

GENERAL BY-LAWS OF THE TOWN OF WILBRAHAM
REVISED - APRIL 29, 1996

ARTICLE I - GENERAL PROVISIONS

(Parenthetical references are to the 1954 compilation of By-Laws and Ordinances and are included for historical purposes only.)

SECTION 100 INTRODUCTION

The By-Laws contained in this Article and in the Articles following shall be known as the "General By-Laws of the Town of Wilbraham". All By-Laws heretofore adopted by the Town (except the Zoning By-Laws and Personnel By-Laws) are hereby repealed. All Ordinances contained in the 1954 compilation of By-Laws and Ordinances are hereby repealed. (Art. I, Sec. 1)

SECTION 101 RULES OF CONSTRUCTION

The following rules of construction shall be observed unless their observance would involve a construction inconsistent with the manifest intent of the voters, or repugnant to the context of the By-Law.

a.) The repeal of a By-Law shall not revive any law in force when the By-Law repealed took effect.

b.) The repeal of a By-Law shall not affect any punishment, penalty incurred before the repeal takes effect, or any suit, prosecution of proceeding pending at the time of the repeal for any offense committed prior to said appeal.

c.) Whenever a penalty is provided for the violation of a By-Law, it shall be for each such violation.

d.) Words and phrases specifying or naming any board, officer, department, committee, commission, authority or trustee of the Town shall be construed as including the lawful successor, or the persons having the powers and performing the duties of such board, officer, department, committee, commission, authority or trustee.

SECTION 102 MEANING OF WORDS

In construing these By-Laws the following words shall have the meaning herein given unless a contrary intention clearly appears.

a.) Words importing the singular shall include the plural; words importing the plural shall include the singular; and words importing masculine shall include the feminine. (Art. I, Sec. 2(a).

b.) The word "person" shall include corporations, societies, associations, partnerships, and individual business proprietorships. (Art. I, Sec. 2(e).

c.) The word "owner" used in reference to real estate, shall include all persons, whatever their estate therein, who have a rightful estate in possession in and to such real estate. (Art. I, Sec. 2(d).

d.) The word "street" shall include highways, town ways, public ways and all public streets, roads, bridges, alleys, courts, and sidewalks, and also those portions of public squares, parking lots and places which form traveled parts of public ways. (Art. I, Sec. 2(g)).

e.) The words "public place" shall include all commons, parks, playgrounds and public lands belonging to or in the charge of the Town, or any of its departments, and those portions of public squares, parking lots and places which do not form traveled parts of public ways.

f.) The words "public building" shall include all buildings belonging to or under the control of the town or any of its departments.

g.) The word "driver" shall mean the person having the charge or control of a vehicle upon a street, way, sidewalk or path.

h.) The word "voter" shall mean a duly registered voter of this Town.

i.) The words "town officer" shall include any town officers, either elected or appointed, serving as a member of any committee, board, authority, or trusteeship. No individual member of a committee shall have the power to bind the Town or any committee to any official action unless duly authorized.

j.) Words prohibiting anything being done except in accordance with a license or permit or authority from a board or officer of the Town shall be construed as giving such board or officers power to license, permit or authorize such an act. (Art. I, Sec. 2(b))

k.) Words prohibiting any act shall not be construed as prohibiting any board or officer of the Town from doing such things as he or it may rightfully do in the execution of his or its powers. (Art. I, Sec. 2(c))

l.) The word "sidewalk" shall be construed as meaning any sidewalk, footpath, bicycle path or other path commonly used by pedestrians, situated outside that portion of a street commonly used by vehicles for travel whether or not the sidewalk has been wrought and constructed by or under the authority of the Town. (Art. I, Sec. 2(f))

m.) The words "motor vehicle" shall include any means of conveyance as defined in the Massachusetts General Laws which is permitted and requires a valid registration legally issued by a governmental authority in order to be operated on a public way including, but not limited to, automobiles, trucks, truck-tractors, trailers, semi trailers, buses, motor homes, motorized campers and motorcycles. (ATM 5/14/07, Art. 35)

