

BY-LAWS AND REGULATIONS OF THE TOWN OF WESTPORT MASSACHUSETTS



Revised October 14, 2022

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TOWN OF WESTPORT, MASSACHUSETTS

BY-LAWS AND REGULATIONS

ARTICLE I

TOWN MEETINGS

- 0101.** The annual meeting for the election of officers and the determination of such matters as shall properly be placed upon the official ballot shall be held on the second Tuesday of April in the several precincts.
- 0102.** The annual meeting for consideration of all matters not covered by Section 0101. shall be held the first Tuesday in May.
- 0103.** The business portion of the Annual Town Meeting, as well as any special town meetings, once started shall continue on a continuous nightly basis until all articles have been acted upon excluding Friday, Saturday, Sunday and Monday, (ie. Tuesday, Wednesday, Thursday nights excluding holidays).
- 0104.** Notwithstanding the provisions of Sections 102 and 103, in Fiscal Year 2014 the Annual and any Special Town Meeting may be held on a Saturday and continued, if and as needed, to such time, date, and place as Town Meeting shall determine.

Footnote: See Article 40 of 1975 Annual Town Meeting

See Article 1 of Special Town Meeting 5/7/74

See Article 6 of Special Town Meeting 5/7/13

ARTICLE II

PROCEDURE AT TOWN MEETINGS

- 0201.** The procedure at Town Meetings shall be governed by the rules of practice contained in the most recent edition of "Town Meeting Time, A Handbook of Parliamentary Law" published by the Massachusetts Moderators Association, except as modified by these By-Laws.
- 0202.** When a question is under debate, no motion shall be entertained except to fix a time to which an adjournment may be made; or motions to lay on the table, for the previous question, to commit, to amend, to postpone indefinitely or to fix the method of voting; which several motions shall have precedence in the order in which they are herein named.
- 0202.1** Speaking on an article. Any person may speak on any article as many times as he shall so choose: but, no person shall speak more than once until everyone wishing to be heard has had the chance to be recognized. The same shall

hold true on speaking for the third or fourth time on the same article. Persons who have not spoken at all, or only once, shall have the right to be heard before another may be heard for the third or fourth time, etc.

0202.2 Call for the Question: (asking for the vote to be taken) may be called by anyone, once they are recognized, and have the floor. The motion must be seconded, and a 2/3 vote is required to pass it. Less than a 2/3 vote means that discussion may continue.

0203. All articles in the warrant shall be taken up in the order of their arrangement, unless otherwise ordered by two-thirds vote.

0204. A motion, if required by the Moderator, shall be reduced to writing before being submitted to the meeting.

0205. On proposed amendments involving sums of money, the largest amount shall be put to the question first, and an affirmative vote thereon shall be a negative vote on any smaller amount.

0206. No motion to adjourn without day shall be in order until all articles in the warrant have been acted upon.

0207. If an article in the warrant is before the meeting and before any motion is offered in relation thereto it is moved "to pass over the article" no other motion shall be in order until action is taken thereon, and an affirmative vote shall preclude further action unless the vote is reconsidered.

0208. No vote shall be reconsidered unless ordered by a two-thirds vote.

0208.1 A motion to rescind, or any other motion shall lead to any reconsideration of a previously passed article or line, shall be treated as a motion to reconsider, and shall require a 2/3 vote.

0209. No motion to reconsider or rescind a vote on an article, line item or any other matter shall be in order unless the intention to move for a reconsideration or rescinding is given within twenty minutes of defeat or passage of the Article and before adjournment of the session.

0210. Any article requesting an appropriation of moneys that is defeated and/or fails to pass after being presented to the Annual Town Meeting shall not be considered at any special town meeting following such annual town meeting until the next annual town meeting, unless petitioned for in accordance with the provisions of M.G.L. Chapter 39, Section 10 or unless approved in writing by a 2/3 vote of the Board of Selectmen and the Finance Committee acting jointly.

ARTICLE III

FINANCE COMMITTEE

- 0301.** The Finance Committee shall hereafter consist of nine members to be appointed by the Moderator, three members to serve for one year, three members for two years and three members for three years, the Moderator to make annual appointments for a term of three years to fill vacancies because of any expired term.
- 0302.** Whenever the warrant for any Town Meeting contains an article or articles under which an appropriation or expenditure of money or the disposal of any property of the Town may be made, the Finance Committee shall consider said articles after giving one or more public hearings thereon and shall report its recommendations to the town meeting.
- 0303.** The Finance Committee shall prior to each Annual Town Meeting prepare and distribute to the voters of the town a budget showing in detail, when available, the anticipated expenditures of the Town for the coming fiscal year together with its advice and recommendations with reference to the various appropriations of Town funds and other municipal matters coming before such town meeting at least one week prior to each town meeting. The Selectmen, School Committee and all departments required to hold public hearings relating to town meeting warrant articles, including budgets, shall hold such hearings and furnish reports thereon to the Finance Committee not less than five (5) weeks prior to the Town Meeting.
- 0303.1** The Selectmen and all Boards, Committees, Heads of Departments and all other officers of the Town authorized to expend money shall furnish to the Finance Committee not later than February 20 a detailed estimate of the amounts necessary for maintenance and operation of the department under their jurisdiction for the ensuing year.
- 0303.2** The Selectmen shall furnish to the Finance Committee no later than March 10 a completed warrant for the Annual Town Meeting showing the sums of money required for each article except the article on budgets as referred to in 0303.1. Information necessary for recommendations by the Finance Committee for Special Town Meetings shall be furnished to the Finance Committee not later than four (4) weeks prior to the Meeting.
- 0304.** Town Meeting as used in this section shall mean the business portion commencing on the first Tuesday in May.

ARTICLE IV

LEGAL AFFAIRS

- 0401.** The Board of Selectmen shall have authority to prosecute, defend and compromise all litigation to which the Town is a party, and to appoint an attorney-at-law as Town Counsel. The Town Counsel shall draft all bonds, deeds, leases, obligations, conveyances and other legal instruments, and do every professional act which may be required of him, by vote of the Town or any board of Town Officers. Town Counsel shall serve at the will of the Board of

Selectmen.

- 0402.** Whenever it shall be necessary to execute any deed conveying land, or any other instrument required to carry into effect any vote of the Town, the same shall be executed by the Treasurer on behalf of the Town, unless otherwise provided by law or by vote of the Town.
- 0403.** The Treasurer, with the approval of the Selectmen, may sell, sign, seal, and acknowledge in the name and on behalf of the Town deeds conveying land, the title to which has been acquired by the Town through the foreclosure of a tax title.
- 0404.** The Collector of Taxes shall collect, under the title of the Town of Westport or the Town Collector, all accounts due the Town of Westport, and is authorized to take any legal action necessary therefore.
- 0405.** All department heads are to file with the Board of Selectmen on or before January 10 an inventory of all equipment under their jurisdiction.
- 0406.**
- A.** The Town Office Building or Town Hall is deemed to be under the exclusive control of the Board of Selectmen.
 - B.** Selectmen may adopt, alter, and amend, rules and regulations pertaining to the use of the Town Hall.
 - 1.** Pursuant to this authority the Selectmen may regulate the hours the Town Hall shall be open to conduct business and the use of the premises, including without limitation, assignment of office space, assignment of parking areas, and assignment of hearing rooms.
- 0407.** The Town shall indemnify any municipal officer for expenses or damages incurred by him in the defense or settlement of a claim against him in an amount not to exceed one hundred thousand dollars which claim arose out of an act performed by such officer while acting within the scope of his official duties or employment, provided that the defense or settlement of such claim shall have been made by the city solicitor or town counsel, or by an attorney legally employed for the purpose by a city or town, or by an attorney furnished by an insurer obligated under the terms of a policy insurance to defend the city or town against such claim, retroactive to January 1, 1973.

ARTICLE V

CONTRACTS - BIDS

- 0501.** No officer or board of the Town shall make any contract on behalf of the Town in which such officer or any member of such board is directly or indirectly financially interested, except when authorized in writing by the Selectmen, and said writing shall be entered upon their records.
- 0501.1** Every officer of the Town who makes or executes a contract on behalf of the Town,

including, without limitation, grant contracts, shall furnish said contract or a true copy thereof to the Town Clerk and the Town Accountant within one week after its execution; and the Town Clerk shall keep such contracts or copy on file, open to public inspection during business hours. Such contracts or copies shall be kept in a book by themselves or in several books, arranged according to subject of the contract, or in other convenient form, and an index to the subject matter of the contracts and to the names of the contractors shall be made semiannually, and shall also be open to public inspection in some convenient form. All allowances under the additions to such contracts, or copies thereof, shall be filed with Town Clerk and the Town Accountant, together with a sworn statement of the Officer making such allowances or additions that the same are correct and in accordance with the contract.

No employment contract made pursuant to General Laws, chapter 41, section 108N and section 1080 shall be effective until furnished to the Town Clerk and Town Accountant as aforesaid.

0502. No Town officer or board of Town officers having the power or authority to appoint any Town officer or agent shall appoint himself or any member of such board to any salaried office or position, but this shall not prohibit any Town Officer from being chairman or clerk of the board of which he may be a member.

0503. The Town Administrator shall have authority to dispose of all tangible supply of the Town determined by relevant boards, committees, officers or departments to be surplus but having resale or salvage value in excess of \$5,000.00 in accordance with the provisions of G.L. c.30B, §15; and further that the Town Administrator may dispose of surplus tangible supply of less than \$5,000.00 in accordance with written procedures approved by the Board of Selectmen.

0504. Award of Certain Contracts to the Lowest Responsible Bidder.

0504.1 No contract for the purchase of equipment, supplies, or materials or for the construction, reconstruction, alteration, remodeling, repair, enlargement or demolition of any building, facility or cemetery in the Town, the actual or estimated cost of which amounts to twenty-five thousand (\$25,000.00) dollars or more, except in case of special emergency involving the health or safety of the people or their property, shall be awarded unless proposals for bids for the same have been invited by advertisement in at least one newspaper published in the Town, or if there is no such newspaper, in at least two newspapers of general circulation in the Town, such publication to be at least one week before the time and place for opening the bids in answer to said advertisement.

0504.2 Such advertisement shall state the time and place for opening the bids in answer to said advertisement.

0504.3 All such bids shall be opened and read in public.

0504.4 All such contracts shall be awarded to the lowest responsible bidder on the basis of competitive bids, providing they meet bid specifications.

0504.5 No bill or contract shall be split or divided for the purpose of evading any provision of the By-Law.

0504.6 The awarding authority may from time to time establish whatever further reasonable regulations it may deem proper for the administration of this By-Law, such as by way of illustration, the form in which bids shall be submitted, bid deposits, bonds, etc.

0504.7 In accordance with M.G.L. Chapter 30B, "the Uniform Procurement Act" for the purpose of this Article, "awarding authority" shall mean the Board of Selectmen and/or any Board, Committee, Commission or department head to whom such authority is delegated in accordance with M. G. L. Chapter 30B.

0504.8 In inviting bids the awarding authority shall reserve the right to reject any or all such bids, if it be in the public interest to do so.

0504.9 Repairs, reconditioning or refurbishing of any operational equipment or vehicles, whether ordinary or extraordinary, may be negotiated and ordered by any department without the necessity of obtaining bids and awarding of such bids to the lowest bidder, subject to Selectmen's approval.

ARTICLE VI

TOWN REPORTS

0601. In addition to the annual report of the Selectmen and School Committee as required by law, there shall be included the report of the Treasurer who shall set forth a statement of all moneys received and expended with schedules of all funds in the treasury; a report by the Assessors, Town Clerk, Commissioners of Public Library and Public Accountant, and such other officers as the Selectmen may determine.

0602. All Town officers receiving fees by virtue of their office shall report to the Selectmen the amount thereof on or before February first for the preceding calendar year, and the same shall be included in the annual report.

0603. The Financial record of the perpetual care of burial lots shall not be included in the annual town report more often than once every five years.

ARTICLE VII

STREETS AND WAYS

- 0701.** No person shall throw, place, or cause to be thrown or placed upon any street or sidewalk in the Town, any dirt, ashes, stones, hoops, boards or other wood with nails projecting there from, shavings, sawdust, manure, nails, spikes, screws, glass, tin cans, filth, rubbish or any noxious or refuse liquid or solid matter or substance.
- 0702.** No person shall dump or pump any water or other liquid substance under his control into or onto any public sidewalk or public way and no person shall dump or pump any water or liquid substance onto land owned or occupied by him in such a manner as to cause such water or substance to flow onto such sidewalk or way.
- 0703.** No person shall tie a horse or other animal to any tree, nor to any structure protecting such tree, in the public streets of the Town, nor shall any person suffer any horse or grazing beasts or swine to run at large in the Town or feed within the limits of any highway, either with or without a keeper.
- 0704.** No person except officers of the Town in the lawful performance of their duties, and those acting under their order, shall obstruct any sidewalk or street or any part thereof, or break or dig the ground of the same, without first obtaining a written permit from the Selectmen therefore. Every person receiving such permit shall execute a written agreement to indemnify and save harmless the Town against all loss, damage or cost suffered or claimed on account of the existence of such obstruction or excavation, and shall leave the street or way at the completion of the work in as good condition as the same was before the work commenced.
- 0705.** No building shall be removed over a public street without a written permit from the Selectmen or other board having charge of the public streets at the time of granting the permit.
- 0706.** Before granting such permit, the applicant therefore shall give to the Selectmen or other board having charge of the public streets, a bond running to the town, in such sum as said Selectmen or other board may require, to hold the town harmless against all damages, costs and expenses which it may be compelled to pay in consequence of the moving of such building, or of the acts of negligence of any parties connected therewith.
- 0707.** Any street for which petition for acceptance is sought subsequent to March 17, 1959, must be a minimum of 40 feet in width, provided that the Board of Selectmen shall appoint an Appeals Board to review and make decision, with reference to acceptance of all roads, ways, and streets that are less than 40 feet width and have been in use as a public thoroughfare for a period of five years or more.
- 0708.** All new roads are to be built to the following standards before being presented to Town Meeting for acceptance:
- 0708.1** Twelve (12) inches gravel foundation conforming to the Commonwealth of Massachusetts, Department of Public Works, Standard Specifications for Highway and Bridges. The gravel to be tested in accordance with the Massachusetts D.P.W. Specifications. The Test results certified by a

Registered Professional Engineer.

0708.2 The surface course of the road is to be constructed in two courses of Class I Bituminous Concrete Pavement Type I-I, one course of Binder one and one-half inches thick. A core sample of the mix shall be taken from the new roadway and tested in accordance with the Massachusetts D.P.W. Specifications. The test results are to be certified by a Registered Professional Engineer and submitted to the Planning Board. The cost of all testing and inspection to be borne by the party constructing the road.

0708.3 Rural Residential Lanes built under this By-Law may not be used to provide frontage or access, either for a further subdivision of land or for use on "approval not required" plans, if such use would result in the roads servicing more than four dwelling units for the purpose of providing frontage. Lots abutting a Rural Residential Lane and with frontage on a street or way other than the Rural Residential Lane may use said Lane for driveway access. Either (1) or (2), or a combination thereof, in the discretion of the Planning Board:

1. A paved width of eighteen (18) feet, and a four- (4) foot wide shoulder on each side of the road, which pavement and foundation conform to the standards set herein for residential streets. Shoulders shall consist of stabilized turf or other material acceptable to the Planning Board; or
2. A graveled road, with a minimum width of eighteen (18) feet with a required fifteen (15") inch to eighteen (18") inch gravel foundation conforming to the Commonwealth of Massachusetts Department of Public Works standard specifications for highway and bridges.

0708.4 Rural Residential Lanes built under this By-Law may not be used to provide frontage or access, either for a further subdivision of land or for use on "approval not required" plans, if such use would result in the road's servicing more than four dwelling units for the purpose of providing frontage, or six dwelling units for the purpose of providing access via driveway.

0708.5 The approval of such rural residential lanes by the Planning Board shall be contingent upon the voluntary execution by the developer and binding upon his heirs, successors and assigns, of a covenant running to the Town that such rural residential lanes shall not be presented to the Town for acceptance. Each such covenant shall be recorded in the Bristol County (S.D.) Registry of Deeds and shall be cross-referenced to each plan to which it pertains. Such covenant shall be enforce-able and renewable in accordance with applicable law.

0709. The Selectmen shall not approve a road layout for a road to be accepted by the Town until the road

is built to the "Residential Street" specifications as contained in Article 39 of 1979 Annual Town Meeting and Article 31 of 1980 Annual Town Meeting, and Rules and Regulations Governing the Subdivision of Land.

0710. PENALTY

Any person who shall violate any of the provisions of these By-Laws as set forth in Article VII, VIII, XV, and XVI shall be subject to a penalty of fifty (\$50.00) dollars for each offense. Each day the violation continues shall be considered as a separate offense.

ARTICLE VIII

JUNK YARDS

0801. No person shall operate a Class III – Motor Vehicle Junk Yard without application to the Board of Selectmen. The process for application shall include a public hearing and notification to abutters. The approved licensee shall operate under the Town Bylaws, Zoning Rules & Regulations and the MGL Chapter 140. The Class III License will be renewed annually.

0802. No additional Class III motor vehicle junk license as defined in General Laws Chapter 140 Section 58 shall hereafter be granted for premises situated within 500 feet of a public Highway or 1000 feet of a dwelling.

0803. General Operating Requirements - Premises used by any junk dealer, including Class III Motor Vehicle License holders shall meet the following requirements:

0803.1 Except where screened from view by natural objects, a junkyard shall have a fence at least eight (8) feet in height, which substantially screens same from surrounding areas. Such fence shall be of the type accept-able to the Building Inspector, soundly erected and properly maintained, no junk shall be stored against it. No such fence shall be erected at a distance less than twenty-five (25) feet from the curbing or edge of the pavement of any street.

0803.2 The junkyard, together with things kept therein, shall at all times be maintained in a sanitary condition.

0803.3 No space not covered by the license shall be used in the licensed business.

0803.4 No water shall be allowed to stand in any place on the premises in such manner as to afford a breeding place for mosquitoes.

0803.5 Weeds and vegetation on the premises, other than trees, shall be kept at a height of not more than four (4) inches.

0803.6 No garbage or other waste liable to give off foul odor or attract vermin shall be kept on the premises, nor shall any refuse of any kind be kept on the premises,

unless such refuse is junk, as defined herein, and is in use in the licensed business.

0803.7 No junk shall be allowed to rest upon or protrude over any public street, walkway, or curb or become scattered or blown off the business premises.

0803.8 Junk shall be stored in piles not exceeding eight (8) feet in height and shall be arranged so as to permit easy access to all such junk for fire-fighting purposes.

0803.9 No combustible material of any kind not necessary or beneficial to the licensed business shall be kept on the premises, nor shall the premises be allowed to become a fire hazard.

0803.10 Gasoline and oil shall be removed from any scrapped engines or vehicles on the premises and disposed of in a manner that does not endanger public health, safety, or welfare, or the environment.

0803.11 No junkyard shall be allowed to become a nuisance, nor shall any junkyard be operated in such a manner as to become injurious to the health, safety, or welfare of the community or of any residents close by.

0804. ESTABLISHED JUNKYARDS

For the purpose of this By-Law, the location of junkyards already established shall be considered approved, provided that such junkyards comply with the fencing, aesthetic provisions and requirements for operation. Such established junkyards shall have one hundred twenty (120) days from the date of mailing of notice to them to comply with such provisions of this By-Law.

0805. PENALTY

Any person who shall violate the provisions of these By- Laws as set forth in Article VII, VIII, XV, and XVI shall be subject to a penalty of fifty (\$50.00) dollars for each offense. Each day the violation continues shall be considered as a separate offense.

ARTICLE IX

PENALTIES

0901. Any person who shall violate the provisions of these By-Laws as set forth in Articles VII, VIII, XV, and XVI shall be subject to a penalty of fifty (\$50.00) dollars for each offense. Each day the violation continues shall be considered as a separate offense.

ARTICLE X

TOWN LANDINGS

1001. All By-Laws in force, except the By-Laws for the Government of Public and Town Landings, approved in June 1848 and on June 28, 1889, are hereby repealed.

ACTS OF 1848 CH. 171

AN ACT FOR THE REGULATION FOR THE PUBLIC AND TOWN LANDING

LANDING PLACES IN THE TOWN OF WESTPORT

- 1002.** "The Inhabitants of the Town of Westport shall have jurisdiction over the public and town landings therein with power to govern, control and regulate them in such manner as will keep them free from encumbrances; and for that and other purposes mentioned in this Act, said Town shall in their annual meeting in March or April in each year choose all necessary officers and agents and make such By-Laws and adopt such rules and regulations not inconsistent with the laws of this Commonwealth as they shall deem proper to carry into effect the provisions of this act."
- 1003.** "Said town shall have power to lease for a term not exceeding five years for such portions of said landings as are not needed for public use and for purposes not inconsistent with the provisions of this Act; and all monies collected by virtue of this act shall be appropriated to pay the expenses of superintending said landings and in making such repairs, alterations and improvements thereon as may be deemed necessary; and said town shall so far as is practicable ascertain the true boundaries of said landings and erect and keep up suitable monuments to designate the same."
- 1004.** "In all cases where the boundaries of said landings cannot be satisfactorily ascertained and the rights of the public be defined therein where buildings have been erected which stand in part on said landing, the said town is empowered to make such compromises, agreements and conveyances as shall be necessary or expedient in the premises to determine the extent and boundaries of such landings, and to adjust and settle all differences in relation thereto, and all sales, contracts and agreements heretofore made by said town relative to said landings not inconsistent with the interests of the public therein are hereby ratified and confirmed."
- 1005.** "Said town may enforce any bargain, agreement, rules and regulation made from time to time consistent with the foregoing provisions by action in any court of law competent to try the same."

BOARD OF LANDING COMMISSIONERS Acts of 1848

BY-LAWS FOR THE GOVERNMENT OF PUBLIC AND TOWN LANDINGS IN THE TOWN OF WESTPORT

- 1006.** The inhabitants of said Town effective at their annual election held in the year 2000, choose Two Commissioners for three-year terms; One Commissioner for a two-year term; and One Commissioner for a one-year term who together with the Treasurer of the Town shall constitute a Board of Commissioners of the Public and Town Landing Places therein, and who shall be sworn to the faithful discharge of their duties. Thereafter all Commissioners shall be elected for three- (3) year terms.

And the said Commissioners shall make a report of their doings at the annual meeting of the Town with a statement of the financial condition of the Board, which shall be signed by the Chairman and countersigned by the Treasurer.

- 1007.** The said Board of Commissioners shall appoint from their number a Clerk who shall keep a true record of their doings and have the custody of all the papers pertaining to said landings.
- 1008.** The Treasurer of the Town shall collect, take charge of and disburse under the direction of the Board, all moneys payable on account of said landings from any person.
- 1009.** The said Board of Commissioners shall take charge of all Public and Town Landing Places in said Town, and ascertain as far as practicable the true boundaries of said landings, and establish suitable monuments to designate the same, and if such cannot accurately be ascertained, or where buildings stand in part on said landings, said Commissioners are hereby empowered on behalf of said Town to make such compromises, agreements and conveyances, or take such other legal measures as shall be necessary or expedient in the premises to determine the extent and boundaries of said landings, and adjust all differences in relation thereto.
- 1010.** Said Board of Commissioners may, for such consideration as they shall judge proper and for terms not exceeding five (5) years lease such portions of said landings as are not needed for public use and for purposes not inconsistent with public or private rights or with the provisions of an "Act for the Regulation of the Public and Town Landing Places in the Town of Westport." in the year One Thousand Eight Hundred and Forty-Eight; and said Commissioners shall cause to be removed from said landing places all encumbrances thereon.
- 1011.** All rents and other moneys accruing from said landing places shall be appropriated by said Commissioners to the payment of the expenses of superintending the same and in making such alterations and improvements thereon as they shall deem necessary; the moneys collected at each landing being expended on said landing place so far as necessary. And for the purposes of this section the landings at the Head of the East River shall be considered as one landing.
- 1012.** The Commissioners are hereby empowered to make such agreements as they shall judge expedient with any person to decorate with trees, shrubbery or otherwise, such portions of said landings as shall not in their judgement be needed for landing purposes and to lay out the same with appropriate walks. Provided the same shall be done without expense to said Town and under the direction of the Commissioners: and upon making such agreements the said Commissioners are to make such covenants on the part of the Town that such grounds

so improved shall be permanently kept open for the use of the public as shall not be inconsistent with law or the Act aforesaid.

