

**TOWN OF UPTON BY-LAWS**



**TOWN OF UPTON**

**GENERAL**

**BYLAWS**

**Town of Upton By-laws As Amended**  
**All amendments incorporated as of April 2010**

# **TOWN OF UPTON BY-LAWS**

## **TITLE 1**

### **GENERAL PROVISIONS**

Section 1 The adoption of these bylaws by the Town shall have the force and effect of repealing all presently existing bylaws and regulations heretofore adopted by the Town, except that this repeal shall not apply to or affect any bylaw, order or article heretofore adopted accepting or adopting the provisions of any statute of the Commonwealth. These bylaws shall be known and referred to as ‘Bylaws of the Town of Upton, Massachusetts’.

Section 2 Whoever violates any provision of these bylaws whereby any act or thing is prohibited shall, unless other provision is expressly made, forfeit and pay a fine not exceeding fifteen dollars.

Section 3 Prosecutions for the breach of any of the provisions of any of these bylaws shall be commenced within one year from such breach.

**TOWN OF UPTON BY-LAWS**  
**TITLE 2**  
**MUNICIPAL GOVERNMENT AND FINANCE**

**Chapter 1**  
**Town Meetings**

Section 1 The Annual Town Meeting for the election of Town Officers shall be held on the first Monday of May of each year. Official ballots shall be used as provided by law.

Section 2 The polls for the Annual Town Meeting shall be opened at seven o'clock in the forenoon and shall remain open until eight o'clock in the evening.

Section 2A The Annual Adjourned Meeting for the transaction of all business other than the election of Town Officers, and the determination of matters required to be by ballot, shall be held at 7:30 P.M. on the Thursday following the first Monday in May of each year.

Section 3 Forty legal voters of the town shall constitute a quorum, and such a quorum shall be necessary for all town meetings except that action on any article in a warrant calling for the election of various town officers at an annual election or an officer or officers at a special election, shall not require the presence of a quorum.

Section 4 Notices of every town meeting shall be given by posting printed copies of the warrant for such meeting in two or more conspicuous public places in the town of Upton, and one copy thereof shall be posted on the exterior of the Town Hall Building.

Section 5 Notice of every adjourned Town Meeting shall be posted by the Town Clerk in two or more conspicuous public places in the Town of Upton, one copy thereof shall be posted on the exterior of the Town Hall Building.

In addition thereto the Town Clerk may, if he or she deems it practicable, publish the same in any newspaper published in the County having a circulation in the Town of Upton.

Section 6 The Selectmen, after drawing a warrant for a Town Meeting shall forthwith deliver a copy of the same to the Clerk of the Finance Committee.

Section 7 At any meeting, articles in the warrant shall be acted upon in the order in which they appear, unless otherwise determined by a vote of the meeting.

Section 8 All motions having to do with the expenditure of money shall be presented in writing; and other motions shall be in writing if so directed by the Moderator.

Section 9 If a motion is divisible, it shall be divided and the questions shall be put separately upon each part thereof if so directed by the Moderator.

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Section 10 When a question is before the meeting, the following motions shall be received and shall have precedence in the following order. The first three shall be decided without debate:

- To adjourn
- To lay on the table
- For the previous question
- To postpone to a time certain
- To commit, recommit or refer
- To amend or substitute
- To postpone indefinitely

Section 11 When a question is put the sense of the meeting shall be determined by the voices thereon, and the Moderator shall declare the vote as it appears to him. If the Moderator is unable to decide the vote of the article or matter by sound of the voices, he shall determine the vote by ordering a show of hands or standing vote and may appoint tellers to make and return the count. A roll call shall be ordered by the Moderator if twenty members shall by rising to their places favor such motion. A ballot vote shall be taken at a regular or special Town Meeting when a motion is made and seconded by seven (7) voters and is carried by a majority vote.

Section 12 No vote passed at any meeting shall be reconsidered at an adjournment of that meeting unless notice be given in writing to the Moderator at the meeting that a motion to reconsider will be made at the adjournment thereof. No vote determining that any matter shall not be reconsidered shall be the subject of reconsideration, and no question shall be reconsidered more than once. No vote shall be reconsidered on a motion to adjourn, to lay on the table, or for the previous question. Any notice of motion to reconsider delivered to the Moderator shall forthwith be delivered by the Moderator to the Town Clerk. No motion can be reconsidered at a Town Meeting after one hour from the time the vote is declared by presiding officer.

Section 13 No meeting shall be dissolved until every article contained in the warrant has been acted upon, except that this provision shall not preclude postponement of consideration of any article to an adjournment of the meeting at a stated time and place.

Section 14 Any voter desiring to speak upon a question or matter in debate shall rise to his feet, and each person, shall in turn, be recognized by the Moderator. The speaker shall, before debate, announce his name.

Section 15 On matters requiring a two thirds (2/3) vote by statute a count need not be taken unless the vote so declared is immediately questioned by seven (7) or more voters as provided in Massachusetts General Laws, Chapter 39, Section 15.

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**Chapter 2**  
**General Powers and Duties of Town Officers**

Section 1 All boards, commissions or committees, the members of which are elected by ballot, shall hold a regular meeting at least once each month and shall keep records exactly and in detail of all motions made, votes passed and business transacted. Such records, unless otherwise provided by law, shall be open to public inspection. When a book or record is completed, it shall be delivered to the Town Clerk for safekeeping in the Town vault.

Section 2 All elected officers and all committees, commissions and trustees, and such appointive officers as the Selectmen may direct, shall, on or before the tenth day of January in each year, make a report to the Town of all business transacted in their Departments during the last preceding fiscal year. Such reports shall be made by filing the original thereof with the Board of Selectmen, and a copy thereof shall be submitted to the Town Clerk for permanent record.

Section 3 The annual report of the officers of the Town of Upton shall include reports of all elected officers, committees, commissions and trustees and such appointive officers as the Selectmen may direct.

Section 4 No deed or grant of land, except as hereinafter provided concerning tax titles and tax liens and land acquired thereby, shall be made without a vote of the Town. And wherever it becomes necessary to execute any deed for land, or any interest therein, or any other instrument required to carry into effect the vote of the town, the same shall be executed by the Selectmen, or a majority thereof, in the name of the Town, unless otherwise provided by law or by vote of the town, and shall be sealed with the seal of the town.

Section 5 Obligations or contracts involving five hundred dollars or more shall be in writing and signed by a majority at least of the board or committee authorized or having control of the appropriation against which such obligation is incurred; and such board or committee shall retain a signed copy of every such contract which shall be filed with the Town Clerk for permanent record.

Section 6 A bond for the faithful performance of any contract shall be required by the Selectmen, School Committee or board or committee having in its charge the execution of such contract, and that a certificate shall be filed by the contractor showing compliance with the Workmen's Compensation Laws.

Section 7 No board or officer shall make any contract on behalf of the Town, the execution of which shall necessarily extend beyond one year from the date thereof, unless otherwise provided by law, unless authority for such contract has been specifically given by the vote of the town.

Section 8 No board or officer shall make any contract on behalf of the Town unless said contract is consistent with M.G.L. Chapter 30B, Uniform Procurement Act, Section 12, Term of Contract.

Section 9 The Selectmen and various Town Departments shall have authority, with the advice and consent of the Selectmen to, from time to time, sell obsolete, surplus or unused town equipment.

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## Chapter 3

### Financial

Section 1 All fees received by all town officers by virtue of their office shall be paid into the town treasury, and all monies received by any town officer or department, except as otherwise provided by law, shall be paid by such officer or department upon their receipt into the town treasury. Any sums so paid into the town treasury shall not later be used by such officer or department without a specific appropriation therefor.

Section 2 Funds given to the town in trust, whether by will, declaration, or otherwise for specific purposes, shall not be mingled with other funds, but shall be kept and invested separately and used only in accordance with the terms of the gift.

Section 3 All bills incurred during the year shall be submitted to the Selectmen on or before the last day of each year.

## Chapter 4

### Selectmen

Section 1 The Selectmen shall appoint a Town Counsel who shall be a member in good standing of the Massachusetts Bar. The Town Counsel shall advise all executive officers, boards and committees of the town whenever requested by them and shall represent the Town in all legal proceedings by or against it whenever so directed by the Selectmen. All requests for opinions from the Town Counsel shall be in writing, and all opinions given by him on questions of law to any officer, board or committee shall be in writing and signed by him. A copy of each opinion shall be forwarded to the Town Clerk.

Section 2 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 capacities and to appear and defend suits brought against it or its officers in their capacities, unless otherwise ordered by vote of the town, or provided by law.

Section 3 The Selectmen shall have authority to settle, compromise and adjust any disputed claim for or against the Town; provided, no such claim or action against the Town shall be settled by the Selectmen for a sum in excess of One Thousand Dollars (\$1,000.00) without a specific vote of authority by the Town unless the same has been reduced to judgment by a Court of competent jurisdiction; and further provided no such claim or action against the Town shall be settled by the Selectmen for a sum in excess of Five Hundred Dollars (\$500.00) without the approval of such settlement by the Finance Committee.

Section 4 The Selectmen shall be the licensing authorities for the town, except where otherwise provided by law.

Section 5 Fees for all licenses and permits shall be established annually by the Selectmen except where fees are established or set by statute.

Section 6 The Selectmen may make such rules and regulations not inconsistent with law as may be

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deemed proper relative to the licensing of junk or second-hand dealers.

### **Chapter 188 of the Acts of 2005**

#### **AN ACT RELATIVE TO THE BOARD OF SELECTMEN OF THE TOWN OF UPTON.**

SECTION 1 Notwithstanding any general or special law to the contrary, a person employed 20 hours or more per week by the town of Upton shall not be eligible to hold the office of selectman of the town of Upton while so employed. Any person so employed who holds the office of selectman on the effective date of this act may serve the remainder of his term but shall be ineligible for re-election while so employed.

SECTION 2 This act shall take effect upon its passage.

Approved January 5, 2006

### **Chapter 5 Town Clerk**

Section 1 The Town Clerk shall record any and all instruments conveying land to the Town, or any interest therein at the proper Registry of Deeds, and shall have in his custody all deeds and other instruments so recorded.

Section 2 The Town Clerk shall notify any board, officer or committee of the Town of any vote or action taken by the town concerning the duties of any officer, board or committee. He shall furnish the Selectmen for publication in the annual report, a copy of his record of all town meetings held during the preceding year and vital statistics recorded during that year.

Section 3 The Town Clerk shall conduct an Annual Town Census.

### **Chapter 6 Treasurer-Collector**

Section 1 The Town Treasurer, with the advice and consent of the Selectmen, is authorized to sell and assign any tax lien held by the Town and/or bargain, sell and convey any property to which the Town has or may hereafter acquire title through the foreclosure of tax liens, or under the statutes relating to Lands of Low Value. The Treasurer is authorized to sign, execute and deliver in the name of the Town, any and all legal instruments under seal, necessary to convey to the assignee or purchaser all rights, title and interest of the Town in such property.

Section 2 The Town Treasurer shall have custody of all insurance policies covering town property.

Section 3 The Town Treasurer shall also be the Tax Collector for any and all accounts due the Town in accordance with General Laws, Chapter 41, Section 1.

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## **Chapter 7 Town Counsel**

Section 1 The Selectmen shall appoint a Town Counsel who shall be a member in good standing of the Massachusetts Bar. The Town Counsel shall advise all executive officers, boards and committees of the town whenever requested by them and shall represent the Town in all legal proceedings by or against it whenever so directed by the Selectmen. All requests for opinions from the Town Counsel shall be in writing, and all opinions given by him on questions of law to any officer, board or committee shall be in writing and signed by him. A copy of each opinion shall be forwarded to the Town Clerk.

## **Chapter 8 Finance Committee**

Section 1: There shall be a Finance Committee consisting of nine citizens of the Town, other than Town Officers, who shall be sworn to the faithful performance of their duties. The term of office for members of said Committee shall be three years and three members shall be appointed by the Board of Selectmen, three members shall be appointed by the Town Moderator, and three members shall be elected at large. The terms of the appointments shall be rotated in such a manner that both appointing authorities shall appoint one member and one member shall be elected, for three year terms each year. The initial three elected members shall be elected for terms of three years, two years, and one year respectively. If there is an interim of time between the passage of this by-law and the next annual election, the Board of Selectmen shall appoint three members to the Committee for a period of time that corresponds to the next most immediate election. All appointments to the Committee shall be made within the month of May following the Annual Town Election of each year. Vacancies in said Committee shall be filled by the Town Moderator for their appointments and by the Selectmen for their appointments as well as vacancies within elected positions. These vacancy appointments shall be filled within thirty days after the vacancy occurs. The member appointed to fill such vacancy shall complete the term of the membership vacated. Said Committee shall choose its own officers.

