

ARTICLE VI - REGULATION OF PUBLIC CONDUCT

SECTION 600: DISCHARGING OF FIREARMS (Art. V, Sec. 20)(Amended ATM, 5/7/01, Art.21)

No person shall discharge a firearm on any land owned by the Town of Wilbraham. Hunting of deer by means of archery, during seasons allowed by the Commonwealth of Massachusetts, Division of Fisheries and Wildlife, is permitted on town-owned land designated suitable by the Wilbraham Conservation Commission. Hunters may obtain permission from the Wilbraham Conservation Commission, acting as the agent for town-owned land, on forms provided for this purpose by the Town Clerk. No person shall hunt or discharge a firearm on any private property in the Town of Wilbraham, other than said person's parent's, children's, grandchildren's or their respective spouse's, own property, without written permission of the owner of the land upon which hunting will take place. Permission forms shall be obtained from the Wilbraham Town Clerk's Office. The distribution of the permission form prior to hunting shall be as follows:

The Town Clerk shall receive and stamp all copies, one of which shall be retained by the Town Clerk, another shall be forwarded to the Police Department by the Town Clerk, and the original copy must be retained by the hunter and must be carried while hunting and be renewed on an annual basis.

Each offender shall receive a written notice to appear before the Town Clerk at any time during office hours, not later than twenty-one days after the date of such notice. Fine for first offense shall be \$100. Second time offenders shall be fined a minimum of \$100 up to \$300. This By-Law shall be enforced by all State and local law enforcement officials and shall be administered under the provisions of Mass. Gen. Laws, Chapter 40, Section 21D on non-criminal dispositions and any Town By-Law implementing said statute, provided, however, that this By-Law shall not apply to the lawful defense of life or property, or to any discharge of firearms in accordance with law enforcement. (Amended ATM 04/30/88 Art. 20, ATM 06/12/93 Art. 22)

SECTION 601: REGULATIONS CONCERNING HORSES (Art. V, Sec. 2)

No person shall allow a horse or vehicle under his control to be driven or parked on any sidewalk or cinder path in such a manner as to obstruct travel in the same. No person shall hitch or tie or allow his horse or other animal to be hitched or tied to any tree in any street.

SECTION 602: OBSTRUCTION OF PASSAGE (Art. V, Sec. 8)

A person shall not assemble or stand upon any sideway or street so as to deliberately obstruct the free passage there over after having been requested by a police officer to provide such free passage.

SECTION 603: CONSUMPTION OF INTOXICATING BEVERAGES ON STREETS AND ON CERTAIN PUBLIC PROPERTIES (Art. V, Sec. 26)

a.) Whoever shall, on any street, or in any other place where the public shall have access, whether in a vehicle or not, consume intoxicating beverages shall be punished by a fine not exceeding \$50.00.

b.) Whoever shall consume any intoxicating beverages in any public, or on any public property, or in any private way or parking area regulated under the provisions of Mass. Gen. Laws, Chapter 90, Section 18, shall be punished by fine not exceeding \$50.00.

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 Mass. Gen. Laws or where specific permission has been granted. A violation of this By-Law shall be deemed to be a breach of peace.

SECTION 604: DOG LICENSING, TREATMENT OF NUISANCE DOGS, ETC., VACCINATIONS OF DOGS AND CATS (Amended ATM 4/29/89 Art.26)(Revision ATM 05/16/05, ART.31) (Revision ATM 05/15/06, Art. 5)

PURPOSE -- The purpose of this bylaw is protection of people, animals, and property from injury, disease, and damage by dogs, including dog-related nuisances.

604.1 Definitions.

As used in this section, unless the context otherwise indicates, the following terms shall have the meanings indicated:

DOG OFFICER – The person(s) appointed by the Board of Selectmen under Town of Wilbraham bylaws, Section 407, having responsibility for enforcement of town bylaws or state statutes relating to dogs.

ANIMAL CONTROL OFFICER — The Dog Officer is also an Animal Control Officer, when meeting the requirements of certification promulgated by the Animal Control Officers Association of Massachusetts or other comparable certification program of not less than 90 hours of instruction and training.

OWNER or KEEPER — Any person or persons, legal entity, firm, association or corporation owning or keeping, or who or which has in his or its possession, for seven consecutive days in any calendar year, a dog or any other animal, licensed or unlicensed, and cannot show to the satisfaction of the Dog Officer that such animal was sold, has died, or has been given away, or otherwise disposed of. Further, if the owner or keeper of a dog is a minor, the parent or guardian of such minor shall be held liable for any violation of this bylaw, Section 604 and all subsections.

604.2 License requirements; fees; exceptions; penalty.

A. All dogs six months of age or older must be currently vaccinated against rabies as per MGL c. 140, S. 145B. No license shall be issued unless the owner or keeper has recorded a valid certificate of rabies vaccination showing the vaccination date, the expiration date, and signed by a veterinarian.

B. Any owner or keeper of a dog six months of age or older in the Town of Wilbraham shall cause that dog to be licensed each year. Licensing is issued annually for a 12-month period beginning April 1.

C. Licensing is available during April, May and June or earlier at the discretion of the Town Clerk. Any owner or keeper who applies for a dog license, whether new or renewal, after June 31, will be charged a late fee for the current year, as established by the Board of Selectmen.

D. The annual fee for every dog license shall be established by the Board of Selectmen.

E. The registering, numbering, describing, and licensing of animals shall be performed in the office of the Town Clerk on a form prescribed and supplied by the Town and shall be subject to the conditions expressed in these bylaws.

F. The owner or keeper of a licensed animal shall cause it to wear around its neck or body a collar or harness to which shall be securely attached a license tag issued by the Town Clerk at the time of licensing and a tag proving a current rabies vaccination provided by a licensed veterinarian.

G. No license fee shall be refunded, in whole or in part, for any reason.

H. Exceptions: No license fee shall be required for *bona fide* assisting dogs (such as seeing eye or hearing ear dogs). Application shall be made to the Town Clerk and tags shall be issued and worn as otherwise provided in this section.

I. The Dog Officer shall investigate complaints of unlicensed dogs and shall, upon satisfactory evidence obtained or observed by the Dog Officer, issue warnings and fines to the owner or keeper of such dogs, subject to non-criminal disposition as provided in MGL Chapter 140, Section 173A, according to the following schedule: \$ 25.00 for each offense. Owners cited for failure to license a dog which otherwise must be licensed under this bylaw, shall obtain a license forthwith and pay any late licensing fee; unlicensed dogs may also be impounded by the Dog Officer and owners shall pay all the charges associated with impoundment as provided in Section 604.7C.

604.3 Vaccination against rabies; dogs and cats; proof; penalty.

A. Whoever is the owner or keeper of a dog or cat age six months of age or older or a ferret housed or sheltered in the Town of Wilbraham shall cause such dog or cat to be vaccinated against rabies by a licensed veterinarian using a vaccine approved by the Massachusetts Department of Public Health. Ferrets kept as household pets must also be vaccinated for rabies as provided in MGL Chapter 131, Section 77.

B. Unvaccinated dogs or cats acquired or moved into the Town of Wilbraham shall be vaccinated within 30 days after the acquisition or arrival into Wilbraham or upon reaching six months of age, whichever occurs last.

C. The owner or keeper of such dog or cat shall procure a veterinarian certificate demonstrating that such animal has been vaccinated, the date of the vaccination, and the duration of immunity, or a notarized letter from a veterinarian that a certificate was issued and vaccination given.

D. Any person who violates the provisions 604.2 A or cannot prove such vaccination as provided in 604.3C, shall be subject to a written warning with five days notice to obtain the required vaccination and present such proof to the Dog Officer. Failure to obtain the required vaccination within five days will result in a citation with a penalty of \$35, and the dog may be impounded and restrained by the Dog Officer until such compliance is demonstrated. All fees and charges accruing under 604. 7C shall be paid before release of the dog back to the owner.

604.4 Dogs required to be leashed; exceptions; penalties.

A. No owner or keeper of a dog shall allow such dog to roam at large upon the land of another, except on the premises of another person with the actual knowledge and permission of such other person. All dogs not on the premises of the owner or keeper or upon the premises of another person without the knowledge and permission of such person, shall be restrained by a chain or leash not exceeding six feet in length.

B. The Dog Officer shall investigate complaints of roaming dogs and shall, upon satisfactory evidence obtained or observed by the Dog Officer, issue fines to the owner or keeper of such dog(s), subject to non-criminal disposition citations, as provided in MGL Chapter 140, Section 173A, according to the following schedule.

First offense: \$25.00

Second offense by same dog: \$50.00

Third and every subsequent offense by same dog \$75.00

C. The Dog Officer has discretion to issue a warning in lieu of a fine for a first offense of this section.

604.5 Dog waste removal; penalty.

A. No owner or keeper of a dog, having the care, custody, or control of any dog, shall permit such dog to soil or defile or commit any nuisance upon any sidewalk, street or public way, beach, or wetland, in or upon any public property, or in or upon the property of persons other than the owner or keeper of the dog, unless said owner or keeper or custodian of the dog picks up such waste and disposes of same in a sanitary manner.

B. Any person found in violation of 604.5A by the Dog Officer, a police officer, or upon investigation by the Dog Officer of a complaint made to the Dog Officer, shall be subject to a fine of \$25.00 for each offence, with each day of complaint for the same dog being considered an offense against the owner or keeper or custodian, subject to the proscribed penalty.

C. The Dog Officer has discretion to issue a warning in lieu of a fine for a first offense of this subsection.

604.6 Vicious and nuisance dogs; complaints; enforcement.

A. The Dog Officer shall investigate complaints of dangerous, nuisance and dogs otherwise categorized by MGL Chapter 140, Section 157, and shall, upon satisfactory evidence obtained or observed by the Dog Officer, issue warnings and fines to the owner or keeper of such dogs, subject to non-criminal disposition, as provided in MGL Chapter 140, Section 173A, according to the schedule outlined below in Sections 604.6C, D, and E.

B. All persons complaining to the Dog Officer shall be treated confidentially, unless and until a formal complaint is made to the Board of Selectmen as provided in Section 604.8.

C. VICIOUS OR AGGRESSIVE BEHAVIOR -- Demonstration of vicious or aggressive behavior, attacks, or unprovoked biting of people, pets, or farm livestock, \$100.00 for each offense by the same dog.

D. BARKING AND HOWLING -- Disturbing the reasonable quiet of the neighborhood by barking, howling or other dog noises for more than 10 minutes in any half hour overnight between the hours of 10:00 PM and 7:00 AM or for more than 15 minutes in any hour during the day between the hours of 7:01 AM and 9:59 PM:

First offense: \$25.00;

Second offense by the same dog: \$50.00;

Third and every subsequent offense by the same dog : \$75.00

D-1 When such noise is plainly audible and in excess of the time constraints listed above it shall be *prima facie* evidence of a violation.