1013. If any person shall hereafter put upon any portion of said landings any building and suffer the same to remain thereon more than forty-eight hours without license from said Commissioners or a major part of them in writing, he shall forfeit and pay the sum of Twenty (\$20.00) Dollars for every twenty-four hours that said building shall be suffered to remain thereon after the expiration of said forty-eight hours.
1014. If any person shall hereafter enclose or cause to be enclosed with fence or otherwise any portion of said landings, and keep the same so enclosed more than one week without license therefore first had from the said Commissioner or a major part of them in writing, he shall forfeit and pay a sum of twenty (\$20.00) dollars for every twenty-four hours that such fence or enclosure shall be kept up after the expiration of one week.
1015. If any person shall place or cause to be placed any article on said landings deemed by said Commissioners to be an encumbrance and shall neglect or refuse to remove the same from said landings within twenty-four hours after notice in writing so to do by said Commissioners or a major part of them, he shall forfeit and a sum of twenty (\$20.00) dollars for every twenty-four hours that such article shall be suffered to remain after such notice.
1016. If any person shall carry any soil, sods or stones from said landings without the written consent of the said Commissioners or a major part of them, he shall forfeit and pay a sum of twenty (\$20.00) dollars for each load so taken.
1017. And all the forfeitures aforesaid may be recovered to the use of said Town by complaint before any Police Court or Justice of the Peace who shall have jurisdiction thereof.
- Examined and approved June, 1848, G. T. Bigelow, J.C.C. Pleas.
1018. No person shall deposit, place or store on any Public or Town Landing Place in the Town of Westport any carriage, vehicle, rubbish, or waste material or any article or thing whatever; provided, however, that this By-Law shall not be construed to prevent the proper use of such landing places for the purposes for which they were established. Any person violating the provisions of this By-Law shall be liable to a penalty of twenty (\$20.00) dollars.
1019. If any person shall deposit or store on any of the Public or Town Landing Places of the Town of Westport, any vehicles, rubbish, waste material or article or anything whatever in violation of the By-Laws of said Town relating thereto, such person shall upon written notice so to do, given by the Landing Commissioners of Said Town, remove such articles within the time required by such notice, and upon failure to do so, shall be liable to a penalty of twenty (\$20.00) dollars and in case of the neglect or refusal of such person to remove such articles as required by said notice, such articles may be removed by said Landing Commissioners at the expense of such person.
1020. Any person violating the provisions of any By-Laws or Regulations of the Town of Westport

respecting the Public and Town Landing Places therein, shall be liable to a penalty of Twenty Dollars.

Examined and approved June 28, 1889. LINCOLN F. BRIGHAM, C. J. Superior Court

ARTICLE XI

SOIL CONSERVATION

1101. ESTABLISHMENT OF SOIL BOARD

1101.1 A Soil Conservation Board is hereby established in the Town of Westport for the purpose of regulating the removal of earth minerals from the land within the Town and enforcing the provisions of this By-Law. The Town Conservation Commission shall also serve as the Soil Conservation Board and administer the regulation of this Board.

Note: Please refer to Definitions 1101.15.

1101.2 Subdivision And Permit Application Requirements

Except as hereinafter provided, no earth minerals shall be removed from any land within the Town without a written permit from the Board, stating the land to which it applies, issued after a public hearing, a notice of which, setting forth the time, place and purpose of said meeting and the land with reference to which application has been made, shall have been published in an English language newspaper published in either Fall River, New Bedford, Dartmouth or Westport and serving the Town of Westport at least four (4) days prior to the date set for such a hearing.

- A.** Any person wishing to remove earth minerals from a property or establish a storage or transfer site for earth minerals from a property in the Town shall file a formal application with the Board which application shall include the following specific information and supporting documentation:
- 1.** The location of the proposed excavation, or storage or transfer site.
 - 2.** The legal name and address of the owner of the property.
 - 3.** The legal name and address of petitioner.
 - 4.** Names and addresses of all abutting property owners, including those lying directly across any streets.

5. A plan shall be submitted showing the area to be excavated and the area to be restored. The plan shall show existing contour elevations, at 10-foot intervals, derived from U.S. Geodetic Survey maps, and proposed contour elevations, at 5-foot contour intervals, drawn from the U.S. Geodetic Survey map and signed and notarized by the preparer. The requirement for said plan may be waived by a majority vote of the Board in cases where the total area excavated or to be excavated does not exceed two acres.
 6. A proposed form of performance bond to be issued in an amount not less than \$5,000.00 per acre by permit.
 7. Photographs shall be required, before any permit or renewal will be issued by the Board, of sufficient size to show the area to be excavated for soil removal and the immediate surrounding area.
- B.** The applicant for the permit shall notify the abutter or abutters of the property on which the permit is applied for by registered mail at least 3 days prior to the hearing on the permit. Proof of this action shall be delivered to the Board 3 days prior to the hearing.

1101.3 Exemptions

A permit shall not be required for the removal of earth minerals in the course of excavation incidental to the construction of a building. A permit shall also not be required for the removal of earth minerals for use upon the same premises or in the ordinary and customary use of land in Westport for a farm, garden, orchard or nursery and purposes incidental thereto except where this removal or transfer of earth minerals exceeds 100 cubic yards and then a permit will be required in accordance with Section 1101.2. The Board may issue a permit without a hearing for such removal for use within the Town of not more than twenty yards of earth minerals for any other purpose, which is not commercial.

1101.4 Permit Conditions

In issuing a permit the Board shall impose reasonable conditions, which shall be written upon and shall constitute part of the permit, requiring the restoration of the land within a designated period by grading, leveling or filling and replacing sufficient top soil for planting cover, to the end that no substantial injury to the health, safety, convenience, welfare, beautification, economic status of the district, Town and the inhabitants will be caused by the acts authorized by such permit. Conditions shall in like manner be imposed to provide adequate protection for the neighborhood and the Town

from nuisances that may arise in the course of such removal and specifically that the finished grade and contour of the land after the material has been removed shall be such as not to direct the flow of drainage water onto an abutter's property or private or public way. If any removal authorized by paragraph 1102 hereof is carried on in a substantial injury to the welfare of the Town and the Town is not adequately protected by the conditions imposed by the permit, the Board may, without hearing, impose additional restrictions or revoke said permit. The Board may, and in the case of the removal of any earth minerals for commercial purposes, require a bond with adequate surety or sureties conditional upon the performance of conditions imposed under this paragraph. The Board will not grant permits for commercial purposes unless proof of variance granted by the Westport Board of Appeals is submitted along with the permit request. The Board may revoke or suspend a permit if the Conditions are not complied with. No permit shall be issued for the removal of soil within 5' of the average maximum groundwater elevation, except as provided for by special permit of the Soil Board.

1101.5 Top Soil Or Loam Removal

A permit shall not be issued for the removal of top soil except upon condition that a cover of top soil of not less than six inches in depth shall be allowed to remain or shall be replaced; provided, however, that a permit may be granted for the removal of all of the top soil or loam when necessary for or incidental to the construction of a road, or other permanent facility which changes the character or the use of the land; but in such case the Board shall require sworn evidence of good faith in the intent of the applicant to complete such road or other facility, and shall make such evidence part of its records.

1101.6 Permit Location Restrictions

A permit shall not be issued for the removal of earth minerals within 300 feet of a public way or within 250 feet of a private way or within 250 feet of an abutting owner unless the Board finds that such removal will not undermine the way or otherwise endanger the safety of public travel upon it, or impair the convenience and welfare of the public or the amenities of living in the houses upon such way, or injuriously affect the abutting owners.

No permit shall be issued for the removal of earth minerals within 25 feet plus a sufficient distance to provide a 3 horizontal to 1 vertical foot slope from an abutting owner.

1101.7 Permit Expiration And Renewal Requirements

A permit issued under this By-Law shall expire upon completion of the

removal of the earth minerals for which it was issued, and in any event upon the expiration of one year from the time it was issued. If at the expiration of said year it appears that the operations for which such permit was issued have been carried on continuously and in good faith but have not been completed and that all conditions presently applicable have been complied with, the permit may be renewed for an additional year without a hearing, provided an application for renewal is made 30 days prior to the expiration date of the permit. The expiration or revocation of the permit shall not affect the obligation of the holder thereof to comply with the conditions attached to the permit, or release him or the surety on his bond from the obligations thereof or require the return of any deposit made by him until such conditions have been complied with.

1101.8 Previous Usage

Whenever the Board shall find that the removal of any earth minerals had previously been undertaken in a particular location and was in continuous operation, at the time when notice of the warrant for the Town meeting at which this By-Law was adopted was given, a permit for the further continuance of such operation within the same territorial limits shall be issued without a hearing; but such permit may be issued subject to conditions in the same manner as other permits.

1101.9 Coverage Of Several Locations

If a commercial operator and/or person engaged in the removal of earth minerals within the town and/or storage or transfer site for earth materials from a property in the town pursuant to permits covering more than one location is found to be in violation of these By-Laws or the terms of any such permits with respect to a particular location, and such violations remain uncorrected, the Board may, in its discretion, terminate the renewal of all permits held by such operator or person and/or suspend the renewal of all permits held by such operator or person until such violation is corrected.

1101.10 Fees, Town

The Board shall establish a fee for the issuance of permits under this By-Law which shall be no more than sufficient in the opinion of the Board to reimburse the Town for the cost of applying and enforcing this By-Law; and no permit shall be issued until such fee is paid. The fees collected under this paragraph shall, at interval determined by the Board, be paid over to the Town Treasurer.

1101.11 Fees, State

The Conservation Commission may establish reasonable filing fees for the implementation of M.G.L. Chapter 131, Section 40.

- A. Such fee schedules may be implemented after a public hearing, the time, date, and place, subject of which must be published seven (7) days in advance in a newspaper of general circulation; and after publication of the final rate schedules in at least one newspaper of general circulation ten (10) days in advance of the effective date of such schedule.
- B. Prior to the implementation of any filing fees, such fee schedule shall be submitted to and approved by the Board of Selectmen.

1101.12 Violations

If the Board shall find that there has been a violation of this By-Law, the Board shall send by registered mail to the offender a written warning; and if such violation continues, the penalties authorized by Chapter 352 of the Acts of the Massachusetts Legislature of 1951 shall be imposed and the penalty for removing earth minerals in violation of this By-Law shall be a fine of fifty (\$50.00) dollars for the first offense after such warning; one hundred (\$100.00) dollars for the second offense; and two hundred (\$200.00) dollars for any subsequent offense. Each day on which the removal of earth minerals takes place shall constitute a separate offense for the person removing the same. If the offender holds a permit issued under the By-Law such permit shall be revoked.

1101.13 Protection Of Public Health And Safety

When the Board finds that any excavation hitherto made for the purpose of removing earth minerals is maintained in such a way as to endanger the public health or safety or to constitute a nuisance, the Board shall request the Board of Health to take steps as are authorized by law to protect the public health and safety, or to cause such nuisance to be abated.

1101.14 Inspections

The Soil Conservation Board and their officers or agents may, as far as they deem it necessary in carrying out the Soil Conservation By-Laws, enter upon any land in the Town of Westport of anyone holding a soil removal permit, to make examinations and surveys and to place and maintain markers.

1101.15 Definitions

Earth Minerals - are defined in this By-Law to include all forms of soil without limitation, specifically including but not limited to loam, sand, gravel, clay, humus, peat, hardpan, rock, granite, minerals, ores and fossil fuels, etc.

Removal - is defined in this By-Law as stripping, digging, excavating or blasting of earth minerals from a lot or parcel of land for the purpose of clearing it away from such lot or parcel of land as well as the actual taking away of such earth minerals.

Applicant - For the purposes of this By-Law "applicant" shall be the person or persons making application to remove earth from a property in the Town.

1101.16 Unconstitutionality

If any sections of this proposed Soil Conservation By-Laws are declared unconstitutional, the remainder of the law shall stand.

1102. TOWN LAND REGULATIONS

1102.1 Definitions

Town Land - Shall mean all land owned or under the control of the Town of Westport or any Boards or Commissions thereof, but shall specifically not include any public way.

Public Way - Any public highway, private way laid out under authority of Statute, way dedicated to public use or way under the control of park commissioners or body having like powers.

Motor Vehicle - As defined by Massachusetts General Laws Chapter 90, Section I.

Recreation Vehicle - A motor vehicle designed to travel over unimproved terrain and which has been determined by the registrar of motor vehicles as unsuitable for operation on the public way and not eligible for registration under Chapter 90.

Snow Vehicle - A motor vehicle designed to travel over ice or snow supported in whole or in part by skis, belts, cleats, or low pressure tires.

Operate - To ride in or on and control the operation of a snow vehicle or a recreation vehicle.

Owner - A person, other than a lien holder, having the property or title to a snow vehicle or to a recreation vehicle entitled to the use or possession thereof.

Beach and Recreation Areas - Those areas of Town Land owned or under the control of the Town of Westport or the Board of Selectmen, Conservation Commission or Recreation Committee, that are dedicated by

the Town or the respective Board or Commission as a Beach or Recreation Area.

Conservation Area - Those areas of Town Land owned by the Town and placed under the jurisdiction of the Conservation Commission under the provisions of Massachusetts General Laws Chapter 40, Section 8C.

1102.2 Operation On Town Lands

Except as hereinafter provided, no person shall operate a motor vehicle, motorcycle, recreational vehicle or snow vehicle upon any Beach, Recreation or Conservation Area.

Persons with a permit issued under Section 3, Police, Fire and other departments with Town owned vehicles and emergency vehicles may operate motor vehicles in or upon any Beach, Recreation or Conservation Area.

In the event of a determination by the Board of Selectmen that emergency conditions exists, such Board may grant permits to volunteers as may be necessary to ensure the health and safety of the public.

1102.3 Permits

Permits may be issued by the Board of Selectmen to any person on an "indefinite basis" for the purpose of operating, maintaining, or policing the Beach, Recreation and Conservation Area. Temporary permits may be issued for fifteen (15) consecutive days for a fee of Two Dollars (\$2.00), to any person.

Temporary permits may be issued without a fee to volunteers under emergency conditions as provided in Section 2, such permits shall be rescinded promptly upon the abatement of such emergency conditions. A determination by the Board of Selectmen that such emergency conditions are terminated will automatically rescind all such temporary emergency permits.

1102.4 Dangerous And Prohibited Operation

No one shall operate a snow vehicle, recreation vehicle or motor vehicle so as to endanger any person or property.

No one shall operate a snow vehicle, recreation vehicle or motor vehicle in a reforested or planted area in a manner to cause damage to growing stock.

No one under fourteen years of age shall operate a snow vehicle or a recreation vehicle unless directly supervised by an adult.

Every person operating or riding in or on a recreation vehicle or a snow vehicle or on a sled attached thereto, shall wear protective headgear conforming with such minimum standards for construction and performance as the registrar of motor vehicles may prescribe under the provisions of Massachusetts General Law, Chapter 90B. No one shall operate a snow vehicle or recreation vehicle in a manner to harass deer or other wildlife.

No one shall operate a snow vehicle or recreation vehicle while under the influence of intoxicating liquor or narcotic drugs.

No one shall carry a firearm, rifle or shotgun in or on a snow vehicle or a recreational vehicle or on a trailer or sled attached thereto, unless such firearm, rifle or shotgun is unloaded and in an enclosed case, unless he is a law enforcement officer or other person authorized to carry arms or a paraplegic as provided in section sixty-five of chapter one hundred and thirty-one.

1102.5 Penalty

Whoever violates any provision of this By-Law shall be punished by a fine of fifty (\$50.00) dollars. Each separate violation shall constitute a separate offense.

1102.6 Protection of Town Beaches

1102.6.1 Prohibitions

No person shall remove, alter, or cause harm to materials or fauna at any Town Beach properties, or beach properties under control of the Town or any entity thereof without permission of the Board of Selectman and Beach Committee, and only then with the required permits from all Town, state and federal agencies.

The gathering of seaweed, rock weed, eel grass, or the like is forbidden without a deeded or established right to do so.

Emergency removal, or altering of materials or fauna at such properties by the Town of Westport in cases of public safety, or removal or alterations allowed by previous order shall be excluded from the operation of this section, provided, however, that any such removal or alteration shall be consistent with such previous order.

1102.6.2 Definitions

“Materials” shall mean boulders, cobble, stones, sand, gravel or other naturally deposited soils, or material placed by the Town, under properly permitted activities.

“Flora” means all vegetation, roots, fungi, and other growing plants.

1102.6.3 Penalty

Violation of this law shall be punishable by a fine of not more than \$250.00.

ARTICLE XII

BUILDING REGULATIONS

1201. The Building Inspector shall post a copy of each building permit application on the Town Hall bulletin board, within 24 hours following the issuance of any building permit based on such application, and such copy shall remain posted for at least 10 days.

1202. "The Board of Appeals established under the provisions of the Westport Zoning By-Law shall further act as the Board of Appeals to act upon matters and appeals arising out of the provisions of Chapter 41 of the General Laws (Subdivision Control) and the provisions of the State Building Code."

1203. The construction, reconstruction, alteration, repair, demolition, removal, inspection, issuance and revocation of permits or licenses, installation of equipment, classification and definition of any building or structure and use or occupancy of all buildings and structures and parts thereof or classes of building and structures and parts thereof; the rehabilitation and maintenance of existing buildings; the standards or requirements for materials to be used in connection therewith, including but not limited to provisions for safety, ingress and egress, energy conservation and sanitary conditions; the establishment of reasonable fees for the issuance of licenses and permits in connection therewith; except as such matters are otherwise provided for in the Massachusetts General Laws Annotated, or in the rules and regulations authorized for promulgation under the provisions of the Basic Code, shall be in accordance with the Commonwealth of Massachusetts State Building Code (Chapter 802, of the Acts of 1972 as amended).

Footnote: As of January 1, 1975 the State Building Code superseded our previous Town By-Laws on Building.

ARTICLE XIII

NUMBERING OF BUILDINGS

1301. Each number to represent twenty (20) feet street or highway frontage.

1302. Numbers to be placed to the right of front door if door faces street, from four and one-half (4 1/2) feet to five and one-half (5 1/2) feet above threshold; otherwise to be placed on front corner board of building nearest front door and four and one-half (4 1/2) feet to five and one-half

(5 1/2) feet above sill height.

- 1303.** Numbers to be no less than three (3) inches high nor more than four and one-half (4 1/2) inches high; first set will be furnished by the Town.
- 1304.** The initial system of numbering houses shall be set up by a committee of five members appointed by the Selectmen.
- 1305.** Numbers to be assigned by Inspector of Buildings for all new construction, giving instructions for placing of numbers, and keep the records of numbers assigned.
- 1306.** The Building Inspector shall have power in his discretion to waive any requirements of these By-Laws subject to the approval of the Board of Appeals.
- 1307.** The said Board of Appeals for these By-Laws shall be the five members appointed by the Board of Selectmen for the Building By-Laws.
- 1308.** The invalidity of any provision of these By-Laws shall not affect the validity of any other provisions of the By-Laws.
- 1309.** For breach of this By-Law, we hereby affix a penalty of twenty (\$20.00) dollars for each offense, which shall inure to the benefit of the Town of Westport.
- 1310.** So much of these By-Laws as shall be approved by the Attorney General shall take effect according to law.
- 1311.** All By-Laws or portions of By-Laws, which are inconsistent with the provisions of these By-Laws, as approved by the Attorney General are hereby repealed.

ARTICLE XIV

ZONING REGULATIONS - (SEE SEPARATE PUBLICATION)

ARTICLE XV

MOBILE HOME/RECREATIONAL VEHICLE REGULATIONS

BY-LAW REGULATING THE INSTALLATION, MAINTENANCE, AND USE OF HOUSE, MOBILE HOME/RECREATIONAL VEHICLE

DEFINITIONS

A Trailer and/or Mobile Home and or Trailer Coach shall be hereafter referred to as a Mobile Home and shall mean any vehicle or object on wheels and having no motive power of its own, but which is drawn by, or used in connection with, a motor vehicle, and so designed and constructed, or reconstructed or added to by means of accessories as to permit use and occupancy thereof for human habitation, whether resting on

wheels, jacks, or other foundations.

RECREATIONAL VEHICLE

A Recreational Vehicle is a vehicle or vehicle attachment, which is designed for sleeping or living quarters for one or more persons, with or without utilities, flush toilets, or bath facilities, is used for recreational purposes, and includes among other items, a travel trailer, a pick-up camper, a tent trailer, a beach buggy, and a motor home.

1501. No Mobile Home/Recreational Vehicle located upon any land in the Town of Westport shall be occupied for living, business, or any other purpose; and no Mobile Home/Recreational Vehicle shall be placed upon land for storage purposes except when authorized by a written permit from the Board of Selectmen.

Such permit shall be issued only:

1501.1 After written application has been filed with the Board of Selectmen.

1501.2 After a notice shall be published by the Board of Selectmen in a local newspaper at least three (3) days prior to the public hearing.

1501.3 After the applicant for the permit shall give written notice to the abutter or abutters of the property on which the permit is applied for by Registered Mail, Return Receipt Requested, at least three (3) days prior to the hearing on said permit.

1501.4 After the Board of Selectmen holds a public hearing, they shall then act upon the application.

1501.5 Mobile Home/Recreational Vehicle parks are hereby prohibited in the Town of Westport. For the purpose of this By-Law, a Mobile Home/Recreational Vehicle park as defined in accordance with General Law, Chapter 140, Section 32F.

1501.6 Not more than one Mobile Home/Recreational Vehicle shall be placed on one lot of land as defined by the By-Laws of the Town.

1501.7 No Mobile Home/Recreational Vehicle shall be placed on a lot with any other dwelling.

1501.8 Selectmen shall make their decision on the issuance of a Mobile Home/Recreational Vehicle permit with regard for the promotion of health, safety, convenience, morals, and welfare of the inhabitants of the Town of Westport.

1501.9 All trailer permits issued will expire annually on June 30th.

1502. No permit for business or other purposes shall be issued for a period of more than one year from and after the date of such hearing. No permit for living purposes shall be issued for a period of more than six (6) months in any single year except:

1502.1 A permit may be issued to an applicant for a period not to exceed eighteen (18) months (with no extensions or renewals) while the applicant is in the process of constructing a house.

1502.2 A permit may be issued without a public hearing for any reason for a period not to exceed thirty (30) days. Each Mobile Home/Recreational Vehicle shall be removed from the land after expiration of any permit issued under this By-Law.

1502.3 Each Mobile Home/Recreational Vehicle shall be removed from the premises within 72 hours of the expiration of the time period as specified on the permit. Failure to do so will constitute a violation for each day such Mobile Home/Recreational Vehicle remains upon the premises.

1502.4 A permit issued for a period of one (1) year may be automatically renewed for the next annual or yearly period upon application of the holder thereof during the sixty (60) day period immediately preceding the expiration thereof. Any permit issued for six (6) months, or less period of time, may be automatically renewed in the following calendar year for the renewal of the six (6) month period upon application of the holder thereof during the sixty (60) day period prior to the commencement of the six (6) month period.

1503. That for the purposes of this By-Law, each Mobile Home/Recreational Vehicle shall be regarded as a single-family dwelling, and the parcel upon which the same is placed must conform to all area regulations pertaining to lot sizes and in every case shall be installed, maintained and used subject to the regulations promulgated by the Board of Health.

1504. Permits granted for the storage of Mobile Homes/ Recreational Vehicles need not comply with Sections 1501.6, 1501.7, and 1503.

1505. Notwithstanding the foregoing provisions, the Board of Selectmen may issue a temporary permit to such applicant, pending public hearing and action by such Board, for a period not to exceed thirty (30) days.

1506. The parking, without further use, of a recreational vehicle owned by a person residing in the Town at his/her place of residence shall not require a permit under these regulations.

1507. PENALTY

Any person who shall violate the provisions of these By-Laws as set forth in Article VII, VIII, XV, and XVI shall be subject to a penalty of (\$50.00) dollars for each offense. Each day the violation continues shall be considered as a separate offense.

ARTICLE XVI

SIGN REGULATIONS

1601. No billboard sign, including political signs, or other advertising device which does not either advertise or indicate the person occupying the premises on which it is located or the business transacted thereon or advertise the property or any portion thereof as for sale or to let shall be erected or maintained within public view from any public or private way or public park unless the erection and maintenance are authorized by a permit lawfully issued by a Town Agency authorized by a By-Law or any agency of the Commonwealth authorized by the General Laws.

1602. PENALTY

Any person who shall violate any of these By-Laws as set forth in Articles VII, VIII, XV, and XVI shall be subject to a penalty of fifty (\$50.00) dollars for each offense. Each day the violation continues shall be considered as a separate offense.

Footnote: To accept the Bicycle Routes Layout of the Bike-Way and Bike-Path Committee as posted on the Town Hall Bulletin Board or on record at Town Clerk's Office.

ARTICLE XVII

VEHICLES:

1701. UNREGISTERED MOTOR VEHICLES

PURPOSE

It is the intent and purpose of the By-Law to promote the health, safety, welfare and convenience of the community by regulating outside storage or maintaining of unregistered motor vehicles. No person shall place, keep or maintain or allow to be placed, upon his land, more than one unregistered motor vehicle, for storage or other purposes, except when authorized by a written permit from the Board of Selectmen.

EXCEPTIONS

This By-Law shall not apply to the following:

- A.** Agricultural vehicles in use on an operating farm.
- B.** Motor vehicles within a garage or other building.
- C.** Any premises licensed under the Provisions of M.G.L. Chapter 140, Sections 54 through 59A.

- D. Any premises licensed under the provisions of the Westport By-Laws Article XXVI - Garage and Service Station Regulations.
- E. Contractor's equipment.

DEFINITIONS

Motor Vehicle - Shall include motor vehicles as defined by the Massachusetts General Laws and including, but not limited to, automobiles, trucks, recreational vehicles, motor homes, trailers, mobile homes, snowmobiles, motorcycles, trail bikes, minibikes, and other forms of motorized or self-powered vehicles.

PERMIT FEE AND TERM

The permit fee for each location, shall be ten (\$10.00) dollars per year or any portion thereof. All permits issued under these regulations shall expire annually on the 31st day of December. Permits may be issued in November and/or December to be valid for twelve months beginning the next succeeding first day of January.

HEARINGS

The original annual permit shall be issued only after written application has been filed with the Board of Selectmen and after the Board of Selectmen hold a public hearing thereon. Notice of the public hearing shall be published by the Board of Selectmen once in a newspaper of general circulation in the Town at least three (3) days, excluding Saturdays and Sundays, prior to the public hearing. The applicant for such permit shall give written notice to the abutters and owners of the land lying directly across the street from the property on which the permit is applied for, at least three (3) days (excluding Saturdays and Sundays) prior to the hearing, by registered mail, certified mail, or other appropriate legal service. The cost of the newspaper notice of the hearing shall be borne by the applicant. The notice shall contain the name and address of the applicant, the address of the premises to be licensed, a description of the activity to be licensed, and the time, date and place of the hearing.