Section 2 To this Committee shall be referred all articles calling for an appropriation of money in any warrant for a Town Meeting. It shall be the duty of the Selectmen after drawing the Town warrant to transmit immediately a copy of the same to the Clerk of the Finance Committee.

Section 3 It shall be the duty of the Finance Committee to make a recommendation concerning each article or transfer relating to finances of the Town. Such recommendation may, at any special meeting of the Town, be made verbally to the voters through the Chairman, or the Clerk of the Committee, and at the annual meeting of the Town, shall be reduced to a printed report available to the voters when annual appropriations shall be acted upon and considered.

Section 4 No motion relating to an expenditure of money or an appropriation shall be acted upon at any Town Meeting until it has been submitted to the Committee, except where provided otherwise by law.

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## **Chapter 9.**

### **Capital Budget Committee**

Section 1 A Committee to be known as the Capital Budget Committee shall be established, composed of one member of the Town Finance Committee appointed by and from it, one member of the Planning Board appointed by and from it, and four additional members to be appointed by the Finance Committee. The members from the Finance Committee and the Planning Board shall be appointed for one-year terms. The other members shall be appointed for four-year terms such that one will expire each year. Vacancies shall be filled for the unexpired terms in the manner of the original appointments. The Committee shall annually prepare a Capital Budget program for use by the Finance Committee, the voters, other Town Boards and officials in their deliberations. The Committee shall publish such a report or a summary thereof in a suitable manner and deposit the original with the Town Clerk.

No motion relating to any capital expenditure of in excess of \$100,000.00 or any appropriation for such a capital expenditure shall be acted upon at any Town Meeting until it has been submitted to the Committee, except where provided otherwise by law. It shall be the duty of the Committee to make a recommendation, either verbally or in written form, to the Town Meeting concerning each article or transfer relating to capital expenditures of the Town.

## **Chapter 10**

### **Personnel Board**

**Under Separate Cover**

## **Chapter 11**

### **Gas Inspector**

Section 1 There shall be, in the Town of Upton, an Inspector of gas piping and gas appliances in buildings located within the Town.

Section 2 It shall be the duty of the Gas Inspector to enforce the rules and regulations as adopted and from time to time amended by the board, established under section 12H of Chapter 25 of the General Laws.

Section 3 The Gas Inspector shall be appointed each year by the Board of Selectmen and shall hold office until his successor is chosen and qualifies.

## **Chapter 12**

### **Water Department**

Section 1 There shall be the levy of special assessments to meet ninety per Centum of the cost hereafter incurred of laying pipes in public and private ways for the conveyance or distribution of water.

Section 2 An owner of land which receives benefit from the laying of water pipes in public and private ways upon which his land abuts shall pay a proportionate part of ninety per Centum of the cost not already assessed of extending such water supply to his land.

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**Section 3** The amount to be charged against each parcel of land receiving such benefit shall include the cost of the pipes and other materials and of the labor in laying them and other expenses incidental thereto and shall be ascertained, assessed and certified by the Water Commissioners.

**Section 4** The assessment provided for in Section 1 above shall be made upon the several parcels of land receiving benefit from the laying of such pipes according to the frontage of such land on any way in which a water pipe is laid.

**Section 5** It shall be the duty of the Water Commissioners to execute this Chapter in accordance with sections forty-two G to forty-two I inclusive of Chapter 40 of the General Laws.

### **Section 6** CROSS-CONNECTION CONTROL-GENERAL POLICIES

#### **(a) PURPOSE**

The purpose of this by-law is:

1. To protect the public potable water supply of the Town of Upton from the possibility of contamination or pollution by isolating within the customer's internal distribution system(s) or the customer's private water system(s) such contaminants or pollutants that could backflow into the public water system: and,
2. To promote the elimination or control of existing cross connections, actual or potential, between the customer's in-plant potable water system(s) and nonpotable water systems, plumbing fixtures, and industrial piping systems; and,
3. To provide for the maintenance of a continuing program of cross-connection control that will systematically and effectively prevent the contamination or pollution of all potable water systems.

#### **(b) AUTHORITY**

As provided in the Federal Safe Drinking Water Act of 1974, (Public Law 93—523), and the Commonwealth of Massachusetts Drinking Water Regulations, 310 CMR 22.22, the water purveyor has the primary responsibility for preventing water from unapproved sources or any other substances from entering the public potable water system.

#### **(c) RESPONSIBILITY**

The Upton Water Department shall be responsible for the protection of the public potable water distribution system from contamination or pollution due to the backflow of contaminants or pollutants through the water service connection. If, in the judgment of the Upton Water Department an approved backflow-prevention assembly is required (at the customer's water service connection; or, within the customer's private water system) for the safety of the water system, the Upton Water Department or its designated agent shall give notice in writing to said customer to install such an approved backflow-prevention assembly(s) at specific location(s) on his/her premises. The customer shall immediately

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install such approved assembly(s) at his/her own expense: and, failure, refusal, or inability on the part of the customer to install, have tested, and maintain said assembly(s) shall constitute grounds for discontinuing water service to the premises until such requirements have been satisfactorily met.

### (d) DEFINITIONS

1. **WATER SUPERINTENDENT** - The Superintendent in charge of the Water Department of the Town of Upton is invested with the authority and responsibility for the implementation of an effective cross-connection control program and for the enforcement of the provisions of this ordinance.
2. **APPROVED** - Accepted by the authority responsible as meeting an applicable specification stated or cited in this ordinance or as suitable for the proposed use.
3. **AUXILIARY WATER SUPPLY** - Any water supply on or available to the premises other than the purveyor's approved public water supply. These auxiliary waters may include water from another purveyor's public potable water supply or any natural source(s), such as a well, spring, river, stream, harbor, and so forth; used waters; or industrial fluids. These waters may be contaminated or polluted, or they may be objectionable and constitute an unacceptable water source over which the water purveyor does not have sanitary control.
4. **BACKFLOW** - The undesirable reversal of flow in a potable water distribution system as a result of a cross connection.
5. **BACKPRESSURE** - A pressure, higher than the supply pressure, caused by a pump, elevated tank, boiler, or any other means that may cause backflow.
6. **BACKSIPHONAGE** - Backflow caused by negative or reduced pressure in the supply piping.
7. **BACKFLOW PREVENTER** - An assembly or means designed to prevent backflow.
  - 7.1 **Air gap** - The obstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor, or other assembly and the flood level rim of the receptacle. These vertical, physical separations must be at least twice the diameter of the water supply outlet, never less than 1 inch (25 mm).
  - 7.2 **Reduced pressure backflow-prevention assembly** - The approved reduced-pressure principle backflow-prevention assembly consists of two independently acting approved check valves together with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves and below the first valve. These units are located between two tightly closing resilient-seated shut-off valves as an assembly and equipped with properly located resilient-seated test cocks.
  - 7.3 **Double check valve assembly** - The approved double check-valve assembly consists of two internally loaded check valves, either spring loaded or internally

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weighted, installed as a unit between two tightly closing resilient—seated shutoff valves and fittings with properly located resilient-seated test cocks. This assembly shall only be used to protect against a “nonhealth” hazard (that is, a pollutant).

8. CONTAMINATION - An impairment of potable water supply by the introduction or admission of any foreign substance that degrades the quality and creates a health hazard.
  
9. CROSS CONNECTION - A connection or potential connection between any part of a potable water system and any other environment containing other substances in a manner that, under any circumstances would allow such substances to enter the potable water system.. Other substances may be gases, liquids. or solids, such as chemicals, waste products, steam, water from other sources (potable or nonpotable), or any matter that may change the color or add odor to the water.
  
10. CROSS CONNECTIONS-CONTROLLED - A connection between a potable water system and a nonpotable water system with an approved backflow-prevention assembly properly installed and maintained so that it will continuously afford the protection commensurate with the degree of hazard.
  
11. CROSS-CONNECTION CONTROL BY CONTAINMENT - The installation of an approved backflow-prevention assembly at the water service connection to any customer's premises, where it is physically and economically unfeasible to find and permanently eliminate or control all actual or potential cross connections within the customer's water system; or it shall mean the installation of an approved backflow-prevention assembly on the service line leading to and supplying a portion of a customer’s water system where there are actual or potential cross connections that cannot be effectively eliminated or controlled at the point of the cross connection.
  
12. DEP - The Massachusetts Department of Environmental Protection.
  
13. HAZARD, DEGREE OF - The term is derived from an evaluation of the potential risk to public health and the adverse effect of the hazard upon the potable water system.
  - 13.1 Hazard--health - A cross connection or potential cross connection involving any substance that could, if introduced in the potable water supply, cause death, illness, spread disease, or have a high probability of causing such effects.
  
  - 13.2 Hazard--plumbing - A plumbing-type cross connection in a consumer’s potable water system that has not been properly protected by an approved air gap or an approved backflow-prevention assembly.
  
  - 13.3 Hazard--nonhealth - A cross connection or potential cross connection involving any substance that generally would not be a health hazard but would constitute a nuisance or be aesthetically objectionable, if introduced into the potable water supply.
  
  - 13.4 Hazard--system - An actual or potential threat of severe damage to the physical properties of the public potable water system or the consumer’s potable water system or

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of a pollution or contamination that would have a protracted effect on the quality of the potable water in the system.

14. **INDUSTRIAL FLUIDS SYSTEM** - Any system containing a fluid or solution that may be chemically, biologically, or otherwise contaminated or polluted in a form or concentration, such as would constitute a health, system, pollution, or plumbing hazard, if introduced into an approved water supply. This may include, but not be limited to: polluted or contaminated waters; all types of process waters and used waters originating from the public potable water system that may have deteriorated in sanitary quality; chemicals in fluid form; plating acids and alkalies; circulating cooling waters connected to an open cooling tower; and/or cooling towers that are chemically or biologically treated or stabilized with toxic substances; contaminated natural waters, such as wells, springs, streams, rivers, bays, harbors, seas, irrigation canals or systems, and so forth; oils, gases, glycerine, paraffins, caustic and acid solutions, and other liquid and gaseous fluids used in industrial or other purposes for fire-fighting purposes.

15. **POLLUTION** - The presence of any foreign substance in water that tends to degrade its quality so as to constitute a nonhealth hazard or impair the usefulness of the water.

16. **WATER--POTABLE** - Water that is safe for human consumption as described by the public health authority having jurisdiction.

17. **WATER--NONPOTABLE** - Water that is not safe for human consumption or that is of questionable quality.

18 **SERVICE--CONNECTION** -The terminal end of a service connection from the public potable water system, that is, where the water purveyor loses jurisdiction and sanitary control over the water at its point of delivery to the customer's water system. If a meter is installed at the end of the service connection, then the service connections shall mean the downstream end of the meter. There should be no unprotected takeoffs from the service line ahead of any meter or backflow-prevention assembly located at the point of delivery to the customer's water system. Service connection shall also include water service connection from a fire hydrant and all other temporary or emergency water service connections from the public potable water system.

19. **WATER--USED** - Any water supplied by a water purveyor from a public potable water system to a consumer's water system after it has passed through the point of delivery and is no longer under the sanitary control of the water purveyor.

### (e) ADMINISTRATION

1. The Upton Water Department will operate an active cross connection control program, to include the keeping of necessary records, which fulfills the requirements of the State DEP's Cross Connection Regulations and is approved by the DEP.

2. The owner shall allow his property to be inspected for possible cross connections and shall follow the provisions of the Upton Water Department's program and the DEP regulations.

### (f) REQUIREMENTS

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## 1. WATER SYSTEM

- 1.1 The water system shall be considered as made up of two parts: The utility system and the customer system.
- 1.2 Utility system shall consist of the source facilities and the distribution system, and shall include all those facilities of the water system under the complete control of the utility, up to the point where the customers system begins (usually at the meter).
- 1.3 The source shall include all components of the facilities utilized in the production, treatment storage, and delivery of water to the distribution system.
- 1.4 The distribution system shall include the network of conduits used for the delivery of water from the source to the customers system.
- 1.5 The customer's system shall include those parts of the facilities beyond the termination of the utility distribution system that are utilized in conveying utility-delivered domestic water to points of use.