D-2 Each segment of time, as itemized above, that a violation is observed or documented is considered an offense.

D-3 The Dog Officer has discretion to issue a warning in lieu of a fine for a first offense of this subsection.

E. OTHER NUISANCE -- Chasing cars or bicycles, running in packs, breaking or damaging shrubbery or gardens:

First offense \$25.00;

Second offense by the same dog: \$50.00;

Third and every subsequent offense by the same dog: \$75.00.

E-1 The Dog Officer has discretion to issue a warning in lieu of a fine for a first offense of this subsection.

604.7 Impoundment; release; disposition of dogs.

A. The Dog Officer or, in his/her absence, police officers, may cause a dog to be impounded for any of the following causes:

- If found without a license when a license is required (Section 604.2);
- If found unrestrained (Section 604.3)
- For violation of any order of the Board of Selectmen issued pursuant to a public hearing (Section 604.8D)
- For having bitten, injured or physically molested any person;
- For having physically injured any domesticated animal;
- To restore peace when the owner or keeper of a dog is otherwise unavailable, unwilling, or physically unable to restrain his/her dog from causing a nuisance by continuous barking or howling; or
- To ensure the safety and well being of the particular dog.

B. If, by license tag or other means, the owner or keeper of an impounded dog can be identified, the Dog Officer shall give prompt notice to said owner or keeper and return the dog to the owner or keeper and issue a citation for any violation that preceded the impoundment.

C. The owner or keeper shall be entitled to resume possession of an impounded dog, excepting those restrained by order of the Board of Selectmen, upon payment of all fines and fees, which may include:

- Board shall be charged for each day the dog is impounded, at a rate to be set by the Board of Selectmen, and
- Rabies vaccination (if not demonstrated to satisfaction of dog officer), and
- Dog license and late fee if applicable, and
- Veterinary care provided during impoundment, including immunizations against disease, and time and travel of the Dog Officer when providing such care, and
- Citation penalties for violations of Sections 604.2, 604.3, 604.4, 604.5 or 604.6 preceding impoundment.

D. Impounded dogs whose owners can not be identified or who refuse to take responsibility for the release of the dog, shall be kept for not less than ten days. At the end of ten days the Dog Officer may

- Cause the dog to be humanely euthanized by a licensed veterinarian, or
- Have its title transferred to a designated shelter operating in the Commonwealth of Massachusetts, or
- Placed in the custody of a person deemed to be a responsible and suitable owner, who will agree to pay the costs of licensing and of keeping and caring for the dog incurred by the town during the required impoundment period.

604.8 Formal complaints; hearings; action by Board of Selectmen; criminal complaint

A. The Dog Officer or any resident may file a written complaint and request an adjudicatory hearing with the Board of Selectmen if aggrieved by any unresolved complaint of vicious or nuisance behavior, which can not be otherwise resolved by the action of the Dog Officer acting alone. All parties shall be served with written notice at least ten days prior to the scheduled hearing. In the case of an emergency, determined by the chairman of the Board of Selectmen, the hearing may be held as soon as one hour after the notice is delivered.

B. The complainant shall testify. The dog owner or keeper may testify. Any party may be represented by private legal counsel. The Board of Selectmen may call such other witnesses to present evidence or testimony which the chairman shall determine to be relevant.

C. The Board of Selectmen may issue a statement of facts and findings at the hearing and shall cause to be delivered to all the parties within seven days of the close of the hearing a written statement of facts and findings, together with any enforcement orders determined by the board.

D. The board may order any of the following resolutions:

- restraint of the dog exclusively to the property of the owner or keeper;
- removal and restraint of the dog into the town impound facility;
- muzzling of the dog at specific times or places;
- evidence of completion of a dog obedience or behavior program for the dog and the owner or keeper;
- construction of a new, or inspection of an existing, fenced enclosure for the dog on the property of the owner or keeper, deemed suitable, safe and secure by the Dog Officer;
- removal of the dog from the town;
- transfer of the dog into the care of a *bona fide* rescue or adoption shelter program; and/or
- cause the dog to be humanely euthanized by a licensed veterinarian.

E. The board may also order the Dog Officer to issue additional citations based on the facts and findings of the hearing, in accordance with the violation schedule in Sections 604.2, 604.3, 604.4, 604.5 or 604.6.

F. The Board of Selectmen may appoint a hearing officer or panel to exercise their adjudicatory powers under this section.

G. The dog owner or keeper may appeal the orders of the Board of Selectmen to the District Court in accordance with MGL Chapter 140, Section 157. An appeal will not stay the execution of an order to restrain said dog during the time of the appeal proceedings.

H. The Board of Selectmen may enforce these bylaws by filing a criminal complaint in the District Court if a dog owner fails to comply with a citation or with any orders issued pursuant to a hearing under this section, and fails to appeal in accordance with the Section 604.8G.

604. 9 Disposition of fines and penalties.

All licensing fees, boarding charges, fines and penalties shall be paid into the general fund of the Town of Wilbraham.

SECTION 606: IMPURE WATER ON TOWN PROPERTY (Art. V, Sec. 14)

No person shall allow any sink water or other impure water to run from any structure or lot occupied by him or under his control onto any street or other public property of this Town.

SECTION 607: VENDORS, HAWKERS AND PEDDLERS (Art. V, Sec. 21)

No transient vendor, hawker or peddler as defined in Mass. Gen. Laws, Chapter 101, shall sell or barter, or carry for sale or barter, any good, wares, or merchandise in the Town of Wilbraham on any day of special town celebration so proclaimed by the Board of Selectmen unless a permit has been issued by said Board or its delegate thereof when deemed to be for the good of said celebration and under such terms and conditions and for such a fee as said Board or its delegate shall determine.

SECTION 608: ZONES OF QUIET (Regulations, Art. IV)

a.) The Board of Selectmen may temporarily establish a Zone of Quiet upon any street where a person is seriously ill if requested to so by the written statement of at least one registered physician certifying to its necessity. Said temporary Zone of Quiet shall embrace all territory within a radius of two hundred (200) feet of the building occupied by the person named in the request of said physician. Said temporary Zones of Quiet shall be designated by the police by placing, in a conspicuous place in the street, a sign or marker bearing the words "Zone of Quiet."

b.) No person operating a motor vehicle within any designated and signed Zone of Quiet shall sound the horn or other warning device of said vehicle except in an emergency.

SECTION 609: HOURS OF BUSINESS (Art. V, Sec. 25) (Amended ATM 4/25/92 Art. 20)

It shall be unlawful for any place of public amusement, public or private establishment holding a liquor license, drive-in theater or other similar public facility to provide such public amusement, serve meals or liquor, provide entertainment or otherwise conduct business between the hours of 2:00 a.m. and 5:00 a.m. The Board of Selectmen may, upon receipt of a written request from the business owner or operator, and after a duly noticed public hearing, grant permission by a majority vote of the board's total membership for one or more 24-hour licenses to conduct the ordinary and usual business activity of the business owner between the hours of 2:00 a.m. and 5:00 a.m. Said written request shall include the specific date(s) and business activities to be conducted. The Board of Selectmen in granting its permission shall have the right to impose any reasonable conditions or requirements as they deem necessary and appropriate to protect the public safety, health and welfare interests of the community. In no event will such a license be granted where, in the opinion of the Board after a public hearing, the activity requested would be detrimental to the specific part of the community in which the business is located. Whoever shall violate any provision of this By-Law shall upon conviction thereof be fined not more than one hundred dollars (\$100.00) for each offense. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town from taking such other lawful action as it deems necessary to prevent or remedy any violations.

SECTION 610: COLLECTING JUNK (Art. V, Sec. 17)

No person shall collect, by purchase or otherwise junk, old metals or second hand articles without being licensed to do so by the Board of Selectmen.

SECTION 611: SIDEWALK SNOW (Art. V, Sec. 17)

Within twenty-four (24) hours after a snowfall, snow shall be removed from sidewalk(s) abutting street(s) by the tenant or occupant, and if no tenant or occupant, by the owner.

SECTION 612: TREE BELTS IN RIGHT OF WAY Art. V, Sec. 2)

No person shall dig up, plow up, cut up or despoil any portion of any street, except that any owner whose land abuts upon any street may grade or otherwise beautify the same street immediately in front of his own parcel in such a manner as will not interfere with public travel in the spaces in said street reserved or generally used for travel.

SECTION 613: CUTTING TREES (Art. V, Sec. 10)

No person other than a town officer or his agent duly authorized shall cut down, remove, mutilate or otherwise injure any tree now growing or which may hereafter be growing on any town property including any park, tree belt, common ground or cemetery.

SECTION 614: VEHICLES ON CONSERVATION LAND (Art. V, Sec. 24)

No person shall operate a motorized vehicle on conservation lands with the exception of designated parking areas, or with the specific permission of the Conservation Commission. Violators shall pay a fine of \$50.00 per violation.

SECTION 615: FIRE LANES (Art. V, Sec. 27)

a.) The Board of Selectmen may designate fire lanes within the limit of any private way, parking area, or driveway for the access of fire apparatus, ambulances or other emergency vehicles to multiple-family dwellings, stores, schools and places of public assembly.

b.) Any area so designated by the Board of Selectmen shall be appropriately posted with a sign stating, in whole or in part, "Fire Lane-No Parking".

c.) It shall be unlawful to obstruct or block any area designated as a Fire Lane with a vehicle or by any other means.

d.) The registered owner of any vehicle parked or left unattended within the limits designated as a Fire Lane shall be punished by a fine not to exceed \$15.00 for each offense.

SECTION 616: REPAIR OR CONSTRUCTION OF HIGHWAYS (Art. V, Sec. 1)

No person other than those officials or boards having authority to repair or construct highways, or a person acting under the authority of any of them, shall dig up, open or excavate any street without first obtaining permission in writing so to do from the Board of Selectmen and, if the Board of Selectmen so require, executing and delivering to the Town an agreement under seal to indemnify the Town and save it harmless from all loss, cost or damage caused to it thereby and to replace the material and substances so dug up or removed to the satisfaction of the Selectmen.

SECTION 617: FIRE HYDRANTS (Art. V, Sec. 12)

No person, except a fireman in legitimate discharge of his duties as a fireman of the Town of Wilbraham, shall open a hydrant without consent of the Board of Water Commissioners, and no person shall place any building material or other article or rubbish of any kind so as to hinder the free access to the use of any hydrant.