TEMPORARY PERMITS

Temporary permits may be issued by the Board of Selectmen to any person for any reason, without a public hearing, for a period not to exceed (30) days.

RENEWAL PERMITS

Permits may be renewed annually in November and/or December, without formal written application or hearing.

MOTOR VEHICLE DEALERS

Any person licensed by the Board of Selectmen under the provisions of M.G.L. Chapter 140, Sections 57 through 69, inclusive, may in the sole discretion of the Board of Selectmen be licensed under these regulations with formal application and hearing.

TRANSFERS OF PERMITS

Whereas the permits issued hereunder are issued to a specific person and location, any change of ownership or change of location will require an application and hearing for an original annual permit.

STANDARDS

The Selectmen shall make their decision on the issuance of any permit hereunder with regard for the promotion of health, safety, convenience, morals, and welfare for the inhabitants of the Town. The applicant must show that the proposed activity is not detrimental to the neighborhood. In this regard the Selectmen may impose conditions applicable to each individual permit.

PENALTY AND ENFORCEMENT

Any person who shall violate any of the provisions of these By-Laws or of the conditions imposed at the time of issuance of the permit shall be subject to a penalty of fifty (\$50.00) dollars per day. Each day the offense continues shall be considered a separate offense. These By-Laws may be enforced by the Board of Selectmen or any police officer through non-criminal disposition, civil mandate action or criminal penalty procedures.

INVALIDITY

The invalidity of any section shall not affect the validity of any other section of these regulations.

- 1702.** The Selectmen or Chief of Police or other ranking officer of the Police Department is authorized to remove to some convenient place through an agency of a person either public or private, if private chosen on the basis of competitive bids, any vehicles parked on a public way or standing any way under the control of a municipality in such manner as to impede in any way the removal or plowing of snow and ice, or in violation of any rule or regulation regulating parking or standing. The reasonable cost thereof shall be borne by the owner not to exceed the amount set by Massachusetts Department of Public Utilities, and storage charges not to exceed five dollars (\$5.00) for each twenty-four hour period.

ARTICLE XVIII

COUNCIL ON AGING

- 1801.** The Board of Selectmen shall appoint a Council on Aging for the purpose of coordinating or carrying out programs designed to meet the problems of the aging in co-operation with

programs of the Commission on Aging established under Chapter 40, Section 8B of the General Laws.

- 1802.** The Board of Selectmen shall appoint the Council on Aging consisting of seven (7) members, such members to be appointed for three- (3) year terms, two (2) members to be appointed in each of two (2) years and three (3) members to be appointed every third year. Members can be re-appointed for concurrent terms. The members of the Council shall serve without pay.
- 1803.** Wherever a vacancy shall occur in the membership of the Council, by reason of death, resignation, inability to act or for any other reason, the vacancy shall be filled by appointment by the Selectmen for the remainder of the term.
- 1804.** The Council on Aging shall annually in July of each year, shall elect from its membership a chairman, vice-chairman, treasurer and secretary.
- 1805.** The Council on Aging shall prepare and submit an annual report of its activities to the Town and shall send a copy thereof to the commission on Aging.
- 1806.** The Council may appoint such clerks and other employees with Town Meeting approval as it may require.

ARTICLE XIX

POLICE REGULATIONS

- 1901.** No person shall by a verbal, written or printed communication, willfully, deliberately and knowingly make or cause to be made to a police officer or other lawful authority a false or fictitious report of crime, knowing that such report is false or fictitious as aforesaid.
- 1902.** No person shall use indecent, profane language to the annoyance of any person in any street or public place.
- 1903.** No person shall make any indecent, profane, or obscene figure, diagram or word upon any sidewalk, fence, building post, street or other object within or along any street or public way.

1904. PENALTY

Whoever violates any provision of this code, or any regulation or By-Law hereafter enacted, shall, unless otherwise provided by law or ordinance, be liable to a penalty of fifty (\$50.00) dollars for each offense.

1905. ALCOHOLIC BEVERAGES IN PUBLIC PLACES:

1905.1 It shall be unlawful for any person to consume any alcoholic beverages, as defined

in Chapter 138, Section 1, of the General Laws or have in his/or her possession any open container thereof, in any public park or beach, or Town Landings, excluding municipal campgrounds, between the hours of 8:00 P.M. and 8:00 A.M., except at functions duly authorized by the Board of Selectmen of the Town of Westport.

1905.2 It shall be unlawful for any person to consume any alcoholic beverage, or to have in his or her possession any open container thereof, while upon any public sidewalk or upon any public way or upon right of way to which the public has access or upon any private land or place without consent of the owner or person in control thereof, at that time.

1905.3 It shall be unlawful for any person to throw, dump, deposit, or strewn any bottle, glass, crockery, can, plastic or similar container, or part thereof, upon ground or within or about any building in any public park or beach or in any public way to which the public has access at any time.

1905.4 Any person who shall violate any provision of this By-Law shall be fined fifty (\$50.00) dollars.

1906. Any person or persons who desire to conduct or organize a road race, parade, or other assembly or gathering on or along a Town way which may interfere with or block the orderly flow of traffic and/ or the safety of travelers thereon, shall submit a written application describing the date(s), time(s), duration, proposed route(s), and estimated number of participants to the Chief of Police and/or Selectmen at least thirty days prior to the event. The Chief of Police and/or Selectmen may request any alterations of the proposed date(s), time(s), duration, proposed route(s), and may require the organizers and/ or sponsors of the event to obtain adequate police supervision along the route, as deemed by the Chief of Police and/or Selectmen to be in the best interests of public safety.

1907. Before undertaking any work, including but not limited to construction, repair, maintenance or reconstruction work in, within or affecting a public way, the person responsible for such work or in charge of those performing such work, shall review such work with the Chief of Police, or his designee, to determine whether or not such work will result in the disruption of the normal flow of traffic or cause to exist a safety hazard to pedestrian or vehicular traffic. If the Chief of Police, or his designee, determines that such work will result in the disruption of normal flow of traffic or cause to exist a safety hazard to pedestrian or vehicular traffic, the person responsible for the work or the person in charge of those performing the work shall observe the safety precautions ordered by the Chief or his designee, including the placement of a Police Officer under existing regulations governing private paid Police details, to direct traffic and/or minimize the vehicle safety hazards connected with such work.

ARTICLE XX

STREET LIGHT REGULATIONS

2001. The Board of Selectmen shall act as the Street Lighting Committee.

2002. It shall be the responsibility of said committee to: (a) Review all petitions or requests for street lighting, hold public hearings thereon, and determine, within the limits of available appropriations, the number, size, and locations of street lights to be installed: (b) Examine existing street lighting and determine, after public hearings, if any lights should be relocated increased in size, or discontinued: (c) Determine on its own motion and after public hearing thereon, that street lighting is necessary at any location even though no request has been received therefore: (d) Notify the Board of Selectmen and petitioners for street lighting, in writing, of the committee's determinations.

2003. The Street Lighting Budget appropriated by the Annual Town Meeting shall include such sum of money for new street lighting as the meeting, on recommendation of the Finance Committee provides and no street lighting shall be ordered installed unless the Street Lighting Budget contains funds adequate to cover the cost thereof.

2004. The Street Light Committee shall order installation, relocation, or removal of street lights as determined by the Street Lighting Committee, but only when provisions of Section 2003, above have been satisfied.

ARTICLE XXI

PERSONNEL BY-LAWS - (SEE SEPARATE PUBLICATION)

ARTICLE XXII

ANIMAL CONTROL OFFICER AND RESTRAINT OF DOGS

Pursuant to Mass. General Laws Chapter 140, Section 173 and 173A as amended the following By-Laws are adopted pertaining to the restraint of dogs:

2201. DEFINITIONS - As used in these By-Laws the following terms mean:

Animal Control Officer - Officer(s) annually appointed by the Selectmen on July first to enforce the laws relating to dogs and animals or anything related, thereto. Said Animal Control Officer shall report to and be supervised by the Board of Health, or their designee. The Animal Control Officer (ACO) performs administration, labor, inspection and technical work in the enforcement and interpretation of applicable state codes and local by-laws, as they relate to the control and regulation of animals within the Town of Westport. Such work includes, among other duties, investigating animal mistreatment, controlling, abandoned, dangerous or unattended animals and educating the public.

At Large - Any dog shall be deemed to be at large when he is off the property of his owner and not under control of a competent person.

Commercial Kennel – Any person, group of persons or corporation engaged in the

commercial business of breeding, buying, selling or boarding dogs.

Dog Fund - The fees, fines, and reimbursements collected in connection with the licensing of dogs and the enforcement of this By-Law.

Dog Pound - Any premises designated by the Selectmen of the Town for the purpose of impounding and caring for dogs found running at large in violation of this By-Law.

Kennel - Any person, group of persons, or corporation housing over 3 dogs, not for commercial purposes.

License Period - The time in between April first and the following March thirty-first, both dates inclusive.

Livestock or Fowls - Animals or fowls kept or propagated by the owner for food or as a means of livelihood; also deer, elk, cottontail rabbits and northern hares, pheasants, quail, partridge and other birds and quadrupeds determined by the department of fisheries, wildlife and environmental law enforcement to be wild and kept by, or under a permit from, said department in proper houses or suitable closed yards. This shall not include dogs, cats and other pets.

Owner - Any person, group or persons, or corporation owning, keeping or harboring a dog or dogs.

Restraint - A dog shall be deemed under restraint within the meaning of these By-Laws if it is on a leash or other type of permanent physical control or controlled by a competent person and obedient to that person's commands, on or within a vehicle being driven or parked on the streets, or within the property limits of its owner or keeper.

2202. LICENSES

2202.1 Any person who at the commencement of the license period, or who during any license period becomes, the owner or keeper of a dog three months old or over which is not duly licensed, shall cause it to be duly registered, numbered, described, and licensed until the end of such license period. In order to own or keep such dog after the beginning of the succeeding license period shall, before the beginning thereof, cause it to be registered, numbered, described, and licensed for such license period. Registration, numbering, description, and licensing shall be with the office of the Town Clerk.

2202.2 Kennel Licenses

Every person maintaining a kennel shall have a kennel license providing, however, it does not violate the provisions of the Zoning By-Laws. Kennel licenses under this section shall be issued by the Town Clerk. Such license shall be in lieu of any other license for any dog while kept at such kennel

during any portion of the period for which such kennel license is issued. The holder of a license for a kennel shall cause each dog kept therein to wear, while it is at large, a collar or harness of leather or other suitable material, to which shall be securely attached a tag upon which shall appear the number of such kennel license and the year of issue. Such tags shall be furnished to such owner or keeper by the Town Clerk.

2202.3 Kennel Licenses/Tags/Certificates

Every holder of a kennel license, upon delivering an unlicensed dog to a purchaser or to any other person, shall attach to such dog a collar or harness which shall carry a tag marked with the name and address of such kennel licensee, and a number which number shall be properly recorded on the records of such licensee, and shall also furnish to the person to whom the dog is delivered a certificate bearing the same number and a description of the dog. Such certificate shall bear the date of purchase, exchange or gift and, with the tag, shall, for a period of two weeks following such date, be a legal substitute for a license. The purchaser or other recipient of a dog shall, within two weeks of the purchase or receipt of such dog, either return the same to the licensee from whom it was received, together with the collar or harness, tag and certificate, or return to such licensee said tag, and a certificate signed by the Town Clerk certifying that the dog has been licensed in the name of such purchaser or recipient or of some other person.

If any such purchaser or recipient fails to comply with the preceding sentence, such licensee shall notify the Town Clerk of the purchase, exchange or gift of such dog and shall furnish to such Town Clerk the date thereof, and the name and address of the purchaser or recipient.

2202.4 Kennel Licenses - Inspection Of Kennels

The Westport Animal Control Officer, the Assistant Animal Control Officer, the Police Chief, the Board of Selectmen, the Board of Health or any police officer authorized by any of said officials may at any time inspect or cause to be inspected any kennel and if, in their or his judgment, the same is not being maintained in a sanitary and humane manner, or if records are not properly kept as required by law, the Westport Animal Control Officer and the Board of Selectmen shall by order revoke or suspend, and in case of suspension, may reinstate such license. Upon the petition of twenty-five citizens, filed with the Board of Selectmen, setting forth that they are aggrieved, or annoyed to an unreasonable extent, by one or more dogs at a kennel because of the excessive barking or vicious disposition of said dogs or other conditions connected with such kennel constituting a public nuisance, said Board of Selectmen within seven days after the filing of such petition, shall give notice to all parties of interest of a public hearing to be held within fourteen days after the date of such notice. Within seven days after such public hearing, the Board of Selectmen shall make an order either revoking or suspending such kennel license or otherwise regulating said

kennel, or dismissing said petition.

2203. RABIES

2203.1 Rabies - Description On License

Every license issued to the owner of a dog shall have a description of the symptoms of rabies printed thereon.

2203.2 Vaccination Of Dogs Against Rabies

Whoever is the owner or keeper of a dog six months of age or older shall cause such dog to be vaccinated against rabies by a licensed veterinarian. Such owner or keeper shall procure a veterinarian's certificate that such dog has been so vaccinated and setting forth the date of such vaccination and the duration of immunity, or a notarized letter from a veterinarian that a certificate was used, or a metal rabies tag bearing an expiration date indicating that such certification is still in effect in order to obtain a license(s).

(See Article 4701 concerning cats)

2204. FEES

The Board of Selectmen, as provided elsewhere in these By-Laws, shall from time to time review and set any applicable fees for the registration, numbering, description, and licensing of dogs; for loss due to damages by dogs, and for expenses related to appraisal of such losses. Any fees or fines collected pursuant to this By-Law shall be paid into the town treasury, along with any interest accrued.

2205. RESTRAINT

No person owning or harboring a dog shall suffer or allow it to run at large in any of the streets or public places in the Town of Westport or allow it upon the premises of anyone other than the owner or keeper of such dog without the permission of the owner or occupant of such premises. No dog shall be permitted in any street or public place within the Town of Westport unless it is effectively restrained as above defined by a chain or leash not exceeding seven (7) feet.

2206. IMPOUNDMENT

Any dog or dogs, found running at large if approachable and can be caught shall be taken up by the Animal Control Officer and impounded in the shelter designated as the Town Dog Pound, and there confined in a humane manner for a period of the number of days that the State mandates and may thereafter be disposed of in a humane manner if not claimed by their owners. Dogs not claimed by their owners before the expiration of the number of days that the State mandates may be disposed of at the discretion of the Animal Control Officer,

except as hereinafter provided in the case of certain dogs.

2206.1 Immediately upon impounding dogs or other animals, the Animal Control Officer shall make every possible reasonable effort to identify the owners of such dogs or other animals, so impounded, and shall notify such owners within 48 hours of the conditions whereby they may regain custody of such animals.

2206.2 Any dog determined by the Animal Control Officer to be fierce, dangerous, or vicious shall not be redeemed unless the owner thereof shall agree to confine the dog within a building or secure enclosure that is approved by the Animal Control Officer.

2207. REDEMPTION OF IMPOUNDED DOGS

The owner shall be entitled to resume possession of any impounded dog except as hereinafter provided in the cases of certain dogs on payment of a twenty dollar (\$20.00) reclaiming fee to the Town of Westport and a fifteen dollar (\$15.00) per day maintenance fee for each day or part thereof of the dog's impoundment, payable to the Town.

2208. Any dog impounded under the provisions of these Regulations and not reclaimed by its owner within ten (10) days, may be humanely destroyed by the Animal Control Officer, or placed in custody of some person deemed to be a responsible and suitable owner, who will agree to comply with the provisions of these Regulations and such other regulations as shall be fixed by the Town of Westport.

2209. EMERGENCY TREATMENT

Any registered veterinarian who renders emergency care or treatment to, or disposes of a dog that is injured on any way, shall receive payment from the owner of such dog, if known, or if not known, from the Town of Westport dog fund in an amount not to exceed one hundred dollars (\$100.00) for such care, treatment or disposal; provided, however, such emergency care, treatment or disposal shall be for the purpose of maintaining life, stabilizing the dog or alleviating suffering until the owner or keeper of such dog is identified or for a period of twenty-four hours, whichever is sooner. Any veterinarian who renders such emergency care or treatment to, or disposes of, such dog shall notify the Westport Animal Control Officer and, upon notification, such Animal Control Officer shall assume control of such dog.

2210. KILLING OF CERTAIN DOGS

If the dog deemed to be at large is determined by the Animal Control Officer to be dangerous, or worrying persons, or worrying animals, or a threat to private property, or is otherwise unapproachable, it will be executed by the Animal Control Officer or a duly appointed Police Officer.

2211. DAMAGE TO LIVE STOCK AND FOWLS

2211.1 The Board of Selectmen or their authorized agents thereto authorized in writing, may, after written notice to the owner or keeper, enter upon the premises of the owner or keeper of any dog known to them to have worried or killed live stock or fowls, and then and there kill such dog unless such owner or keeper whose premises are thus entered for the said purpose shall give a bond in the sum of two hundred dollars, with sufficient sureties, approved by the Board of Selectmen, conditioned that the dog shall be restrained for twelve months next ensuing. And if the owner or keeper of the dog declares his intention to give such a bond said Selectmen, Chief of Police or his or their agents, shall allow him seven days, exclusive of Sundays and holidays, in which to procure and prepare the same and to present it to them, or to file it with the Westport Town Clerk.

2211.2 Whoever suffers loss by the worrying, maiming or killing of his live stock or fowls by dogs, outside the premises of the owners or keepers of such dogs, may, inform the Westport Police Department, who shall be designated by the Board of Selectmen to receive such information, and, if the damage is done in the Town, may notify the Chairman of the Board of Selectmen, or if he/she is absent or ill, any one of the Selectmen, who shall proceed to the premises where the damage was done and determine whether the same was inflicted by dogs, and if so, appraise the amount thereof if it does not exceed fifty dollars. If in the opinion of said police officer, Chairman or Selectman, the amount of said damage exceeds fifty dollars, the damage shall be appraised, on oath, by three persons, of whom one shall be such police officer, Chairman or Selectman, one shall be appointed by the person alleged to be damaged, and the third shall be appointed by the other two. The said appraisers shall consider and include in such damages the labor and time necessarily expended in the finding and collecting of the live stock or fowls injured or separated and the value of those lost or otherwise damaged by dogs. The police officer, Chairman or Selectman shall return a certificate of damages found to the Town Treasurer within ten days after such appraisal is made. The Town Treasurer, within thirty days shall examine all bills for damages, and may upon request of an interested party, summon the appraisers and all parties interested and make such investigation as they may deem proper, and shall issue an order upon the Town Treasurer for such amounts, if any, as they decide to be just and shall notify all interested parties of their decision. The Town Treasurer shall pay all orders drawn upon him in full, for the above purpose, in accordance with the reimbursement schedule as determined by the Board of Selectmen from time to time, and for the expenses of appraisal out of the money in the Dog Fund. All appraisers shall receive from the Dog Fund a sum of money as provided under Section 2204 for every such examination made by them and mileage one way for their necessary travel as provided under Section 2204.

2211.3 No owner of livestock or fowls shall be reimbursed for damages, as provided under Section 2204, inflicted by his own dog or dogs, nor shall he be reimbursed

for any damage by any dog if, at the time such damage was inflicted, he was himself the owner or keeper of an unlicensed dog of the age of three months or older. No reimbursement shall be made on account of damages by a dog to deer, elk, cottontail rabbits, northern hares, pheasants, quail, partridge and other livestock or fowls determined by the Department of Fisheries, Wildlife and Environmental Law Enforcement to be wild unless they are kept by, or under permit from, said Department, nor unless they shall be kept in proper houses or in suitable enclosed yards. No reimbursement shall be made for damage by a dog to dogs, cats and other pets. Awards shall in no case exceed the fair cash market value of such livestock or fowls.

2212. HUNTING DOGS

No leash or physical restraint shall be necessary if a dog is with his owner or keeper when said owner or keeper is hunting, providing that the dog is obedient to that person's commands.

2213. INTERFERENCE

No person shall interfere with, hinder or molest the Animal Control Officer of this Town in the performance of his duties, or seek to release any animal in the custody of the Animal Control Officer, except as herein provided.

2214. RECORDS

2214.1 It shall be the duty of the Animal Control Officer to keep, or cause to be kept, accurate and detailed records of the impoundment and disposition of all animals coming into his custody.

2214.2 It shall be the duty of the Animal Control Officer to keep, or cause to be kept accurate and detailed records of all bite cases reported to him and his investigation of the same.

2215. ENFORCEMENT

The provisions of this By-Law shall be enforced by the Animal Control Officer of the Town of Westport and may be enforced by any Police Officer of said Town.

2216. KILLING OF DOGS FOR HUMANE PURPOSES

When, in the judgment of the Animal Control Officer or any police officer, in this Town, an animal should be destroyed for humane reasons, such animal may not be reclaimed, and may be destroyed by the Animal Control Officer or Police Officer.

2217. DOGS ON SCHOOL PROPERTY: COMPLAINTS MADE TO ANIMAL CONTROL OFFICER

No dogs are allowed in schoolyards or on school property when school is in session or being used for school activities, whether at large or under restraint, seeing-eye dogs, so-

called excepted.

2217.1 Notwithstanding the provisions of Section 2213., dogs under the control and restraint of any police or law enforcement officer or school authorities may be allowed on school property for official purposes such as, but not limited to, bomb or drug searches, lectures, animal studies, etc.

2218. All complaints made under the provisions of this Section shall be made to the Animal Control Officer. Complaints may be made orally, provided, however, that such complaint is within forty-eight hours, reduced to writing and shall be signed by the complainant showing his address and telephone number, if any.

2219. RIGHT OF ENTRY

In the discharge of the duties imposed by the By-Laws, the Animal Control Officer or any Police Officer of this Town shall have the authority at all reasonable times to enter upon any premises, but such authority should not include the right to enter any residence on such premises, to examine a dog or other animal which is allegedly in violation of a provision of these By-Laws. Such Officer shall have the further authority to take possession of any such dog or other animal and remove it from such premises.

2219.1 Dogs on Beach and Recreation Areas: Dogs on Beach and Recreation Areas: No dogs shall be allowed on Beach and Recreation Areas, owned or under the control of the Town of Westport or any Boards or Commissions thereof from April 16th through September 15th, whether at large or under restraint. Seeing Eye dogs and dogs owned or under the control of the Police or any Law Enforcement Officer shall be excepted from these provisions.

2220. ABANDONMENT OF DOGS OR OTHER ANIMALS

It shall be unlawful to abandon dogs or other animals within the Town limits.

2221. It shall be unlawful to allow or permit any dog to trespass on private or public property so as to damage or destroy any property or thing of value and the same is hereby declared to be a nuisance and any such dog may be impounded by any police officer. Whenever it shall be affirmed in writing by three or more persons residing in or regularly employed in the neighborhood that any dog is a habitual nuisance by reason of trespassing, howling, barking or other noise, or damage to property, being vicious or by its actions potentially vicious or in any other manner causing undue annoyance, any police officer, if he finds such nuisance to exist, shall serve notice upon the owner or custodian that such nuisance must be abated.

2222. PENALTY

Except as otherwise provided herein, any person convicted of violating any provision of these By-Laws may be punished by the payment of a fine of fifty (\$50.00) dollars to be recovered for the use of the Town and if such violation be continued, each day's violation may constitute a separate offense. The provisions and procedures in Mass. General Laws

Chapter 140, Section 173A shall be followed and apply to violation of these By-Laws.

ARTICLE XXIII

YOUTH ACTIVITIES BOARD (Not a By-Law)

2301. A Westport Youth Activities Board shall be appointed by the Board of Selectmen. This Board shall consist of nine members. The terms of the members shall be for one, two and three years, and so arranged that the terms of approximately one-third of the members will expire each year, and their successors shall be appointed for terms of three years each.

2302. The purpose of this Board is to plan, operate and/or supervise a year-round recreation program for the youth of Westport with these activities supported by an appropriation voted for this purpose at a Town meeting.

NOTE: Not approved by the Attorney General as a By-Law.

ARTICLE XXIV

CEMETERY REGULATIONS (Not a By-Law – For Informational Purposes Only)

2401. Town Cemetery regulations approved at the Special Town Meeting held May 26, 1970:

2401.1 All orders for work of any kind in the public cemeteries shall be forwarded to the Superintendent of Beech Grove Cemetery, and uniform rates for such work shall be fixed by the Board of Selectmen.

2401.2 No soliciting for work of any kind will be allowed in a public cemetery.

2401.3 No work in the care of or relative to lots, monuments, grading, etc., shall be allowed in any public cemetery before 7:00 a.m. or after 6:00 p.m. without the written permission of the Superintendent.

2401.4 No work in the care of or relative to lots, monuments, grading, etc., shall be allowed on Memorial Day, and no grading, seeding, digging, or setting monuments shall be performed any time prior to and including ten days before Memorial Day without written permission of the Superintendent.

2401.5 Any work to be done by persons not employed under the direction of the Superintendent must be approved by the Superintendent before any work is begun.

2401.6 No trees or shrubbery shall be set out on any lot or lots without first obtaining the written permission of the Superintendent.