## 2. POLICY

- 2.1 No water service connection to any premises shall be installed or maintained by the water purveyor unless the water supply is protected as required by state/provincial laws and regulations and this By-Law. Service of water to any premises shall be discontinued by the water purveyor if a backflow-prevention assembly required by the by-law is not installed, tested, and maintained, or if it is found that a backflow-prevention assembly has been removed, bypassed, or if an unprotected cross connection exists on the premises. Service will not be restored until such conditions or defects are corrected.
- 2.2 The customer's system should be open for inspection at all reasonable times to authorized representatives of the Town of Upton Water Department to determine whether cross connections or other structural or sanitary hazards, including violations of these regulations exist. When such a condition becomes known, the Upton Water Department shall deny or immediately discontinue service to the premises by providing for a physical break in the service line until the customer has corrected the condition(s) in conformance with state/provincial and town statutes relating to plumbing and water supplies and the regulations adopted pursuant thereto.
- 2.3 An approved backflow-prevention assembly shall be installed on each service line to a customer's water system at or near the property line or immediately inside the building being served; but in all cases, before the first branch line leading off the service line wherever the following conditions exist:
  - 2.3a In the case of premises having an auxiliary water supply that is not or may not be of safe bacteriological or chemical quality and that is not acceptable as

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an additional source by the Upton Water Department, the public water system shall be protected against backflow from the premises by installing an approved backflow-prevention assembly in the service line, appropriate to the degree of hazard -

2.3b In the case of premises on which any industrial fluids or any other objectionable substances are handled in such a fashion as to create an actual or potential hazard to the public water system, the public system shall be protected against backflow from the premises by installing an approved backflow-prevention assembly in the service line, appropriate to the degree of hazard. This shall include the handling of process waters and waters originating from the utility system that have been subject to deterioration in quality.

2.3c In the case of premises having (1) internal cross connections that cannot be permanently corrected and controlled, or (2) intricate plumbing and piping arrangements or where entry to all portions of the premises is not readily accessible for inspection purposes, making it impracticable or impossible to ascertain whether or not dangerous cross connections exist, the public water system shall be protected against backflow from the premises by installing an approved backflow-prevention assembly in the service line.

2.4 The type of protective assembly required under subsections (f) 2.3a, (f) 2.3b, and (f) 2.3c shall depend upon the degree of hazard that exists as follow:

2.4a In the case of any premises where there is an auxiliary water supply as stated in subsection (f) 2.3a of this section and it is not subject to any of the following rules, the public water system shall, be protected by an approved air-gap separation or an approved reduced pressure principle backflow-prevention assembly.

2.4b In the case of any premises where there is water or substance that would be objectionable but not hazardous to health, if introduced into the public water system, the public water system shall be protected by an approved double check valve assembly.

2.4c In the case of any premises where there is any material dangerous to health that is handled in such a fashion as to create an actual or potential hazard to the public water system, the public water system shall be protected by an approved air-gap separation or an approved reduced-pressure principle backflow-prevention assembly. Examples of premises where these conditions will exist include sewage treatment plants, sewage pumping stations, chemical manufacturing plants, hospitals, mortuaries, and plating plants.

2.4d In the case of any premises where there are “uncontrolled” cross connections, either actual or potential, the public water system shall be protected by an approved air-gap separation or an approved reduced pressure principle backflow-prevention assembly at the service connection.

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2.4e In the case of any premises where, because of security requirements or other prohibitions or restrictions, it is impossible or impractical to make a complete in-plant cross-connection survey, the public water system shall be protected against backflow from the premises by either an approved air-gap separation or an approved reduced-pressure principle backflow-prevention assembly on each service to the premises.

2.4f In the case of any premises where, in the opinion of the Upton Water Department, an undue health threat is posed because of the presence of extremely toxic substances, the Upton Water Department may require an air-gap at the service connection to protect the public water system. This requirement will be at the discretion of the Upton Water Department and is dependent on the degree of hazard.

2.5 Any backflow-prevention assembly required herein shall be a model and size approved by the DEP and the Upton Water Department. The backflow-prevention assemblies must comply with the DEP list of approved Backflow Prevention Devices, as amended.

2.6 It shall be the duty of the customer-user at any premises where backflow prevention assemblies are installed to have certified inspections and operational tests made at least once per year. In those instances where the Upton Water Department deems the hazard to be great enough, certified inspections may be required at more frequent intervals. These inspections and tests shall be at the expense of the water user and shall be performed by the assembly manufacturer's representative, Town of Upton Water Department personnel, or by a certified tester approved by the Upton Water Department. Fees for backflow prevention assembly inspection and testing conducted by the Town of Upton Water Department will be assessed at the rate of \$100.00 for each backflow prevention assembly installed or required. It shall be the duty of the Upton Water Department to see that these tests are made in a timely manner. The customer-user shall notify the Upton Water Department in advance when the tests are to be undertaken so that the customer-user may witness the tests if so desired. These assemblies shall be repaired, overhauled, or replaced at the expense of the customer-user whenever said assemblies are found to be defective. Records of such tests, repairs, and overhaul shall be kept and made available to the Upton Water Department.

2.7 All presently installed backflow-prevention assemblies that do not meet the requirements of this section but were approved assemblies for the purposes described herein at the time installation and that have been properly maintained, shall, except for the inspection and maintenance requirements under subsection (f) 2.6., be excluded from the requirements of these rules so long as the Upton Water Department is assured that they will satisfactorily protect the utility system. Whenever the existing assembly is moved from the present location, requires more than minimum maintenance, or when the Upton Water Department finds that the maintenance constitutes a hazard to health, the unit shall be replaced by an approved backflow-prevention assembly meeting the requirements of this section.

## TOWN OF UPTON BY-LAWS

### Section 7      RATE

#### (a)      Residential Connections:

- (1) For a single family dwelling that is connected, directly or indirectly, to the municipal water supply, \$2,500.00 shall be assessed.
- (2) For a multi-family dwelling that is connected, directly or indirectly, to the municipal water supply, \$2,500.00 shall be assessed for the first dwelling unit and \$1,250.00 shall be assessed for each additional dwelling unit therein or as may be from time to time added thereto. For the purposes of this provision, “multi-family dwelling” shall mean any house, building or other structure (other than a hotel or motel) that has more than one dwelling unit.
- (3) For an approved sub-division having branch or secondary mains installed and paid for by any party or parties other than the Town of Upton, \$2,500.00 shall be assessed for each connection made, directly or indirectly, to the municipal water supply within five years from the date of initial definitive sub-division plan approval as endorsed by the Upton Planning Board. The provisions of Section 7(a) (1) SUPRA, shall govern any connection made within such development after said five year period.
- (4) For a hotel or motel that is connected, directly or indirectly, to the municipal water supply, \$2,500.00 shall be assessed for each rentable unit therein or as may be from time to time added thereto; and for any other use therein which is connected, directly or indirectly, to a public water supply an amount shall be assessed in accordance with Section 7(b), INFRA.

#### (b)      Non—Residential Connections:

- (1) For an approved commercial or individual sub-division having branch or secondary mains installed and paid for by a party or parties other than the Town of Upton, \$2,500.00 shall be assessed for each connection made, directly or indirectly, to the municipal water supply within five years from the date of the initial definitive sub-division plan approval as endorsed by the Upton Planning Board.. The provisions of Section 7(b) (2), INFRA, shall govern any connection made with such development after such five-year period.
- (2) Any facility not otherwise herein provided for shall be assessed as follows:
  - (i) Any such facility that is utilized solely by one party, partnership, association, corporation or other entity, and for one enterprise only, and which has floor space not in excess of 10,000 square feet, shall be assessed at \$2,500.00.
  - (ii) Any other such facility shall be assessed a minimum of \$2,500.00 together with an additional \$2,500.00 for each 10,000 square feet of floor space up to a total of 50,000 square feet, as such floor space may be therein or as may be from time to time added thereto.

### Section 8      Water Use Restrictions

8.1      Authority      This By-law is adopted by the Town under its police powers to protect public

## TOWN OF UPTON BY-LAWS

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.

8.2 Purpose The purpose of this bylaw is to protect, preserve and maintain the public health, safety and welfare whenever there is in force a State of Water Supply Conservation by providing for enforcement of any duly imposed restrictions, requirements, provisions or conditions imposed by the Town.

8.3 Definitions:

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

State of Water Supply Conservation shall mean a State of Water Supply Conservation declared by the Town pursuant to section 8.4 of this bylaw.

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.

8.4 Declaration of a State of Water Supply Conservation The Town, through its Board of Selectmen, 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 required to ensure an adequate supply of water to all water consumers. Public notice of a State of Water Conservation shall be given under section 8.6 of this by-law before it may be enforced.

8.5 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 the municipal water system as necessary to protect the water supply. The applicable restrictions, conditions or requirements shall be included in the public notice required under section 8.6.

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 Watering 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.

8.6 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

## TOWN OF UPTON BY-LAWS

State of Water Supply Conservation. Any restriction imposed under section 8.5 shall not be effective until such notification is provided. Notification of the State of Water Supply Conservation shall also be simultaneously provided to the Massachusetts Department of Environmental Protection.

8.7 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 Selectmen 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 8.6.

8.8 Penalties Any person violating the provisions of this bylaw will receive a written notice for the first violation, and shall be liable to the Town in the amount of \$50.00 for the second violation and \$100.00 for each subsequent violation, which penalties shall inure to the Town Treasury. Each day of violation shall constitute a separate offense. Any person violating this bylaw for a third offense shall be subject to termination of municipal water service and Department of Public Works personnel will shut off the municipal water service to the property. Service will be restored only by Department of Public Works personnel during normal working hours following payment to the Town Treasurer of any and all applicable fines. Fines shall be recovered by indictment, or on complaint before the District Court, or by non-criminal disposition enforced by the Water & Sewer Superintendent or by the Director of Public Works in accordance with Section 21D of Chapter 40 of the Massachusetts General Laws.

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

### Chapter 13 Sewer Cost Apportionment

Preamble: The purpose of this By-law shall be to establish equitable permanent sewer connection fees to offset in part the capital cost of sanitary sewerage in the Town of Upton.

Section 1 In General:

The owner of any house, building or other structure used for human habitation, employment, recreation or periodic activity, or for which sanitary sewerage facilities are by law required to be installed or maintained, and that is within the Town and upon land abutting upon a public or private way in which there is a public sanitary sewer, shall connect such facilities to said sewer by a sufficient drain (a) within one year after the date that said public sanitary sewer shall have been placed in operation, or (b) in the case of a newly constructed such house, building, or other structure, or where a permit for occupancy, or the like, would be otherwise required, prior to the occupancy thereof.

Section 2 Assessment:

For any connection (whether or not required under Section 1, SUPRA) made, directly or indirectly to a public sanitary sewer, or for any addition (as set forth in Section 3 (a) (2) and (4), and 3 (b) (2) (ii), INFRA) to the use of such connection, there shall be assessed and levied, upon the real property for which said connection or addition is or has been made, a sewer connection fee as hereinafter set forth.

Section 3 Rate:

(a) Residential Connections:

## TOWN OF UPTON BY-LAWS

- (1) For a single family dwelling that is connected, directly or indirectly, to a public sanitary sewer, \$5,000.00 shall be assessed.
- (2) For a multi-family dwelling that is connected, directly or indirectly, to a public sanitary sewer, \$5,000.00 shall be assessed for the first dwelling unit and \$2,500.00 shall be assessed for each additional dwelling unit therein or as may be from time to time added thereto. For the purposes of this provision, "multi-family dwelling" shall mean any house, building or other structure (other than a hotel or motel) that has more than one dwelling unit.

*Board of Selectmen Regulation voted January 2006: Also, that a multifamily dwelling with Separate connections from each unit to the Town's sanitary system at the **Street or Main Driveway** is subject to a \$5,000.00 fee for **each unit**.*

- (3) For an approved sub-division having branch or secondary mains installed and paid for by any party or parties other than the Town of Upton, \$5,000.00 shall be assessed for each connection made, directly or indirectly, to a public sanitary sewer within five years from the date of initial definitive sub-division plan approval as endorsed by the Upton Planning Board. The provision of Section 3 (a) (1), SUPRA, shall govern any connection made within such development after said five-year period.

*Board of Selectmen Regulation voted January 2006: Also, that a multifamily dwelling with Separate connections from each unit to the Town's sanitary system at the **Street or Main Driveway** is subject to a \$5,000.00 fee for **each unit**.*

- (4) For a hotel or motel that is connected, directly or indirectly, to a public sanitary sewer, \$5,000.00 shall be assessed for each rentable unit therein or as may be from time to time added thereto; and for any other use therein which is connected, directly or indirectly, to a public sanitary sewer an amount shall be assessed in accordance with Section 3 (b), INFRA.

### (b) Non-Residential Connections:

- (1) For an approved commercial or individual sub-division having branch or secondary mains installed and paid for by a party or parties other than the Town of Upton, \$5,000.00 shall be assessed for each connection made, directly or indirectly, to a public sanitary sewer within five years from the date of the initial definitive sub-division plan approval as endorsed by the Upton Planning Board. The provisions of Section 3 (b) (2), INFRA, shall govern any connection made with such development after such five-year period.