SECTION 618: WATER EMERGENCY DECLARATION (Amended ATM 4/29/89 Art. 18)

The Board of Water Commissioners, or its designee, is authorized and empowered to declare a state of water emergency as may be necessary from time to time, in order to conserve water resources of the Town, and ban or restrict the use of water on certain uses. Any person who, upon approval of the foregoing restrictions for a state of water emergency, by the Department of Environmental Quality Engineering of the Commonwealth of Massachusetts, shall violate the ban or restrictions, shall be subject to a fine in an amount not to exceed the sum of One Hundred Dollars for each violation, and each day in which a violation occurs will be considered a separate violation. This section shall be subject to the provisions of Mass. Gen.

Laws Chapter 21G, and the regulations adopted thereunder.

SECTION 619: BURGLAR ALARM OPERATIONS/REGULATIONS/FINES (Amended ATM 4/29/89, Art. 24)(Amended ATM 5/7/01, Art. 34)

a.) If a person has for his home or business a burglar alarm system that results in a police call to the person's home or business, the person is liable for a fee of twenty-five (\$25) dollars for each "false alarm" after the first three (3) "false alarms" in any calendar year. For the purposes of this section a "false alarm" means the triggering of the alarm by any cause other than by a person whose presence on the premises the alarm system is intended to report.

b.) If a person becomes liable for the "false alarm" fee, the Town Collector shall send to the person a bill for the fee. If the person fails to pay the fee within thirty (30) days after the sending of the bill, the Police Department shall cause the burglar alarm system to be disconnected so that the system no longer gives notice to the police upon being triggered. The Collector has authority to collect a "false alarm" fee that accrued before the discontinuance.

c.) The Board of Selectmen shall establish an abatement procedure for "false alarm" fees.

SECTION 620: REGULATING THE NUMBERING OF BUILDINGS (ATM 04/28/90 Art. 24) (Mass. Gen. Laws Chapter 40, Sec. 21)

1. The Board of Selectmen or its designee including but not limited to the Town Building Inspector may order a building to be numbered or renumbered by the owner thereof, on or near the line of public or private ways; and shall keep or cause to be kept and shall file with the office of the Town Clerk a suitable record of all such numbering and renumbering.

2. The owner of every building shall comply with any such order within thirty (30) days after notice by the Board of Selectmen or its said designee, to number or renumber a building on or near the line of the public or private way on which the building is situated. The numbers shall be not less than three (3) inches in height.

3. If the owner of any building fails to number the same timely in accordance with an order issued under the provisions of this By-Law, said owner shall pay a penalty in the amount of twenty-five (\$25.00) Dollars for each offense, which shall inure to the Town or to such usages as it may direct; said fine to be recovered on complaint before a District Court or by non-criminal disposition in accordance with Mass. Gen. Laws, Chapter 40, Section 21D. Each day the owner fails to comply with an order issued under the provisions of this By-Law shall constitute a separate offense.

SECTION 621: MANDATORY RECYCLING (STM 6/25/90 Art. 1)

All residents of the Town shall be required to separate their solid waste into various categories for the purpose of recycling in the manner set forth by any rules or regulations promulgated by the Board of Health.

SECTION 622: FEE FOR UNDERGROUND STORAGE TANK REMOVAL (STM 6/22/92 Art. 6)

There is hereby established a fee for removal or relocation of underground flammable or combustible fluid tanks at \$75.00 per tank for tanks with a capacity between 550 and 10,000 gallons, as provided in Mass. Gen. Laws, Chapter 148, Section 38(A).

SECTION 623: WATER CROSS CONNECTION REGULATIONS (ATM 06/12/93 Art. 21)

The Board of Water Commissioners is authorized to implement and enforce regulations on file with the Town Clerk providing for the elimination or control of water cross connections, actual or potential, between the in-plant potable water system and non-potable systems.

SECTION 625: SNOW REMOVAL (ATM 5/14/94 Art. 25)

No driver of a vehicle used to remove snow and no person operating snow removal equipment shall place snow in any constructed, traveled roadway within the town limits of the Town of Wilbraham.

SECTION 626: TAG SALES (ATM 5/4/98 Art. 30)

No person shall conduct a tag sale, attic sale, garage sale, lawn sale, rummage sale, yard sale or their equivalent in the Town of Wilbraham except in accordance with the following requirements:

1. The Tag Sale shall be restricted to the sale of personal property belonging to the resident family, which is being sold on their own premises; or in the case of a neighborhood tag sale, shall be restricted to personal property belonging to the participating resident families, which is being sold from premises located in the neighborhood.
2. The Tag Sale shall be limited to not more than two (2) consecutive days and the hours of operation shall not begin before 8 AM and shall not extend beyond sunset.
3. Tag Sales by a resident family on more than two (2) occasions in any given calendar year and sales of property belonging to other persons shall not be permitted without the issuance of a Junk License from the Board of Selectmen. In such instances, Zoning By-Law requirements must be complied with.
4. Temporary signs advertising the Tag Sale may be erected on the day (s) of the sale in accordance with Zoning By-Law requirements, and shall be promptly removed at the conclusion of the sale. Signs that create a nuisance or threat to public safety are prohibited and shall be removed at the request of the zoning enforcement official or police officer.
5. The Tag Sale holder shall be responsible for orderly parking and traffic flow. If parking or traffic flow conditions create a threat to the safety of the public, the tag sale event shall be terminated at the request of a police officer.
6. No Tag Sale event shall be held at a time or place so that it negatively impacts or interferes with any other public event in the community.

Occasional sales by churches and other charitable organizations shall be exempted from these regulations.

Violations of the provisions of Section 626

Fine allowed: \$100 dollars

Fine scheduled: Each offense

Enforcement Agent: Zoning Enforcement Officer and the Police Department.

SECTION 627: REGULATION OF AUTOMATIC AMUSEMENT DEVICES (ATM, 5/7/01, Art.36)(ATM, 5/6/02,Art. 36)(ATM, 5/13/03, Art. 2)(ATM, 5/17/04, Art.23)

a.) In accordance with M.G.L. C140s177A, as amended from time to time, any individual or business desiring to keep and operate an automatic amusement device for hire, gain or reward shall secure an annual license from the Board of Selectmen. The term automatic amusement devices as used in this By-law shall refer to mechanical (**ADD-DIGITAL, ELECTRONIC**) and electrical devices. No license shall be granted for any automatic amusement device, which presents a risk of misuse as a gaming device. No person shall operate or allow the operation of an automatic amusement device, which presents a risk of misuse as a gaming device. Automatic amusement devices which simulate actual gaming or actual gaming devices and games which involve matching of random numbers, patterns or color combinations (**ADD-AND GAMES WHICH SIMULATE OR REPRESENT CASINO TYPE GAMES, POKER AND BLACKJACK.**)

b.) The maximum number of automatic amusement devices allowed on any single business premises shall be six, with no such device able to accept a bill larger than (**DELETE \$1.00, ADD \$5.00**). Any change of automatic amusement devices shall be subject to inspection.

c.) All premises designated on a license for automatic gaming devices granted by the Board of Selectmen shall be subject to inspection by the Wilbraham Police Department to ensure conformance with submitted application information and local By-law requirements.

d.) Any unlicensed automatic amusement device or automatic amusement device, which presents a risk of misuse as gaming device, shall be subject to immediate seizure by the Wilbraham Police Department. Any expense incurred by the Wilbraham Police related to the seizure of such devices shall become the responsibility of the person that controls the premises where the devices were located.

e.) Any individual or business not in compliance with this By-law shall receive a written notice of such non-compliance. The first notice shall result in a fine of \$100.00. A second or subsequent notice of non-compliance shall result in a fine of \$300.00 and the revocation of all licenses issued in accordance with this By-law and M.G.L. C 140 s177A.

f) Notwithstanding anything contained herein to the contrary, the limitation upon the maximum number of automatic amusement devices allowed on any single business premises of six set forth in Subparagraph (b) above shall not be applicable to the operation of a business that constitutes public recreation operated as a business, including facilities for assembly, billiards, bowling, soccer, roller skating and similar activities, provided that the following conditions are satisfied as determined by the Planning Board:

1. The operation of automatic amusement devices shall be accessory to the principal use

of public recreation operated as a business; and

2. More than six amusement devices shall only be operated within the business premises that have as their principal use public recreation operated as a business in conjunction with and as accessory to the public recreation activities carried out within any such business premises.

Upon receipt by the Board of Selectmen of a certification from the Planning Board that an establishment satisfies both of the foregoing conditions and constitutes public recreation operated as a business where the operation of automatic amusement device is accessory to such principal use, the Board of Selectmen shall be entitled to issue a license permitting the operation of more than six automatic amusement devices at the business premises where public recreation operated as a business constitutes the principal use, with no limitation imposed upon the number of automatic amusement devices that may be permitted by the Board of Selectmen pursuant to any such license. Nothing contained in this Subparagraph (f) shall modify or otherwise affect the prohibition set forth in Subparagraph (a) that no license shall be granted for any automatic amusement device which presents a risk of misuse as a gaming device and no person shall operate or allow the operation of an automatic amusement device which presents a risk of misuse as a gaming device.”

g.) This By-law shall be enforced by all state and local law enforcement officials and shall be administered under the provisions of M.G.L. C 40 s21D and any M.G.L. or Town By-law implementing enforcement of such By-laws. Nothing in this By-law shall be construed to change any provision of the Wilbraham Zoning By-law.

SECTION 628: INSTALLATION OF KEY BOXES ON PROPERTY PROTECTED BY AUTOMATIC FIRE ALARM SYSTEMS OR AUTOMATIC SPRINKLER SYSTEMS (ATM, 5-13-03, art.32)

1. Whenever an automatic fire alarm system or automatic sprinkler system protects a structure or area within the Town of Wilbraham, a secure key box rapid entry systems approved by the Fire Chief shall be installed on the property in a location approved by the Fire Chief or his designee. It shall be the responsibility of the owner, lessee, tenant, or other party in control of the structure 1) to assume all costs associated in the installation of the key box, 2) to ensure that all keys contained therein are those most currently in use in the structure or area, and 3) to keep the key box in good repair.

1.1 Exemptions. The following are exempt:

- 1.1.1. Structures or area that are occupied 24 hours a day, seven days a week, where personnel on site have keys and access to aforementioned areas;
- 1.1.2. Buildings containing five or less dwelling units;
- 1.1.3. Buildings containing six or more dwelling units that do not utilize common corridors to access living units.

2. Contents and Information to be Provided. Such key boxes shall contain current keys and information for the following:

- 2.1. Locked points of ingress or egress whether on the interior or exterior of the building.
- 2.2. Fire alarm panel room.