- 2401.7** All foundations for stones or monuments must be laid and built under the direction of the Superintendent.
- 2401.8** Immediately upon completion of any work in a public cemetery, all surplus material must be removed by those doing the work.
- 2401.9** It shall be unlawful to bury more than one person in one grave without the consent of the Selectmen.
- 2401.10** All bills for work in the Cemetery Department are due in the year rendered and are payable when the work is done. All bills being payable to the Town Treasurer; any complaint on bills must be filed with the Superintendent in writing.
- 2401.11** The penalty for violation of these rules shall be the withdrawal of all privileges of work or employment in the cemeteries, at the discretion of the Superintendent or Board of Selectmen, and any improper trespass, vandalism or other illegal acts shall subject the offender to liability of arrest.
- 2401.12** It shall be the duty of the Superintendent to enforce these rules and regulations and to prosecute the violation of all laws affecting said cemeteries.
- 2401.13** The Superintendent shall make returns of all expenses and receipts to the Selectmen when required.
- 2401.14** "On all two, four or six grave lots, the headstones would be placed in the center line on the lot between any two or more of the graves. Grave markers can be placed at the front of the graves. Planting on the graves will be limited to approximately one foot around the headstone." Pro-visions of this item to be restricted to future developments in existing cemeteries and future cemeteries.
- 2401.15** Veterans Plat shall be used for the internment of a veteran and his/her spouse only.
- 2401.16** Flat flush ground grave markers to be used in the third section and in all new sections added to the existing Veteran's Plot; the third section being east or directly behind sections one and two of the Veteran's Plot.
- 2401.17** No dogs will be allowed in a public cemetery with the exception of service dogs, sometimes known as guide dogs or signal dogs, that have been individually trained to provide assistance to individuals with disabilities, and those contained within a motor vehicle.

ARTICLE XXV

TRUST & PERPETUAL CARE FUNDS

2501. A Board of Commissioner of Trust Funds shall be established in accordance with Massachusetts General Laws, Chapter 41, Section 45, and to elect in the next annual elections one member for one year, one member for two years and one member for three years, thereafter, one elected each year. The Board of Selectmen shall serve as the Board of Commissioners of Trust Funds until the new Board is elected and qualified as provided above.

2502. AMBULANCE FUND

2502.1 An Ambulance Fund shall be established to be held in trust by the Commissioners of Trust Funds. Monies donated or contributed to such Fund shall be accumulated and expended to purchase or contribute towards the purchase of an ambulance or ambulances, or permanent equipment or parts thereof.

2502.2 A Board consisting of the Fire Chief, the Board of Selectmen and a member appointed by the Moderator shall determine the need and type of ambulance or equipment and the Commissioners shall on its order expend such monies to the extent they are available.

THE TWO PRECEDING ARTICLES HAVE NOT BEEN APPROVED BY THE ATTORNEY GENERAL AS A BY-LAW

2503. PERPETUAL CARE FUND

2503.1 The Treasurer shall invest moneys or securities deposited for the preservation, care, improvement, or embellishment of any public or private burial place and shall annually on January 1st report to the Board of Selectmen the amounts of accrued interest and/or moneys available to be expended.

2503.2 The Board of Selectmen and the Finance Committee shall annually, prior to the Annual Town Meeting, determine the amount of the available funds to be expended in the next fiscal year.

2503.3 The Board of Selectmen may by voucher(s) order the payment of such available funds and the Treasurer shall apply or pay over such funds for such purposes.

2503.4 Notwithstanding the provisions of paragraph 2 above, the Selectmen may order payment of such available funds during fiscal year 1982 without complying therewith.

ARTICLE XXVI

GARAGE AND SERVICE STATION LICENSE REGULATIONS

2601. PURPOSE

It is the intent and purpose of these By-Laws to promote the health, safety, welfare and convenience of the community by regulating the conduct of motor vehicle repair garages, body and fender shops, service stations and similar type businesses which may have loud or offensive noise or odors or unsightly storage of vehicles, equipment and parts.

2602. GENERAL

No person shall engage in the business of operating a motor vehicle or equipment service station or repair facility without obtaining a license therefore from the Board of Selectmen.

2603. DEFINITIONS

Motor Vehicle - Shall include motor vehicles as defined by the Massachusetts General Laws and include but not limited to, automobiles, trucks, recreational vehicles, motor homes, trailers, mobile homes, snowmobiles, motorcycles, trail bikes, minibikes, and other forms of motorized or self-powered vehicles.

Equipment - Shall include but not be limited to contractors' equipment, farm equipment, motorized equipment, marine equipment and other forms of heavy machinery.

Service Station - A gasoline service or sales station including so-called self-service gasoline stations.

Repair Facility - Shall include but not be limited to automobile repair garages, body and fender shops, welding shops, machine shops, and other shops specializing in the repair or rebuilding of equipment, motors and other forms of machinery. For the purpose of this license regulation, repair facilities shall specifically include facilities for the washing, cleaning, or grooming of motor vehicles, motorized equipment, and/or parts thereof.

2604. LICENSE FEE AND TERM

The annual license fee for each establishment or business location shall be determined by the Board of Selectmen. All licenses issued under these regulations shall expire annually on the first day of January except that licenses may be issued in November and/or December to be valid for twelve months beginning the next succeeding first day of January.

2605. HEARINGS

2605.1 The original annual license shall be issued only after written application has been filed with the Board of Selectmen and after the Board of Selectmen hold a public hearing thereon. Notice of the public hearing shall be published by the Board of Selectmen once in a newspaper of general circulation in the Town at least three (3) days including Saturdays and Sundays prior to the public hearing. The applicant for such license shall give written notice to the abutters and owners of the land lying directly across the street from the

property for which the license is applied at least three (3) days including Saturdays and Sundays prior to the hearing, by registered mail, certified mail, or other appropriate legal service. The cost of the newspaper notice of the hearing shall be borne by the applicant.

2605.2 The Notice shall contain the name and address of the applicant, the address of the premises to be licensed, a description of the activity to be licensed, and the time, date and place of the hearing.

2606. TEMPORARY LICENSES

Temporary licenses may be issued by the Board of Selectmen to any person for any reason, without a public hearing, for a period not to exceed thirty (30) days.

2607. RENEWAL LICENSES

Licenses may be renewed annually in November and/or December without formal written application or hearing.

2608. MOTOR VEHICLE DEALERS

Any person licensed by the Board of Selectmen under the provisions of M.G.L. Chapter 140, Section 57 through 69, inclusive, may in the sole discretion of the Board of Selectmen be licensed under these regulations without formal application and hearing.

2609. TRANSFERS OF LICENSES

Whereas the licenses issued hereunder are issued to a specific person and location, any change of ownership or change of location will require an application and hearing for an original annual license.

2610. EXISTING BUSINESS

All persons conducting businesses covered by these regulations existing on the effective date of these regulations shall obtain the original annual license without a public hearing and without a fee for the portion of the first year licensed, providing such persons obtain such licenses between the effective date hereof and the first of January immediately following.

2611. STANDARDS

2611.1 The Selectmen shall make their decision on the issuance of any, license hereunder with regard for the promotion of health, safety, convenience, morals, and welfare of the inhabitants of the Town. The applicant must show that the proposed activity is not detrimental to the neighborhood.

2611.2 In this regard the Selectmen may impose conditions applicable to each individual license.

2612. PENALTY

Any person who shall violate any of the provisions of these By-Laws or the conditions imposed at the time of issuance of the license shall be subject to a penalty of fifty (\$50.00) dollars per day each offense continues and subject to mandate action to compel compliance.

2613. INVALIDITY

The invalidity of any section shall not affect the validity of any other section of these regulations.

ARTICLE XXVII

SIGHT TRIANGLES

- 2701.** The Purpose of this By-Law is to regulate the placing of structures, fences, trees, shrubs, or other obstacles within the area classified as sight triangles and/or within twenty (20') feet of a public way. A sight triangle is defined as the area bounded by the right-of-way lines and a straight line connecting points on the street center lines which are eighty (80') feet long (along) said center lines from their intersections. This By-Law is concerning any new or proposed public way, which may obstruct the view and therefore create a hazard for anyone traveling upon or entering into or leaving such way. Buildings and trees three (3") inches in diameter or larger existing at the inception of this By-Law shall be exempt from the previous provisions hereof.
- 2702.** There shall be a Safety Regulation Board, which shall consist of the Highway Surveyor, one Fence Viewer, and one Selectmen as so designated by the Board of Selectmen.
- 2703.** The Board shall upon written Notice submitted to it by any person stating that a fence, shrub, tree, structure, or other obstacle is within the sight triangle and/or within twenty (20') feet of a public way, and obstructs the view of travelers entering, traveling, or exiting there from, should inspect same and forthwith notify the owner, lessee, or mortgagee in possession to remove same, or take such appropriate action as is necessary to make it safe for such travelers using such public way.
- 2704.** Any person so notified shall be allowed seven (7) days following service of the Notice to begin to remove such obstacle or take such appropriate action as is necessary to make it safe for travelers using such Public Way.
- 2705.** Any person aggrieved by any order of the Board may, within the seven (7) day period, appeal such Notice by filing in writing with such Board.
- 2706.** Upon receiving any appeal, as stated in the foregoing section, the Board shall hold a Public Hearing upon the matter in the following manner:

2706.1 Notice of time, place, and purpose of the Public Hearing shall be published in a newspaper serving the Town, at least one week prior to such Hearing.

2706.2 Notice of the time, place, and purpose of the Hearing shall also be mailed, certified mail, to the Complainant, the Appellee, the Owner, Lessee, or Mortgagee in possession, and the abutters including owners of property lying directly across the Public Way from the property involved.

2706.3 The decision of the Board shall be by majority vote of the entire membership and shall be in writing and sent postage prepaid to all interested parties receiving the Notice of the Hearing and any other person requesting a copy at the meeting.

2706.4 The Board shall render its decision have due regard to the safety of motor vehicles and persons in other vehicles using the Public Way and specifically based upon whether the obstacle complained of obstructs the view of persons traveling upon, entering into, or leaving the Public Way, in such a manner as to constitute a hazard, either to themselves or others.

2707. Anyone receiving an order of the Board issued after a Public Hearing as provided, who fails to comply with such Order within fifteen (15) days shall be subject to a fine of fifty (\$50.00) dollars, for each day beyond the fifteen (15) days time limit that such offense continues.

ARTICLE XXVIII

TOWN OFFICERS FEES AND SALARY

2801. The Tax Collector or Town Collector shall pay all fees received by the Tax Collector or Town Collector by virtue of the office, under the provisions of M.G.L., Ch. 60, Section 15 and other provisions of the General Laws, to the Town Treasury, which shall not be reimbursed to said Tax Collector or Town Collector, and that this is conditional upon that the salary of the Tax Collector or Town Collector be raised to at least that of the level of the Town Treasurer.

2802. The Town Clerk is required to forward all fees collected by virtue of that office to the Town Treasurer for deposit in the town treasury, to become effective 7/1/86.

ARTICLE XXIX

FLEA MARKETS

2901. PURPOSE

It is the intent of this By-Law to provide a mechanism for allowing, subject to reasonable and appropriate controls, certain types of activities having to do with the sale of second

hand articles within the community while at the same time preserving the residential atmosphere of the various neighborhoods in Town. It is further the intent of this By-Law to enhance traffic and pedestrian safety through the provision of appropriate restrictions on the placing of signs and advertising devices on utility poles, traffic signs, street signs, and public trees. It is also the intent of this By-Law to assure the activities relating to the sale of second hand articles by persons or groups customarily engaged in such activities as a business shall be limited to those locations within town which the town, through its Zoning By-Laws, has set aside for the conduct of businesses.

2902. DEFINITIONS

For the purposes of this By-Law the following term shall have and include the following respective meaning.

Flea Market - A temporary market where old, damaged (seconds), or used articles are sold.

2903. REQUIREMENTS

2903.1 Business and Industrial Zoning Districts

- A.** Flea markets may be held in a business or Industrial District pursuant to a permit granted by the Board of Selectmen as authorized. No material for sale shall be displayed on any public or private way. Permits may be issued subject to conditions deemed by the Board of Selectmen to be necessary or advisable.
- B.** No sign or advertising device shall be placed within any street right-of-way, including free standing signs, or any sign affixed to street signs, traffic or regulatory or warning signs or any utility poles within such right-of-way.

No such sign or advertising device shall be placed on any public tree.

- C.** Any authorized signs may be displayed on the premises for not more than five (5) days.

2903.2 All other Zoning Districts

- A.** Flea Markets may be held in any other Zoning District pursuant to a permit granted by the Board of Selectmen subject to conditions hereinafter set forth.
 - 1.** Flea Market is under the sponsorship of a Westport, Massachusetts based non-profit organization or corporation whose purpose is to provide service or charitable work. No fee shall be required for permits granted under this section.

2. The number of Flea Markets shall be limited to one per calendar year per organization or corporation.
3. No person customarily engaged in the business of conducting Flea Markets shall participate in any Flea Market within any Zoning District except Business and Industrial Districts unless the sponsoring organization or corporation has received a special permit from the Zoning Board of Appeal. No material for sale shall be displayed on any public or private way. Permits may be issued subject to conditions deemed by the Board of Selectmen to be necessary or advisable.
4. No sign or advertising device shall be placed within any street right-of-way, including free-standing signs, or any sign affixed to street signs, traffic regulatory or warning signs or any utility poles within such right-of-way. No such sign or advertising device shall be placed on any public tree.
5. Any authorized signs may be displayed on the premises for not more than five (5) days.
6. Such sale shall not exceed three (3) days duration.

2904. PROCEDURE

2904.1 Any person, organization, or corporation intending to conduct a Flea Market, or similar activity by a different name shall make application for a permit to conduct such activity at the Board of Selectmen's office no less than ten (10) calendar days prior to the date of the proposed activity.

2904.2 If an application is favorably acted upon by the Board of Selectmen or its designated representative, a permit shall be issued to the person, organization or corporation to conduct such activity and said permit shall be available at all times on the site during the term of the sale.

2905. FEES

The fee for permits granted pursuant to this By-Law shall be according to the following schedule: Flea Market - \$100.00 plus \$1.00 for each planned stall.

2906. ENFORCEMENT

2906.1 The Police Department shall be responsible for enforcement of this By-Law and upon request of a police officer, any person conducting any activity governed by these rules and regulations, shall make available for inspection by the police officer the permit granted by the Board of Selectmen.

2906.2 A person found by a police officer not to be in compliance with the By-Law as heretofore set forth shall upon such police officer's order, cease such activity immediately or comply with the directive of the police officer to bring into conformity that portion of the activity which is deemed to be in violation of these By-Laws.

2906.3 Signs or advertising devices in violation of this By-Law found to be affixed to any utility pole, street sign, traffic warning or regulatory signs within the right-of-way of any street shall be removed by any police officer observing same.

2907. PENALTY

Any person who shall violate the provisions of these By-Laws as set forth in Article VII, VIII, XV, and XVI shall be subject to a penalty of fifty (\$50.00) dollars for each offense. Each day the violation continues shall be considered as a separate offense.

2908. GENERAL

2908.1 Nothing contained in this By-Law shall require the Board of Selectmen to issue a permit if, in its opinion, the public interest would be adversely affected by so doing.

2908.2 The Board of Selectmen may waive strict compliance with any of the above By-Laws if after its examination of the facts in a particular case such waiver can be granted without derogating from the intent and purpose of this By-Law.

ARTICLE XXX

BEACH COMMITTEE

3001. The Board of Selectmen shall appoint a Beach Committee for the purpose of making recommendations and/or carrying out specific programs with regard to traffic and/or crowd control, public safety, litter, animals or such other problems as might require attention in any of the Town-owned or administered beach areas in Westport. The Committee shall have no formal jurisdiction over the State Reservation at Horseneck Beach.

3002. The Board of Selectmen shall appoint said Committee consisting of five members. Upon this By-Law's becoming effective, the Board shall appoint two (2) members for three (3) years, two (2) members for two (2) years, and one (1) member for one (1) year. Thereafter each member can be appointed for concurrent terms. Members of the Committee shall serve without pay. Member's terms shall run from July 1 of the year of appointment until June 30 of the third year following, except for the initial appointments as stated above.

3003. Whenever a vacancy shall occur in the membership of the Committee, by reason of death,

resignation, inability to act or any other reason, the vacancy shall be filled by appointment by the Selectmen for the remainder of the term.

- 3004.** The Committee shall meet and organize in July of each year, and shall elect from its membership a chairperson, who shall serve until the following July election. If this office becomes vacant, a special meeting shall be called to elect another member to fill such vacancy. The frequency of meetings shall be determined by the members, except that the Committee shall meet at least three (3) times between May 25 and September 15th of each year.

ARTICLE XXXI

RESIDENCY REQUIREMENT AND RESIDENCY PREFERENCE

- 3101.** Every applicant for the position of regular police officer or permanent firefighter, or any other permanent officer of either department shall be a resident of the Town of Westport, or if not a resident shall within six (6) months after his/her appointment takes effect, establish his/her residency within the Town of Westport and shall maintain such residency during the entire period of his/her service with either department of the Town of Westport.
- 3102.** Every applicant for a position on the Highway Department shall be a resident of the Town of Westport and, if hired, shall maintain a residency within the Town of Westport during the tenure of such position.
- 3103.** Whenever a person is to be employed to fill a full-time opening or position for the Town, the employing officer or board shall give preference in the original hiring to a resident of the Town, providing such resident possesses qualifications desired for such position, that are equal to those qualifications of any non-resident applicant.

This By-Law shall apply only to the original hiring of new employees and nothing herein shall be construed to affect the promotion or assignment of any new or present employee.

Footnote: Included in Personnel By-Laws in 1976; Excluded from Personnel By-Laws in 1979.

ARTICLE XXXII

USER FEES

- 3201.** The Board of Selectmen may establish reasonable fees for the use of the Town Beach and other Town property, the use of the ambulances; inspections for building construction, demolition or alteration; inspections for plumbing, natural gas and electrical wiring installations or repairs; for the towing of boats, Town Wharfage and other similar user-based services.
- 3202.** Such fee schedules may be implemented after a public hearing, the time, date, and place, subject of which must be published at least seven (7) days in advance in at least one newspaper of

general circulation; and after publication of the final rate schedules in at least one newspaper of general circulation at least ten (10) days in advance of the effective date of such schedule.

ARTICLE XXXIII

YARD OR GARAGE SALES

3301. DEFINITIONS

Yard Sale - Includes all sales entitled "Yard Sales", "Garage Sale", "Lawn Sale", "Attic Sale", "Cellar Sale", "Barn Sale", or any similar casual sale of tangible personal property whether or not said sale is advertised by any means whereby the public at-large is or can be made aware of such sale.

Person - Any individual, corporation or association but not including charitable organizations.

Premises - The entire area or any parcel of land under one ownership including contiguous parcels and parcels lying directly across any street or way.

3302. PERMIT REQUIRED

3302.1 It shall be unlawful for any person to conduct a yard sale, within any residential zone, without obtaining from the Building Inspector, a permit, which shall be known as a Yard Sale Permit.

3302.2 A Fee of two (\$5.00) dollars for each day of each yard sale shall be charged.

3303. ISSUANCE AND DISPLAY OF PERMIT

3303.1 A Yard Sale Permit may be issued to anyone person for only three (3) days in any one (1) month or four (4) days in any one (1) year in conformity with the Zoning Regulations.

3303.2 A Yard Sale Permit shall be issued not more than three (3) days in any month or four (4) days in any year for any one (1) premises located in a residential zone.

3303.3 Charitable, religious, and civic organizations are exempt from the provisions of this By-Law.

3303.4 Each permit issued under this By-Law must be available on the premises throughout this entire period of the sale and must be shown to any police officer or zoning enforcement officer if requested.

3304. CONTENTS OF APPLICATION

The information to be filed with the Building Inspector upon application for a Yard Sale Permit shall be as follows:

3304.1 Name and address of person to conduct said sale.

3304.2 Name of the owner of the property on which sale is to be conducted and the written consent of the owner if applicant is other than the owner.

3304.3 Location at which the sale is to be conducted.

3304.4 Hours during which the sale will be held.

3304.5 Date and nature of any past sale held within one (1) year.

3304.6 Whether or not the applicant has been issued another vendors permit by any local or state agency.

3305. VIOLATIONS AND PENALTIES

Any person who shall violate any provision of this By-Law shall be liable to a fine of fifty (\$50.00) dollars for each violation. Each day shall constitute a separate offense.

ARTICLE XXXIV

PRIVATE SWIMMING POOL, SPA, AND HOT TUB ENCLOSURE REQUIREMENTS

3401. All private swimming pools, spas, and hot tubs shall be enclosed in accordance with the Massachusetts State Building Code, 780 CMR 421.10.1 through 421.10.4.

3402. Any person who shall violate any provision of this By-Law shall be liable to a fine of fifty (\$50.00) dollars for each violation. Each day shall constitute a separate offense.

ARTICLE XXXV

HANDICAPPED PARKING REGULATIONS

3501. DESIGNATION OF PARKING SPACES

3501.1 Any person or body that has lawful control of a public or private way or of improved or enclosed property used as off-street parking areas for businesses, shopping malls, theaters, auditoriums, sporting or recreational facilities, cultural centers, residential dwellings or for any other place the public has the right of access as invitees or licensee is required to reserve parking spaces in said off-street parking areas for any vehicle owned and

operated by a disabled veteran or handicapped person whose vehicle bears the distinguishing license plate authorized M.G.L. Chapter 90, Section 2, according to the following formula:

If the number of parking spaces in any such area is more than fifteen but not more than twenty-five, one parking space; more than twenty-five but not more than forty, five percent of such spaces but not less than two; more than forty but not more than one hundred, four percent of such spaces but not less than three; more than one hundred but not more than two hundred, three percent of such spaces but not less than four; more than two hundred but not more than five hundred, two percent of such spaces but not less than six; more than five hundred but not less than one thousand, one and one-half percent of such spaces but not less than ten; more than one thousand but not more than two thousand, one percent of such spaces but not less than fifteen; more than two thousand but less than five thousand, three-fourths of one percent of such spaces but not less than twenty; and more than five thousand, one-half of one percent of such spaces but not less than thirty.

3501.2 Parking spaces designated as reserved under the provisions of section 3501.1 shall be identified by the use of above grade signs with white lettering against a blue background and shall bear the words "Handicapped Parking: Special Plate Required. Unauthorized Vehicles May be Removed at Owner's Expense"; shall be as near as possible to a building entrance or walkway; shall be adjacent to curb ramps or other unobstructed methods permitting sidewalk access to a handicapped person; and shall be twelve feet wide or two eight foot wide areas with four feet of cross hatch between them.

3502. LEAVING OF UNAUTHORIZED VEHICLES

3502.1 The leaving of unauthorized vehicles within parking spaces designated for use by disabled veterans or handicapped persons as authorized by section 3501 or in such a manner as to obstruct a curb ramp designated for use by handicapped persons as a means of egress to a street or public way shall be prohibited.

3502.2 The penalty for violation of section 3502.1 shall be as follows: for each and every offense, three hundred (\$300.00) dollars, and/or the vehicle may be removed in accordance with the provisions of M.G.L. Chapter 40, Section 22D.

ARTICLE XXXVI

OUTSIDE TIRE STORAGE REGULATIONS

Any person, owner, business or corporation that shall establish, maintain, or allow to exist on any property

within the Town of Westport the storage of fifty (50) or more new or used rubber tires, tire casings, tire tubes, rubber scraps, and/or other by-product of rubber tires shall meet the following requirements:

3601. GENERAL OPERATING INSTRUCTIONS

The storage site shall be reasonably level, solid ground, preferably surfaced with fine gravel. Refuse or filled-land, swampy ground, or areas where the hazard of underground fire is present shall not be used.

All-weather roadways, alley-ways, and fire-lanes capable of supporting fire department apparatus shall be provided to the plant and throughout the storage yard from the town way.

All sides of storage piles shall be accessible by means of alleyways and fire lanes. An alleyway width of 1½ times the pile-height, but not less than twenty feet is required, with fire lanes between alternate rows of two pile groups, providing a clear space of at least 100 feet. The length of each pile shall not exceed 125 feet in length, 25 feet in width, or 15 feet in height. Fire lanes for access across each end providing a clear space of at least 100 feet to adjacent pile rows, or other exposed property shall be provided. Where practical, greater widths are desirable to minimize the effects of radiated heat, particularly in high-piled yards. Fire lanes shall be kept unobstructed at all times to permit maneuvering of fire suppression equipment. For basic fire protection, a water supply shall be provided where practical. The supply should be large enough to provide 1,000 G.P.M. for a period of two hours, and shall be accessible to fire apparatus as directed by fire department personnel.

Weeds, grass, and similar vegetation shall be controlled throughout the storage yards, and should be sprayed as often as needed with a satisfactory herbicide or ground sterilizer or grubbed out. Dead vegetation shall be removed after destruction. Weed burners shall not be used.

Good housekeeping should be maintained at all times, including regular and frequent cleaning of materials handling equipment.

Smoking shall be prohibited in tire storage yards. No smoking signs shall be posted in the storage yard.

Access into yard areas by unauthorized persons shall be prohibited. Where needed, storage areas should be enclosed with a suitable fence equipped with proper gates located as necessary, to permit entry of fire department apparatus.

Miscellaneous occupancy hazards such as vehicle storage and repair shops, cutting and welding operations, flammable liquid storage, liquefied petroleum gas storage and similar operations shall be safeguarded in accordance with recognized good practice. Refer to various N.F.P.A. standards applicable to specific occupancy hazards.

Vehicles and other power devices should be of an approved type, safely maintained and operated. Vehicle fueling operations should be conducted in specified safe locations, isolated from storage areas and principal operating buildings (Refer to standard for Powered

Industrial Trucks, N.F.P.A., 505).

All electrical equipment and installations shall conform to the provisions of the National Electrical Code, N.F.P.A., 70.

No cutting, welding, or other use of open flames or spark-producing equipment shall be permitted in the storage area.

The owner of the storage yard shall be responsible for the hiring of any heavy equipment to aid in the extinguishing of a fire, should it be deemed necessary.