SECTION 103 FINES FOR VIOLATIONS

Any persons violating any of the provisions of Article VI, Regulation of Public Conduct, of the Town by-laws shall be punished by a fine not to exceed \$20.00 for each offense, unless otherwise provided by the General Laws or by a particular by-law. (Art. V, Sec. 28)

SECTION 103 A NON-CRIMINAL DISPOSITION OF VIOLATIONS OF ANY BY-LAW
(Amended STM 8/28/91 ART. 3)

Pursuant to the provisions of Mass. Gen. Laws, Chapter 40, Section 21D, the Town hereby adopts the following procedure for the non-criminal disposition of violations of any by-law adopted by the Town or any rules or regulation of any board, commission or department which contains therein a specific financial penalty. A copy of any such schedule of financial penalties to which this by-law applies shall be retained on file with the Town Clerk.

The Board of Selectmen shall file with the Town Clerk a list of the Town's enforcing persons who shall be entitled to issue tickets under this by-law. Any person taking cognizance of a violation of a specific ordinance, by-law, rule or regulation which he is empowered to enforce, hereinafter referred to as the enforcing person, as an alternative to initiating criminal proceedings may give to the offender, a written notice to appear before the clerk of the Palmer District Court at any time during office hours, not later than twenty-one days after the date of such notice. Such notice shall be in triplicate and shall contain the name and address, if known, of the offender, the specific offense charged, and the time and place for his required appearance. Such notice shall be signed by the enforcing person, and shall be signed by the offender whenever practicable in acknowledgment that such notice has been received.

The enforcing person shall, if possible, deliver to the offender a copy of said notice at the time and place of the violation. If it is not possible to deliver a copy of said notice to the offender at the time and place of the violation, said copy shall be mailed or delivered by the enforcing person, or by his commanding officer or the head of his department or by any person authorized by such commanding officer, department or head to the offender's last known address, within fifteen days after said violation. Such notice as so mailed shall be deemed a sufficient notice, and a certificate of the person so mailing such notice that it has been mailed in accordance with this section shall be prima facie evidence thereof.

At or before the completion of each tour of duty, or at the beginning of the first subsequent tour of duty, the enforcing person shall give to his commanding officer or department head those copies of each notice of such violation he has taken cognizance of during such tour which have not already been delivered or mailed by him as aforesaid. Said commanding officer or department head shall retain and safely preserve one copy and shall, at a time not later than the next court day after such delivery or mailing, deliver the other copy to the clerk of the court before which the offender has been notified to appear. The clerk of court shall maintain separate docket of such notices to appear.

Any person notified to appear before the clerk of a district court as hereinbefore provided may so appear and confess the offense charged, either personally or through a duly authorized agent or by mailing to the Town Clerk together with the notice such sum of money not exceeding three hundred dollars as the town shall fix as penalty for violation of the ordinance, by-law, rule or regulation. Such payment shall if mailed be made only by postal note, money order or check. Upon receipt of such notice, Town Clerk shall forthwith notify the district court clerk of such payment and the receipt by the district court clerk of such notification shall operate as a final disposition of the case. An appearance under this paragraph shall not be deemed to be a criminal proceeding. No person so notified to appear before the clerk of district court shall be required to report to any probation officer, and no record of the case shall be entered in any probation records.

If any person so notified to appear desires to contest the violation alleged in the notice to appear and also to avail himself of the procedure established pursuant to this section, he may, within twenty-one days after the date of the notice, request a hearing in writing. Such hearing shall be held before a district court judge, clerk, or assistant clerk, as the court shall direct, and if the judge, clerk, or assistant clerk shall, after hearing, find that the violation occurred and that it was committed by the person so notified to appear, the person so notified shall be permitted to dispose of the case by paying the specific sum of money fixed as a penalty as aforesaid, or such lesser amount as the judge, clerk or assistant clerk shall order, which payment shall operate as a final disposition of the case. If the judge, clerk, or assistant clerk shall, after hearing, find that violation alleged did not occur or was not committed by the person notified to appear, that finding shall be entered in the docket, which shall operate as a final disposition of the case. Proceedings held pursuant to this paragraph shall not be deemed to be criminal proceedings. No person disposing of a case by payments of such a penalty shall be required to report to any probation office as a result of such violation, nor shall any record of the case be entered in the probation records.