### (2) Any facility not otherwise herein provided for shall be assessed as follows:

- (i) Any such facility that is utilized solely by one party, partnership, association, corporation or other entity, and for one enterprise only, and which has floor space not in excess of 10,000 square feet, shall be assessed at \$5,000.00.
- (ii) Any other such facility shall be assessed a minimum of \$5,000.00 together with an additional \$5,000.00 for each 10,000 square feet of floor space up to a total of 50,000 square feet, as such floor space may be therein or as may be from time to time added thereto.

## **TOWN OF UPTON BY-LAWS**

Assessments as herein set forth shall be made by the Water/Sewer Commission of the Town of Upton by filing with the Board of Assessors of the Town of Upton a certificate designating the public or private way on which the real property for which a connection or addition as herein described, abuts, and setting forth the name or names of the owner or owners of the real property for which such connection or addition has been made, and the amount of the assessment to be paid by such owner or owners. Said assessors, upon receipt of such certification, shall forthwith commit such assessment with their Warrant to the Collector of Taxes of the Town of Upton, who shall forthwith make a demand in writing for the payment of said assessment, and every owner of real property thus assessed shall, within three months after such demand is served upon him or upon the occupants of such real property, or is sent to said owner at his last known address, pay to said Collector the sum so assessed. A copy of this certification shall, within 30 days of the filing of the same with said assessors, be recorded by said commission in the Worcester District Registry of Deeds, or in the case of registered land, to the Worcester County Registry District.

### **Chapter 14 Street Numbering**

Section 1 The Board of Selectmen of the Town of Upton or their appointed agent, shall be responsible for assigning Street numbers to each dwelling, business, or industrial building in the Town of Upton.

Section 2 The numbers shall be those assigned to each structure in accordance with the street numbering survey compiled by the Board of Selectmen on file in the office of the Town Clerk.

Section 3 Street numbers shall be provided for each building shown in the above survey by the owner of such structure within ninety days after approval of this bylaw by the Attorney General. The numbers shall be a minimum of three inches high, made of a permanent weather-proof material, and shall be placed on each structure or on a suitable support near the main entrance to the structure so as to be clearly visible from the street or roadway upon which the structure fronts.

Section 4 It shall be the responsibility of such owner of property not presently covered by the above survey, to obtain a number assigned to his structure within three months after notification of such new assignment.

### **Chapter 15 Civil Defense**

Section 1 DEPARTMENT OF CIVIL DEFENSE: There is hereby established a department of civil defense (hereinafter called the "department"). It shall be the function of the department to have charge of civil defense as defined in Section 1, Chapter 639, Acts of 1950 and to perform civil defense functions as authorized or directed by said chapter or by any and all executive orders or general regulations promulgated thereunder, and to exercise any authority delegated to it by the governor under said Chapter 639.

Section 2 DIRECTOR OF CIVIL DEFENSE: The department shall be under the direction of a director of civil defense (hereinafter called the 'director'), who shall be appointed by the Selectmen. The director shall have direct responsibility for the administration of the department, subject to the direction

## **TOWN OF UPTON BY-LAWS**

and control of the Selectmen. The director may, within the limits of the amount appropriated therefor, and subject to the approval of the Selectmen, appoint such experts, clerks and other assistants as the work of the department may require and may remove them, and may make such expenditures as may be necessary to execute effectively the purpose of Chapter 639 of the Acts of 1950.

The director shall also have authority, subject to the approval of the Selectmen, to appoint district coordinators and may accept and may receive, on behalf of the Town, services, equipment, supplies, materials or funds by way of gifts, grant or loan, for purposes of civil defense, offered by the federal government or any agency or officer thereof or any person, firm or corporation, subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer. The director shall cause appropriate records to be kept of all matters relating to such gifts, grants or loans.

Section 3      **CIVIL DEFENSE ADVISORY COUNCIL:** There is hereby established a civil defense advisory council (hereinafter called the "council"). Said council shall serve without pay and shall consist of the director of civil defense, and such other department heads and other persons as the Selectmen may deem necessary. Such member of said council, as the Selectmen shall designate, shall serve as chairman of said council. The council shall serve subject to the direction and control of the Selectmen and shall advise the Selectmen and the director on matters pertaining to civil defense.

Section 4      **POLICE AID TO OTHER CITIES AND TOWNS IN EVENT OF RIOTS OR OTHER VIOLENCE THEREIN:** The Police Department is hereby authorized to go to aid another city or town at the request of said city or town in the suppression of riots or other forms of violence therein.

Section 5      **TERMINATION OF BYLAW:** This bylaw shall remain in force during the effective period of Chapter 639, Acts of 1950 and any act in amendment or continuation thereof or substitution therefor.

Section 6      **DEFINITION:** All references to Chapter 639, Acts of 1950, as now in force, shall be applicable to any act or acts in amendment or continuation of or substitution for said Chapter 639.

### **Chapter 16 Animal Control**

Section 1:      The fee to license a male or female dog will be \$20.00. The fee to license a spay female or neutered male dog will be \$10.00.

Section 2:      In addition to the license fees required by Section 1 of this by-law, there shall be assessed a late charge of ten dollars (\$10.00) with respect to any dog that is not licensed before June 1 of each year. The above fees to become effective with the 1999 licensing period.

Section 3:      In no event shall any pet/dog, leashed or unleashed, be permitted to be upon any of the following public properties: Town Beach, Playground, Town Common, Cemeteries, Knowlton Risteen/ Town Hall area and all playing fields, except for any person physically challenged that may require the assistance of a dog. Violation of this section shall be subject to a fine of \$10.00; each instance shall constitute a separate violation of this by-law.

## **TOWN OF UPTON BY-LAWS**

### **Leash Law**

Section 1: Whoever owns or keeps a dog with the Town shall restrain said dog from running at large, confining said dog to the premises of the owner or keeper or shall keep such dog on a leash, or under constant voice command, while on a public way.

Section 2: The restraint of dogs shall not apply for the purpose of training dogs or hunting. Nor shall it apply to a dog belonging to a law enforcement agency, acting in the line of duty. Nor shall it apply to a dog formally trained as a search and rescuer, acting in the line of duty.

Section 3: Upon receipt of a written report from an investigating officer regarding a complaint about a dog in the Town of Upton, the Chief of Police may make such order concerning the restraint of such dog as may be deemed necessary, pending a hearing on the matter by the Board of Selectmen.

Section 4: No dog collected under the provisions of this Bylaw, or the provisions of Massachusetts General Laws, Chapter 140, as amended, shall be released unless it has been licensed as required by this Chapter.

Section 5: The owner or keeper of a dog found in violation of this Bylaw or the provisions of Massachusetts General Laws, Chapter 140, as amended, which has been impounded, shall pay fees equal to the expenses incurred by the Town for the collection, initial handling, and daily care (if applicable) of such dogs. These fees shall be established by the Upton Board of Selectmen, in accordance with Massachusetts General Laws, Chapter 140, as amended.

### **Chapter 17 Building Committee**

Section 1 A Building Committee shall be appointed and act as the Official Town Agent on major construction projects. When preliminary studies are approved by a vote at a Town Meeting for a major new building, construction or renovation project, a Building Committee shall be appointed by the Board of Selectmen, Town Moderator, and the Department Head for which the project is directed to review the results of the study and make their recommendations at the next appropriate Town Meeting. The Board of Selectmen, the Moderator and the Department Head shall each have one vote; totaling three votes. The appointments shall be by a majority vote of the above three entities. The recommendations should include a request for a detailed engineering study if the Committee deems it necessary; the engineering study should be done prior to any action on the project.

Section 2 This Building Committee should include five members who have expertise in architecture, construction, accounting, engineering and/or other related fields; if possible, it should also include members who are familiar with and are concerned with the Town's historic and environmental character.

Section 3 This Building Committee shall, as the Official Town Agent, oversee the project (if project is approved) to its conclusion, and shall make public progress reports at least semi-annually; these reports shall indicate if the project is on schedule and within budget. The Committee shall also act as liaison between all parties to assure that all local and state codes are met.

**TOWN OF UPTON BY-LAWS**  
**Chapter 18**  
**Board of Commissioner of Trust Funds**

**Creation:**

At the STM of April 12, 2005, the Town voted to establish a three member elected Board of Commissioners of Trust Funds in accordance with M.G.L. Chapter 41, § 45, and § 47.

**Composition Term of Office:**

At the time of creating said Board there shall be elected one member for one year, one member for two years, and one member for three years; and there shall be elected annually thereafter one member for three years. Any vacancy occurring other than by expiration of term shall be filled by appointment by the majority vote of the Board of Selectmen until the next annual election, at which time such office shall be filled, by election, for the remainder of the unexpired term.

**Responsibilities & Duties:**

The said Board of Commissioners shall, so far as consistent with the terms of the trusts, manage and control the same, and distribute the income in accordance with the terms of the respective trusts. The Board shall keep a record of its doings, and at the close of each financial year shall make a report to the Town, showing the total amount of funds, and their investments, receipts and disbursements on account of the same, setting forth in detail the source of the receipts and the purposes of the expenditure.

**Chapter 19**  
**Non-Criminal Disposition**

Any bylaw of the Town of Upton, or rule or regulation of its officers, boards or departments, 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 2I-D of Chapter 40 of the Massachusetts General Laws. The non-criminal fine for each such violation, if not otherwise specified, shall be \$150.00. "Enforcing person" as used in this bylaw, shall mean: any Town of Upton police officer with respect to any offense; as well as the Building Inspector, the members of the Conservation Commission, the members of the Board of Health and its Health Agent, the Sealer of Weights and Measures, and such other officials as the Board of Selectmen may from time to time designate, each with respect to violation of bylaws 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.

**Chapter 20**  
**Fire & EMS Department Advisory Committee**

**Composition:** There shall be a Fire & EMS Department Advisory Committee consisting of five members; one full time Firefighter/EMT, one Call member, one EMS member, one Citizen at Large, and the Chief, all appointed by and will serve at the pleasure of the Board of Selectmen.

**Responsibility & Duties:** The FD/EMS Advisory Committee shall make careful studies of resources, and needs of the FD/EMS Department. The committee will make comprehensive recommendations to the Fire Chief setting forth policies to govern the future growth and development of the FD/EMS

## TOWN OF UPTON BY-LAWS

Department. These recommendations shall be submitted in written form to the Chief for his review. The Chief shall within a reasonable time respond in writing to the Advisory Committee as to their recommendations.

**Administration:** The Board of Selectmen shall adopt reasonable rules and regulations for the administration of the FD/EMS Advisory Committee, which maybe amended from time to time.

### Chapter 21 Planning Board

(S.T.M., Article 2, 08 August 1955)

#### a. **Composition, Term of Office**

There shall be a Planning Board consisting of five members elected for terms of five years each, so arranged that the term of at least one member will expire each year, and their successor shall be elected for a term of five years. A vacancy occurring otherwise than by expiration of term shall be filled by appointment by majority vote of the Board of Selectman and the remainder of the members of the Planning Board until the next annual election, at which time, such office shall be filled, by election, for the remainder of the unexpired term.

#### b. **Responsibilities and Duties**

The Planning Board shall make careful studies of resources, possibilities and needs of the town and shall make plans for the development of the town. The Board shall have the authority to make comprehensive or master plan, setting forth in graphic and textual form policies to govern the future growth and development of the town. The Board shall have the authority to regulate the subdivision of land within the Town by adoption of rules and regulations. The Board shall have the authority to grant special permits for all uses as designated in the zoning by-laws.

### Chapter 22 Recall of Elected Officials

AN ACT AUTHORIZING RECALL ELECTIONS IN THE TOWN OF UPTON.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

**SECTION 1.** Any holder of an elected office in the town of Upton may be recalled, and removed from that office, by the qualified voters of the town as provided in this act.

**SECTION 2.** Any 30 registered voters may initiate a recall petition by filing with the town clerk of the town of Upton an affidavit containing the name of the officer sought to be recalled and a statement of the grounds for recall.

After the town clerk has certified the affidavit, the town clerk shall, within 2 business days, deliver to

## TOWN OF UPTON BY-LAWS

the voter first named on the affidavit a sufficient number of copies of petition blanks demanding the recall. These blanks shall be issued by the town clerk with the town clerk's signature and official seal attached to them; they shall be dated and addressed to the selectmen of the town, shall contain the name of the person to whom issued, the name of the person sought to be recalled, the office from which recall is sought, the grounds of recall as stated in the affidavit, and shall demand the election of a successor to the office. A copy of the petition shall be entered in a record book to be kept in the office of the town clerk.

The recall petition shall be returned and filed with the town clerk on or before 5:00 p.m. on the thirtieth day after the filing of the affidavit. If the thirtieth day is a Saturday, Sunday, or a holiday, the petition may be filed on the next business day.