3602. ESTABLISHED TIRE STORAGE YARDS

For the purpose of this By-Law, any tire storage yards already established shall have one hundred twenty (120) days from the date of mailing of notice to them of the provisions of this By-Law to comply with said provisions.

3603. PENALTY

Any person who violates the provisions of this By-Law shall be subject to a fine of fifty (\$50.00) dollars for each such offense. Each day the violation continues or is allowed to remain shall be considered a separate offense.

ARTICLE XXXVII

NON-CRIMINAL DISPOSITION OF VIOLATIONS

3701. NON-CRIMINAL DISPOSITION OF SHELLFISH RULES AND REGULATIONS

3701.1 Any Shellfish Rule and Regulations of the Board of Selectmen, the violation of which is subject to a specific penalty, may, in the discretion of the Town Official who is the appropriate, enforcing person, be enforced in the method provided in Section 21D of Chapter 40 of the Massachusetts General Laws.

3701.2 "Enforcing Persons", as used in this By-Law, shall mean any Selectmen, Police Officer, Reserve Police Officer, Shellfish Constable or any Shellfish Deputy Warden and such other officials as the Board of Selectmen may from time to time designate, each with respect to violation of Shellfish Rules and Regulations within their respective jurisdictions. If more than one official has jurisdiction in a given case, any such official may be an enforcing person with respect thereto.

3702. NON-CRIMINAL DISPOSITION

3702.1 Any person taking cognizance of a violation of a specific By-Law, rule or regulation which he or she is empowered to enforce, hereinafter referred to as the enforcing person, as an alternative to initiating criminal proceedings may give to the offender a written notice to appear before the Clerk of the Fall River District Court at any time during office hours, not later than twenty-one (21) days after the date of such notice. Such notice shall be in triplicate and shall contain the name and address if known, of the offender, the specific offense charged, and the time and place for his required appearance. Such notice shall be signed by the enforcing person and shall be signed by the offender whenever practicable in acknowledgment that such notice has been received.

3702.2 If the enforcing person is unable to deliver a copy of the notice to the offender at the time and place of the violation, said copy shall be mailed or delivered by the enforcing person or by his commanding officer or the head of his department or by any person authorized by such commanding officer, department or head, to the offender's last known address, within fifteen (15) days after said violation. Such notice as so mailed shall be deemed a sufficient notice, and a certificate of the person so mailing such notice that it has been mailed in accordance with this section shall be prima facie evidence thereof.

3702.3 At or before the completion of each tour of duty, or at the beginning of the first subsequent tour of duty, the enforcing person shall give to his commanding officer or department head those copies of each notice of such a violation he has taken cognizance of during such tour which have not already been delivered or mailed by him aforesaid. Said commanding officer or department head shall retain and safely preserve one copy and shall, at a time not later than the next court day after such delivery or mailing, deliver the other copy to the clerk of the court before which the offender has been notified to appear.

3702.4 The disposition of such notices by the Clerk of the Fall River District Court shall be in accordance with Section 21D of Chapter 40 of the General Laws.

3702.5 Non-Criminal By-Law to provide for non-criminal disposition of violations under the Sale and Use of Tobacco Products and Nicotine Delivery Products Regulation and Prohibiting Smoking in Work Places and Public Places Regulation under the authority of the Board of Health as follows:

3702.5A Sale and Use of Tobacco Products and Nicotine Delivery Products Regulation, Section P:

It shall be the responsibility of the establishment, permit holder and/or their business agent to ensure compliance with all sections of this By-Law pertaining to their distribution of tobacco and/or nicotine delivery products. A violation of

this section shall be subject to the following penalties: in the case of the first violation, a fine of one hundred dollars (\$100.00); in the case of a second violation within twenty-four (24) months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for seven (7) consecutive business days; in the case of three or more violations within a twenty-four (24) month period, a fine of three hundred dollars (\$300.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for thirty (30) consecutive business days.

**3702.5B Prohibiting Smoking in Work Places and Public Places
Regulation Section 5.0 and in Accordance to 105 CMR
661.000**

Any owner, manager, or other person in control of a building, vehicle or vessel who violates this section, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of one hundred dollars (\$100.00) for the first violation, two hundred dollars (\$200.00) for a second violation occurring within two (2) years of the date of the first offense and three hundred dollars (\$300.00) for a third or subsequent violation occurring within two (2) years of the second offense.

3702.6 Any person who violates the provisions of Section 2401.7 of the Cemetery Regulations shall be subject to a fine of \$25.00, with each day a violation occurs considered a separate offense. Any police Officer of the Town of Westport shall be the enforcing authority for purposes of non-criminal disposition.

ARTICLE XXXVIII

SEWAGE DISPOSAL SYSTEMS

3801. No soil absorption system – a component of an onsite sewage disposal system that receives effluent from a septic tank or treatment system – for new construction shall be constructed or located within one hundred (100) feet of any Waters of the Commonwealth or Waters or Water Bodies as defined by Title 5, Section 15.002 or Wetland as defined by the Massachusetts Wetland Protection Act, M.G.L. Chapter 131, Section 40 and regulations promulgated pursuant thereto at 310 CMR 10.00 or pursuant to Section 404 of the Federal Water Pollution Control Act 33, U.S.C. 1341.

A variance may be granted by the Board of Health provided that the soil absorption system is a component of an on-site sewage disposal system designed and operated to enhance the

removal of effluent nitrogen as approved by the Board of Health and that granting the variance will not reduce the level of environmental protection below that offered by Title 5 et seq.

- 3802.** The minimum standards for the disposal of sewage are set by Title 5 (310 CMR 15.000). Where the provisions of the Westport Board of Health are more strict, they shall prevail.
- 3803.** Any sanitary sewage or greywater, no matter how treated, shall not be discharged into [a] wetland as defined by the Massachusetts Wetlands protection Act or Waters of the Commonwealth as defined by Title 5 and referenced in Section 3801.

ARTICLE XXXIX

UNDERGROUND FUEL AND CHEMICAL STORAGE SYSTEMS

Under Chapter 40, Section 21, and Chapter 148, Section 9, of the Massachusetts General Laws, the Town of Westport hereby adopts the following By-Law to protect the ground and surface waters from contamination with liquid fuel or toxic materials from leaking storage tanks. The following regulations apply to all underground fuel and chemical storage systems (tanks and piping):

- 3901.** Any spill or loss of fuel must be reported immediately to the Head of the Fire Department.
- 3902.** All leaking tanks must be emptied within twenty-four (24) hours of leak detection and removed in a time period determined by the Head of the Fire Department.
- 3903.** All tank installations within four (4) feet of maximum high water table or within one hundred (100) feet of a surface water body or whenever else deemed necessary by the Head of the Fire Department, shall be of fiberglass construction, and, if deemed necessary by the Head of the Fire Department, shall be vaulted.
- 3904.** New underground fuel and chemical storage systems are prohibited within one hundred (100) feet of a private well and within two thousand (2,000) feet of a public water supply.
- 3905.** The owner of the property affected or the individual in control of the property affected, if not the owner, shall be responsible for compliance with these regulations.

The following regulations shall apply to all underground storage systems, other than sewage systems, with capacities greater than nine hundred (900) gallons.

3905.1 The owner shall file with the Head of the Fire department the size, type, age, and location of each tank, and the type of fuel or chemical stored. A plot plan showing all wells within five hundred (500) feet should be filed. Evidence of date of purchase and installation, including Fire Department permit, if any, shall be included.

3905.2 The owner of tanks for which evidence of installation date is not available shall, at

the order of the Head of the Fire Department, have such tank systems tested. If in the opinion of the Head of the Fire Department, the tank is not product tight, it shall be replaced.

3905.3 All steel tanks shall be subject to testing ten (10) years and fifteen (15) years after installation and annually after twenty (20) years to prove that the tank is product tight. An alternative to the testing is the installation of any approved monitoring system. Certification of testing or monitoring shall be submitted to the Head of the Fire Department. Any tank failing the test or monitoring shall be neutralized and disposed of under the direction of the Head of the Fire Department at the owner's expense.

3905.4 Owners of all commercial subsurface fuel storage facilities shall submit quarterly a statement certifying that daily inventory records have been maintained and reconciled. Any loss must be reported as stated previously.

3905.5 Owners of residential subsurface fuel storage tanks shall report any unaccounted for, significant, increase in fuel usage to the Head of the Fire Department. Further, owners shall notify their fuel service company who shall submit a report to the Head of the Fire Department.

3906. All tanks shall be properly installed as per Massachusetts Fire Prevention Regulations and manufacturers' specifications, under the direction of the Head of the Fire Department. Tanks shall be of approved design and protected from internal and external corrosion. The following tanks construction systems are considered to provide adequate corrosion protection: all fiberglass construction; steel with bonded fiberglass and internal lining; and the Steel Tank Institute 3-Way Protection System. Used tanks may not be installed. Any other system must be shown to provide equivalent protection.

3907. Variances from this By-Law may be granted by the Head of the Fire Department along with a majority vote of the Conservation Commission after a hearing at which the applicant establishes that the installation or use of an underground storage tank will not adversely affect public or private water resources. In granting a variance, the Head of the Fire Department and the Conservation Commission will take into consideration the direction of the ground water flow, soil conditions, depth to ground water, size, shape, and slope of the lot, and existing and known future water supplies.

3908. Non-compliance with this By-Law will result in a fine of one hundred (\$100.00) dollars.

ARTICLE XL

NOISE POLLUTION CONTROL

4001. PREAMBLE

The purpose of this By-Law is to prevent the occurrence of conditions of air pollution from

noise where such do not exist and to facilitate the abatement of conditions of air pollution where and when such occur. They are designed to attain, preserve, and conserve the highest possible quality of the ambient air compatible with needs of society.

4002. DEFINITIONS

When used in this By-Law the following words and phrases shall have the meanings ascribed to them below:

Agriculture - Those practices involved with the cultivation of soil for purposes of crop production and/or the raising of livestock when such crops are produced primarily for commercial foodstuffs and such livestock are raised primarily for commercial foodstuffs or work purposes.

Air – Atmosphere.

Air Contaminant - Any man-made physical phenomenon in the ambient air space and includes, but is not limited to sound.

Air Contamination Source - Any place at or from which any air contaminant is emitted to the ambient air space.

Air Pollution - The presence in the ambient air space of one or more air contaminants or combinations thereof in such concentrations and of such duration as to:

- A. Cause a nuisance;
- B. Be injurious, or be on the basis of current information, potentially injurious to human or animal life, to vegetation, or to property; or
- C. Unreasonably interfere with the comfortable enjoyment of life and property or the conduct of business.

Ambient Air Space - The unconfined space occupied by the atmosphere above the geographical area of the Town of Westport.

Best Available Control Technology - An emission limitation based on the maximum degree of reduction of any regulated air contaminant emitted from or which resulted from any regulated facility which the Town, on a case-by case basis taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems and techniques for control of each such contaminant. The best available control technology determination shall not allow emissions in excess of any emission standard established under the New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants or under any other applicable section of these By-Laws, and may include a design feature, equipment specification, work practice, operating standard, or combination thereof.

Emission - Any discharge or release of an air contaminant to the ambient air space.

Noise - Sound of sufficient intensity and/or duration as to cause or contribute to a condition of air pollution.

Person - Any individual, partnership, association, firm, syndicate, company, trust or corporation.

Sound - The phenomenon of alternative increases and decreases in the pressure of the atmosphere, caused by radiations having a frequency range of from twenty (20) to twenty thousand (20,000) cycles per second, that elicits a physiologic response by the human sense of hearing.

4003. No person owning, leasing, or controlling a source of sound shall willfully, negligently, or through failure to provide necessary equipment, service, or maintenance or to take necessary precautions cause, suffer, allow, or permit unnecessary emissions from said source of sound that may cause noise.

4004. The provisions of this By-Law shall pertain to, but shall not be limited to, prolonged unattended sounding of burglar alarms, construction and demolition equipment which characteristically emit sound but which may be fitted and accommodated with equipment such as enclosures to suppress sound or may be operated in a manner so as to suppress sound, suppressible and preventable industrial and commercial sources of sound, and other man-made sounds that cause noise.

4005. The provisions of this By-Law shall not apply to sounds emitted during and associated with:

- A.** Parades, public gatherings, or sporting events;
- B.** Emergency police, fire, and ambulance vehicles;
- C.** Police, fire, and civil and national defense activities;
- D.** Domestic equipment such as lawn mowers and power saws between the hours of 7 A.M. and 9 P.M.;
- E.** Agricultural operations;
- F.** Public facilities;
- G.** Motor vehicles;
- H.** Trucks and/or truck equipment, and/or other equipment regulated by the Environmental Protection Agency, Department of Transportation, or Federal Agency, which Regulations are in conflict herewith.
- I.** Any regulations adopted under any Federal or State Agency, which are in conflict

herewith.

J. Fishing vessels.

4006. PRESUMPTION

Between the hours of 9:00 P.M. to 7:00 A.M. any noise, which is emitted into the ambient air space above a person's private property exceeding the level of 60 decibels will be presumed to be intrusive and a nuisance and a violation of these standards provided for in this By-Law.

4007. PENALTY AND ENFORCEMENT

Any person who shall violate any of the provisions of this By-Law shall be subject to a penalty of \$50.00 for the first occurrence, \$100.00 for the second occurrence, and \$200.00 for each subsequent occurrence. This By-Law may be enforced through the Non-Criminal Disposition Provisions, the Criminal Procedures for enforcement of By-Laws, through restraining orders and other Court procedures or any combination thereof.

4008. INVALIDITY

Invalidity of any section or portion of this By-Law shall not affect the remaining sections or portions thereof.

ARTICLE XLI

GRANT OR RENEWAL OF LICENSE/PERMIT FOR NON-PAYMENT OF TAXES/FEES

4101. Under the provisions of M.G.L. Chapter 40, Section 57 this By-Law permits the denial, suspension and/or revocation of any license or permit including renewals or transfers issued by any Board to any person, corporation or business enterprise who has neglected or refused to pay any local taxes, fees, assessments, betterment or any other municipal charges.

4101.1 The Tax Collector shall annually furnish to each department, board, commission, or division, hereinafter referred to as the licensing authority, that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than a twelve month period, and that has not filed in good faith a pending application for an abatement of such tax or a pending petition before the appellate tax board.

4101.2 The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers, of any party whose name appears on said list furnished to the licensing authority from the Tax Collector; provided,

however, that written notice is given to the party and to the Tax Collector, as required by the applicable provisions of law, and that the party is given a hearing, to be held not earlier than fourteen days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party. The Tax Collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the licensing authority with respect to such license denial, revocation or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license denial, revocation or suspension. Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the license authority receives a certificate issued by the Tax Collector that the party is in good standing with respect to any and all municipal charges, payable to the municipality as of the date of the issuance of that certificate.

4101.3 Any party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitations to the license or permit and the validity of said license or permit shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.

4101.4 The Board of Selectmen may waive such denial, suspension or revocation if it finds that there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of their immediate family, as defined in section one of chapter two hundred and sixty-eight in the business or activity conducted in or on said property.

4101.5 This By-Law shall apply to all local licenses or permits except the following: open burning (c.48 s.13); bicycle permits (c.85 s.11A); sales or articles for charitable purposes (c.101 s.33); children's work permits (c.149 s.69); clubs, associations dispensing food or beverage (c.140 s.21E); dog licenses (c.140s.137); fishing, hunting, or trapping (c.131 s.12); marriage licenses (c.207 s.28); and theatrical events, public exhibitions (c.140 s.181).

ARTICLE XLII

CONDOMINIUM UNITS

4201. Each individual unit contained in any structure newly created as condominium units, and each unit in all existing structures converted to condominium-type ownership and/or use, shall be required prior to occupancy or sale, whichever occurs first, to comply with all applicable state and/or local building codes, electrical codes, plumbing codes, gas codes, Board of Health regulations including but not limited to the provisions of the State Sanitary Code

(Title V), fire safety codes, and all other applicable health and safety regulations. The issuance of a final occupancy permit by the Inspector of Buildings, and the issuance of a smoke detector certificate from the authorized officer in the Fire Department and a letter from the Board of Health certifying that each unit complies with the State Sanitary Code and Board of Health regulations, shall together be deemed to be full compliance with the above provisions of this By-Law.

4202. A copy of the master deed for each condominium project as it was recorded in the Registry of Deeds, and any subsequent amendments thereto, together with one set of the plans for the project "as built" and recorded, and, if applicable, each amended set of plans, shall be filed with the Building Inspector.
4203. In the event any provision of this By-Law is declared invalid by the Attorney General or by any court of competent jurisdiction, all of the remaining provisions shall remain valid, and in full force and effect.
4204. Violations of the By-Law may be enforced in accordance with the Town of Westport By-Law allowing non-criminal disposition, by any police officer, the Fire Chief, Deputy Fire Chief, the Building Inspector, Wire Inspector, Gas Inspector, Plumbing Inspector, and/or any Board of Health agent or assistant agent. A penalty of fifty (\$50.00) dollars shall be assessed for each violation. Each day, or part thereof, during which a violation continues to exist, shall constitute a separate violation under this By-Law.

ARTICLE XLIII

TOWN WHARVES/DOCKS (By-Law & Regulations)

4301. This By-Law limits the use of the town owned wharves located at Westport Point to commercial fishing boats owned by town residents. A commercial fishing boat shall be defined as follows:

4301.1 A commercial fishing boat be actively used for the sole purpose of catching and selling fish and shellfish. The Wharfinger of the Town of Westport shall enforce this By-Law with the direction of the Board of Selectmen.

4302. **DEFINITIONS**

Boat - Any vessel capable of being used on the water.

Commercial Boat - Any vessel capable of being used on water and in any marine related construction or marine waterways maintenance and so duly licensed from which the owner and/or master, mate and required crew derive their principle source of income.

Commercial Fishing Boat - Any vessel capable of being used on the water and in any marine fishery and so duly licensed from which the owner and/or master, mate and required crew derive their principle source of income.

Skiff - Any of various types of boats small enough for sailing or rowing by one person.

Wharfage - The use of a wharf and associated structures.

Wharfage Fee - The charge or payment for the privileges of wharfage.

Wharfinger - Person appointed by the Westport Board of Selectmen who as agent for the Board has charge of the Wharf.

4302.1 The Wharfinger, in administering his or her duties, shall not only keep in mind the letter of the following provisions and rules and regulations but also the vein in which they were made. To this end the Wharfinger should prescribe to a philosophy which not only permits efficient utilization of the Town Dock by and for the Westport fisherman and the benefit of the Westport fishing industry as a whole but also allow for maximum utilization of the Town Dock to sustain its monetary needs associated with upkeep, upgrading and possible expansion for the benefit of the Town of Westport and the future needs of Westport's citizens.

4303. GENERAL PROVISIONS

4303.1 In all matters regarding the granting of Wharfage, Westport citizens shall be given preference.

4303.2 Any person desiring Wharfage must apply for such to the Board of Selectmen or Wharfinger by means of certified mail.

4303.3 Applicants for Wharfage will be placed on a waiting list. Assignment to the waiting list does not guarantee the applicant dock space nor does it guarantee the applicant dock space on a first come, first serve basis. Rather, the waiting list is one mechanism or criterion by which Wharfage may be assigned when suitable dock space becomes available and the Board of selectmen and Wharfinger may meet the needs of efficient dock use and maximum dock utilization.

4303.4 Any Wharfage applicant claiming resident or citizen status for preferential treatment for Wharfage assignment shall submit satisfactory proof of citizenship or residency in the Town of Westport. Proof of such citizenship or residency shall be the burden of the applicant to the satisfaction of the Wharfinger. Such proof to consist of current Real Estate Tax Receipt, current and legal rent lease agreement of at least a term not considered seasonal or rent receipts affirming that lease agreement, Driver's License, Automobile Registration, Boat Registration, Voter's Registration Listing, children's enrollment in Westport's public school system and any other proof deemed necessary by the Wharfinger to establish whether the applicant actually and physically resides in the Town of Westport as a citizen.

4303.5 Wharfage applicants shall be assigned to the waiting list according to the following criteria and hierarchy:

- A. Commercial Fishing Boats owned by Westport citizens, or corporations owned by Westport citizens.
- B. Commercial Boats owned by Westport citizens or corporations owned by Westport citizens.
- C. Commercial Fishing Boats owned by non-residents or citizens, or corporations owned by non-residents or citizens.
- D. Commercial Boats owned by non-residents or citizens, or corporations owned by non-residents or citizens.

4303.6 Skiffs owned by Westport citizens shall be granted Wharfage according to the following hierarchy:

- A. Skiffs used primarily or in part for commercial fishing.
- B. Skiffs used primarily for recreational fishing.

4303.7 Wharfage privileges shall include, unless otherwise provided, mooring along the wharfs or piers, parking, storage and electric use.

4303.8 Skiff owners cannot be guaranteed parking and storage privileges.

4303.9 In cases where a Wharfage holder sells a vessel to another Wharfage holder, in good standing, then the sold vessel may be allowed to remain in berth with continued Wharfage privileges.

4303.10 In cases where a vessel moored at the Town Dock is sold to a resident, the sold vessel may be allowed to remain at berth and continue with Wharfage privileges provided there are no vessels of similar length and beam owned by Westport citizens or corporations owned by Westport citizens which are ahead of the new owner on the waiting list.

4303.11 In cases where a vessel is sold to a non-resident or corporation owned by a non-resident, that vessel may continue at berth and with Wharfage privileges provided there are no other persons or corporations on the waiting list with vessels which may be accommodated with suitable space on the Town Dock.

4303.12 Wharfage will be granted for a period of one year beginning on January 1st of any one year to December 31st of that year and will be automatically renewed each year except as otherwise provided.

4303.13 The billing for Wharfage Fee for that year will be forwarded to the Wharfage holder sometime during the summer of that year and be due no later than sixty (60) days from the date of issuance.

4304. RULES AND REGULATIONS

4304.1 All boats and skiffs granted Wharfage shall be subject to a Wharfage Fee.

4304.2 All persons using the Town Dock do so at their own risk.

4304.3 No boat or skiff shall moor or otherwise use the Town Dock without first obtaining permission from the Wharfinger except in cases of emergency.

4304.4 Any boat or skiff mooring at the Town Dock without permission and not leaving within a reasonable time after a request for removal by the Wharfinger shall be subject to removal by the Harbor Master at the expense of the owner and/or master and the owner and/or master shall be subject to criminal trespass charges.

4304.5 The northeast section of the Wharf shall be reserved for use by skiffs only.

4304.6 Except for the northeast corner of central Wharf, all other sections of the Wharf and associated piers shall be reserved for use by Commercial Fishing Boats and by Commercial Boats.

4304.7 Commercial Fishing Boat owners or masters and Commercial Boat owners or masters may tie alongside their vessels one skiff without charge so long as that skiff does not interfere with normal operations and traffic on, into, or out of the Town Dock.

4304.8 Any vessel owner accepting Wharfage at the end of the piers does so with full knowledge that any other vessel not granted Wharfage may also use the end of the piers for repairs, refitting, and loading and unloading.

4304.9 Any vessel not granted Wharfage and requiring the end of the pier for loading, unloading, repairs, or refitting must contact both the Wharfinger and the owner and/or master of the vessel as to the time and date as well as length of time needed.

4304.10 No vessel shall unduly hinder or inconvenience vessels assigned to the end of the pier while loading, unloading, being repaired, or refitted.

4304.11 Any vessel requiring the end of the dock for repairs or refitting shall be subject to a daily fee.

4304.12 Any boat not actively engaged as a Commercial Boat or Commercial Fishing Boat shall not be granted Wharfage except when there are no other

actively engaged boats seeking Wharfage provided suitable Wharfage is available.

- 4304.13** Any boat granted Wharfage and has not been actively engaged as a Commercial Boat or Commercial Fishing Boat for the previous year shall not have Wharfage renewed except in cases where no other actively engaged boats are awaiting Wharfage.
- 4304.14** No substances injurious or potentially injurious to the structural integrity of the Town Dock or the marine environment and organisms contained therein shall be stored on the Town Dock except for the purpose of loading and unloading.
- 4304.15** No substances injurious or potentially injurious to the marine environment and organisms contained therein shall be dumped from the Town Dock or any vessel into the Westport River estuary and no such substances shall be pumped from any vessel into said body of water.
- 4304.16** No empty bait barrels shall be stored on the Town Dock except for the purposes of loading and unloading.
- 4304.17** No bait shall be dumped from the Town Dock or any vessel moored along the Town Dock into the Westport River estuary.
- 4304.18** Broken, discarded, or otherwise useless equipment and materials shall not be kept on the Town Dock.
- 4304.19** Parking and storage privileges on the Town Dock for any one vessel shall be confined to an area roughly the length of that vessel and fifteen (15) feet side. In some cases wharf configuration does not permit storage and parking alongside the vessel as previously described, therefore, other parking and storage privileges may be made with the Wharfinger.
- 4304.20** A center strip approximately fifteen (15) feet wide shall be kept open on the piers and wharf.
- 4304.21** No boat or skiff shall in any manner interfere with the right of any other vessel to moor and pass from and into the Town Dock.
- 4304.22** No vehicle or stored material shall interfere with the parking or storage privileges of Wharfage holders.
- 4304.23** No double berthing and/or double tying at the Town Docks unless authorized by the Wharfinger and except in the case of an emergency.

4305. WHARFAGE AND OTHER FEE SCHEDULES

4305.1 All boats, vessels, and skiffs, commercial boats and commercial fishing boats, except as otherwise provided, shall be subject to an annual Wharfage fee of twenty-four (\$24.00) dollars per foot.