- 2.3. Fire alarm panel.
- 2.4. Elevator controls and firefighter switch, if applicable.
- 2.5. Any area with hazardous conditions or materials.
- 2.6. Mechanical rooms.
- 2.7. Fire Protection systems control rooms.
- 2.8. Alarm enunciator instructions.
- 2.9. Emergency response notification list.
- 2.10. Other areas as directed by the Fire Chief or his designee.

3. Compliance. All structures or areas required to install a key box have 18 months from the effective date of this bylaw to comply. Failure to comply with any portion of this bylaw will result in notification to the Board of Selectmen, Planning Board, Building Department, and the Zoning Board of Appeals, requesting no permits, licenses, or occupancies within the structure be issued or renewed until this bylaw is complied with.

SECTION 630: UNREASONABLE NOISE (ATM, 5/6/02, Art. 35)

1. Unreasonable Noise Prohibited. It shall be unlawful for any person or persons to create, assist in creating, continue or allow to continue any excessive, unnecessary, or unusually loud noise which either annoys, disturbs, injures, or endangers the reasonable quiet, comfort, repose, or the health or safety of others within the town of Wilbraham. The following acts are declared to be loud, disturbing, injurious, unnecessary and unreasonable noises in violation of this section, but this enumeration shall not be exclusive, namely:

- a.) Radio, Phonograph, Musical Instruments and Television. The playing of any radio, phonograph, television set, amplified or musical instruments, loudspeakers, tape recorder, or other electronic sound producing devices, in such a manner or with volume at any time or place so as to annoy or disturb the reasonable quiet, comfort or repose of persons in any dwelling, hotel, hospital, or other type of residence, or in any office, school, church, or of any persons in the vicinity.
- b.) Shouting and Whistling. Yelling, shouting, hooting, whistling, singing, or the making of any other loud noises on the public streets, between the hours of 9:00 p.m. and 7:00 a.m., or the making of any such noise at any time or place so as to annoy or disturb the reasonable quiet, comfort or repose of persons in any dwelling, hotel, hospital, or other type of residence, or in any office, school, church, or of any persons in the vicinity.
- c.) Animal Noises. The keeping of any animal or bird which, by causing frequent or long continued noise, shall disturb the reasonable comfort or repose of any person.
- d.) Devices to Attract Attention. The use of any drum or other instrument or device of any kind for the purpose of attracting attention by the creation of noise. This section shall not apply to any person who is a participant in a school band or duly licensed parade or who has been otherwise authorized to engage in such activity.
- e.) Construction Noise. The operation of vehicles, equipment, tools or machines used as a means of construction, maintenance, repair or demolition of a building site, building, bridge, tower or road between the hours of 9:00 p.m. and 7:00 a.m., or the

making of any such noise between the hours of 9:00 p.m. and 7:00 a.m., so as to annoy or disturb the reasonable comfort or repose of persons in any dwelling, hotel, hospital, or other type of residence, or in any office, school, church or of any persons in the vicinity.

- f.) Engine noise during or incident to the repair of motor vehicles between 9:00 p.m. and 7:00 a.m. on commercial premises and any time on residential premises.

2. Exemptions. None of the terms or prohibitions of the previous section shall apply or be enforced against:

- a.) Trains
- b.) Emergency Vehicles. Any police or fire vehicles or any ambulance while engaged in necessary emergency business.
- c.) Highway and Utility Maintenance and Construction. Necessary excavation in or repairs of bridges, streets, or highways, or any public utility installation by or on behalf of the Town, or any public utility or any agency of the State of Massachusetts.
- d.) Public Address. The reasonable use of amplifiers or loud speakers for public addresses, which are non-commercial in nature.
- e.) Noise caused by agricultural, farm-related activities as defined by M.G.L. Chapter 128, Section 1A, as amended from time to time, including but not limited to the operation of farm equipment, sawmills, harvesting equipment, noises from farm animals, and the like.
- f.) Noise caused by lawful hunting or other lawful discharge of firearms.
- g.) Noise from activities which have been duly licensed, permitted or otherwise allowed by a governmental body having jurisdiction to license, permit or allow the activity that generates the noise.
- h.) Organized Sports

3. Penalties. The first violation of this By-law shall be punished by a fine of not less than one hundred dollars (\$100.00). The second violation of this By-law within 12 months after the first violation shall be punished by a fine of not less than two hundred dollars (\$200.00). Further violations within 12 months after the last violation shall be punished by a fine of three hundred dollars (\$300.00). Each such act, which either continues or is repeated more than one-half (½) hour after issuance of a written notice of violation of this By-law shall be a separate offense and shall be prosecuted as a separate offense. If the violation occurs on the premises of rental property, which is a non-resident owner, then the owner must also be notified in writing that the violation has occurred.

4. Other Remedies.

- a.) If a person or persons responsible for any activity which violates paragraph 1 cannot be determined, the person in lawful custody and/or control of the premises,

including but not limited to the owner, lessee or occupant of the property on which the activity is located, shall be deemed responsible for the violation.

- b.) If the person or persons responsible for an activity which violated paragraph 1 can be determined, any person or persons who remain in willful violation of this By-law after notice by a police officer may be arrested without a warrant provided that the violation occurs in the presence of a police officer and the conduct constitutes "*Disorderly Conduct*" as defined in M.G.L. C 272 S 53.
- c.) If any person shall make complaint in writing to the Board of Selectmen or their designee that a person has acted in violation of this By-law by being responsible for unreasonable noise, the Selectmen shall investigate or cause to be investigated such complaint, including examinations on oath of the complainant and all other persons called to testify or who wish to testify and may make a finding of violation of this By-law after a hearing on the merits of the complaint conducted by the Board of Selectmen. The complainant and the person complained of will be afforded the opportunity to be heard, to call witnesses on their behalf to cross-examine witnesses and to be represented by counsel at the hearing.

5. Enforcement. This By-law shall be administered under the provisions of G.L. c. 40 Section 21D and any statute, regulation or Town By-law implementing enforcement of such By-laws.

6. Severability. If any provision of this By-law is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the By-law shall not be invalidated.

SECTION 631: PRIVATE WAYS (Atm, 5/14/07, art.28)

- 1.01 The Town of Wilbraham may, subject to appropriation therefore in advance at the previous annual town meeting, make temporary repairs to a private way on which there is more than one owner abutting the private way, subject to limitations expressed in the following sections of this by-law, which shall not constitute a rebuilding of the road by replacing the gravel base, binder course and top coat, but which would be limited to patching degraded portions of the asphalt or regrading gravel roads or minimal snow plowing to allow for emergency access by public emergency vehicles and practical access to accommodate public necessity. See Section 1.03 below.
- 1.02 Drainage improvements shall not be made at the time of the making of such temporary repairs unless necessary to provide access by emergency vehicles to more than one home abutting the private way and then only to the extent to which the temporary repairs are necessary to provide such emergency access by public emergency vehicles and practical access to accommodate public necessity.
- 1.03 Temporary repairs will not be made unless there is a public necessity for the repairs, and not merely an inconvenience to a property owner on a private way who is either the sole owner abutting the private way or an owner of property adjacent to the private way at the end of the private way, but not abutting the private way. The private ways eligible for temporary repairs under this by-law

shall have been in existence prior to August 9, 1946 when the subdivision control law became effective in Wilbraham or shall have been constructed (or in the process of construction) in accordance with a plan approved and endorsed under the subdivision control law. The term “public necessity” shall mean a need by public emergency vehicles including fire, police, and ambulance; or Town snow removal vehicles, school buses, and other vehicles customarily used by delivery services and utility and home appliance service vehicles to access the homes abutting the private way.

- 1.04 In order for the town to make temporary repairs on a private way, in addition to the rest of the requirements set forth herein, there must first be a petition for such temporary repairs presented in writing to the town and signed by 51% of the owners abutting the private way.
- 1.05 Neither betterment assessments nor any other fee shall be assessed to owners abutting the private way when temporary repairs are made. However, notwithstanding the petition of 51% of the owners abutting the private way, said owners shall pay to the town a sum of money equal to the amount estimated by the Director of Public Works to be the cost of materials to be used in the temporary repairs including, but not limited to, oil, stone, bituminous asphalt and pipes, said sum of money to be apportioned among said owners as they deem appropriate.
- 1.06 Notwithstanding the petition of 51% of the owners abutting the private way, the town shall not make temporary repairs unless each and every owner abutting the private way shall first execute a document presented by the town which establishes a one hundred (\$100.00) dollar limit of liability of the town on account of damages caused by such repairs.
- 1.07 The town may also offer the owners abutting the private way the opportunity to hire the town’s paving contractor if and when the town’s paving contractor is performing other work for the Town in the vicinity of the particular private way(s), when such an opportunity would represent the likelihood of a substantial savings to the owners abutting the private way in an instance where more extensive repairs or a complete reconstruction of the road is preferred by the owners abutting the private way. Nothing herein shall be construed to impose a requirement that the town take any such action or create or offer such an opportunity to the owners abutting the private way.
- 1.08 Notwithstanding anything in the foregoing to the contrary, no temporary repairs or other repairs or services, including but not limited to snowplowing as referenced in Section 1.01 above, shall be construed to constitute the acceptance by the town of a private way as a public way or to otherwise convert a private way to a public way.

SECTION 632: UNREGISTERED OR INOPERABLE MOTOR VEHICLES
(ATM 5/14/07, Art. 35)

1. No person in charge or control of any property within the Town, whether as owner, tenant, occupant, lessee or otherwise, shall allow any motor vehicle or trailer which is partially dismantled, wrecked, junked, inoperable or unregistered to be stored, parked or otherwise placed on such property for more than thirty (30) days during any one year period except that this Section shall not apply to:

- A. A motor vehicle stored or parked within a lawfully permitted and totally enclosed building with sidewalls and roof;
- B. An un-garaged motor vehicle stored or parked in a location out of sight from abutting properties and public ways, except that the open air storage of more than two (2) unregistered or inoperable vehicles is prohibited on any lot where the principal use of such lot is residential in nature. For purposes of this section all contiguous parcels of land in common ownership shall be considered one lot.
- C. A motor vehicle on the premises of a legally established business enterprise operated in a lawful place and manner when necessary to the operation of such business enterprise including, but not limited to, motor vehicles sales, motor vehicle towing operations and motor vehicle repair shops;
- D. Motor vehicles which are used for bona-fide agricultural purposes; and
- E. A motor vehicle stored or parked in an appropriate storage place or depository maintained in a lawful place and manner with the consent of the Town.