The petition, before being returned and filed, shall be signed by 15 per cent of the registered voters, and to every signature shall be added the place of residence of the signer, giving the street and number.

The town clerk shall, within 1 business day after the date of its filing with the town clerk, submit the recall petition to the board of registrars of voters in the town, which shall, within 5 business days after the day of receipt, certify in writing on it the number of signatures which are those of registered voters in the town as of the date the affidavit was filed with the town clerk. The board of registrars of voters shall, upon completion of its certification, return the petition to the town clerk.

**SECTION 3.** If the petition shall be found and certified by the town clerk to be sufficient, the town clerk shall submit it, with the town clerk's certificate on it, to the selectmen without delay, and the selectmen shall immediately give to the elected officer whose recall is sought written notice of the receipt of the certificate and shall, if the officer sought to be removed does not resign within 5 days after receipt of the notice, order a special election to be held not less than 65 days nor more than 75 days after the date of the town clerk's certificate that a sufficient petition has been filed, but if any other town election is to occur within 90 days after the date of the certificate, the selectmen may, in their discretion, postpone the holding of the removal election to the date of that other election. If a vacancy occurs in the office after a recall election has been ordered, the election shall nevertheless proceed as provided in this act.

**SECTION 4.** Any officer sought to be recalled may be a candidate to succeed himself or herself, and, unless the officer requests otherwise in writing, the town clerk shall place that officer's name on the official ballot without nomination. The nomination of other candidates, the publication of the warrant for the recall election, and the conduct of the election shall all be in accordance with the law relating to elections, unless otherwise provided by this act.

**SECTION 5.** The incumbent shall continue to perform the duties of the office until the recall election. If the recall fails, or if the incumbent is re-elected, the incumbent shall continue in the office for the remainder of the unexpired term, subject to recall as before, except as otherwise provided in this act. If not re-elected in the recall election, the incumbent shall be considered removed upon the qualification of a successor, who shall hold office during the unexpired term. If the successor fails to qualify within 5 days after receiving notification of election, the incumbent shall be considered removed and the office vacant.

**SECTION 6.** Ballots used in a recall election in the town shall submit the following proposition in the

## **TOWN OF UPTON BY-LAWS**

order indicated: For the recall of (name of Officer); Against the recall of (name of officer).

Immediately at the right of each proposition, there shall be an oval which the voter may fill to vote for either of such proposition. Just above said ovals, there shall appear the direction "vote for one". Under the proposition shall appear the word "Candidates" and the direction to voters required by section 42 of chapter 54 of the General Laws and beneath this the names of candidates nominated as provided in this act. In case of other forms of balloting, appropriate provision shall be made to allow the same intent of the voter.

If a majority of the votes cast on the recall question is in the affirmative, then the candidate who received the highest number of votes in the special election to fill the vacancy shall be elected. If a majority of the votes cast on the recall question is in the negative, the ballots for candidates to fill the potential vacancy need not be counted.

**SECTION 7.** No recall petition shall be filed against an officer within 6 months after that officer takes office, nor, in the case of an officer subjected to a recall election and not recalled by that election, until at least 6 months after the election at which the recall was submitted to the voters.

**SECTION 8.** No person who has been removed from an office or who has resigned from office while recall proceedings were pending against that person shall be appointed to any town office within 2 years after the removal or resignation.

*Approved January 3, 2007.*

### **Chapter 391 of the Acts of 2008**

#### ***AN ACT ESTABLISHING THE OFFICE OF TOWN MANAGER IN THE TOWN OF UPTON.***

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

**SECTION 1.** As used in this act, the following words shall have the following meanings:-

"Board", the board of selectmen.

"Employee s", persons who act on behalf of the town, whether appointed or hired, who receive compensation from the town and are under the jurisdiction of the board. For specific positions refer to the personnel b y-laws of the town.

"Hiring authority", persons, boards and committees specifically empowered to employ individuals on behalf of the town.

"Manager", the town manager.

"Town", the town of Upton.

**SECTION 2** There shall be an administrative officer in the town of Upton known as the manager. The manager, reporting directly to and supervised by the board, shall be the chief administrative officer of

## TOWN OF UPTON BY-LAWS

the town. The manager shall not set town policy but shall ensure that there is appropriate coordination in the implementation of town policy, working with the board and all elected and appointed boards and commissions.

The following responsibilities and authority shall devolve from the board to the manager:

- (a) hiring, firing and disciplining employees under the jurisdiction of the board, pursuant to subsection (k) of section 4;
- (b) compiling and recommending to the board a balanced budget, for approval in its entirety, for the departments under the jurisdiction of the board;
- (c) fixing the compensation, within the appropriated amounts, of all town officers and employees under the jurisdiction of the board;
- (d) reorganizing town departments under the jurisdiction of the board for more efficient operation;
- (e) acting as the town's chief procurement officer; and
- (f) signing the warrants for payment of town obligations.

The manager shall supervise, manage and coordinate the day-to-day activities of all town departments and employees under the jurisdiction of the board and coordinate all activities of said departments with the activities of other departments under the jurisdiction of other elected officials, boards and commissions.

With the exception of the board, all other elected boards, officials, commissions, trustees and committees are exempt from the provisions of this act. This exemption includes the departments, employees and appointments of other elected boards, commissions and committees of the town.

**SECTION 3** The manager shall be appointed by the board on the basis of executive and administrative qualifications and other hiring requirements set forth by the board. The manager shall be a person especially suited by a combination of education, training and professional experience to perform the duties of the office. The manager shall not serve in elected office in the town's government for at least 12 months before his appointment. The manager shall devote his full-time to the office and shall not hold any other public office, elected or appointed, nor engage in any other business or occupation during the term unless that service is approved in advance by the vote of the board. The manager shall be subject to the personnel by-laws of the town unless the board exempts specific provisions of those by-laws as defined in a signed contract between the town and the applicant. The board may enter into a contract with the manager, not to exceed 3 years in length, setting forth the terms and conditions of the manager's employment.

**SECTION 4** The manager shall be responsible and accountable to the board for the efficient and orderly conduct of the departments and functions placed in his charge as manager and for the proper execution of the following powers and duties. The manager shall:

- (a) Be the hiring authority for all employees under the jurisdiction of the board. The manager shall act in conformance with the personnel by-laws of the town. The manager shall oversee the efficient operation and administration of all officers, divisions and departments appointed by him. No appointment, disciplinary action or termination by the manager of a town officer or employee shall take effect within 15 days of notice being provided to the board. The board may approve or disapprove the manager's proposed appointment within said 15 days or the board may waive the 15 day right of refusal by a vote at an open meeting. The board may vote, in open session, to disapprove an appointment and shall state the reason or reasons, which shall be provided in the meeting minutes. The board shall conduct any meeting to consider a proposed disciplinary action or termination of a town officer or employee in accordance with applicable law;

## **TOWN OF UPTON BY-LAWS**

- (b) In conjunction with the chair of the board, prepare and distribute agendas for the board's meetings. The manager or his designee shall be the recording and corresponding secretary for the board;
- (c) Ensure that all of the meetings of the board are properly posted and are in accordance with local, state and federal laws. The manager shall attend aforesaid meetings unless requested by the board not to be in attendance or upon approval by the chairman of the board of a request by the manager to be excused from attendance. The manager shall have the right to speak at the aforesaid meetings but shall not have a vote;
- (d) Prepare warrants for special and annual town meetings for consideration and signature by the board in compliance with town by-laws. Attend all sessions of annual and special town meetings, unless excused by the board, and be prepared to answer all questions concerning warrant articles;
- (e) Work in conjunction with the chair of the board and town counsel regarding any litigation or other legal matters in which the town has an interest, act as liaison between the town counsel and the board and affected town departments and officials, review and approve new requests, other than those of the chairman of the board, for use of town counsel on new matters and provide the board with monthly status reports on legal issues and concerns ;
- (f) Have the authority to execute contracts on behalf of the town up to \$25,000.00;
- (g) Serve as chief procurement officer of the town responsible for purchasing all supplies, materials and equipment for the departments under the jurisdiction of the board. Purchases by other boards shall be reviewed by the manager to ensure that they conform to all state and local laws and regulations. The manager shall keep a full and complete inventory of all town property, both real and personal;
- (h) Manage the town's insurance programs and serve as the contact with the insurance providers ;
- (i) Be responsible for the administration of personnel and personnel matters , including the personnel by-laws, files and all personnel policies that the board and the town may adopt. Such responsibilities shall include the enforcement of personnel policies, rules and regulations and managing personnel costs such as salaries, benefits, overtime and use of town-owned vehicles for employees under the jurisdiction of the board;
- (j) Evaluate all of the town officers and employees under the board in accordance with the personnel by-laws;
- (k) Serve as the town's Americans with Disabilities Act director and affirmative action officer and administer the town's affirmative action program;
- (l) Fix the compensation of all town officers and employees within the limits established by the personnel board, the relevant body and the appropriation;
- (m) Administer all applicable general and special laws, and all applicable by-laws and regulations and implement all lawful goals and policies established by the board and provide reports to the board when appropriate;
- (n) Be responsible for keeping full and complete records of the administrative activities of the town and

## **TOWN OF UPTON BY-LAWS**

render a full report of the prior fiscal year to the board within 3 months of the end of that year. The manager shall have access to all town books and records for the performance of his duties;

- (o) Keep the board informed as to the financial condition and needs of the town and recommend to the board any actions that should be taken;
- (p) Serve as arbitrator of grievances and chief union negotiator for all collective bargaining agreements under the jurisdiction of the board. The board, from time to time, may provide advice and guidelines to the manager. The board shall retain the authority to execute the union contract agreements;
- (q) Respond to and coordinate local response to emergency situations;
- (r) Establish and maintain positive community relations with local organizations, groups and residents;
- (s) Receive and act on questions and complaints filed with the board or the manager and inform the board of the status of the resolution;
- (t) Serve as the board's liaison to news outlets, including the preparation of news releases and acting as spokesperson to the press when authorized by the board;
- (u) Prepare written reports as directed by the board; and
- (v) Perform other duties required by the by-laws or votes of the town meeting or by the board.

**SECTION 5** The manager shall have budgetary powers and responsibilities, the manager shall:

- (a) Prepare and present annually to the board for its review, approval and recommendations to the finance committee detailed budgetary estimates of amounts necessary for the administration of all town boards, officers, committees, divisions and departments under the jurisdiction of the board or the manager for the ensuing fiscal year, including both capital and operating items. The manager shall present a requested balanced budget to the finance committee.
- (b) Review the warrants for all town meetings and ballot questions to ensure that they are proper and legal and that there are sufficient funds available for implementation.
- (c) Approve the warrants for the payment of town obligations after reviewing the expenditures and ensuring that they are proper and within the appropriation. The signature of the manager is sufficient for payment by the treasurer.
- (d) Have the authority to reorganize departments under the jurisdiction of the board for more efficient use of town resources in order to ensure that departmental activities are conducted within the budget as authorized by town meeting.
- (e) Ensure that the complete and full records of the financial activity of the town are maintained in accordance with state, federal laws and the town by-laws and render quarterly reports to the board. The board may require interim or condensed reports from time to time.

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(f) Seek out, prepare, coordinate and file applications for state, federal and private grants.

**SECTION 6** During a temporary absence of 30 days or less, the manager shall designate by a letter filed with the board, a qualified administrative employee to exercise the powers and perform the duties of the manager not admitting to delay. If the manager fails to do so, or the designated person fails to serve to the satisfaction of the board, the board may appoint a qualified administrative employee or officer to serve. During an absence of greater than 30 days or a vacancy in the office, the board shall designate an interim manager with the full powers and authority of the manager.

**SECTION 7** During the transition period from an active administrative board to the manager form of administration as defined by this act, the position of administrative assistant to the board may exist for a period of time not to exceed 90 days to assist the manager once hired. The length of the 90 day transition period may be shortened at the discretion of the board.

**SECTION 8** The board, by an affirmative vote of its members, may initiate the removal or suspension of the manager by adopting a resolution to that effect. The resolution shall state the reason thereof; provided, however that no such resolution shall be adopted within 90 days of the annual town election. Any such resolution shall be adopted by action of the board only at a regularly scheduled meeting of the board and in open session. The board may suspend the manager for not more than 45 days. A copy of the resolution of suspension and removal shall be delivered in hand to the manager. The manager may request a public hearing within 7 business days after the copy of the resolution has been received by filing a written request with the board. If a request for a public hearing is properly filed, the board shall conduct a public hearing within 14 days from the receipt of the written request and, within 7 days after the hearing, may discharge the manager by a majority vote of the board. If the manager does not request a public hearing in writing within 7 business days of the receipt of the resolution, the board, by affirmative vote, may vote to remove or take any other action relative thereto.