4305.2 All vessels using the Town Dock for the purpose of repair or refitting shall be assessed a daily fee of twenty-five (\$25.00) dollars per day, except for the first day and non-emergency uses (i.e. loading, unloading).

ARTICLE XLIV

SHELLFISH AND SCALLOP RULES AND REGULATIONS

(Not a By-Law – For Informational Purposes Only)

4401. SEVERABILITY CLAUSE

If any section, provision, rule or regulation is deemed unlawful or unconstitutional then the remaining sections or portions thereof, provisions, rules and regulations shall remain in effect.

4402. GENERAL PROVISIONS

4402.1 Definitions - (Rules of Construction) In these rules and regulations, unless the context otherwise requires, the following words shall have the following meanings and the following rules of construction shall apply:

Board - The Board of Selectmen of the Town of Westport.

Boat - Watercraft of every description used or capable of being used as a means of transportation on water.

Bushel - A quantity of four (4) pecks equivalent to thirty-two (32) quarts of wet measure or a volume of 2,150.42 cubic inches.

Calendar Week - Any period of seven (7) full days beginning on any Sunday at dawn.

Clam - A marine mollusk of the species Mya arenaria commonly called the soft-shelled clam or steamer.

Closed Area - A closed season for any or all kinds of shellfish or scallops in such waters, flats, and/or creeks deemed necessary or expedient by the Shellfish Constable subject to approval of the Board to plant, grow and protect shellfish or scallops.

Closed Season - The time during which shellfish and/or scallops can not be lawfully harvested.

Commercial Fishermen Permits (Shellfish or Specially Endorsed) – The permit issued by the Massachusetts Division of Marine Fisheries expressly for the purpose of harvesting shellfish and scallops to offer said for sale.

Family - Shall mean and include a husband, wife and dependent(s) providing the husband, wife and dependent(s) are domiciled and living under the same roof and the dependent(s) has not yet reached the age of twenty-one (21).

Head of Family - Person whom assumes responsibility for the family and is so recognized by the Board.

Hinge Width - The distance between the convex apex of the right shell and the convex apex of the left shell.

License - The license issued under the authority of the Board expressly for the purpose of harvesting commercial quantities of shellfish or scallops.

Licensee - Any person to whom a license has been issued.

Non-resident - Any person who neither resides in, nor owns real estate in the Town of Westport but is an inhabitant of the Commonwealth of Massachusetts.

Oyster - A marine mollusk of the species Crassostrea virginica commonly known as the American oyster.

Peck - A quantity of eight (8) quarts of wet measure or a volume of 537 cubic inches.

Permit - The permit issued under the authority of the Board expressly for the purpose of harvesting recreational quantities of shellfish or scallops for domestic use only.

Permittee - Any person to whom a permit has been issued and any family member listed on that permit.

Quahog - A marine mollusk of the species Mercenaria commonly known as the hard-shelled clam, little neck, and cherrystone.

Resident - Any person who actually and physically resides in, or owns real estate having an assessed valuation of three thousand (\$3,000.00) dollars or more in the Town of Westport.

Ropeck Orange Basket – The official Town measuring basket for shellfishing, when leveled at the top.

Scallop - A marine mollusk of the species Argopectin irradians commonly known as the cape cod scallop or bay scallop.

The verb **To Scallop** in all of its moods and tenses; to take or attempt to take or harvest scallops by any method or means whether or not such method or means results in their capture.

Sea Clam - A marine mollusk of the species Spisula solidissima commonly known as the surf clam.

Seed Clam - A soft-shelled clam of a size less than two (2) inches in the longest length.

Seed Oyster - An American oyster of a size less than three (3) inches in the longest length.

Seed Quahog - A hard shelled clam of a size less than one (1) inch shell thickness or hinge width.

Seed Scallop - A cape or bay scallop without a well defined raised annulus or growth ring.

Seed Sea Clam - A surf-clam of a size less than four (4) inches in the longest length.

Shellfish - Shall mean and include soft-shelled clams, eels, marine worms, mussels, oysters, quahogs, razor clams, and sea clams.

The verb **To Shellfish** in all of its moods and tenses; to take or attempt to take or harvest shellfish by any method or means, whether or not such method or means results in their capture. (hand, hand rake, bull rake, tong, fork, plunger, dredge or dive)

Special License - The license issued under the authority of the Board to persons not yet attaining the age of sixteen (16), expressly for the purpose of harvesting commercial quantities of shellfish.

Town - The Town of Westport.

Waters - All waters of the Town within the rise and fall of the tide and the three (3) mile limit of marine jurisdiction as far as the same are applicable to the shellfish and scallop resources of the Town.

4402.2 A person who counsels, aids or assists in a violation of any of these provisions, rules and regulations so adopted by the Board or shares in any of the proceeds of said violation by receiving or processing shellfish and scallops

shall be deemed to have incurred the penalties imposed thereby upon the person of such violation.

4402.3 When deemed necessary or expedient, the harvest of shellfish and scallops, as authorized by the Board, shall be referenced as to the harvesting by lawful means and in a lawful manner. Any reference to the harvesting, or having in possession, of any shellfish and scallops shall include the harvesting, or having in possession, of any part or portion thereof.

4403. CLASSES OF LICENSES, PERMITS, AND FEES

Dredging Licenses – **Taken over by the State**
Fourteen-Day Citizen's Family Shellfish Permits - **\$100.00**
Non-Resident Family Scallop Permit - **\$250.00**
Non-Resident Family Shellfish Permits - **\$200.00**
Resident Family Scallop Permits - **\$50.00**
Resident Family Shellfish Permits - **\$35.00**
Senior Citizen Resident Scallop Permit - **\$10.00**
Senior Citizen Resident Shellfish Permits - **\$10.00**
Commercial Scallop License - **\$300.00**
Commercial Shellfish License - **\$200.00**
Commercial Student Shellfish License - **\$60.00**
Commercial Student Scallop License - **\$60.00**
Duplicate - **\$10.00**

4404. REQUIREMENTS TO OBTAIN LICENSES AND PERMITS

For all classes of licenses and permits it shall be the burden of the applicant to the satisfaction of the issuing authority, the Board or their agent, to prove place of residence or real estate ownership. For all classes of permits, it shall also be the burden of the applicant, to the satisfaction of the issuing authority, the Board or their agent, to prove family membership for each individual to be listed on the permit. Instruments of such proof may consist of a current real estate tax receipt, inclusion in the roles of a current assessor's list, inclusion in the roles of a current census list, children's enrollment in a school system, a valid drivers license, a valid automobile registration, current rent receipts and/or current utility bill receipts showing address and is domiciled in the Town of Westport, and/or any other instrument deemed expedient or necessary by the issuing authority.

4404.1 Dredging License

Shall be issued to any applicant who is a resident of the Town. Said license may also be issued in the name of a boat provided the boat is owned and operated by a resident of the Town.

4404.2 Fourteen Day Citizen's Family Shellfish Permits

Shall be issued to any non-alien citizen of the United States, who being

head of family and neither a resident nor non-resident, is temporarily housed and vacationing in the Town. Applicants shall bear the burden of proof of temporary housing by means of any one, or combination, of the instruments listed in Section 4404.

4404.3 Non-Resident Family Permit (Shellfish and Scallop)

Shall be issued to any non-resident who is head of family. The head of family shall provide the names of the family members entitled to use said permit.

4404.4 Resident Family Permit (Shellfish and Scallop)

Shall be issued to any resident who is head of family. The head of family shall provide the names of all family members entitled to use said permit.

4404.5 Fisherman's License (Shellfish and Scallop)

Shall be issued to any resident who has in their possession a valid Commercial Fisherman Permit or who submits positive evidence that a Commercial Fishermen Permit has been applied for.

4404.6 Senior Citizen's License (Shellfish and Scallop)

Shall be issued to any resident of the Town who has attained the age of sixty-five (65) at the time he or she purchases the permit.

4404.7 Special Shellfish Fisherman's License

Shall be issued to any resident who has not yet attained the age of sixteen (16), when said resident files in the office of the Town Clerk a written statement of the parent, parents or legal guardian granting permission for the applicant to receive said license. Applicants must possess a valid Commercial Fisherman permit or submit positive evidence that a Commercial Fisherman Permit has been applied for.

4404.8 Duplicate

Shall be issued for any class of license or permit as a replacement for loss or by mistake or accidentally destroyed. Duplicate shall also be issued to amend any class of permit when the family status or eligibility of a permittee to use a permit changes.

4405. GENERAL CONSIDERATION FOR ALL CLASSES OF LICENSE AND PERMITS

4405.1 License and permits shall be issued subject to any changes in these provisions, rules, and regulations and any amendments thereto that the Board may deem

necessary and expedient and so adopted under the provisions of Massachusetts General Law, Chapter 130, Section 52.

4405.2 Any licensee or permittee who violates any of these provisions, rules, and regulations may have their license or permit suspended or revoked and canceled by the Board by written notice to person to whom the license or permit was issued. A copy of such notice shall be filed in the office of the Board and shall be prima facie evidence that such notice has been given.

4405.3 Licenses and permits are not transferable and no person shall amend, alter or in any way modify the information contained on a license or permit.

4405.4 No licensee shall be issued nor entitled to use a similar class of permit and no permittee shall be issued nor entitled to use a similar class of license.

4405.5 The age, height, weight, color of eyes and hair and any other identifying features deemed necessary by the Board shall be plainly marked on each license or permit for each licensee and permittee.

4405.6 No person shall shellfish or scallop without a valid license or permit.

4405.7 Every person shall have their license or permit in possession while shellfishing or scalloping and while transporting shellfish and scallops from their beds to shore and shall on demand forthwith display the same along with a valid driver's license or other positive identification and catch to any Westport Selectman, Police Officer, Reserve Police Officer, Shellfish Constable or any Shellfish Deputy Warden and such other officials as the Board may from time to time designate as enforcing persons.

4405.8 Shellfish and scallops shall be brought ashore whole and in shell.

4405.9 Shellfishing and scalloping shall only be between sunrise and sunset, excluding eeling, which shall have no closed season.

4405.10 Unless the scallop closed season is modified under the provisions of the Massachusetts General Law, Chapter 130, Section 73 by the Board, no person shall scallop between April first (1st) and the following September thirtieth (30th) inclusive.

4405.11 No person shall shellfish or scallop in a closed area so plainly marked.

4405.12 While shellfishing or scalloping, shellfish and scallops shall be **IMMEDIATELY** culled and all seed returned to the waters and flats and no person shall move or transport seed of any kind without first obtaining written permission from the Director of the Massachusetts Division of Marine Fisheries and the Westport Shellfish Constable.

4405.13 No person shall take or have in their possession seed clams, seed oysters,

seed quahogs, or seed sea-clams except that a five (5%) per cent by count of seed shall be allowed.

- 4405.14** Clams shall only be taken by a clam fork, clam rake, clam hoe, plunger, or hand; no other device or method shall be used.
- 4405.15** Mussels shall only be taken by hand, hand rake, bull rake, or tongs. No other device or method shall be used except during the scallop season when the use of a scallop drag or dredge, so-called, shall be allowed.
- 4405.16** Oysters shall only be taken by hand, hand rake, bull rake, or tongs. No other device or method shall be used. Oyster Relay Areas shall only be harvested by hand rake or tongs. No other device or method shall be used and oysters will be culled immediately over relay bed.
- 4405.17** Quahogs shall only be taken by hand, hand rake, bull rake, or tongs; no other device or method shall be used except that a dredge may be used outside the waters of the Westport River estuary beginning from a line drawn from Westport light atop the Nubble to the western most tip of Horseneck or Cherry and Webb Point-approximately 331 true.
- 4405.18** No person shall engage in the removal of mussels or scallops while using a drag or dredge, so-called, of more than thirty-six (36) inches in overall width.
- 4405.19** The maximum quantity of scallops to be taken by any one boat on any one day shall be limited to that allowed two (2) licenses or two (permits) or one (1) license and one (1) permit.
- 4405.20** Scallops shall only be taken by hand, hand rake, bull rake, tongs, dig net, or dredge; no other device or method shall be allowed.
- 4405.21** Within the waters so-defined under Article XLIV, Section 4405.7 and all other waters seaward to the twelve (12) foot mean low water contour, sea clams shall only be taken by hand, hand rake, bull rake, tongs, or dip net; no other device or method shall be used.
- 4405.22** Whoever catches or takes from the waters any starfish or drills and winkles and their egg cases, or cockles shall deposit the same at some place at least five (5) feet above the high watermark.
- 4405.23** No person shall shellfish or scallop within one hundred (100) feet of any municipal aquacultural enterprise or in any other way disturb the growth of shellfish or scallops contained in or on the racks, rafts, trays, or floats of a municipal aquacultural enterprise so plainly marked. No person shall take or directly or indirectly injure the shellfish or scallops contained in or on aquacultural devices so mentioned. No person shall injure, deface, destroy,

remove, or trespass upon any municipal aquacultural device or any mark or bound used to define the extent of the municipal aquacultural enterprise, or tie or fasten any vessel thereto, or injure, deface, destroy, remove, or trespass upon any materials used as part of or in conjunction with any municipal aquacultural and propagative enterprise so plainly marked.

4405.24 The destruction of shellfish beds, scallop beds, and marshlands while shellfishing or scalloping is strictly prohibited.

4406. FAMILY PERMITS

4406.1 The names of family members qualifying to use a family permit shall have their names plainly marked on the permit.

4406.2 Family permits are only valid for those persons listed on the permit.

4406.3 No more than one (1) permit of any one class shall be issued to a family.

4406.4 Senior Citizen Resident Permit is valid only for the senior citizen to whom the permit is issued and their spouse who shall have his or her name listed on the permit.

4406.5 No more than one class of Senior Citizen Resident Permit shall be issued to any one senior citizen including spouse.

4406.6 Non-Resident Family Shellfish Permits, Resident Family Shellfish Permits, and Senior Citizen Resident Shellfish Permits are valid for any one year during the period between January first (1st) and December thirty-first (31st) inclusive of that year.

4406.7 Non-Resident Family Scallop Permits, Resident Family Scallop Permits, and Senior Citizens Scallop Permits are valid only during the period of October first (1st) of any one year to the succeeding March thirty-first (31st) inclusive unless the scallop closed season is modified by the Board as provided under the Chapter 130, Section 73 of the Massachusetts General Laws.

4406.8 Fourteen Day Citizen's Family Shellfish Permits are valid only during the period from the date of issuance hence for fourteen (14) days inclusive.

4406.9 Not more than one-half ($\frac{1}{2}$) basket of clams including shells (to be taken in one day) per week on any one (1) permit.

4406.10 Not more than one-half ($\frac{1}{2}$) basket of mussels including shells (to be taken in one day) per week on any one (1) permit.

4406.11 Not more than one-half ($\frac{1}{2}$) basket of oysters including shells shall be taken

during any one (1) calendar week on any one (1) permit.

- 4406.12** Not more than one (1) peck of quahogs including shells shall be taken during any one (1) day on any one (1) permit and not more than one-half ($\frac{1}{2}$) bushel of quahogs including shells shall be taken during any one (1) calendar week on any one (1) permit.
- 4406.13** Not more than one and one half ($1\frac{1}{2}$) baskets of scallops including shells shall be taken during any one (1) calendar week on any one (1) permit.
- 4406.14** Not more than one (1) bushel of sea-clams including shells shall be taken during any one (1) day on any one (1) permit and not more than two (2) bushels of sea-clams including shells shall be taken during any one (1) calendar week on any one (1) permit.
- 4406.15** No permittee will sell or offer for sale, for money or other considerations, any shellfish and scallops.

4407. COMMERCIAL FISHERMAN'S LICENSE

- 4407.1** Fisherman's and Special Fisherman's Licenses are valid only for the one (1) person to whom the license is issued.
- 4407.2** Fisherman's and Special Fisherman's Shellfish Licenses are valid for any one (1) year during the period between January first (1st) and December thirty-first (31st) inclusive of that year.
- 4407.3** Scallop Fisherman's Licenses are only valid during the period of October first (1st) of any one year to the succeeding March thirty-first (31st) inclusive unless the scallop closed season is modified by the Board as provided under Chapter 130, of the Massachusetts General Laws.
- 4407.4** No more than one (1) class of license shall be issued to any one (1) resident.
- 4407.5** Special Fisherman's Shellfish Licenses are not valid during school hours.
- 4407.6** Dredging Licenses are valid for any one (1) year during the period January first (1st) and December thirty-first (31st) inclusive of that year.
- 4407.7** No shellfish and scallops shall be removed from the shores of any area of the Town by any licensee unless the container thereof has been tagged and labeled with said tag or label to bear thereon the quantity of shellfish or scallops contained therein, the size or sizes of shellfish contained therein, the area (BB1--Area outside the mouth of river; BB2--Richmond Pond; BB3--West Branch; BB4--East Branch) within the Commonwealth of Massachusetts from which the shellfish or scallops were taken, the number of the Commercial Fisherman Permit (State License) under which the shellfish or scallops were taken, the date the shellfish or scallops were taken and the

name of the licensee.

4407.8 Not more than one (1) basket of clams including shells shall be taken during any one (1) day on any one (1) license.

4407.9 Fisherman's and Special Fisherman's License daily mussel limit shall be unlimited.

4407.10 Not more than three (3) baskets of oysters including shells shall be taken during any one (1) day on any one (1) Shellfish Fisherman's License.

4407.11 Not more than two and one-half (2½) bushels of oysters including shells shall be taken during any one (1) day on any one (1) Special Fisherman's Shellfish License.

4407.12 Not more than four (4) bushels of quahogs including shells shall be taken during any one (1) day on any one (1) Shellfish Fisherman's License.

4407.13 Not more than one and one half (1½) bushels of quahogs including shells shall be taken during any one (1) day on any (1) Special Shellfish Fisherman's License.

4407.14 Not more than five (5) baskets of scallops, including shells shall be taken during any one (1) day on any one (1) Scallop Fisherman's License.

4407.15 Not more than three hundred and fifty (350) bushels of quahogs including shells shall be taken during any one (1) calendar week on any one (1) Dredging License.

4407.16 Not more than one hundred (100) bushels of surf clams, including shells, shall be taken during any one (1) day and including every day of the week between sun up and sunset, outside twelve (12) feet of water at low tide from November 1st to April 30th and twenty (20) feet of water at low tide from May 1st to October 30th and outside of Town waters two hundred (200) bushels are allowed per day. (State Reg. 6.08)

4407.17 Not more than ten (10) bushels of surf clams in any one (1) day on any one Shellfish Fisherman's License.

4408. DIVING REGULATIONS FOR HARVESTING OF SHELLFISH

4408.1 A flag should be displayed for each diver in the water. Non-compliance will be a \$100 fine.

4408.2 Skin diving with mask and snorkel, and scuba diving with air tanks, may be used to take shellfish in specific areas when prescribed by the Selectmen. In no case will scuba diving for shellfish be allowed in depths of less than seven (7) feet. Any commercial shellfisherman harvesting by scuba diving shall display permit numbers on the flag with Massachusetts permit numbers not

less than three (3) inches in height no less than ½ inch in thickness or width of line. Both skin and scuba divers shall display a dive flag that they shall carry with them attached by a line to a basket or weight. Divers must stay within a ten (10) foot radius of their flag while shellfishing. Non-compliance with any part of this regulation shall be a fine of not less than one hundred (\$100) dollars for the first offense, two hundred (\$200) dollars for the second offense and three hundred (\$300) dollars for the third offense.

4408.3 No scuba or skin diving for shellfish is allowed within fifty (50) feet of a marked channel. Non-compliance with this regulation shall be one hundred (\$100) dollars for the first offense, two hundred (\$200) dollars for the second offense and three hundred (\$300) dollars for the third offense.

4408.4 There will be no harvesting of shellfish by any means within any properly marked grant sites, except those with special permission or grant owner or Shellfish Constable. Fine assessed to violators shall be one hundred (\$100) dollars.

4408.5 When scuba or skin diving for shellfish, the diver will cull his or her catch immediately as it is being caught and release under size shellfish at that site. Non-compliance with this regulation is a one hundred (\$100) dollar fine currently in the Shellfish Regulation booklet.

4409. ENFORCEMENT

4409.1 Penalties

The foregoing provisions, rules, and regulations shall be enforced by any Westport Selectman, Police Officer, Reserve Police Officer, Shellfish Constable, or any Shellfish Deputy Warden and any other official the Board may designate as enforcing persons. Enforcing persons may in their discretion initiate criminal proceedings for any and all violations of these provisions, rules, and regulations in which case the penalties shall be as provided in Massachusetts General Law, Chapter 130. Alternatively, or in addition to initiating criminal proceedings, enforcing persons may refer violations of these provisions, rules, and regulations to the Board. The Board shall notify the concerned licensee or permittee as to the time and place of the hearing at which the Board may, at their pleasure, suspend or revoke and cancel licenses and permits according to the following policy:

4409.2 First Offense

Suspension of license or permit for thirty (30) days, in which case the licensee or permittee shall not apply for any license or permit for thirty (30) days.

4409.3 Second Offense

Suspension of license or permit for sixty (60) days, in which case the licensee or permittee shall not apply for any license or permit for sixty (60) days.

4409.4 Third Offense

Suspension of permit for one (1) year, in which case the licensee or permittee shall not apply for any license or permit for one (1) year.

4409.5 Fourth Offense

In the event a fourth offense is incurred or a licensee or permittee otherwise shows total disregard for these provisions, rules, and regulations, the Board may revoke and cancel the license or the permit for a period of time as so determined by the Board not to exceed five (5) years, in which case the licensee or permittee shall not apply for any license or permit for a period of time so determined by the Board not to exceed five (5) years.

4409.6 No fee received for a license or permit, which has been suspended or revoked and canceled shall be refunded.

4410. NON-CRIMINAL DISPOSITION

Town By-Law affords enforcing persons a third option of enforcing these rules and regulations, non-criminal disposition. If the method of non-criminal disposition is used by an enforcing person, the specific penalties for a violation of these rules and regulations shall be:

4410.1 Violation And Penalties:

Section 4405., Paragraphs 4405.7, 4405.12, 4405.19, 4405.22 - **\$15.00**

Section 4407., Paragraph 4407.7 - **\$15.00**

Section 4405., Paragraphs 4405.14, 4405.15, 4405.16, 4405.18, 4405.20 - **\$25.00**

Section 4405., Paragraphs 4405.6, 4405.8 - **\$50.00**

Section 4406., Paragraphs 4406.9, 4406.11, 4406.12, 4406.13, 4406.14 - **\$50.00**

Section 4407., Paragraphs 4407.8, 4407.10, 4407.11, 4407.12, 4407.13, 4407.14, 4407.15 - **\$50.00**

Section 4405., Paragraphs 4405.13, 4405.24 - **\$100.00**

Section 4405., Paragraphs 4405.9, 4405.10, 4405.11, 4405.17, 4405.21, 4405.23 - **\$200.00**

Section 4406., Paragraph 4406.15 - **\$200.00**

Section 4405., Paragraph 4405.6 - **\$100.00**

ARTICLE XLV

WATERWAYS REGULATIONS (Not a By-Law – For Informational Purpose Only)

4501. PURPOSE

The purpose of the regulations is to standardize mooring practices and behavior within the waterways to fully utilize the area in the Westport Rivers, while implementing uniform safety practices; also to provide adequate space for all types of recreational usage.

Copies of these regulations are available from the Harbor Master or from the Town Clerk.

4502. DEFINITIONS

- A. **Mooring Areas** - Shall mean those portions of the Westport Waters, which shall be designated as such by the Board of Selectmen and/or Harbor Master.
- B. **Registered Owner** - Shall mean the holder of a mooring space assigned to him by the Mooring Assignment Committee and/or Harbor Master
- C. **Mooring Assignment Committee** - Shall consist of the Harbor Master and one member of the Harbor Advisory Committee.
- D. **Commercial Mooring** - Shall mean any permanent mooring placed in the Westport Waters for which a rental fee may be charged. They shall only be granted to marine service businesses.
- E. **Private Mooring** - Shall mean any permanent mooring placed in the Westport Waters for the owner's private use.
- F. **Mooring Year** - Will date annually from April 1st through March 31st, and is the period for which mooring space is assigned.
- G. **Yearly Waiting List** - All new mooring permits shall be filed with the Harbor Master. The Mooring Assignment Committee shall, upon available space, assign the owner a mooring space. If space is unavailable the committee will assign the applicant to the Harbor Master to a "Yearly Waiting List". All new applications shall be added to this list in order received. Upon availability of space, the committee will assign moorings based on the order of this list. As of April 1st 1998, all applicants on the Mooring Yearly Waiting List must reapply before April 1st of

each year to remain active on the Yearly Waiting List. Those applicants on the Waiting List who do not reapply by April 1, will be dropped from the Waiting List. The Mooring Assignment Committee will determine available space.

- H. Docked Boats** - Shall mean any boat that is tied to a dock, pier, slip, clothesline system or placed on a beach below the high water mark, within the Westport Waters of areas A, B, & C or not registered under the mooring regulations.
- I. Marina** - Shall mean any facility, which provides dockage or berthing for more than five (5) boats that are not registered to the facility owner and may also provide services of a vessel (see definition below).
- J. Harbor Master** - As appointed per CH 102 M.G.L. (Mass. General Laws)
- K. Personal Watercraft** - Personal watercraft means a small vessel which uses an inboard motor powering a water jet pump as it's primary source of motive power, and which is designed to be operated by persons sitting, standing or kneeling on the vessel. This term includes but is not limited to a jet ski, wet bike, or surf jet, so called.
- L. Vessel Service Facility** - A shorefront commercial facility providing one or more of the following: vessel construction, repair or servicing; vessel storage, hauling and launching; the sale of vessels; the sale of supplies and services for vessels and their equipment and accessories; berthing or dockage facilities for not more than five vessels not being serviced or repaired.
- M. Vessel** - Every description of watercraft, other than a sea/float plane on water, used as a means of transportation on the water. Specifically excluded by this definition are floating homes or dwellings or "houseboats".
- N. Dwelling** - is a structure used in whole or part for human habitation. A dwelling does not include a trailer or mobile home however mounted, or a vessel.