2. Any person who continues to violate any provision of this Section 631 of the Town by-laws after seven (7) days following receipt of written notice of such violation from the Zoning Enforcement Officer shall be liable for a penalty not exceeding one hundred (100) dollars for each offense. Each day that any violation continues after said seven (7) day period shall constitute a separate offense. Any violation that is corrected and then recurs within one year following the written notice of the original violation shall be considered a repeat violation subject to an immediate penalty not exceeding two hundred (200) dollars for each offense and each day that the repeat violation continues shall constitute a separate offense.

3. The violation of any provision of this section may be addressed by the procedure for non-criminal disposition as provided in MGL Chapter 40 Section 21D, as incorporated in Section 103A of the By-laws of the Town of Wilbraham.

- Citation to by-laws: Wilbraham Town By-laws Section 632
Subject of by-laws: Unregistered motor vehicles
Enforcing Persons: Police Department Zoning Enforcement Officer
Penalty: \$100 for each offense, each day being a separate offense; \$200 for each repeat offense, each day being a separate offense

SECTION 633: RIGHT TO FARM (ATM 5/14/07, Art. 41)

The Town of Wilbraham hereby adopts a Right to Farm Bylaw, administered by an Agricultural Commission, to promote and preserve farming and farmland within the town. The Agricultural Commission shall perform its duties in cooperation with other relevant town boards, commissions and departments.

Section 1: Purpose and Intent

In the Town of Wilbraham, where farming is an essential part of the town's history, farming continues to be a necessary and desirable activity that provides food, clean air, economic diversity, local employment, and open space to all citizens of our community.

This bylaw is intended to encourage the pursuit of agriculture, promote farm-based economic and employment opportunities, farm-based recreational and leisure activities, and protect farmland within the Town of Wilbraham.

The purpose and intent of this bylaw is to foster agricultural uses of land, and to encourage the initiation and expansion of agriculture and related activities to function in harmony with the citizens of Wilbraham.

The right to farm is accorded to all citizens of the Commonwealth under Article 97 of its Constitution and all state statutes and regulations there under, including but not limited to: Massachusetts General Laws Chapter 40A, Section 3, Paragraph 1; Chapter 90, Section 9; Chapter 111, Section 125A; and Chapter 128, Section 1A. We, the citizens of Wilbraham, restate and republish these rights pursuant to the town's authority conferred by Article 89 of the Articles of Amendment of the Massachusetts Constitution ("Home Rule Amendment").

Section 2: Definitions

"Farm" shall include any parcel or contiguous parcels of land or bodies of water, used for agriculture.

The words "farming" or "agriculture" or their derivatives shall include, but not be limited to the following:

- farming in all its branches which involve the cultivation and the tillage of the soil
- establishing and maintaining orchards
- dairying
- production, cultivation, growing and harvesting of any agricultural, aqua-cultural, floricultural, viti-cultural or horticultural commodities
- growing and harvesting of forest products including the production of maple syrup, Christmas trees and any other related forestry or lumbering operations
- raising and keeping of domestic livestock
- keeping of horses and other livestock as a commercial enterprise
- establishing community gardens and maintaining other agricultural endeavors

Section 3: Right to Farm Declaration

In this bylaw, the word "farming" encompasses activities including, but not limited to, the following:

- agricultural operation and transportation of slow-moving farm equipment over roads within the town
- agricultural activities that may occur on holidays, weekdays, weekends, by day or by night, and shall include the attendant activities associated with accepted farming practices
- conducting agricultural-related educational and farm-based recreational activities, including agri-tourism
- the operation and maintenance of a farmers' market and farm stands
- the sale of farm-related products with approved signage

- maintenance, repair or storage of farm-related equipment or apparatus owned or leased by the farm owner or manager
- the construction and maintenance of farm buildings used for shelter, feed, storage, maintenance and farm stands

Nothing in this Right to Farm Bylaw shall be deemed as acquiring an interest in any land, nor as imposing any land use regulation which is properly within the purview of state statute or regulation, or local zoning law.

Section 4: Policy Statement

“It is the policy of the Town of Wilbraham, a Right to Farm community, to conserve, protect and encourage the maintenance and improvement of agricultural land for the production of food and other agricultural products, and also for its natural, recreational and ecological value.”

The Agricultural Commission shall submit this policy statement as part of its Annual Report to the Town of Wilbraham, and shall cause copies of said policy to be posted in various town offices dealing with land use, including, but not limited to the Board of Assessors, Zoning Board of Appeals, Planning Board, and Conservation Commission.

Section 5: Procedure for Mediation

Any person having a complaint about a farm or farming activity or practice is encouraged to seek an amicable solution, including talking directly with the involved participant. Such person may, pursuant of other available remedies notwithstanding, request assistance from the Board of Selectmen. The Board of Selectmen may appoint a panel of at least three individuals, including a farmer and a member of the Agricultural Commission, to review and facilitate the resolution of the grievance, and to report its recommendations to the Board of Selectmen within an agreed-upon time frame.

Section 6: Severability Clause

If any part of this bylaw is for any reason found to be invalid, such decision shall not affect the remainder of this bylaw.

SECTION 634: STORMWATER PHASE II COMPREHENSIVE BY-LAW
(ATM 5/14/07, Art. 43)

PART I LOCAL STORMWATER MANAGEMENT

SECTION A. PURPOSE AND AUTHORITY

1. Purpose

- a. The purpose of this by-law is to better manage land alteration and development in order to protect, maintain, and enhance the public health, safety, and general welfare of the citizens of Wilbraham by establishing minimum requirements and procedures to control the **adverse impacts** associated with **stormwater runoff**. (Bolded words and phrases are defined under the definition section B).

- b. The proper management of stormwater runoff will meet the following objectives:
 1. Reduce the adverse water quality impacts of stormwater discharges to rivers, lakes, reservoirs and streams in order to meet federal water quality standards;
 2. Prevent the discharge of pollutants, including hazardous chemicals, into stormwater runoff;
 3. Minimize the volume and rate of storm water, which is discharged to rivers, streams, reservoirs, lakes and storm sewers, that flows from any site during and following development;
 4. Prevent erosion and sedimentation from land development, and reduce stream channel erosion caused by increased runoff;
 5. Provide for the non-polluted recharge of groundwater aquifers and maintain the base flow of streams;
 6. Provide storm water facilities that are attractive, maintain the natural integrity of the environment, and are designed to protect public safety;
 7. Maintain or reduce pre-development runoff characteristics after development to the extent feasible;
 8. Minimize damage to public and private property from flooding;
 9. Ensure that these management controls are properly maintained; and
 10. Comply with state and federal statutes and regulations relating to storm water discharges.

2. Authority

This by-law is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and the regulations of the federal Clean Water Act found at Title 33 U.S.C. §§ 1252 1387 and 40 CFR 122.34.

3. Responsibility for Administration

The Town of Wilbraham Department of Public Works (Wilbraham DPW) shall be the Permitting Authority/**Authorized Enforcement Agency** and shall administer, implement and enforce this by-law. Any powers granted to or duties imposed upon the Wilbraham DPW to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

SECTION B. DEFINITIONS

1. Definitions

Unless otherwise expressly stated, the following definitions describe the meaning of the terms used in this by-law:

Applicant: a person with the duty to apply for a permit hereunder

Authorized Enforcement Agency – The Town of Wilbraham Department of Public Works (Wilbraham DPW), and its employees or agents designated to enforce this by-law. Also see permitting authority below.

Adverse Impact - Any deleterious effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics or usefulness for human or natural uses which are or may potentially be harmful or injurious to human health, welfare, safety or property, to biological productivity, diversity, or stability or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

Best Management Practices (BMP) - An activity, procedure, restraint, or structural improvement that helps reduces the quantity or improve quality of stormwater runoff. Some examples of BMPs are described in a stormwater design manual, Stormwater Management, Volume Two: Stormwater Technical Handbook (March, 1997, MA Department of Environmental Protection and MA Office of Coastal Zone Management, as updated or amended). Best Management Practices may include:

- Detention basins
- Deep sump catch basins
- Water quality swales
- Oil/sediment separators
- Vortex separators

Certificate of Completion: A written determination by the Wilbraham DPW that work has been completed in accordance with a Local Stormwater Management Permit. For major projects, a Certificate of Completion will be issued only after a Notice of Termination has been submitted to United States Environmental Protection Agency for termination of coverage under NPDES.

Construction Activity - The disturbance of the ground by removal of vegetative surface cover or topsoil, grading, excavation, clearing or filling.

Design Storm - A rainfall event of specified size and return frequency that is used to calculate the runoff volume and peak discharge rate.

Detention - The temporary storage of storm runoff which is used to control the Peak Discharge rates, and which provides gravity settling of pollutants.

Disturbance - Any activity which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the clearing, grading, digging, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural man-made watercourse.

Drainage Area - That area contributing runoff to a consolidated flow of water as measured in a horizontal plane.

Easement - A grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land affected by such easement.

Impervious Surfaces – Any material or structure on or above the ground that prevents water from infiltrating the underlying soil. Impervious surfaces include roads, pavement, building rooftops, sidewalks, and driveways.

Infiltration - The process of percolating water from the surface into the subsoil.

Local Stormwater Management Permit: A document issued by the Wilbraham DPW, including conditions, which regulates stormwater controls associated with land disturbance.

Operation and Maintenance Plan – A plan setting up the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to insure that it continues to function as designed.

Nonpoint Source Pollution - The Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, mining, construction, subsurface disposal and urban runoff sources.

National Pollutant Discharge Elimination System (NPDES) - As authorized by the Clean Water Act, is a permit program governed by the U.S. Environmental Protection Agency (EPA) that controls water pollution by regulating point sources that discharge pollutants into waters of the United States. A Notice of Intent is the mechanism used to “register” for coverage under a

general permit. A Notice of Termination is the mechanism used to close out coverage under a general permit after construction completion.

NRCS - The United States Department of Agriculture Natural Resources Conservation Service.

Owners: The person owning the subject property at the time the application for the permit is made and the also subsequent owners and assignees.

Outfall - The terminus of a storm drain or other stormwater structure where the contents are released.

Peak Discharge - The maximum instantaneous rate of flow during a storm, usually in reference to a specific design storm event.

Permeable Soils - Soil materials with a sufficiently rapid infiltration rate so as to greatly reduce or eliminate surface and stormwater runoff. These soils are generally classified as NRCS hydrologic soil types A and B.

Permit: A **Local Stormwater Management** permit (see above)

Permitting Authority: The Wilbraham DPW, to which a person must apply for a permit under this bylaw.

Person - Any individual, group of individuals, association, partnership, corporation, company, business, organization, trust, estate, administrative agency, public or quasi-public corporation or body, the Commonwealth or political subdivision thereof.