**SECTION 9** This act shall take effect upon its passage.

*Approved December 17, 2008*

# **TOWN OF UPTON BY-LAWS**

## **TITLE 3** **LAND USE**

### **Chapter 1** **Earth Removal**

Section 1 The removal of soil, loam, sand or gravel from any parcel of land not in public use in the Town of Upton except as hereinafter provided, shall be allowed only after a written permit therefor is obtained from the Board of Selectmen after a public hearing of which due notice is given.

Section 2 A permit shall be required for the operation of any parcel of land as a sand or gravel pit regardless of when said pit began operations; all sand or gravel pits operating without a permit at the time this by-law amendment takes effect shall obtain said permit within one hundred twenty (120) days of the date this by-law amendment takes effect.; and no permit shall be required for the removal of soil, loam, sand or gravel from any parcel of land when incidental to and in connection with the construction of a building on the parcel.

Section 3 In issuing a permit under this bylaw, the Board of Selectmen may impose conditions not specifically provided for herein as it may seem necessary for the adequate protection of the neighborhood and the Town. Any conditions imposed by the Board shall be attached to and made a part of the permit. The Board may, in its discretion, require a bond, certified check or other security for compliance with said conditions or as evidence of good faith, as to the completion of any proposed construction. The Board may, after a public hearing on proof of violation of any condition, revoke any permits so issued. No permit shall be issued under the provisions of this bylaw for a period of more than three years.

Section 4 (Removal of Sand and Gravel) Sand and gravel may be removed from any parcel of land, except within 300 feet of a street, or way, and the Board of Selectmen may issue a permit therefor provided, however, that the Board shall impose such reasonable conditions as to the disposition of top soil and the reestablishment of ground levels and grades as it may deem necessary.

Section 5 (Removal of Soil or Loam) Soil or loam may be removed from any parcel of land within such parcel determined by the Board to be unsuitable to agricultural use, and the Board may issue a permit for such removal; provided, however, that the Board shall in making such decision, obtain the recommendation of the appropriate Soil District Supervisor and the County Extension Director or Agent, or their successors, and their recommendations shall be made a part of the records of the Board. In issuing a permit, the Board may impose reasonable conditions as to the re-establishment of ground levels and grades.

Section 6 Notwithstanding the provisions of the above, the Board may issue a permit for the removal of soil or loam from any parcel of land in the Town where such removal is incidental to and in connection with the construction of a road or other facility involving a permanent change in the use of the land. The Board shall issue no such permit unless it is reasonably satisfied that the construction will be completed and evidence thereof shall be made a part of the records of the Board.

## **TOWN OF UPTON BY-LAWS**

Section 7 (Removal within 300 feet of Streets) Soil, loam, sand or gravel may be removed from any parcel of land within such parcel lying within 300 feet of any street or way, provided a permit therefor has been issued by the Board after satisfactory evidence that such removal will not be seriously detrimental or injurious to the neighborhood; provided further that the Board shall impose reasonable conditions as to the method of removal, the re—establishment of ground levels and grades and the planting of the area to suitable cover, as it may seem necessary.

Section 8 A new road taking shall not be less than forty (40) feet in width and the roadway itself be not less than twenty (20) feet in width, with at least one (1) foot depth of good gravel on the surface.

### Section 9 Accumulation or Deposit of Soils and Materials

No land owner, occupant, resident, tenant, contractor or other person shall pile, push, shovel or cause the accumulation or deposit of soils or refuse during transportation, placement, removal or by way of allowing land erosion onto any public way, or body of water, including but not limited to lawn areas, wooded areas, driveways, walks and roof areas. This prohibition shall apply during construction as well as after construction. Any person or persons who causes said accumulation or deposit onto any public way, or body of water shall bear all costs associated with fines, damage and costs associated with the cleanup of said deposit or accumulation as may be necessary to restore any such land or body of water to it's pre-existing condition or, to the condition that otherwise be acceptable to the Town.

## **Chapter 2**

### **Zoning - Under separate cover**

## **Chapter 3**

### **Motor Vehicle Storage**

No person shall suffer or permit two or more unregistered motor vehicles, or parts thereof, to remain on his premises and no person shall suffer or permit any unregistered or disabled motor vehicle, or parts thereof, to remain within 100 feet of any public way, unless a written permit be issued therefor by the Board of Selectmen. Said permit shall not be required for vehicles, or parts thereof, stored or garaged inside buildings.

## **Chapter 4**

### **Public Way Access, Closing, Construction, Excavation**

Section 1 Except as otherwise provided by law no driveway or other access to a public way shall be constructed, and no other opening or closing, obstruction, construction, or excavation of, upon, along, over, under, or across a public way shall be made, except by written permit issued by the Road Commissioner.

Section 2 In issuing a permit under this by-law, the Road Commissioner may impose conditions regarding specifications for work and materials, liability and other insurance, or any other conditions, not specifically provided for herein, that in his judgment are necessary for adequate protection of the public way, the neighborhood, the public, or the Town. The Road Commissioner may require a bond,

## **TOWN OF UPTON BY-LAWS**

certified check or other security, to insure compliance with said conditions. All such conditions, and any such requirements for security, shall be attached to and made a part of the permit. All permit applications are to be made on forms provided by the Road Commissioner.

Section 3 Additional requirements as to driveways and other access:

No building permit shall be issued for the construction of any dwelling or other structure until the proposed location, composition, construction and grade of the driveway or other access pertaining thereto are approved in writing, on the application for said building permit, by the Road Commissioner; and no permit for the occupancy of any such dwelling or other structure shall be issued unless the location, composition, construction and grade of such driveway and other access, as constructed, are approved in writing by the Road Commissioner. Either or both of these requirements may be waived by the Road Commissioner in a particular case where he determines their application to be impracticable, so long as he has otherwise received what in his judgment is security that is adequate to insure the satisfactory location, composition, construction and grade of such driveway or other access. In this connection, the Road Commissioner shall be notified of each proposed subdivision of land the development of which might contemplate occupancy of dwellings or other structures before the requirements outlined in the first sentence of the paragraph can be fulfilled.

Section 4 The Selectmen shall from time to time establish a fee to be paid to the Town in connection with the application for each permit issued under this bylaw, which shall, in any event, be no less than \$25.00.

### **Chapter 5 Snow Obstructing Public Ways**

Section 1: No person shall pile, push, throw, shovel, plow, or by any other method cause snow to be deposited, placed or accumulated, other than by natural means on any public roadway or sidewalk of the Town so as to impede, obstruct, interrupt, or otherwise adversely affect the unrestricted flow of traffic, or the safe travel of any pedestrian on such roadway or sidewalk. The foregoing sentence shall not apply to any person in the employ of the Town, or in the employ of an independent contractor, which has been hired by the Town for the purpose of snow removal. Whoever violates this section shall be liable to a penalty not exceeding twenty-five dollars (\$25.00) for each violation; each violation shall mean each instance or occurrence that the condition exists once the owner and/or violator has been informed by the Police Department or the Department of Public Works in writing of said violation. Each instance shall constitute a separate violation of this By-law.

**TOWN OF UPTON BY-LAWS**  
**TITLE 4**  
**POLICE AND PUBLIC ORDER**

**Chapter 1**  
**Loitering**

- (a) Whoever continues to stand, sit or loiter in, on or about any street, sidewalk or any public place so as to obstruct the free passage of travelers or vehicles thereon, after being directed by a police officer to move on or disperse, shall be punished by a fine not exceeding twenty-five dollars.
- (b) It shall be the duty of any police officer of the Town to order any person, so acting as to obstruct the free passage of travelers or vehicles, to move on and disperse, and if the person so ordered does not forthwith obey, to remove such person, or to arrest and cause such person to be brought before a Justice of the Third District Court of Southern Worcester County, upon a complaint made for violation of the provision of the preceding paragraph (a).

**Chapter 2**  
**Public Drinking**

- (a) Whoever shall, within the limits of any public way located within the town, whether that public way be a town way, county highway, state highway, or a private way open to the public, consume intoxicating beverages, shall be punished by a fine not exceeding fifty dollars. This section shall also be construed so as to prohibit the following: The consumption of intoxicating beverages by any person while such person is standing, sitting, walking, running, or otherwise present within such way or is within any vehicle, whether parked or moving, which is within the limits of such public way.
- (b) Whoever shall consume any intoxicating beverages in any public building, or on any public property, including parks, cemeteries, school houses and school grounds, and public squares, or in any private way or parking area regulated under the provisions of General Laws Chapter 90, Section 18 shall be punished by a fine not exceeding fifty dollars.
- (c) The foregoing paragraphs (a) and (b) shall not apply to any activity duly licensed by the Board of Selectmen under the applicable provisions of the Massachusetts General Laws.
- (d) It shall be the duty of any police officer of the town to arrest any person who violates the provisions of paragraphs (a) or (b) and to cause such person to be brought before a Justice of the Third District Court of Worcester County upon a complaint for violation thereof.

**Chapter 3**  
**Cutting or Removal of Firewood**

- (a) No person or persons shall cut or remove any wood or dead or live trees from any property, public or private, in the Town of Upton, without first obtaining a permit to do so issued by the Upton Police Department. Such permit, or the written authorization referred to in Section b shall be in the possession of, or in a place easily accessible to, such person or persons so engaged in the cutting or removal of wood. Such permit, or the written authorization referred to in Section b shall be produced upon the request of any police officer having jurisdiction in the Town of Upton. Any person or

## **TOWN OF UPTON BY-LAWS**

persons violating the provisions of this paragraph shall be punished by a fine not exceeding \$100.00 for a first offense, nor less than \$100.00 for a second or subsequent offense.

- (b) The foregoing paragraph (a) shall not apply to any person being the owner (includes immediate family) or person in lawful control of said property, or any person bearing the written authorization of the owner of the property, nor shall it apply to the Tree Department of the Town of Upton, the State Forestry Department or its authorized representative, or any department in the lawful performance of its duties.
- (c) Upon approval of the Board of Selectmen of the Town of Upton, the Upton Police Department shall establish a procedure for the issuance of said permits and the collection of a fee for each.
- (d) It shall be the duty of any police officer having jurisdiction in the Town of Upton to summons to court or to arrest any person who violates the provisions of paragraph (a) and cause such person or persons to be brought before a Justice of the Third District Court of Southern Worcester County upon a complaint for violation thereof.

### **Chapter 4 Gasoline or Automotive Service Stations**

Section 1 No so-called “self-service” gasoline or automobile service station shall be maintained or operated within the Town of Upton, and no gasoline station, automobile service station or other business, the premises of which are used in whole, or in part, for the retail distribution of gasoline or other petroleum products, shall be operated or maintained so as to permit the operation of any gasoline pump. or other device used for the retail distribution of such products, by other than an owner, officer, employee, or other duly authorized agent of such business.

Section 2 Whoever violates the foregoing paragraph shall forfeit a sum not to exceed \$50.00 for each offense. Such forfeiture shall be recovered as provided by law and shall enure to the town. Each day that such violation continues shall constitute a separate offense.

### **Chapter 5 Entertainment**

Section 1 The acts or conduct enumerated in Section 2 of this by-law are deemed contrary to the public need and to common good and therefore are prohibited in or on premises licensed under the provisions of General Laws, Chapter 138, Section 1 and 12, or Chapter 140, Section 181 or 183A.

Section 2 The following acts or conduct are prohibited as provided in Section WETW9s by-law:

- a. To employ or permit any person in or on the licensed premises while such person is unclothed or in such attire as to expose to view any portion of the areola of the female breast or any portion of the pubic hair, cleft of the buttocks, or genitals.
- b. To employ or permit any host, hostess or other person to mingle with the patrons while such host, hostess or other person is unclothed or in such attire as described in paragraph (a) above.

## TOWN OF UPTON BY-LAWS

- c. To encourage or permit any host, hostess or other person in or on the licensed premises to touch, caress or fondle the breasts, buttocks, or genitals of any other person.
- d. To employ or permit any person to wear or use any device or covering exposed to view which simulates the breasts, buttocks, pubic hair or genitals or any portions thereof.
- e. To employ or permit any person in or on the licensed premises to perform an act or acts, or to simulate the act or acts of:
  - 1. Sexual intercourse, masturbation, sodomy, flagellation or any sexual acts prohibited by law.
  - 2. Touching, caressing or fondling of the breasts, buttocks or genitals of another.
- f. To employ or permit any person in or on the licensed premises to show motion pictures, films, television tape cassettes, still pictures or other photographic reproductions depicting any acts, or any simulation of any of the acts prohibited in paragraphs (a, e) hereof.

Section 3 Nothing contained in this by-law shall permit any other conduct or activity in or on any licensed premises in violation of any general or special by-law or by-law now in force or hereafter enacted or adopted.