4503. MOORING & DOCKING REGULATIONS

- A.** No mooring shall be placed In the Westport Rivers (areas A, B, & C) unless they are in compliance with these regulations.
- B.** A moratorium on new moorings has been in effect per order of Westport Board of Selectmen. As of April 1, 1989 the moratorium has been amended to read: "New PRIVATE moorings are permitted in areas " A & C" within 100 feet of the High Water Mark and in area "B" between Grinnell Rock and Bial Pt, and between Charlton Wharf and Canoe Rock within 100 feet of the high water mark, excluding all islands in all areas of the Westport Rivers. These moorings shall be granted conditionally by the Mooring Assignment Committee. As of April 1, 2009 New private moorings will be allowed within 150 feet of MHW (Mean High Water) if space allows, in the following areas: Off of Cummings Lane; Hillcrest Acres;

Shirley Street; Florence Street; Petty Lane; and 1634-1636 Drift Road and from 504 River Road –South to Canoe Rock in the West River.

- C. An identification sticker will be issued to each registered mooring holder upon receipt of the annual registration fee. This sticker must be attached to the outside of the hull of the boat, aft on the port side. Failure to display said sticker will result in a **\$50.00** fine and/or subject the owner to revocation of his mooring registration.
- D. All Moorings shall be registered with the Harbor Master each year. The registration period for any year shall end at 12:00 noon, April 1. Any moorings not registered before this time may be canceled and removed by the Harbormaster at the owner's expense and the mooring space allocated to the Yearly Waiting List.
- E. Waterways Use Fee, Commercial and Private mooring permits: The Waterways Use Fees shall be per/foot as determined annually by the Board of Selectmen by March 1 of each year. All Moorings, Commercial and Private shall require a permit and the rate will be determined annually by the Board of Selectmen. Boats ten feet or less are exempt.
- F. A mooring location is transferable only on the approval of the Mooring Assignment Committee and current owners of moorings shall have preference over the Yearly Waiting List. Transfers should be filed with the Harbor Master.
- G. Owners who register moorings that are lost or are not usable in their present state, shall have their registrations voided and not renewed. Any mooring that is not visible by August 1st shall be considered abandoned, unless recently lost, and the space allocated to those on the Yearly Waiting List.
- H. No private mooring may be rented, sold or transferred without prior written permission of the Mooring Assignment Committee. Any private mooring owner who has not used his mooring after one mooring year will forfeit his mooring location.
- I. Boat owners failing to pay excise tax on their boats shall be liable for loss of mooring and or dockage privileges and/or removed from same at boat owner's expense.
- J. The Harbor Master may permit temporary use of the mooring upon application of the owner. Temporary means to the end of the calendar year.
- K. No vessel shall occupy a mooring for which it is not registered without advance permission of the mooring owner and Harbor Master. The Harbor Master has the authority to move any vessel violating the provisions of these regulations, and such movement shall be at the risk and expense of the owner. At no time should any vessel be tied to a mooring inconsistent with the mooring tackle regulations.
- L. No more than two vessels may be rafted at any time. The raft must have a qualified

operator on board at all times.

- M.** Assignment of mooring space shall be made by the Mooring Assignment Committee. At such time as a mooring space shall become available in Westport Harbor, the committee shall assign the space to the first person on the list provided the vessel fits within the space available. The Mooring Assignment Committee will maintain this list. If the vessel is too large, the assignment will be made to the first vessel on the list that will fit in the mooring space.
- N.** No mooring shall be set within the marked navigable channels nor shall any part of any vessel moored obstruct said channels. Any vessel not in compliance shall be moved by the Harbor Master at the owner's risk and expense.
- O.** No Mooring, after being set, shall be moved or in any way changed or sold without the approval of the Harbor Master.
- P.** Owners of moorings are forbidden to change the size of a boat on their mooring without advanced approval of the Harbor Master.
- Q.** No private mooring/owner shall permit the temporary use of his mooring without advanced notice to the Harbor Master.
- R.** Commercial mooring and Marina owners shall provide to the Harbor Master by July 1st of each year, an alphabetical list of the current renters of moorings and slips to include: name of boat owner, name of boat, type, year, and length of vessel, registration or documentation numbers, town where excise tax is paid, private and business address and phone numbers of renters. The Harbor Master shall send a copy of this information to the Westport tax assessors.
- S.** Each mooring buoy shall be colored white with a horizontal blue stripe surrounding the middle and marked with the mooring registration number in (3) three inch numbers, (boat name is optional).
- T.** Moorings that are not properly marked as stated are subject to removal at the owner's risk and expense.
- U.** "Winter logs" are prohibited. Winter floats if used must be 6" minimum diameter and spherical in shape either white or orange in color with mooring permit number marked on it. Winter floats if used shall be removed by June 1st of each year and not set before October 1st of each year.
- V.** The Registered Owner shall be required to maintain his mooring in safe condition. Any chain, shackle, swivel or other tackle, which has become warped or worn by one-third its normal diameter, shall be replaced.
- W.** Failure to maintain a safe mooring hereunder shall be cause for revocation by the Harbor Master. The Harbor Master and his designated agents may inspect any mooring at any time to determine compliance with this section.

- X. No commercial moorings shall be placed in area "C" of the Westport Waterways.
- Y. The Harbor Master may in any emergency situation or situation requiring immediate attention take any action regarding these regulations which shall be temporary until the Mooring Assignment Committee meets at which meeting the Mooring Assignment Committee shall affirm, modify or rescind the action.
- Z. Boats over ten (10) feet in length that are docked at commercial or private facilities in the Westport waters of areas A, B, & C shall be registered with the Harbor Master by July 1st of each year. All new registrations shall be by August 1st.
 - 1. An identification sticker shall be issued upon registration and should be applied as per mooring regulations. Anyone failing to display said sticker properly, aft on the port-outside, shall be subject to penalties and fines under paragraph A of "Enforcement and Fines."
 - 2. Any boat that is docked or moored in a private dock or slip without the written permission of the owner shall be subject to a \$50.00 fine and removal by the Harbor Master or his agent at the boat owner's expense.
- AA. "Houseboats / live-aboard Dwellings" are permitted only in area "B" of the Westport Waterways, must be owner occupied, and have a minimum holding / waste tank with a capacity of 12 gallons.

4504. MOORING TACKLE REGULATIONS

A. Specifications Of Minimum Requirements For Moorings Installed Are As Follows:

Length of Boat	Mushroom	Cement Block or Equiv.
0 ---- 16 ft.	150 lb.	24" x 24" x 08"
17 ---- 25 ft.	250 lb.	30" x 30" x 08"
26 ---- 32 ft.	500 lb.	30" x 30" x 12"
33 ---- 50 ft.	1000 lb.	48" x 48" x 15"
over 50 ft	Subject to ruling by Harbor Master	

Note: All cement blocks must be of the reinforced type.

Hairpins must be 25% heavier than chain specifications.

All shackles wired with Stainless or Equivalent.

B. Chain Size

Length of Boat	Diameter
----------------	----------

0 ----- 16 ft.	1/2"
17 ----- 25 ft.	5/8"
26 ----- 32 ft.	3/4"
33 ----- 50 ft.	7/8"

C. Pennant Diameter

Length of Boat	Nylon or Equivalent
0 ----- 16 ft.	1/2"
17 ----- 25 ft.	5/8"
26 ----- 32 ft.	3/4"
33 ----- 50 ft.	7/8"

D. Scope

Length of chain for flotation buoy: --- Water Floor to 2 ft. above maximum high water.

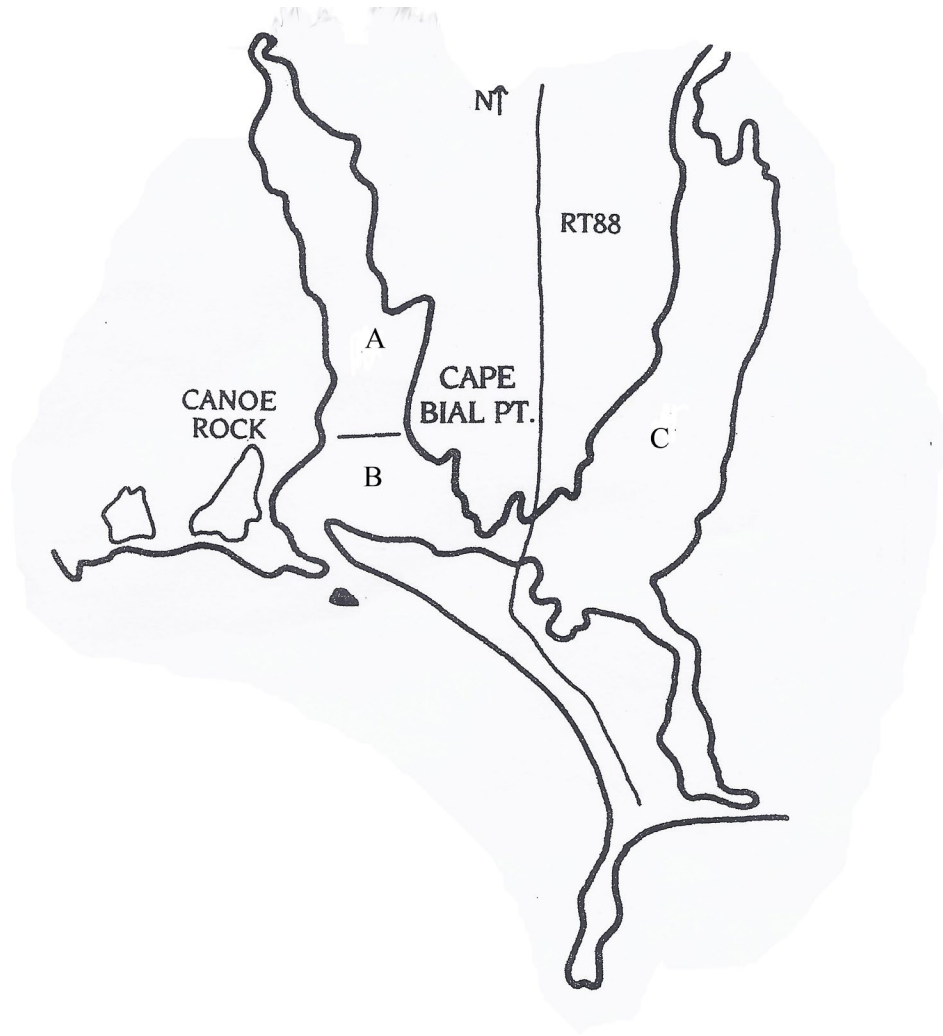
Length of pennant --- 2/3rds of the length of the boat.

4505. BUOYS

The use of spars for flotation shall be prohibited. Only cans, balls or styrene-type chain flotation shall be used. In all types of flotation buoys, other than metal, chain or a metal rod must be passed through the buoy connecting the mooring pennant to the mooring chain.

All chain flotation buoys shall be plainly and clearly visible above the tide level at all times.

Boats 25 feet or less can use a styrene or Styrofoam type float, with a line passing through its center. This float shall be white with a blue stripe around it



4506 WATERWAYS RULES AND REGULATIONS

- A. Speed in all mooring areas - No boat shall operate at a speed greater than headway speed, which shall cause a wash or wake that may endanger other property or life.
- B. Waterways Sections - **Section A** - An area of the West Branch of the Westport Rivers that begins at a line drawn from Canoe Rock to Point Bial and all areas North.

Section B - An area from the Nubble and south of Section A to boat ramp at Point Bridge (Rte. 88).

Section C - An area from Point Bridge including all of the East Branch of the Westport River to the Narrows North of Donovan's Lane.
- C. **Water Skiing** – As herein before permitted is subject to the provisions of the Chapter 90B General Laws of the Commonwealth of Massachusetts and to the further restriction that there shall be no water skiing, within four hundred (400) feet of bathers, divers, piers, wharves, floats, moored boats or any shore, or within a

marked channel. "Water skiing" shall include towing or manipulation of a wake board, knee board, tube, surfboard or other similar devices behind a motorboat. No water skiing activity shall occur between the hours of sunset and sunrise.

- D. **Personal Watercraft** - As herein before permitted is subject to the provisions of the Chapter 90B General Laws of the Commonwealth of Massachusetts and to the further restriction that there shall be no personal watercraft operation within four hundred (400) feet of bathers, divers, piers, wharves, floats, moored boats or any shore unless at "headway speed". Personal watercraft shall include all jet skis, motor propelled surfboard or water bikes. No personal watercraft operation shall occur between the hours of sunset and sunrise.
- E. **Fishing** - All vessels shall use care and courtesy when passing under Point Bridge or by boats where people are fishing. No fishing is allowed over main channel from any bridge.
- F. **Wind Surfing** - Windsurfers are not to operate in the Main Channels of Section B or in concentrated Mooring Areas. Free access across the channel at any point is permitted but repeated crossings will not be permitted.
- G. **Navigational Aids** - No vessel shall tie to any navigational channel markers within the Westport Waterways.
- H. **Diving From Point Bridge (Rte.88) shall be prohibited.**
- I. **Sanitation Devices** - Westport Tidal Waterways are a Zero Discharge zone. The discharge of sewage, garbage, rubbish or other debris from vessels and dwellings on the Westport Waterways is prohibited.

A holding tank pump-out facility is maintained by the Town of Westport. The Westport Harbor Master also operates a floating pump-out vessel for area "B" of the Westport Waterways. Pump outs may be scheduled by calling the Harbor Master.
- J. **Liquor** - No persons shall operate any vessel on the Waterways of Westport while they are under the influence of intoxicating liquor, narcotic drug, barbiturate or marijuana.
- K. **Negligent Operation** - No persons shall operate any vessel on the Waterways of Westport or manipulate any water skis, sailboats, surfboards, jet skis or similar device thereon in a negligent manner so that the lives or safety of the public might be endangered.
- L. **Reporting Accidents** - All boating accidents occurring in Westport Waters, where damage exceeds \$100.00 or results in a death, missing person or requires medical treatment more than first aid, shall be reported to the Harbor Master and to:

Massachusetts Environmental Police & MEP Communications Center
175 Portland Street
Boston, MA 02114
Tel (617) 727-3905

175 Portland Street
Boston, MA 02114
Tel (617) 727-6398

and also reported to the nearest U.S.C.G. facility if damage is over \$200.00.

- M. **Scuba Diving** - Diving and snorkeling are prohibited in the Westport Waters within 50 feet of any marked Channel. Divers must display all state and Coast Guard regulated devices.
- N. **Winter Mooring in Area B** – No boat shall remain on its mooring in Area B between the dates of December 21st and March 21st.

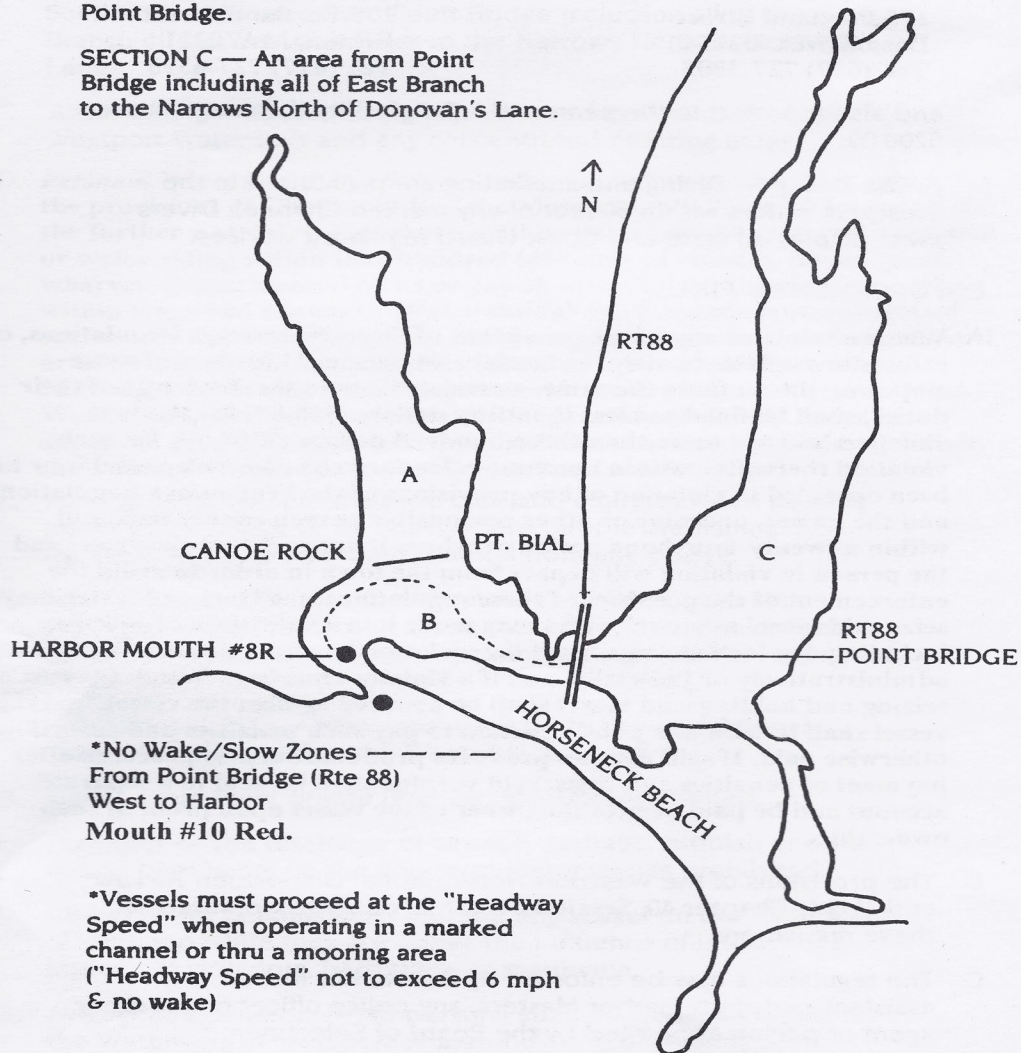
4507. **ENFORCEMENT & FINES**

- A. Whoever violates any of the provisions of these Waterways Regulations, or refuses or neglects to obey the lawful and reasonable orders of those empowered to enforce the same, or resists them in the discharge of their duties, shall be fined not less than fifty dollars (\$50.00) for the first violation and not more than three hundred dollars (\$300.00) for each violation thereafter within the same calendar year. Where a vessel is or has been operated in violation of any provisions of the Waterways Regulations and the owner, operator or other responsible person cannot be found within a twenty-four-hour period or where it appears that the vessel and the person in violation will depart from the town in order to avoid the enforcement of the penalties of these regulations, the Harbor Master may seize said vessel as security and may move it to a safe place of storage, including dry land storage, until the violation has been disposed of administratively or judicially, and if a violation has been found, the cost of seizing and holding said vessel shall be assessed against the vessel and the vessel shall be sold at a public auction to pay such penalties and costs if not otherwise paid. If said auction produces surplus proceeds after payment of penalties and costs, said surplus shall be held in a separate account and be paid over to the owner of the vessel upon proof of such ownership.
- B. The provisions of the Westport Non-Criminal Disposition by-law and M.G.L. Chapter 40, Section 21D shall apply to violations of these regulations.
- C. The regulations may be enforced by the Harbor Master, any Assistant or Deputy Harbor Masters, any police officer or any other agent or person appointed by the Board of Selectmen.

SECTION A — North of a line from Canoe Rock East to Point Bial in West River.

SECTION B — Area from Harbor entrance and south of Section A to Point Bridge.

SECTION C — An area from Point Bridge including all of East Branch to the Narrows North of Donovan's Lane.



ARTICLE XLVI

POLICE OR FIRE FALSE ALARM CHARGE

4601. DEFINITIONS

The following definitions shall apply in the interpretation and the enforcement of this By-Law:

Alarm Systems - Shall mean any assembly of equipment and devices arranged to signal the presence of a hazard requiring urgent attention to which the Police or Fire Department are expected to respond.

False Alarm - Shall mean the activation of an alarm system through a mechanical failure, accidental tripping, misoperation, improper installation, malfunction, misuse, or the neglect of the owner or lessee of an alarm system, or of their employees or agents. Upon failure of the Police or Fire Departments to find any evidence of intrusion or other legitimate need or legitimate cause for activating an alarm system a rebuttable presumption of false alarm will be made. False alarm shall not include false alarms caused by earthquakes, violent winds, or external causes beyond the control of the owner or lessee of the alarm system.

Alarm User – Any person who is the owner or person in charge of premises where an alarm system is maintained within the Town of Westport.

4602. STANDARDS FOR ALARM SYSTEMS

Any alarm system intended to cause a Police or Fire Department response shall meet the following standards:

4602.1 All alarm systems shall be in compliance with NFPA 101, Life Safety Code, Section 7-6.1.3.

4602.2 All equipment installed after the effective date of this By-Law shall be Underwriters Laboratory approved.

4602.3 All alarms installed after the effective date of this By-Law, which has an audible type alarm shall be equipped with an automatic shut-off device, which will shut off the audible component of the alarm within fifteen (15) minutes of activation.

4602.4 All existing alarms shall have such deactivation time installed or programmed by December 31, 2002.

4603. FALSE ALARM CHARGES

Any person who maintains or has connected an alarm system which has caused any signal, message, or alarm to be transmitted to the Police Department or Fire Department either by direct telephone or other communication which has been determined to be a false alarm shall pay a false alarm charge to the Town as follows:

4603.1 First through third false alarm - **No charge**

4603.2 Fourth through sixth false alarm - **\$25.00 each**

4603.3 Seventh or more false alarm - **\$100.00 each**

4604. NOTICE OF DISCONNECT FOR FAILURE TO PAY

In the event that any person responsible for the operation of an alarm fails to pay within

thirty (30) days the false alarm charges assessed against them in accordance with the provisions of this By-Law, the Chief of Police or Fire Chief shall cause to be sent to that person a notice that the alarm will be disconnected from the Police or Fire Departments. Any person receiving such a notice shall have thirty (30) days from the date received to show just cause why that alarm should not be disconnected. In the absence of just cause, the alarm shall be disconnected at the end of the thirty-day period.

4605. PENALTY

Any person who shall violate any of the provisions of these By-Laws shall be liable to a fine of fifty dollars (\$50.00) for each violation. Each day shall constitute a separate offense.

4606. RESPONSIBILITY TO REGISTER ALARM SYSTEMS

4606.1 Every alarm user shall register an alarm system by submitting to the Chief of Police/Chief of Fire (as applicable) their name, the name(s) of persons authorized to respond to an emergency signal transmitted by an alarm system and who can open or provide access to the premises where the alarm is located.

4606.2 All existing burglar alarm systems shall be registered with the Town of Westport Police Department before October 1, 2002.

4606.3 All burglar alarm systems installed after the effective date of this By-Law shall be registered with the Chief of Police within thirty (30) days of the date of installation.

4606.4 Penalty:

Failure to comply with responsibility to register shall be punishable by a fine of one hundred dollars (\$100) for each offense.

4607. EQUIPMENT LIMITATIONS

Automatic Dialer Devices Prohibited: It shall be unlawful to install a mechanical protection device that is automatically keyed to and/or activates the telephone line(s) controlled by and/or listed to the Westport Police or Fire Department. All such devices installed before the effective date of this bylaw shall be removed before December 31, 2002.

4607.1 Penalty:

Failure to comply with any Equipment limitations as described above shall be punishable by a fine of one hundred dollars (\$100) for each offense.

4608. FALSE ALARMS

4608.1 Notice:

After the police department or fire department has recorded three (3) separate false alarms from an alarm user within a twelve month period, the Police Chief/Fire Chief or their designee, shall notify the alarm user, in writing, of such facts, including the dates and times of each alleged false alarm.

4608.2 Testing:

All users must notify the police department or fire department (whichever is applicable) in advance of any testing equipment. Failure to notify the police or fire department in advance of testing shall constitute a false alarm and be subject to the assessment schedule contained herein.

4609. APPLICABILITY

This bylaw shall be subject to the provisions of G.L. c.40, Section 21D for non-criminal enforcement.

4610. LIMITATIONS OF LIABILITY

Notwithstanding the provisions of this By-Law, the Town, its departments, officers, agents, and employees shall be under no obligation whatsoever concerning the adequacy, operation or maintenance of any alarm system or of alarm monitoring facilities. No liability whatsoever is assumed for the failure of such alarm devices for monitoring facilities or for failure to respond to alarms or for any other act or omission in connection with such alarm devices. Each alarm user shall be deemed to hold and save harmless the Town, its departments, officers, agents and employees from Liability in connection with the alarm users alarm device.