If any person so notified to appear before the clerk of a district court fails to pay the fine provided hereunder within the time specified or, having appeared, does not confess the offense before the clerk or pay the sum of money fixed as a penalty after a hearing and finding as provided in the preceding paragraph, the clerk shall notify the enforcing person who issued the original notice, who shall determine whether to apply for the issuance of a complaint for the violation of the appropriate ordinance, by-law, rule or regulation.

The enforcing person may upon the commission of a first offense, inform the offender in writing that a violation has occurred and that if the violation recurs or is not rectified within a specific period of time, such financial penalty shall be imposed.

Each such day that a violation continues shall constitute a separate offense. The violation of any by-law or regulation enforced under the provisions of this by-law shall not exceed the sum of \$300 per diem as specified in Mass. Gen. Laws, Chapter 40, Section 21D or as specified in amendments of the said Statute from time to time. If no specific fine has been designated by the by-law section or rule or regulation to which the violation relates, the fine shall be the higher of \$20 per diem or the minimum fine specified by the most recent amendment of Mass. Gen. Laws, Chapter 40, Section 21D.

(Amended ATM 4/30/88, Art. 22) (Amended STM 8/28/91, Art. 3)

SECTION 104 FINES TO BE PAID TO TOWN

All fines and penalties for the violation of any By-Law shall be paid into the Town treasury.

SECTION 105 FEES

A copy of all fees subject to Town Meeting approval shall be kept on file with the Town Clerk. The schedule of fees shall be posted in a conspicuous place in the office of the Town Clerk. Mass. Gen. Laws, Chapter 40, Section 34.

SECTION 106 FEES TO REVERT TO TOWN

Whenever any Town official or committee is entitled to collect any fees, said fees shall revert to the Town treasury unless otherwise provided by statute or this By-Law.

SECTION 107 APPOINTMENTS TO FILL VACANCIES

Any appointment to fill any vacancy in any appointed position shall be made for the balance of said term unless otherwise provided by state law or this By-Law. Any appointment to fill any vacancy in any elected position shall be made for the period expiring with the next Town election at which time said position shall be filled by election for the balance of said term unless otherwise provided by state law or this By-Law.

SECTION 108 ADOPTION OF CHANGES BY MAJORITY VOTE

New By-Laws may be adopted and amendments to existing By-Laws may be adopted by majority vote of the Town meeting unless any provision of these By-Laws or of any state statute requires a different plurality.

SECTION 109 AMBULANCE FEES & OPERATIONS (ATM 4/25/92 ART. 12)

In accordance with Mass. Gen. Laws, Chapter 40, Section 5 (21A), the Town authorizes the establishment of fees for utilization of a Town-operated emergency ambulance service. The ambulance service shall be operated by the Fire Department. Said fees shall be in accordance with those fees set by insurance standards and Medicare. An abatement procedure shall be established for residents who are uninsurable or unable to pay said fee.

SECTION 110 GRANT OR RENEWAL OF LICENSES AS AFFECTED BY NON PAYMENT OF LOCAL TAXES, FEES, ETC. (ATM 06/12/93 ART. 19)(ATM 05/16/05 ART. 32)

In accordance with Mass. Gen. Laws, Chapter 40, Section 57, the Board of Selectmen, hereinafter referred to as the Board, may revoke or suspend any local license or permit including renewals and transfers issued by the Board for any person, corporation or business enterprise who has neglected or refused to pay any local taxes, fees, assessments, betterments or any other municipal charges, provided that:

a.) The Tax Collector shall annually furnish to the Board a list of any person, corporation, or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than a twelve month period, and that has not filed in good faith a pending application for an abatement of such tax or a pending petition before the appellate tax board.

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

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

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

SECTION 111 ESTABLISHMENT OF DUE DATES FOR PAYMENT OF SEWER CHARGES AND RATE OF INTEREST FOR UNPAID CHARGES

(Amended ATM 05/01/95 ART. 31)

Property owners who do not pay sewer charges within 30 days from the date the bill is mailed shall be assessed a late penalty fee of \$25.00 and an interest charge of 14 percent per annum computed from the date the bill is mailed.