Section 4 Nothing contained in this by-law shall limit or prohibit the appropriate licensing authority from adopting additional regulations relating to conduct or activity on licensed premises or from imposing additional conditions on the issuance of any license.

Section 5 Violation of the provisions of this by-law shall be cause for the suspension or revocation of any license granted pursuant to General Laws, Chapter 138, Section 1 and 12 or Chapter 140, Section 181 or 183A.

Section 6 In addition to the penalty imposed by Section 5 hereof, violations of this by-law shall be punished by a fine of not less than five hundred dollars (\$500.00) and not more than one thousand dollars (\$1,000.00); each day a prohibited activity occurs shall constitute a separate offense.

Section 7 If any of the provisions of this by-law or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provisions of this by-law, or the application thereof, and for this purpose the provision of this by-law are severable.

# **TOWN OF UPTON BY-LAWS**

## **Chapter 6**

### **Signs**

Section 1      **POLITICAL SIGNS** A sign designed to influence the action of voters for the passage or defeat of a measure, or the election of a candidate to a public office in a national, state, or other local election.

1. Such signs are permitted if they are stationary, unlighted and temporary.
2. Such signs shall be displayed no earlier than twenty-one (21) days prior to a voting day, and shall be removed within two (2) days after a voting day.
3. Such signs may not exceed five (5) sq. ft. in area or four (4) feet in height above ground level.
4. Political signs are not allowed to be placed on public property, utility poles, or trees.
5. Violations of any section of this by-law shall be subject to a penalty not exceeding ten dollars (\$10.00) for each violation. Each instance shall constitute a separate violation of this by-law.

Section 2 – Severability:

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

## **Chapter 7**

### **Cigarette Rolling Paper**

No person or business shall sell, offer, or display any cigarette rolling paper in the Town of Upton. Any person or business which violates this By-law shall be punished by a fine of one hundred dollars (\$100.00) for each offense.

**TOWN OF UPTON BY-LAWS**  
**TITLE 5**  
**COMMUNITY PRESERVATION COMMITTEE**

Section I Establishment

There is hereby established in the Town of Upton a Community Preservation Committee, consisting of nine (9) voting members pursuant to MGL Chapter 44B. The composition of the committee, the appointment authority and the term of office for the committee members shall be as follows:

One member of the Conservation Commission as designated by the Commission for a term of three years.

One member of the Historical Commission as designated by the Commission for a term of three years.

One member of the Planning Board as designated by the Board for a term of three years.

One member of the Recreation Commission as designated by the Commission for an initial term of one year and thereafter for a term of three years.

One member of the Housing Authority as designated by the Authority for an initial term of two years and thereafter for a term of three years.

One member of the Open Space Committee as designated by the Committee for an initial term of one year and thereafter for a term of three years.

Three members to be appointed by the Board of Selectmen, one member to be appointed for a term of one year and thereafter for a term of three years and one member to be appointed for a term of one year and thereafter for a term of three years and one member to be appointed for a term of three years.

Should any of the Commissions, Boards, Councils or Committees who have appointment authority under this Chapter be no longer in existence for what ever reason, the appointment authority for that Commission, Board, Council, or Committee shall become the responsibility of the Board of Selectmen.

Section II Duties

(1). The community preservation committee shall study the needs, possibilities and resources of the town regarding community preservation. The committee shall consult with existing municipal boards, including the conservation commission, the historical commission, the planning board, the recreation council and the housing authority, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the committee shall hold one or more public informational hearings on the needs, possibilities and resources of the town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the town.

(2). The community preservation committee shall make recommendations to the Town Meeting for the acquisition, creation and preservation of open space, for the acquisition and preservation of historic resources, for the acquisition, creation and preservation of land for recreational use, for the creation, preservation and support of community housing and for rehabilitation or restoration of such open space, historic resources, land for recreational use and community housing that is acquired or created as provided in this section. With respect to community housing, the community preservation committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.

## **TOWN OF UPTON BY-LAWS**

(3). The community preservation committee may include in its recommendation to the Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.

### Section III Requirement for a quorum and cost estimates

The community preservation committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the community preservation committee shall constitute a quorum. The community preservation committee shall approve its actions by majority vote. Recommendations to the Town Meeting shall include their anticipated costs.

### Section IV Amendments

This Chapter may be amended from time to time by a majority vote of the Town Meeting, provided that the amendments would not cause a conflict to occur with MGL, Chapter 44B.

### Section V Severability

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

### Section VI Effective Date

Each appointing authority shall have ten days after approval by the Attorney General to make their initial appointments. Should any appointing authority fail to make their appointment within that allotted time, the Town Moderator shall make the appointment.

### Section VII Records, Accounting and Reporting

The community preservation committee shall keep a full and accurate account of all of its actions, including its recommendations and the action taken on them and records of all appropriations or expenditures made from the Community Preservation Fund. The committee shall also keep records of any real property interests acquired, disposed of or improved by the city or town upon its recommendation, including the names and addresses of the grantors or grantees and the nature of the consideration. The records and accounts shall be public records.

**TOWN OF UPTON BY-LAWS**  
**TITLE 6**  
**WETLAND PROTECTION BYLAW**

**I. Purpose**

The purpose of this bylaw is to protect the wetlands, water resources, and adjoining land areas in the Town of Upton by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon resource area values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution control, fisheries, wildlife habitat, rare species habitat including rare plant species, agriculture, and recreation values, deemed important to the community (collectively, the “resource area values protected by this bylaw”). This bylaw is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations thereunder (310 CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth.

**II. Jurisdiction**

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; flooding; and lands abutting any of the aforesaid resource areas as set out in §VII (collectively the “resource areas protected by this bylaw”). Said resource areas shall be protected whether or not they border surface waters.

**III. Exemptions and Exceptions**

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

The application and permit required by this bylaw shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Conservation Commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.

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

## **TOWN OF UPTON BY-LAWS**

be filed with the Commission for review as provided by this bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

Activities in the buffer zone on single-family house lots (approval not required lots or lots on approved definitive subdivision plans) recorded before and with a house constructed before May 1, 2004 shall be exempt from this bylaw. This exemption in no way implies exemption from applicable regulation under the Wetlands Protection Act.

Minor activities within the buffer zone, but not within any resource area, provided they meet the requirements outlined herein, are exempt from this bylaw. Minor activities include, but are not limited to, (1) unpaved pedestrian walkways for private use; (2) plantings of native species of trees, shrubs, or groundcover, but excluding turf lawns; (3) the conversion of impervious to vegetated surfaces, provided erosion and sedimentation controls are implemented during construction; (4) fencing, stonewalls, and stacks of cordwood provided they will not constitute a barrier to wildlife movement and fences to contain livestock are located more than 100 feet from the mean annual high water line within a river front area or 50 feet from other resource areas, whichever is farther. (5) mowing of lawns and pruning of pre-existing landscaped areas; (6) vista pruning, provided the activity is located more than 100 feet from the mean annual high water line within a river front area or 50 feet from other resource areas, whichever is farther. (7) conversion of lawn to uses accessory to existing single family houses such as decks, sheds, patios, pools, and gardens provided the activity is located more than 100 feet from the mean annual high-water line within the river front area or 50 feet from other resource areas, and erosion and sedimentation controls are implemented during construction. (8) removal of dead or dying trees that pose a hazard to structures or public safety, (9) repair of existing structures provided footprint of structure does not change and erosion and sedimentation controls are implemented during construction, and (10) activities that are temporary in nature, have negligible impacts, and are necessary for planning and design purposes (e.g., installation of monitoring wells, exploratory borings, sediment sampling and surveying) provided that erosion and sedimentation controls are implemented during construction.

Other than stated in this section, the exceptions provided in the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations (310 CMR 10.00) shall not apply under this bylaw.

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

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

The Commission in an appropriate case may accept as the application and plans under this bylaw any application and plans filed under the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations (310 CMR 10.00).

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may in writing request a determination from the Commission. Such a Request for Determination (RFD) shall include information and plans as are deemed necessary by the Commission.

## **TOWN OF UPTON BY-LAWS**

At the time of an application, the applicant shall pay a filing fee specified in Regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act and Regulations. Fees for construction of a single family house in the buffer zones shall not exceed \$500, fees for additions to structures shall not exceed \$100, and fees for proposed land use changes on a single family lot shall not exceed \$50. No fees shall be charged for review of repairs to or replacement of a septic system. Fees for review of subdivisions and commercial development shall be set by the Commission after appropriate public hearings.

If a municipal revolving fund has been established, pursuant to G.L. Ch. 44 §53E\* or a special act, for deposit and Commission use of filing described above, then such filing and/or consultant fees shall be deposited therein, for uses set out in the vote establishing the fund. This account shall be kept separate from the account established for filing fees paid under the state Wetlands Protection Act.

The Commission shall waive the filing fee, and costs and expenses for a Notice of Intent or other application or RFD filed by a government agency.

### **V. Notice and Hearings**

Any person filing a permit or other application or RFD with the Conservation Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all

abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice to abutters shall have enclosed a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, the notice of the hearing, and the determination itself shall be sent by the Commission to the owner as well as to the person making the request. The commission shall have the discretion to waive any of the above notification requirements except those required under the Massachusetts Wetland Protection Act M.G.L. Chapter 131 §40 by a majority vote of the commission.

The Commission shall conduct a public hearing on any permit application, Abbreviated Notice of Resource Area Delineation (ANORAD) or RFD, with written notice given at the expense of the applicant, at least five business days prior to the hearing, in a newspaper of general circulation in the municipality.

The Commission shall commence the public hearing within 21 days from receipt of a completed permit application, ANORAD or RFD unless an extension is authorized in writing by the applicant. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others deemed necessary by the Commission in its discretion, based on comments and recommendations of the boards and officials listed in §VI.

The Commission shall issue its permit, other order or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.

## **TOWN OF UPTON BY-LAWS**

The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act (G.L. Ch.131 §40) and Regulations (310 CMR 10.00).

In the event of a decision that is unfavorable to the Applicant, the Commission will consider revised plans without prejudice and without collection of additional filing fees under the Bylaw.

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

Any person filing a notice of intent with the Conservation Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested) or hand delivery, to the planning board, board of health, and building inspector. A copy shall be provided in the same manner to the Conservation Commission of the adjoining municipality, if the application or RFD pertains to property within 300 feet of that municipality. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The Commission shall not take final action until the boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

### **VII. Permits and Conditions**

If the Conservation Commission, after a public hearing, determines that the activities which are subject to the permit application or the land and water uses which will result therefrom are likely to have a significant individual or cumulative effect upon the resource area values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions. The Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.

Where no conditions are adequate to protect those resource values, the Commission is empowered to deny a permit for failure to meet the requirements of this bylaw. It may also deny a permit: for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; or for failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area values protected by this bylaw. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

Lands within 200 feet of rivers, ponds and lakes, and lands within 100 feet of other resource areas, are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission may therefore establish performance standards for protection of such lands including without limitation strips of continuous, undisturbed vegetative cover within the 200-foot or 100-foot area, or other form of work limit or setback to buildings, roads, landscaping and other features, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm

## TOWN OF UPTON BY-LAWS

to the values protected by the bylaw. The specific size and type of protected area may be established by regulations of the Commission.

In the review of areas within 200 feet of rivers, ponds (over 20,000 square feet) and lakes, no permit issued here under shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this bylaw, has proved by a preponderance of the evidence that (1) there is no practicable alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial purpose), logistics, existing technology, costs of the alternatives, and overall project costs.

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

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

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

A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one year period, provided that a request for a renewal is received in writing by the Commission prior to expiration. Notwithstanding the above, a permit may identify requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land.

For good cause the Commission may revoke any permit, other order, determination or other decision issued under this bylaw after notice to the holder of the permit, the public, abutters, and town boards, pursuant to §V and §VI, and a public hearing. Amendments to permits or determinations shall be handled in the manner set out in the Wetlands Protection Act Regulations and policies thereunder.

## **TOWN OF UPTON BY-LAWS**

The Commission in an appropriate case may combine the decision issued under this bylaw with the Order of Conditions, Order of Resource Area Delineation (ORAD), Determination of Applicability or Certificate of Compliance issued under the Wetlands Protection Act and Regulations.

No work proposed in any application shall be undertaken until the permit, ORAD or determination issued by the Commission with respect to such work has been recorded in the registry of deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the document has been recorded. If the applicant fails to perform, the Commission may record the documents itself.

### **VIII. Regulations**

After public notice and public hearing, the Conservation Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw to become effective they must be approved by a majority of the Conservation Commission and filed with the Town Clerk. If the regulations are challenged by petition of 25 or more voters of Upton within 10 days of filing with the Town Clerk, they shall not go into effect until voted at Town Meeting. If the regulations are not challenged they shall go into effect ten days after filing with the Town Clerk.. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw.