Phasing - The disturbance of a parcel of land in distinct phases, with the stabilization of each phase completed before the disturbance of the next.

Recharge - The replenishment of underground water reserves.

Responsible Party: Transferees and assignees of this original owner/applicant

Retention - The holding of runoff in a basin without release except by means of evaporation, infiltration, or emergency bypass.

Stormwater Management Permit: See **Local Stormwater Management Permit**

Stormwater Runoff - The flow on the surface of the ground, resulting from precipitation.

Stormwater Pollution Prevention Plan (SWPPP) – Plan including minimum information as required for coverage under the EPA NPDES General Permit and with additional information as required by this by-law.

Swale - A natural depression or wide shallow ditch used to temporarily store, route, or filter runoff.

2. Reference Documents

Stormwater Management Policy (March, 1997, Massachusetts Department of Environmental Protection).

Stormwater Management, Volume One: Stormwater Policy Handbook (March, 1997, Massachusetts Department of Environmental Protection and Massachusetts Office of Coastal Zone Management).

Stormwater Management, Volume Two: Stormwater Technical Handbook (March, 1997, Massachusetts Department of Environmental Protection and Office of Coastal Zone Management).

SECTION C. APPLICABILITY

1. Prior to the issuance of any Special Permit, Site Plan Approval, Building Permit for any proposed development listed below, a **Local Stormwater Management Permit**, must be approved by the Wilbraham DPW. No **person** shall, on or after the effective date of the by-law, initiate any vegetation clearing, land grading, earth moving or development activities without first complying with this by-law. The following uses and activities shall be regulated under this by-law:

- a. Minor Projects: any proposed development **disturbing** an area of less than 43,560 square feet (1 Acre)
- b. Major Projects:

(1) Subdivisions and construction activities of any kind **disturbing** an area equal to or greater than 43,560 square feet (1 Acre); and

(2) Development or redevelopment involving multiple separate activities in discontinuous locations or on different schedules if the activities are part of a larger common plan of development that all together disturbs an area equal to or greater than 43,560 square feet (1Acre).

SECTION D. EXEMPTIONS

1. To prevent the adverse impacts of stormwater runoff, the Wilbraham DPW has adopted the MA DEP Stormwater Management Policy as the set of performance standards that must be met at new development sites. These standards apply to construction activities as described under Section C. The following activities are exempt from these stormwater performance standards:

- a. Any agricultural activity which is consistent with an approved soil conservation plan prepared or approved by the **NRCS**;
- b. Any logging which is consistent with a timber management plan already approved under the Forest Cutting Practices Act by the Massachusetts Department of Conservation and Recreation;
- c. Additions or modifications to existing single family structures where there is no proposed change in impervious area;

- d. Any emergency activity that is immediately necessary for the protection of life, property or the environment, as determined by the Wilbraham DPW; and
- e. Work undertaken by the Wilbraham DPW.

SECTION E. PERMIT PROCEDURES AND REQUIREMENTS

1. Approval of Local Stormwater Management Permit Required

No landowner shall receive a building, grading, or other land development permits required, or commence land **disturbance** activities, without approval of the Local Stormwater Management Permit and meeting the requirements of this by-law. Approval by the Wilbraham DPW under this by-law does not exempt the applicant from meeting the requirements of the federal **National Pollutant Discharge Elimination System (NPDES)** program, which requires a Notice of Intent be filed with the EPA and a **Stormwater Pollution Prevention Plan (SWPPP)** be prepared and maintained on site nor does it supersede compliance with the requirements of the Wilbraham Conservation Commission and the Massachusetts Department of Environmental Protection.

2. Application and SWPPP Requirements

a. Minor Projects

Applicants for a Local Stormwater Management Permit for Minor Projects are required to submit the non-refundable permit review fee with the Local Stormwater Management Permit Application and a site plan depicting the following information.

1. Name, address and telephone number of owner, professional engineer (if applicable) and contractor (if applicable)
2. Property lines
3. Existing zoning and land use at the site
4. Proposed land use
5. Location(s) of existing and proposed **easements**
6. Location of existing and proposed buildings and **impervious surfaces**
7. Location of existing and proposed Stormwater utilities, including dry wells, rain gardens or **swales** within 100' of the property line
8. Proposed driveway location and slope (not to exceed 2% within the first 20 feet measured from the paved road)
9. Septic system or sewer location
10. Well or water location
11. Limits of tree clearing
12. Limits of grading
13. Proposed erosion controls
14. Average slope of disturbed area as a percentage (%)
15. Delineation of 100 year flood plain if applicable

Every person disturbing a site with an average slope equal to or greater than 5% must post a bond or other approved means of security in an amount agreeable to Wilbraham DPW until the project is completed. The Wilbraham DPW may promulgate regulations setting forth the elements comprising the amount of and terms and conditions of the bond or other financial security required by this or other sections of this bylaw. Wilbraham DPW may require a SWPPP.

If a project is shown on a plan as part of a larger plan of development that is covered under an existing NPDES (NOI), but is, in actual fact, considered a separate development on a unique lot, as determined by the Wilbraham DPW, then Local Stormwater Management Permit coverage is required for both activities. This may apply to a residential or commercial subdivision, where one person is responsible for roadway construction and a separate person is responsible for building construction on subdivided lots.

b. Major Projects

Applicants for a Local Stormwater Management Permit for Major Projects are required to submit the non-refundable permit review fee along with the Local Stormwater Management Application, a copy of the following information that was sent to EPA:

1. NPDES Notice of Intent
2. SWPPP, including additional information as described in section E.(3)
3. An Operation and Maintenance Plan and Agreement.

All major projects must post a \$500 per acre of disturbed area bond.

3. **Contents of the SWPPP for Major Projects** - Every person applying for a Local Stormwater Management Permit for a major project shall submit a copy of the NPDES (NOI) and the SWPPP that was sent to the EPA. The SWPPP shall include sufficient information to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures proposed for managing stormwater runoff. The SWPPP shall be designed to meet the Massachusetts Stormwater Management Standards as set forth in the DEP/CZM Stormwater Management Handbook Volumes I and II. The applicant shall certify on the drawings that all clearing, grading, drainage, construction, and development shall be conducted in accordance with the SWPPP.

The SWPPP shall be designed and stamped by a professional engineer. Prior to submission to the Town the SWPPP shall include the following minimum information:

- a. Name, address and telephone number of owner, professional engineer and **person** responsible for implementation of the plan
- b. Locus map
- c. Property lines
- d. Existing zoning and land use at the site
- e. Proposed land use
- f. Location(s) of existing and proposed easements
- g. Location of existing and proposed utilities
- h. Location of all existing and proposed buildings and impervious surfaces
- i. Erosion and sediment control provisions to minimize on-site erosion and prevent off-site sediment transport, including provisions to preserve topsoil and limit disturbance
- j. Design details for adequate access (i.e. easement, gravel roads, gates) for operation and maintenance of the **best management practices (BMPs)**
- k. Site's existing and proposed topography with contours at 2 foot intervals on the MA State Plane Coordinate System
- l. Existing and proposed vegetation and ground surfaces

- m. Clear and definite delineation of any areas of vegetation or trees. Specify vegetation that is to be removed and vegetation that is to be saved.
- n. Description and delineation of existing stormwater conveyances, impoundments, and wetlands on or adjacent to the site or into which storm water flows or impacts
- o. Delineation of 100-year flood plains, if applicable
- p. Estimated seasonal high groundwater elevation in areas to be used for storm water **retention, detention, or infiltration**
- q. **Drainage area** map showing pre- and post-construction watershed boundaries and stormwater conveyances.
 - 1. Subcatchment areas for specific design points must include pre- and post-design drawings, report, and a summary table for 2, 10, 50, 100 year **design storms** based on accepted engineering standards.
- r. A description and drawings of the proposed drainage system including:
 - 1. locations, cross sections, and profiles of drainage swales and their method of stabilization
 - 2. measures for the detention, retention or infiltration of water
 - 3. measures for the protection of water quality
 - 4. the structural details for the components of the proposed drainage systems and stormwater management facilities
 - 5. notes on drawings specifying materials to be used and construction specifications
 - 6. expected hydrology with supporting calculations
 - 7. Proposed improvements including location of buildings or other structures, impervious surfaces, and drainage facilities, if applicable
- s. A description of construction and waste materials expected to be stored on-site, and a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to storm water, and spill prevention and response consistent with those allowed in zoning district
- t. Timing, schedules, **phasing**, and sequence of development including clearing, stripping, rough grading, construction, final grading, and vegetative stabilization
- u. An inspection and maintenance schedule, including but not limited to replacement of compromised haybales or silt fence, catch basin cleaning, or cleaning of sedimentation basins, for the period of construction, routine updates to the Wilbraham DPW may be required.
- v. Description of how project meets the Standards of the Massachusetts DEP Stormwater Management Policy as updated or amended, including back-up materials such as hydraulic calculations and detailed plans
- w. An **operation and maintenance plan and agreement** for continued operation and maintenance of each component of the stormwater management system, refer to Section H.

4. Additional Information for the SWPPP

The Wilbraham DPW may require any additional information or data deemed appropriate and may impose such conditions as may be deemed necessary to ensure compliance with the provisions of this by-law, or to protect public health and safety.

Application Review Fees

The fee for review of any Local Stormwater Management Permit application shall be based on the amount of land to be disturbed at the site and the fee structure established by the Wilbraham DPW.

Section F. STORMWATER MANAGEMENT PERFORMANCE STANDARDS

In addition to other criteria used by the Wilbraham DPW in making permit decisions, for the uses specified in this by-law, the Wilbraham DPW must also find that the Stormwater Pollution Prevention Plan submitted with the permit application meets the following criteria:

1. Minimum Control Standards

Projects must meet the Standards of the Massachusetts Stormwater Management Policy as updated or amended. These Standards are:

- a. No new stormwater conveyances (e.g. **outfalls**) may discharge untreated stormwater directly to or cause erosion in wetlands or water of the Commonwealth.
- b. Stormwater management systems must be designed so that post-development **peak discharge** rates do not exceed pre-development peak discharge rates.
- c. Loss of annual recharge to groundwater should be minimized through the use of infiltration measures to the maximum extent practicable. The annual recharge from the post-development site should approximate the annual recharge rate from the pre-development or existing site conditions, based on soil types.
- d. For new development, stormwater management systems must be designed to remove 80% of the average annual load (post-development conditions) of Total Suspended Solids (TSS). It is presumed that this standard is met when:
 - (1) suitable nonstructural practices for source control and pollution prevention are implemented;
 - (2) stormwater management BMPs are sized to capture the prescribed runoff volume; and
 - (3) stormwater management BMPs are maintained as designed.
- e. Stormwater discharges from areas with higher potential pollutant loads require the use of specific stormwater management BMPs (Stormwater Management Volume I: Stormwater Policy Handbook, as updated or amended). The use of infiltration practices without pretreatment is prohibited.
- f. Stormwater discharges to critical areas must utilize certain stormwater management BMPs approved for critical areas (Stormwater Management Volume I: Stormwater Policy Handbook, as updated or amended). Critical areas are Outstanding Resource Waters (ORWs), shellfish beds, swimming beaches, cold water fisheries and recharge areas for public water supplies.
- g. Redevelopment of previously developed sites must meet the Stormwater Management Standards to the maximum extent practicable. However, if it is not practicable to meet all the Standards, new (retrofitted or expanded) stormwater management systems must be designed to improve existing conditions.
- h. Erosion and sediment controls must be implemented to prevent impacts during disturbance and construction activities.
- i. All stormwater management systems must have an operation and maintenance plan to ensure that systems function as designed.

When the proposed discharge may have an impact upon a sensitive receptor, including streams, storm sewers, and/or combined sewers, the Wilbraham DPW may require an increase in these minimum requirements, based on existing stormwater system capacity.

2. Erosion Control Performance Standards

Projects must address the following design requirements for erosion and sediment control.

- a. Minimize total area of disturbance;
- b. Sequence activities to minimize simultaneous areas of disturbance;
- c. Minimize peak rate of runoff in accordance with the MA Stormwater Management Policy;
- d. Minimize soil erosion and control sedimentation during construction; prevention of erosion is preferred over sedimentation control;
- e. Divert uncontaminated water around disturbed areas;
- f. Maximize groundwater recharge;
- g. Install, and maintain all erosion and sediment control measures in accordance with the manufacturer's specifications and good engineering practices;
- h. Prevent off-site transport of sediment;
- i. Protect and manage on and off-site material storage areas (overburden and stockpiles of dirt, borrow areas, or other areas used solely by the permitted project are considered a part of the project);
- j. Comply with all applicable Federal, State and local laws and regulations, including but not limited to, waste disposal, sanitary sewer or septic system regulations, and air quality requirements, including dust control;
- k. Prevent adverse impact from the proposed activities to habitats mapped by the Massachusetts Natural Heritage & Endangered Species Program as Estimated Habitats of Rare Wildlife and Certified Vernal Pools, and Priority Habitats of Rare Species;
- l. Institute interim and permanent stabilization measures. The stabilization measures shall be instituted on a disturbed area as soon as practicable but no more than 14 days after **construction activity** has temporarily or permanently ceased on that portion of the site;
- m. Properly manage on-site construction and waste materials; and
- n. Prevent off-site vehicle tracking of sediments.

3. Criteria for Review of Local Stormwater Management Permit Applications

The Wilbraham DPW shall review each application to determine its conformance with the provisions of this section. The Wilbraham DPW shall review the permit application and issue a decision within 21 municipal business days after receiving an application. This timeframe may be extended at the sole discretion of the Wilbraham DPW if it requires additional information. Upon completion of the review, the Wilbraham DPW shall issue, in writing:

- 1) The Local Stormwater Management Permit based upon determination that the proposed plan meets the purposes in Section A and the standards in Section F and will adequately protect the water resources of the community and is in compliance with the requirements set forth in this by-law;
- 2) Approval of the Local Stormwater Management Permit subject to any conditions, modifications or restrictions required by the Wilbraham DPW to meet the purposes in Section A and the standards in Section F to adequately protect water resources, set forth in this by-law; and

- 3) Disapproval of the Local Stormwater Management Permit based upon a determination that the proposed plan, as submitted, does not meet the purposes in Section A and the standards in Section F or adequately protect water resources, as set forth in this by-law.

SECTION G. INSPECTIONS

When any new drainage control facility is installed on private property, or when any new connection is made between private property and a public drainage control system or sanitary sewer, the filing of an application shall be deemed as the property owner's permission to the Wilbraham DPW, or their agents for the right to enter the property at reasonable times and in a reasonable manner for the purpose of the inspection. This includes the right to enter a property when the Wilbraham DPW has a reasonable basis to believe that a violation of this by-law is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this by-law.

The applicant shall notify the Wilbraham DPW within 48 hours prior to the following activities. At its discretion, the Wilbraham DPW may enter the property to observe these activities:

- a) Installation of erosion and sediment control measures;
- b) Site clearing;
- c) Installation of permanent stormwater structures prior to backfilling of any underground drainage
- d) or stormwater conveyance structures; and
- e) Construction completion: Contractor shall notify Wilbraham DPW in writing when all work, including construction of stormwater management facilities and landscaping, has been completed and the site is stabilized. For all major projects, the NPDES Notice of Termination must also be filed with EPA and a copy provided to the Wilbraham DPW prior to final inspection or issuance of **Certificate of Completion**.
- f)

The applicant shall submit an "as-built" plan for the stormwater controls after the final construction is completed. The plan must show the final design specifications of all stormwater management controls and Wilbraham DPW may require the plan be prepared by a professional engineer. The as-built plan shall be submitted digitally in accordance with Wilbraham Engineering Department standards, or a conversion fee shall be required. Wilbraham DPW shall issue a Certificate of Completion once all requirements have been met.

The person responsible for implementation of the plan shall make regular inspections of all control measures in accordance with the inspection schedule outlined in the approved SWPPP. The purpose of such inspections shall be to determine the overall effectiveness of the control plan and the need for additional control measures. All inspections shall be documented in written form, maintained on site, and made available at the Wilbraham DPW's request. Such records shall be maintained by the applicant for at least 3 years from the day of final inspection.

SECTION H. MAINTENANCE REQUIREMENTS

1. Operation, Maintenance and Inspection Agreement

a. binding on all subsequent owners of land served by the private stormwater management facility. The agreement shall be designed to ensure that water quality standards are met in all seasons and throughout the life of the system. Such agreement shall provide for access to the facility at reasonable times for regular inspections by the Wilbraham DPW, or its designated representative, and for regular or special assessments to property owners after costs of operation, maintenance and inspection to ensure that the facility is maintained in proper working condition to meet design standards and any conditions set forth in the permit. The agreement shall include:

1. The name(s) of the owner(s) for all components of the system
2. Maintenance agreements that specify
 - a. the names and addresses of the person(s) responsible for operation and maintenance;
 - b. the person(s) responsible for financing maintenance and emergency repairs;
 - c. a maintenance schedule for all drainage structures, including swales and ponds;
 - d. a list of easements with the purpose and location of each; and
 - e. the signature(s) of the owner(s).
3. Stormwater management easements as necessary for:
 - a. access for facility inspections and maintenance;
 - b. preservation of stormwater runoff conveyance, infiltration, and detention areas and facilities, including flood routes for the 100-year storm event; and
 - c. direct maintenance access by heavy equipment to structures requiring regular cleanout.
4. Stormwater management easement requirements
 - a. The purpose of each easement shall be specified in the maintenance agreement signed by the property owner.
 - b. Stormwater management easements are required for all areas used for off-site stormwater control, unless a waiver is granted by the Town.
 - c. Easements shall be recorded with the Registry of Deeds prior to issuance of a Certificate of Completion.
5. Changes to Operation and Maintenance Plans
 - a. The owner(s) of the stormwater management system must notify the Wilbraham DPW of changes in ownership or assignment of financial responsibility.
 - b. The maintenance schedule in the Maintenance Agreement may be amended to achieve the purposes of this by-law by mutual agreement of the Wilbraham DPW and the Responsible Parties. Amendments must be in writing and signed by all Responsible Parties. Responsible Parties must include owner(s), persons with financial responsibility, and persons with operational responsibility.

b) The agreement shall also provide that, if satisfactory corrections are not made by the owner(s) within thirty days of notice by the Wilbraham DPW, or designated representative, to correct a violation requiring maintenance work, the Town may perform or contract all necessary work to place the facility in proper working condition. The owner(s) of the facility shall be assessed the cost of the work and any penalties. If the costs are not paid, the Town may place a lien on the property or use available secured funds from bond provided.

2. Maintenance Responsibility

- a) The owner of the property on which work has been done pursuant to this by-law for private stormwater management facilities, or any other person or agent in control of such property, shall maintain in good condition and promptly repair and restore all grade surfaces, walls, drains, dams and structures, vegetation, erosion and sediment control measures and other protective devices. Such repairs or restoration and maintenance shall be in accordance with approved plans.
- b) A maintenance schedule shall be developed for any stormwater management facility and shall state the maintenance to be completed, the time period for completion, and who shall be legally responsible to perform the maintenance. This maintenance schedule shall be printed on the stormwater management plan.
- c) Records of installation and maintenance shall be maintained by the property owner and shall be made available to Town officials by request. These records shall be stored by the property owner for a minimum of three years.
- d) Failure to maintain any stormwater management facility shall be subject to the enforcement and penalties identified in Section J herein.

SECTION I. PERFORMANCE BOND

The Town or its agents may require from the developer a surety or cash bond or other means of security acceptable to the Town prior to the issuance of any building permit for the construction of a development requiring a stormwater management facility. The bond so required in this section shall include provisions relative to forfeiture for failure to complete work specified in the approved stormwater management plan, compliance with all of the provisions of this By-law and other applicable laws and regulations, and any time limitations. The company providing the performance bond to the developer shall submit a bond of the highest grade as rated by Moody's or Standard and Poor's.

A Certificate of Completion signed by the town, submission of "As-built" plans, and the Town's final inspection is required prior to full release of the bond.

SECTION J. ENFORCEMENT AND PENALTIES

1. Violations

Any development activity that has commenced or is conducted contrary to this by-law may be restrained by injunction or otherwise abated in a manner provided by law.

2. Notice of Violation

When the Town determines that an activity is not being carried out in accordance with the requirements of this by-law, it shall issue a written notice of violation to the owner of the property. Failure to maintain proper maintenance and installation records shall constitute a violation of this by-law.

The notice of violation shall contain:

- a. the name and address of the owner applicant;
- b. the address when available or the description of the building, structure, or land upon which the violation is occurring;
- c. a statement specifying the nature of the violation;
- d. a description of the remedial measures necessary to bring the development activity into compliance with this By-law and a time schedule for the completion of such remedial action; and
- e. a statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed.

3. Stop Work Orders

Persons receiving a notice of violations will be required to halt all construction activities. This “stop work order” will be in effect until the Town confirms that the development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a notice of violation in a timely manner can result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this by-law.