At a minimum these regulations shall define key terms in this bylaw not inconsistent with the bylaw, set out procedures for implementation of the by-law, and determine the amount of filing fees. These regulations shall not expand the Conservation Commission's authority beyond that defined in this bylaw.

### **IX. Definitions**

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

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

- A. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind
- B. Changing of preexisting drainage characteristics, flushing characteristics, salinity, sedimentation patterns, flow patterns, or flood retention characteristics
- C. Drainage, or other disturbance of water level or water table
- D. Dumping, discharging, or filling with any material which may degrade water quality
- E. Placing of fill, or removal of material, which would alter elevation
- F. Driving of piles, erection, expansion or repair of buildings, or structures of any kind
- G. Placing of obstructions or objects in water
- H. Destruction of plant life including cutting or trimming of trees and shrubs
- I. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters

## **TOWN OF UPTON BY-LAWS**

J. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater

K. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.

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

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

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

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

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

Except as otherwise provided in this bylaw or in regulations of the Conservation Commission, the definitions of terms and procedures in this bylaw shall be as set forth in the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations (310 CMR 10.00).

### **X. Security**

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

A. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit

## **TOWN OF UPTON BY-LAWS**

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

### **XI. Enforcement**

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.

Whenever an application is made to the Commission, the Conservation Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.

The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, non-criminal citations under G.L. Ch. 40 §21D, and civil and criminal court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

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

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

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

### **XII. Burden of Proof**

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

### **XIII. Appeals**

## **TOWN OF UPTON BY-LAWS**

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

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

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations (310 CMR 10.00) thereunder.

### **XV. Severability**

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

# TOWN OF UPTON BY-LAWS

## Title 7

### Preservation of Historically Significant Buildings

#### Intent and Purpose

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

#### Definitions

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

**APPLICATION** – An application for the demolition of the building.

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

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

**COMMISSION** – The Upton Historical Commission or its designee.

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

**DEMOLITION PERMIT** – The permit issued by the Building Commissioner for a demolition, substantial demolition or removal of a building, excluding a demolition permit issued solely for the demolition of the interior of a building.

**PREFERABLY PRESERVED** – Any significant building that the Commission determines, following a public hearing, is in the public interest to be preserved rather than demolished. A preferably preserved building is subject to the 12-month demolition review period of this bylaw.

**SIGNIFICANT BUILDING** – A building determined by the Commission or its designee to be significant

based on any of the following criteria:

- The building is listed on the National Register of Historic Places
- The building has been found eligible for the National Register of Historic Places.

The building, in whole or in part, was built 75 or more years prior to the date of the application for the demolition permit. If a building is of unknown age, it shall be assumed that the building is over 75 years old for the purposes of this bylaw.

## TOWN OF UPTON BY-LAWS

### Procedure

No demolition permit for a significant building shall be issued without following the provisions of this bylaw.

An applicant proposing to demolish a building subject to this bylaw shall file with the Building Commissioner 2 copies of a demolition permit application containing the following information:

- The address of the building to be demolished
- The owner's name, address and telephone number
- A description of the building
- The reason for requesting a demolition permit
- A brief description of the proposed reuse, reconstruction or replacement
- A photograph or photographs of the building

The Building Commissioner shall within 7 days following receipt of the completed application forward a copy of the application to the Commission. The Commission shall, within 15 days after its receipt of the application, make a determination of whether the building is significant.

Upon determination by the Commission that the building is *not* significant, the Commission shall so notify the Building Commissioner and applicant in writing. Upon receipt of such notification from the Commission, the Building Commissioner may then issue the demolition permit in accordance with applicable law.

Upon determination by the Commission that the building is significant, the Commission shall so notify the Building Commissioner and applicant in writing. No demolition permit may be issued at this time. If the Commission does not notify the Building Commissioner within 22 days following receipt of the application by the Commission, the Building Commissioner may then issue the demolition permit in accordance with applicable law.

If the Commission determines that the building is significant, it shall hold a public hearing within 30 days of the written notification to the Building Commissioner. Public notice of the time, place and purpose of the hearing shall be posted in a conspicuous place in Town Hall for a period of not less than 7 days prior to the date of said hearing.

The Commission shall determine at the public hearing or within 14 days after close of the public hearing whether the building should be preferably preserved. If agreed to in writing by the applicant, the determination of the Commission may be postponed.

If the Commission determines that the building is *not* preferably preserved, the Commission shall so notify the Building Commissioner and applicant in writing. The Building Commissioner may then issue the demolition permit in accordance with applicable law.

If the Commission determines that the building is preferably preserved, the Commission shall notify the Building Commissioner and applicant in writing. No demolition permit may be issued for a period of 12 months from the date of the notification unless otherwise agreed to by the Commission. If the Commission does not notify the Building Commissioner within 14 days after close of the public hearing,

## **TOWN OF UPTON BY-LAWS**

the Building Commissioner may issue the demolition permit in accordance with applicable law.

During the 12-month review period, the Commission will work with the property owner; national, state and local historical preservation organizations; and any other interested party in an effort to preserve the significant building.

The Building Commissioner may issue a demolition permit in accordance with applicable law for a preferably preserved building within the 12-month review period if the Commission notifies the Building Commissioner in writing that the Commission finds that it is in the public interest to issue the demolition permit.

Following the 12-month review period, the Building Commissioner may issue the demolition permit in accordance with applicable law.

### **Administration**

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

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

The Commission may delegate authority to one or more members of the Commission.

The Commission may delegate authority to municipal staff under this bylaw.

The Commission may proactively develop a list of significant buildings that will be subject to this bylaw.

Buildings proposed for the significant building list shall be added following a public hearing. Public notice of the time, place and purpose of the hearing shall be posted in a conspicuous place in Town Hall for a period of not less than 7 days prior to the date of said hearing.

### **Emergency Demolition**

If a building poses an immediate threat to public health or safety due to its deteriorated condition, the owner of such building may request issuance of an emergency demolition permit from the Building Commissioner. The Building Commissioner shall notify the Commission in writing of this request. If, after a site inspection of the building, the Building Commissioner finds that the condition of the building poses a serious and imminent threat to public health and safety and that there is no reasonable alternative to the immediate demolition of the building, then the Building Commissioner may issue an emergency demolition permit to the owner of the building. The Building Commissioner shall prepare a report explaining the condition of the building and the basis for her or his decision. This report shall be forwarded to the Commission.

No provision of this bylaw is intended to conflict with or abridge any obligations or rights conferred by G.L. c. 143 regarding removal or demolition of dangerous or abandoned buildings or structures. In the event of a conflict, the applicable provisions of Chapter 143 shall control.

# **TOWN OF UPTON BY-LAWS**

## **Enforcement and Remedies**

The Commission and/or the Building Commissioner are each specifically authorized to institute any and all actions and proceedings, in law or equity, as they may deem necessary and appropriate to obtain compliance with the requirements of this bylaw or to prevent a threatened violation thereof. Any owner of a building demolished without first obtaining a demolition permit in accordance with the provisions of this bylaw shall be subject to a fine of no more than \$300. Each day the violation exists shall constitute a separate offense until a faithful restoration of the demolished building is completed.

If a building is demolished without first obtaining a demolition permit, no building permit shall be issued for a period of 2 years from the date of the demolition on the subject parcel of land or any adjoining parcels of and under common ownership and control.

## **Historic District Act**

If any of the provisions of this bylaw conflict with the provisions of the Historic District Act, Massachusetts General Laws Chapter 40C, with respect to requirements of notice, hearing and issuance by the Commission of a Certificate of Appropriateness, a Certificate of Non-applicability or a Certificate of Hardship prior to demolition of any building or structure in a historic district, the Act shall prevail.

## **Severability**

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

## **Town of Upton By-laws As Amended**

**All amendments incorporated as of April 2010.**

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**Title 2 MUNICIPAL GOVERNMENT AND FINANCE**

**Chapter 1:**

Section 2A Voted at ATM May 2002 to change day to Thursday.

Section 15 Voted at ATM to add this section.

**Chapter 2:**

Section 5 Voted at ATM May 1996 to delete Section 5 and renumber the subsequent sections of said Chapter 2 as required

Section 8 Updated to reflect research showing no vote was taken to change section to reference M.G.L. 30B

**Chapter 4:**

Chapter 188 of the Acts of 2005 regarding Selectmen in the Town of Upton voted April 12, 2005 and approved by State Legislature on January 5, 2006

**Chapter 6:**

Section 3 Voted at STM March 20, 1951 that the Town amend the Bylaws by providing that the Tax Collector shall also be the Town Collector for any and all accounts due the Town in accordance with General Laws, Chapter 41, Section 38A.

**Chapter 8:**

Section 1 Voted at ATM May 1995 that the Town amend the By-laws of the Town by deleting Section 1 of Chapter 8 'Finance Committee', and substituting the above Section 1

**Chapter 9:**

Section 1 Voted at ATM May 1995 that the Town amend the By-laws of the Town by deleting from Chapter 9 "Capital Budget Committee" in line four the word Moderator, and substituting the words "Finance Committee" in its place; and by adding at the end of the chapter the following sentences: "No motion relating to any capital expenditure of in excess of \$10,000.00 or any appropriation for such a capital expenditure shall be acted upon at any Town Meeting until it has been submitted to the Committee, except where provided otherwise by law. It shall be the duty of the Committee to make a recommendation, either verbally or in written form, to the Town Meeting concerning each article or transfer relating to capital expenditures of the Town.

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Section 1 Voted at STM March, 2010 to change \$10,000 to \$100,000

### **Chapter 10:**

**Personnel Board Under Separate Cover Voted at ATM May 1996**

### **Chapter 12:**

Town of Upton Water Department, Rules and Regulations, Voted at ATM May 1995.

Section 6 Voted at ATM May 1996 to add a new Section 6, entitled Cross-Connection Control General Policy.

Section 7 Voted at ATM May 1997 to add a new Section 7, entitled Rates.

Section 8 Voted at STM May 1998 to add a new section 8 entitled Water Use Restriction

Section 8 Voted at ATM May 1999 to add final line to section 8.8

### **Chapter 13:**

Section 3 Voted at ATM May 1997 to add a new Section 3 entitled Rate.

### **Chapter 16:**

Section 3 Voted at STM June 1994 to add a new Section 3 entitled Animal Control.

Section 1 & 2 Voted at ATM May 1998 to increase the fee and late charge.

Leash Law Voted at STM November 1996 to add Leash Law.

**Chapter 17:** Voted at ATM May 1992 to add a new chapter 17 entitled Building Committee.

**Chapter 18:** Voted at ATM May 1995 to add a new chapter 18 entitled Financial Review Board.  
Voted at STM October 2006 to delete Financial Review Board and add Chapter entitled Board of Commissioners of Trust Funds

**Chapter 19:** Voted at ATM May 2004 to add chapter 19 entitled Non Criminal Disposition

**Chapter 20:** Voted at STM June 2008 to add chapter 20 entitled Fire & EMS Department Advisory Board

**Chapter 21:** Voted at ATM May 2006 to add chapter 21 entitled Planning Board

**Chapter 22:** Voted at ATM May 2006 to add chapter 22 entitled Recall of Elected Officials

## **TOWN OF UPTON BY-LAWS**

### **Chapter 391 of the Acts of 2008**

An Act Establishing the Office of the Town Manager in the Town of Upton

Voted at ATM May 2007 to Petition General Court for an Act to Establish Town Manager

## **Title 3 LAND USE**

### **Chapter 1:**

Section 2 Voted at ATM May 1998 to amend Section 2

Section 9: Voted at ATM May 2008 to add Section 9

### **Chapter 5:**

Section 1: Voted at ATM May 1990 to add Chapter 5 entitled Snow Obstructing Public Ways.  
Voted at ATM May 2008 to add \$25.00 fee for each violation

## **Title 4 POLICE AND PUBLIC ORDER**

### **Chapter 6:**

Voted at ATM May 1993 to add Chapter 6 entitled signs.

Section 2 – Severability

Voted at ATM May 2009 to add Section 2

### **Chapter 7:**

Voted at ATM May 1996 to add Chapter 7 entitled Cigarette Rolling Paper.

## **Title 5 COMMUNITY PRESERVATION COMMITTEE**

Voted at ATM May 2003 to add Title 5 entitled Community Preservation Committee

## **Title 6 WETLAND PROTECTION BYLAW**

Voted at ATM May 2004 to add Title 6 entitled Wetland Protection Bylaw

## **Title 7 PRESERVATION OF SIGNIFICANT HISTORICALLY BUILDINGS**

Voted at STM September 2005 to add Title 7 entitled Demolition Delay Bylaw