4. Non-Criminal Disposition

As an alternative to criminal prosecution or civil action, the Town of Wilbraham may elect to utilize the non-criminal disposition procedure set forth in the non-criminal disposition procedure in M.G.L. Chapter 40, §21D or in the Town of Wilbraham General By-laws § 103A. The Wilbraham DPW shall be the enforcing entity. The penalty shall be three hundred (\$300.00) dollars per day. Each day or part thereof that such violation occurs or continues shall constitute a separate offense. If action is not taken by the property owner within seven days, this shall become a civil or criminal penalty.

5. Criminal and Civil Penalties

Notwithstanding anything to the contrary in the foregoing sections of this bylaw any person who violates any provision of this by-law, valid regulation, or the terms or conditions in any permit or order prescribed or issued thereunder, *shall be subject to a fine for each day* such violation occurs or continues or subject to a civil penalty which may be assessed in an action brought on behalf of the Town in any court of competent jurisdiction.

6. Restoration of Lands

Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town will take necessary corrective action, the cost of which shall become a lien upon the property until paid.

7. Severability

If any provision, paragraph, sentence, or clause, of this by-law shall be held invalid for any reason, all other provisions shall continue in full force and effect.

STORMWATER PHASE II COMPREHENSIVE BY-LAW
PART II ILLICIT DISCHARGES TO THE MUNICIPAL STORM DRAIN SYSTEM

SECTION A. PURPOSE AND AUTHORITY

1. Purpose

The purpose of this by-law is to eliminate non-stormwater discharges to the Town of Wilbraham's Municipal Storm Drain System (storm drain). Non-stormwater discharges contain contaminants and supply additional flows to the Town of Wilbraham's Storm Drain System. Non-stormwater discharges are major causes of:

- a. impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands, and groundwater;
- b. contamination of drinking water supplies;
- c. alteration or destruction of aquatic and wildlife habitat; and
- d. flooding.

Regulation of illicit connections and discharges to the storm drain system is necessary for the protection of the Town of Wilbraham's natural resources, municipal facilities, general health, safety, welfare, and the environment.

The objectives of this section are:

- a. to prevent pollutants from entering the storm drain;
- b. to prohibit illicit connections and unauthorized discharges to the storm drain;
- c. to remove all such illicit connections;
- d. to comply with state and federal statutes and regulations relating to stormwater discharges; and
- e. to establish the legal authority to ensure compliance with the provisions of this section through inspection, monitoring, and enforcement.

2. Authority

This by-law is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and the regulations of the federal Clean Water Act found at 40 CFR 122.34.

3. Responsibility for Administration

The Town of Wilbraham Department of Public Works (DPW) shall administer, implement and enforce this by-law. Any powers granted to or duties imposed upon the DPW to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

SECTION B. DEFINITIONS

1. Definitions

Authorized Enforcement Agency – The Town of Wilbraham Department of Public Works (DPW), its employees and agents designated to enforce this by-law.

Best Management Practice (BMP) – An activity, procedure, restraint, or structural improvement that helps reduce the quantity or improve quality of stormwater runoff.

Clean Water Act – The Federal Water Pollution Control Act (33 U.S.C. section 1251 *et seq.*) and as it is amended from time to time.

Discharge of Pollutants - The addition from any source of any pollutant or combination of pollutants into the storm drain or into waters of the United States of America (United States) or the Commonwealth of Massachusetts (Commonwealth) from any source.

Groundwater - Water beneath the surface of the ground, except where the water under the ground is the result of a perched water table.

Illicit Connection - A surface or subsurface drain or conveyance, which allows an illicit discharge into the storm drain, including without limitation sewage, process wastewater, or gray water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this by-law.

Illicit Discharge - Direct or indirect discharge to the storm drain that is not composed entirely of stormwater, except as exempted in Section 8. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or resulting from fire fighting activities.

Impervious Surface - Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and rooftops.

Municipal Storm Drain System (storm drain) or Municipal Separate Storm Sewer System (MS4) - The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Wilbraham.

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit - A permit issued by the United States Environmental Protection Agency or jointly with the State of Massachusetts that authorizes the discharge of pollutants to waters of the United States or Commonwealth.

Non-Stormwater Discharge - Discharge to the storm drain not comprised entirely of stormwater.

Person - An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the United States or Commonwealth or, to the extent permitted by law, and any officer, employee, or agent of such person.

Pollutant - Any element or property of sewage, residential, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or non-point source, that is or may be introduced into any storm drain system, waters of the United States, and/or Commonwealth. Pollutants shall include without limitation:

- a. paints, varnishes, solvents;
- b. oil, grease, antifreeze, other automotive fluids and/or products;
- c. non-hazardous liquid and solid wastes;
- d. refuse, garbage, litter, rubbish, yard wastes, or other discarded or abandoned objects, ordnances, accumulations and floatables;
- e. pesticides, herbicides, and fertilizers;
- f. hazardous materials and wastes;
- g. sewage;
- h. dissolved and particulate metals;
- i. metal objects or materials;
- j. animal wastes;
- k. rock, sand, salt, soils, or other products/materials that mobilize in surface water runoff; and
- l. construction wastes and/or residues.

Process Wastewater - Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

Recharge - The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

Stormwater - Runoff from precipitation or snowmelt.

Toxic or Hazardous Material or Waste - Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare or to the environment. Toxic or hazardous material includes without limitation:

- a. any synthetic organic chemical;
- b. petroleum products;
- c. heavy metals;
- d. radioactive or infectious waste;
- e. acid and alkali substances;
- f. any substance defined as Toxic or Hazardous under G.L. Ch. 21C and Ch. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.000; and
- g. any substance listed as hazardous under 40 CFR 261.

Watercourse - A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.

Waters of the Commonwealth - All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

Wastewater - Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

SECTION C. APPLICABILITY

1. Applicability

This section shall apply to flows entering the municipally owner storm and/or operated storm drain system, a watercourse, or into waters of the United States and/or Commonwealth.

2. Regulations

The DPW may promulgate rules and regulations to effectuate the purpose of this by-law. Failure by the DPW to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

3. Prohibited Activities

Illicit Discharges – No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the storm drain system, into a watercourse, or into waters of the United States and/or Commonwealth.

Illicit Connections – No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

Obstruction of the Municipal Storm Drain System – No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior approval from the DPW.

SECTION D. EXEMPTIONS

1. Exemptions

Discharge or flow resulting from fire fighting activities and DPW ice and snow control operations shall not constitute illicit discharge within the meaning of this by-law or pertinent federal, state, or local laws.

The following non-stormwater discharges or flows are considered exempt provided that the source is not a significant contributor of pollution to the municipal storm drain system:

- a. waterline flushing;
- b. flow from potable water sources;
- c. springs;
- d. natural flow from riparian habitats and wetlands;
- e. diverted stream flow;
- f. rising groundwater;
- g. uncontaminated groundwater infiltrating as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;

- h. water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
- i. discharge from landscape irrigation or lawn watering;
- j. water from individual residential car washing;
- k. discharge from dechlorinated swimming pool water (less than one ppm chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
- l. discharge from street sweeping;
- m. discharge or flow resulting DPW ice and snow control operations
- n. dye testing, provided verbal notification is given to the DPW prior to the time of the test;
- o. discharge or flow resulting from fire fighting activities
- p. non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
- q. discharge for which advanced written approval is received from the DPW as necessary to protect public health, safety, welfare, and the environment.

SECTION F. ENFORCEMENT AND PENALTIES

1. Emergency Suspension of Storm Drainage System Access

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

2. Notification of Spills

Any spills or releases that require notification under local, state or federal law will be the responsibility of the person responsible for a facility or operation, or for an emergency response for a facility or operation (e.g., construction). In the event of a spill or release which may result in a discharge of pollutants or non-stormwater discharge to the municipal storm drain system, waters of the United States, and/or waters of the Commonwealth, the responsible parties, potentially responsible parties, or any person or persons managing a site or facility shall take all necessary steps to ensure containment, and remediate any municipal storm drains that have been impacted. However, if in the opinion of DPW, there is an excessive amount of pollutants in the stormdrain system, the DPW can require remediation by the responsible party regardless of other state or federal regulations. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall take all necessary steps to ensure containment, clean-up of the release, retain on-site a written record of the discharge, and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

4. Enforcement

a. Non-Criminal Disposition

B. As an alternative to criminal prosecution or civil action, the Town of Wilbraham may elect to utilize the non-criminal disposition procedure set forth in the non-criminal disposition procedure in M.G.L. Chapter 40, §21D or in the Town of Wilbraham General By-laws 103A. The Wilbraham DPW shall be the enforcing entity. The penalty will be three hundred (\$300.00) dollars per day each day or part thereof that such violation occurs or continues shall constitute a separate offense. If action is not taken by the property owner within seven days, this shall become a civil or criminal penalty.

a. Criminal and Civil Penalties

C. Notwithstanding anything to the contrary in the foregoing sections of this bylaw any person who violates any provision of this by-law, valid regulation, or the terms or conditions in any permit or order prescribed or issued thereunder, shall be subject to a fine for each day such violation occurs or continues or subject to a civil penalty which may be assessed in an action brought on behalf of the Town in any court of competent jurisdiction.

D. The DPW or an authorized agent of the DPW shall enforce this by-law, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

a. Civil Relief – If a person violates the provisions of this by-law, regulations, permit, notice, or order issued thereunder, the DPW may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

b. Orders – The DPW or an authorized agent of the DPW may issue a written order to enforce the provisions of this by-law or the regulations thereunder, which may include:

E. elimination of illicit connections or discharges to the MS4;

F. performance of monitoring, analyses, and reporting;

G. cessation of unlawful discharges, practices, or operations;

H. remediation of contamination in connection therewith.

I. If the authorized enforcement agency determines that abatement or remediation of contamination is required and is the responsibility of the property owner, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of Wilbraham may, at its option, undertake such work, and expenses, trebled, shall be charged to the violator.

J. Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town of Wilbraham, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the DPW within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or

within thirty (30) days following a decision of the DPW affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Ch. 59, section 57 after the thirty-first day at which the costs first become due.

- a. **Entry to Perform Duties under this By-Law** – To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Wilbraham DPW, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this by-law and may make or cause to be made such examinations, surveys or sampling as the DPW deems reasonably necessary.
- b. **Appeals** – The decision or orders of the Wilbraham DPW shall be final. Further relief shall be to a court of competent jurisdiction.
- c. **Remedies not Exclusive** – The remedies listed in this by-law are not exclusive of any other remedies available under any applicable federal, state or local law.

4. Severability

If any provision, paragraph, sentence, or clause, of this by-law shall be held invalid for any reason, all other provisions shall continue in full force and effect.