ARTICLE XLVII

VACCINATION OF CATS AGAINST RABIES

4701. Whoever is the owner or keeper of a cat, three months of age or older, shall cause such cat to be vaccinated against rabies by a licensed veterinarian. Such owner or keeper shall procure a veterinarian's certificate that such cat has been so vaccinated and setting forth the date of such vaccination and the duration of immunity, or a notarized letter from a veterinarian that a certificate was used, or a metal rabies tag bearing an expiration date indicating that such certification is still in effect in order to verify immunity. (Referenced in Article 2201. Section 2203.2)

ARTICLE XLVIII

RECYCLING AND SOLID WASTE

- 4801.** Anyone disposing of solid waste into a public Westport Solid Waste Facility shall remove from said solid waste any materials deemed recyclable as described in a list to be adopted by the Board of Health in effect at the time of disposal. Such recyclable materials shall be separated and if disposed of in Westport, with other similar items into a Board of Health approved recycling facility.
- 4802.** Non-recyclable solid waste shall be free of recyclable materials as described in a list to be adopted by the Board of Health to the extent that the non-recyclable solid waste contains no more than 10% by volume recyclable materials.
- 4803.** It shall be the responsibility of the disposer of the solid waste that recyclable materials are separated from the waste stream and disposed of at a recycling facility.
- 4804.** Any person who violates any provision of this By-Law shall be required to remove the unacceptable solid waste from the landfill. Each separate violation shall constitute a separate offense.
- 4805.** Any Town Board, Commission or Officer establishing or adopting a rule, regulation or procedure for the disposal or transfer of solid waste shall treat commercial waste in the same manner as household or residential waste. This requirement specifically does not apply to industrial waste or demolition materials.

Industrial waste is defined as waste in any form from the manufacture or production of a product including, but not limited to, hazardous material, toxic material, sludge, or other materials deemed industrial by the Board of Health.

ARTICLE XLIX

ANTI-LITTER

4901. GENERAL PROVISIONS

No person shall throw, place or cause to be thrown or placed upon any street, way or sidewalk or public property or private property without the written consent of the owner, any litter or rubbish as defined in this By-Law for any purpose. Public and private property shall include vacant land and/or occupied land, structures and buildings located upon such property, including dumpsters or other similar containers located upon such property, whether owned by the property owner, private hauler, or other person.

4902. DEFINITIONS

4902.1 Litter

Any refuse, material or rubbish, whether it is recyclable or not, that has been abandoned or which has not been disposed of properly in a trash receptacle

or at a public or private permitted water disposal or transfer station.

4902.2 Rubbish

Means combustible and non-combustible materials and includes, but is not limited to, garbage, paper, rags, cartons, boxes, cardboard, wood, construction and demolition debris, excelsior, rubber, plastic, leather, tree branches, yard trimmings, stumps, grass clippings, batteries, tires, furniture, household appliances, televisions, stereos, radios, tin cans, bottles, metals, mineral matter, glass crockery, and the residue from burning wood, coal, coke, oil, other combustible materials and any noxious or refuse liquid or solid matter or substance.

4903. PENALTY AND ENFORCEMENT

Any person who shall violate any of the provisions of this By-Law shall be subject to a penalty of \$200.00 for each occurrence. This By-Law may be enforced through the Non-Criminal Disposition Provisions, the Criminal Procedures for enforcement of By-Laws, through restraining orders and other Court procedures or any combination thereof. The enforcement of this By-Law shall be through the Board of Health.

ARTICLE L

CAPITAL IMPROVEMENT PLANNING COMMITTEE

5001. The Board of Selectmen shall appoint a Capital Improvement Planning Committee consisting of ten members as follows:

1. A person knowledgeable and experienced in banking, finance or investment matters;
2. A person who represents the business community;
3. A person with experience in the management of construction activities;
4. A person who is a member of the School Committee or an appointee thereof;
5. A Selectman;
6. One member of the Finance Committee;
7. Town Treasurer;
8. Town Accountant;
9. Town Administrator;

10. One Assessor who is selected by the Board of Assessors.

- 5002.** The Committee shall study proposed capital projects and improvements involving major non-recurring tangible assets and projects which: 1) are purchased or undertaken at intervals of not less than five years; 2) have a useful life of at least five years; and 3) cost over \$10,000. All officers, boards and committees, including the Selectmen and the School Committee, shall, by November 1st of each year, give to the Committee, on forms prepared by it, information concerning all anticipated projects requiring Town Meeting action during the ensuing six years. The Committee shall consider the relative need, impact, timing and cost of these expenditures and the effect each will have on the financial position of the town. No appropriation shall be voted for a capital improvement requested by a department, board or commission unless the proposed capital improvement is considered in the Committees report, or the Committee shall first have submitted a report to the Board of Selectmen explaining the omission.
- 5003.** The Committee shall prepare an annual report recommending a Capital Improvement Budget for the next fiscal year, and a Capital Improvement Program including recommended capital improvements for the following five fiscal years. The report shall be submitted by February 1st to the Finance Committee and Board of Selectmen for their consideration and recommendation.
- 5004.** The Committee's report and the Selectmen's recommended Capital Budget shall be published and made available in a manner consistent with the distribution of the Finance Committee warrant. The Committee shall deposit its original report with the Town Clerk.

ARTICLE LI

PAINT BALL GUNS

5101. PROVIDING/FURNISHING MINOR

No person, other than a parent, guardian or adult who has custody and control of the minor, shall sell, provide or furnish a paint ball gun to a minor unless the minor has a permit issued by the Chief of Police or a designee, in their possession. Whoever violates this sub-section shall be punished by a fine of not less than one hundred fifty dollars (\$150) and not more than three hundred dollars (\$300). A second or subsequent offense shall be punished by a fine of three hundred dollars (\$300).

5102. POSSESSION/SHOOTING BY MINORS

No minor shall have a paint ball gun in his/her possession or discharge same in any place in the Town of Westport to which the public has the right of access unless that minor either:

5102.1 Is accompanied by a parent, guardian or adult who has custody and control of the minor.

5102.2 Has a permit to carry a paint ball gun issued by the Chief of Police or a designee.

The Chief of Police or his designee shall issue a permit to carry a paint ball gun under this By-Law to any person under the age of eighteen (18) provided a parent or person having legal custody of the minor assents in writing by signing the permit to that effect. A permit for this purpose shall not be denied or revoked without just cause and an opportunity for a hearing before the Chief of Police or a designee. Whoever violates this sub-section shall be punished by a fine of not less than one hundred dollars (\$100) and not more than two hundred dollars (\$200). A second and subsequent offense shall be punished by a fine of not less than two hundred dollars (\$200) and not more than three hundred dollars (\$300).

5103. DISCHARGE REGULATED

No person shall discharge a paint ball gun into, from or access any public way, or any way to which the public has a right of access; nor shall any person discharge a paint ball gun into, upon or from any private property without the express permission of the owner(s) or person(s) in control of the private property. Whoever violates this by may be punished by a fine of not less than one hundred dollars (\$100) and not more than two hundred dollars (\$200). A second or subsequent offense shall be punished by a fine of not less than two hundred dollars (\$200) and not more than three hundred (\$300).

5104. DEFINITIONS FOR THE PURPOSE OF THIS BY-LAW

5104.1 Minor

A person under the age of eighteen (18) years of age.

5104.2 Paint Ball Gun

An instrument or implement capable of propelling and projecting a projectile by means of air pressure or other means of propulsion which projectile leaves a distinguishing mark, stain or color upon impact which may be indelible or may be temporary in nature.

5105. ENFORCEMENT

The provisions of this By-Law shall be enforced by any officer of the Westport Police Department.

ARTICLE LII

COMMUNITY PRESERVATION COMMITTEE

5201. ESTABLISHMENT

There is hereby established a Community Preservation Committee, consisting of nine (9) voting members pursuant to the provisions of M.G.L. Chapter 44B, Section 5. The composition of the committee, the appointing authority and the term of office for the committee members shall be as follows:

1. One member of the Conservation Commission as designated by the Commission;
2. One member of the Historical Commission as designated by the Commission;
3. One member of the Planning Board as designated by the Board;
4. One member of the Recreation Commission/ Community Center Committee as designated by the Commission/Committee;
5. One member of the Housing Authority as designated by the Authority;
6. One member of the Finance Committee as designated by the Finance Committee;
7. Three members as appointed by the Board of Selectmen and six members of the committee designated by subsections (1) through (6).

5201.1 Each member of the Committee shall serve for a term of one year, or with respect to those persons designated as members of the Committee in subsections (1) through (6) above, until the person no longer serves on the commission, board, committee or authority as set forth above, whichever is earlier.

5201.2 Should any of the commissions, boards, authorities or committees who have appointing authority under this By-Law be no longer in existence for whatever reason, the Board of Selectmen shall appoint a suitable person to serve in their place.

5201.3 Any member of the Committee may be removed for cause by their respective appointing authority after hearing.

5202. DUTIES

5202.1 The Community Preservation Committee shall study the needs, possibilities and resources of the town regarding community preservation. The committee shall consult with existing municipal boards, including the Conservation Commission, the Historical Commission, the Planning Board, the Highway Department, and the Housing Authority, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the committee shall hold one annual public informational hearing, or more at its discretion, on the needs, possibilities and resources of the town regarding community preservation possibilities and resources, notice

of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the Town.

5202.2 The Community Preservation Committee shall make recommendations to the Town Meeting for the acquisition, creation and preservation of open space, for the acquisition and preservation of historic resources, for the acquisition, creation and preservation of land for recreational use, for the creation, preservation and support of community housing and for rehabilitation or restoration of such open space, historic resources, land for recreational use and community housing that is acquired or created as provided in this section. With respect to community housing, the Community Preservation Committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.

5202.3 The Community Preservation Committee may include in its recommendation to the Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.

5202.4 In every fiscal year, the Community Preservation Committee must recommend either that the legislative body spend, or set aside for later spending, not less than 10% of the annual revenues in the Community Preservation Fund for (a) open space (not including land for recreational use),(b) historic resources; and (c) community housing.

5203. REQUIREMENT FOR A QUORUM AND COST ESTIMATES

The Community Preservation Committee shall comply with the provisions of the Open Meeting Law, M.G.L. Chapter 39, Section 23B. The committee shall not meet or conduct business without the presence of a majority of the members of the Community Preservation Committee. The Community Preservation Committee shall approve its actions by majority vote. Recommendations to the Town Meeting shall include the committee's anticipated costs.

5204. AMENDMENTS

This By-Law may be amended from time to time by a majority vote of the Town Meeting, consistent with the provisions M.G.L. Chapter 44B.

5205. SEVERABILITY

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

5206. EFFECTIVE DATE

Provided that this By-Law is approved by the Attorney General, this By-Law shall take effect upon acceptance of the Community Preservation Act at the 2002 Annual Town election, and after all requirements of M.G.L. Chapter 40, Section 32 have been met. Each appointing authority shall have thirty days after acceptance at the 2002 Annual Town Election to make their initial appointments.

ARTICLE LIII

WESTPORT DEMOLITION BY-LAW

5301. INTENT AND PURPOSE

This By-Law is enacted for the purpose of preserving and protecting historically and/or architecturally significant buildings within the Town; to encourage owners of such significant buildings to seek out persons who might be willing to purchase, preserve, rehabilitate or restore such buildings rather than demolish them; and by furthering these purposes to promote the public welfare, to preserve the resources of the Town and to make the Town a more attractive and desirable place in which to live.

To achieve these purposes the Westport Historical Commission (the "Commission") is empowered to advise the Building Inspector with respect to the issuance of permits for demolition of significant buildings. The issuance of demolition permits for significant buildings is regulated as provided in this By-Law.

5302. DEFINITIONS

5302.1 Building

Any combination of materials forming a shelter for person, animals or property.

5302.2 Demolition

Any act of pulling down, destroying, removing or razing any building or a substantial portion thereof.

5302.3 Significant Building

Any building included on the Historical Inventory compiled by the Historical Commission. This list is kept at the office of the Westport Historical Commission.

5302.4 Preferably-Preserved Significant Building

Any significant building whose demolition has been determined by the Commission to be detrimental to this historical or architectural heritage or resources of the Town.

5302.5 Commission

The Westport Historical Commission.

5303. PROCEDURE

5303.1 Upon receipt of an application for demolition permit for a significant building the Building Inspector shall forward a copy thereof to the Commission. No demolition permit shall be issued at that time. The Commission will notify the applicant of its next scheduled meeting at which it will vote on whether to recommend issuance of a demolition permit.

5303.2 The Commission shall notify the Building Inspector and the Applicant within 30 days of receipt of its copy of the application whether (a) a demolition permit may be issued by the Building Inspector without further consultation with the Historical Commission or (b) a demolition permit may be issued up to and/or after 365 days of the Commission's receipt of the application if the Commission has determined at a public hearing that the building is a Preferably Preserved Significant Building; the Commission may shorten that time period if it determines that a shorter time period is appropriate, on a case by case basis.

5303.3 In the case of (b) the applicant may request a hardship permit of the Building Inspector with the consent of the Commission.

5303.4 Upon receiving notice that the building in question is a Preferably-Preserved Significant Building the applicant shall be encouraged to exercise continuing and bonafide efforts to locate a purchaser willing to preserve, rehabilitate or restore the building. It shall be the task of the Commission as well to assist the applicant in these efforts.

5304. EMERGENCY DEMOLITION

5304.1 Should a building or structure pose an imminent threat to public safety due to its deteriorated condition, the owner may request issuance of an emergency demolition permit. In this event the Building Inspector will apply to the Commission for a hardship demolition permit.

5305. ENFORCEMENT AND REMEDIES

5305.1 The Commission and the Building Inspector are each authorized to institute any and all proceedings in law or equity as they deem necessary and appropriate to obtain compliance with the requirements of this By-Law, or to prevent a violation thereof.

5305.2 No building permit shall be issued with respect to any premises upon which a significant building or a substantial portion thereof has been voluntarily demolished in violation of this By-Law for a period of two years after the date of the completion of such demolition. As used herein “premises” includes the parcel of land upon which the demolished significant building was located.

ARTICLE LIV

RIGHT TO FARM BY-LAW

Article 97 of the Massachusetts Constitution ensures "the protection of the people in their right to the conservation, development and utilization of the agricultural... and other natural resources." Massachusetts General Laws Chapter 40A, Section 3, Paragraph 1 furthers this goal by stating that no local zoning bylaw may prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of agriculture. Other state laws such as Chapter 111, Section 125A provide additional protection and incentives for agriculture. This By-Law does not seek to change these State laws, but to bring them together into one local By-Law to enhance local understanding of “the right to farm.”

This General By-Law section encourages the pursuit of agriculture, promotes agriculture-based economic opportunities, and protects farmlands within the Town of Westport by allowing agricultural uses to function with minimal conflict with abutters and Town agencies. This section shall apply in all areas in the Town.

The word "farm" shall include any parcel or contiguous parcels of land used for the primary purpose of agriculture as defined by the Commonwealth. The Commonwealth definition is at present that of Chapter 61A: a farm must contain at least five acres and have annual revenues of at least \$500.

The words "farming" or “agriculture” or their derivatives shall include:

- Farming in all its branches and the cultivation and tillage of the soil;
- Dairying;
- The production, cultivation, growing, and harvesting of any agricultural, aquacultural, floricultural, viticultural, or horticultural commodities;
- The growing and harvesting of forest products upon forest land;
- The raising of livestock including horses;
- The keeping of horses as a commercial enterprise;
- The keeping and raising of poultry, swine, cattle, ratites (e.g. emu) and camelids (e.g. llama) and other domesticated animals for food and other agricultural purposes, bees, fur-bearing animals; and

- Any other forestry or lumbering operations.

Farming shall encompass activities including, but not limited to:

- The operation and transportation of large, slow-moving equipment over roads within the Town;
- The control of pests, including, but not limited to; insects and weeds, predators and diseases of plants and animals;
- The application of manure, fertilizers and pesticides;
- Conducting agriculture-related educational and farm-based recreational activities provided that the activities are related to marketing the agricultural output or services of the farm;
- The processing and packaging of the agricultural output of the farm and the operation of a farmer's market or farm stand;
- The on-farm relocation of earth and the clearing of ground for farming operations, provided that the movement of soils that are rated as "prime" by the Natural Resources Conservation Service shall not adversely affect agriculture in the Commonwealth.

The right to farm is hereby recognized to exist within the Town of Westport. The foregoing agricultural activities may occur on holidays, weekdays, and weekends by night or day and shall include the attendant incidental noise, odors, dust and fumes associated with these practices. It is hereby determined that whatever impact may be caused to others through the normal practice of agriculture is more than offset by the benefits of farming to the neighborhood, community, and society in general.

The foregoing agricultural activities must be in conformance with applicable Federal, State laws, and local rules and regulations, to which reference is made as to more specific rights and obligations of the agricultural community and the Town.

The provisions of this By-Law shall not apply whenever an impact results from willful negligence or reckless misconduct in the operation of any such agricultural or farming operation, place, establishment or facility, or any of its appurtenances.

The following procedure is hereby encouraged to enhance early and effective resolution of farm-related issues:

Any person who seeks to complain about the operation of a farm is encouraged to, prior to filing a formal complaint, file an informal complaint (grievance) with the Select Board, Zoning Enforcement Officer (ZEO), Board of Health, or Conservation Commission, depending upon the nature of the grievance. The filing of the grievance does not suspend the time within which to pursue any other remedies that the aggrieved may have.

The ZEO or Select Board shall forward a copy of the grievance to the Agricultural Commission or its agent, which/who shall review and mediate the grievance and report its findings and recommendations to the appropriate Town authority for further action. The Board of Health, except in cases of imminent danger or public health risk, and the Conservation Commission

shall forward a copy of the grievance to the Agricultural Commission or its agent, which/who shall review and within an agreed upon timeframe and report its findings and recommendations to the Board.

ARTICLE LV

WATERCRAFT NOISE

5501. For purposes of this By-Law, the following words shall have the following meanings:

- A.** Watercraft – Any vessel used, or capable of being used, as a means of transportation on water defined in M.G.L. 90B Section 1 including, but not limited to, motorboats, jet skis, surf jets and wetbikes. The word “watercraft” shall include airboats.
- B.** Stationary Sound Level Test – The standard developed by the Society for Automotive Engineers to measure the decibel level of stationary motorboats as prescribed by SAE J2005.
- C.** Shoreline Sound Level Test – The standard developed by the Society for Automotive Engineers to measure the decibel level of motorboats from shore as prescribed by SAE J1970.

5502. Every watercraft operated on the waters of Westport shall be equipped at all times with a muffler on the exhaust of its engine or an underwater exhaust as required by M.G.L. 90B Section 6.

5503. No persons shall operate watercraft on the waters of Westport in a manner to permit the production of any sound from the watercraft that equals or exceeds:

- A.** Ninety decibels on the “A” scale when subjected to a stationary sound level test at a distance greater than three feet from the stern with its engine at idle speed; or
- B.** Seventy-five decibels on the “A” scale when subjected to the shoreline sound level test from the shoreline or from the banks of a river.

5504. The Harbormaster, Assistant Harbormaster or police officer who has reason to believe that a watercraft is not in compliance with noise levels established by this By-Law may direct the operator of the watercraft to submit it to an on-site test to measure the level of sound emitted by the watercraft. The operator shall comply with that direction. The Harbormaster, Assistant Harbormaster or police officer may remain aboard the watercraft during the test at his discretion. If the level of sound emitted by the watercraft exceeds the sound levels established in this By-Law, the Harbormaster, Assistant Harbormaster or police officer may direct the operator to take immediate and reasonable measures to correct the violation, including returning the watercraft to a mooring or dock, stopping the motor and keeping the watercraft on the mooring or dock until the violation is corrected or ceases.

- 5505.** Any person who shall violate any of the provisions of the By-Law shall be subject to a penalty of \$50.00 for the first occurrence, \$100.00 for the second occurrence and \$200.00 for each subsequent occurrence.
- 5506.** This By-Law may be enforced by the Harbormaster, Assistant Harbormaster or a police officer through the Non-Criminal Disposition of By-Law Violations defined in M.G.L. 40 Section 21D, the Criminal Procedures for Enforcement of By-Laws, through restraining orders and other court procedures or any combination thereof.
- 5507.** This By-Law shall not apply to the operation of commercial fishing vessels, watercraft owned or operated by any government agency or authority, dredges, commercial vessels engaged in construction or demolition work, tugboats or to auxiliary engines on commercial vessels that do not propel the vessel through water.

ARTICLE LVI

WESTPORT AFFORDABLE HOUSING TRUST FUND

- 5601.** The purpose of the Westport Affordable Housing Trust Fund (the “Trust”) shall be to provide for the creation and preservation of affordable housing in the Town for the benefit of low and moderate-income households.
- A.** There shall be a Board of Trustees for the Trust, comprised of no more than nine nor less than seven members, at least one of whom shall be a Selectman. A quorum of the Board of Trustees shall be a majority of the trustees as are then appointed and serving. The Board of Selectmen shall appoint the Board of Trustees for rotating terms not to exceed two years. Vacancies shall be filled by the Board of Selectmen for the remainder of the unexpired term. Any member of the Board of Trustees may be removed for cause after the opportunity for a hearing.
 - B.** The powers of the Board of Trustees, all of which shall be carried on in furtherance of the purposes set forth in M.G.L. c. 44, §55C, shall include the following:
 - 1.** To accept and receive real property, personal property or money, by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the trust in connection with any ordinance or by-law or any general or special law or any other source, including money from Chapter 44B;
 - 2.** To purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;
 - 3.** To sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to trust property as the board deems advisable notwithstanding the length of any such lease or contract;

4. To execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the board engages for the accomplishment of the purposes of the trust;
5. To employ advisors and agents, such as accountants, appraisers and lawyers as the board deems necessary;
6. To pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the board deems advisable;
7. To apportion receipts and charges between incomes and principal as the board deems advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;
8. To participate in any reorganization, re-capitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;
9. To deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the board may deem proper and to pay, out of trust property, such portion of expenses and compensation of such committee as the board may deem necessary and appropriate;
10. To carry property for accounting purposes other than acquisition date values;
11. To borrow money on such terms and conditions and from such sources as the board deems advisable, to mortgage and pledge trust assets as collateral;
12. To make distributions or divisions of principal in kind;
13. To comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of this act, to continue to hold the same for such period of time as the board may deem appropriate;
14. To manage or improve real property; and to abandon any property which the board determined not to be worth retaining;

15. To hold all or part of the trust property uninvested for such purposes and for such time as the board may deem appropriate; and
 16. To extend the time for payment of any obligation to the trust.
 17. To adopt any regulations the Board of Trustees may deem necessary to conduct the business of the Board and to administer the Affordable Housing Trust Fund.
- B.** The Board of Trustees shall provide for an annual audit of the books and records of the Trust. Such audit shall be performed by an independent auditor in accordance with accepted accounting practices. Upon receipt of the audit by the Board of Trustees, a copy shall be provided forthwith to the Board of Selectmen.

In accordance with G.L. c.44, §55C, all moneys paid to the Trust in accordance with any Zoning or General By-Law, exaction fee, or private contributions shall be paid directly into the Trust and need not be appropriated or accepted and approved into the Trust. Funds appropriated into the Trust by the Town shall become Trust property, and to be expended these funds need not be further appropriated. All moneys remaining in the Trust at the end of any fiscal year, whether or not expended by the Trustees within 1 year of the date they were appropriated into the Trust, remain Trust property.

ARTICLE LVII

ANTIQUE DEALERS/PAWN BROKERS/JUNK COLLECTORS

5701. No person shall be collector of or a dealer in junk, old metals, precious metals, or second-hand articles, or a keeper of a shop for the purchase, sale or barter of junk, old metals, precious metals, or second-hand articles, unless licensed therefore by the Town Clerk. The Town Clerk shall receive at least thirty (\$30.00) dollars for each license so granted.

5702. REQUIREMENT THAT RECORDS BE KEPT, PROVIDED AND RETAINED

5702.1 Computerized Records

Every keeper of a shop or business involved in purchase, sale or barter of junk, old metals, precious metals, or secondhand articles, referred to as shopkeeper for the purposes of this article, shall keep a computerized record of style and design approved by the Chief of Police. Included shall be all transactions of purchases, which shall be recorded in the English language, and reflect the amount of purchase.

5702.2 Identification of Customer

For all purchases, every shopkeeper shall also require positive identification and record the type of identification, identification number and the date of

birth from any person selling any article. Positive identification shall mean any picture identification card issued by a government agency.

5702.3 Requirement That Records Be Kept, Provided and Retained

The shopkeeper shall record the name and residence, date of birth, a photocopy of any picture identification card issued by a government agency of the person selling or pledging such articles. The shopkeeper shall furnish a correct and complete record of such transactions by an approved method once daily, or as otherwise determined, by the Chief of Police to the Westport Police Department. The above- described records shall be transmitted electronically in a specifically stored format along with any other information deemed necessary by the Chief of Police, or his designee. No entry or said records shall be erased, obliterated, defaced, or changed.

5702.4 Photographs Required

Every shopkeeper shall photograph any persons pawning, selling or pledging articles and keep such photographs with said records. The required photographs shall be clear and of such quality that the person pawning, selling or pledging the items can be clearly identified. A photograph shall be required each time a person makes a separate transaction. The photographs shall be stored in a digitized format. The image must be retrievable and a clear copy provided to police upon request.

5702.5 Accurate Transaction Record Required

The transaction records shall accurately describe all items including but not limited to, all distinguishing marks, model names or number, and serial numbers. Any etchings or engravings will be noted. Any jewelry with affiliation of any institution or organization shall include the name and year indicated along with inscribed initials. Jewelry items inventoried shall include a complete description to include the material, ring size, weight, chain length, shapes, carat weight and color. Coins, stamps, collectable cards, autographed items, figurines, or other collectibles of any description, including but not limited to all of the following which may apply: particular identifying features such a name of item, date, denomination, color, size, brand name, vintage, and image represented. The Chief of Police or his designee may amend required elements of the description, by written notice to the Licensee.

5702.6 Inventory of Media

All forms of media transmission whatsoever, (cassette or video tapes, compact disc, DVD, electronic games, game cartridges, etc. or any future medium developed) shall be inventoried by the title and artist. Any electronic, or computer or computer associated equipment of software shall have its identifying numbers and titles inventoried.

5702.7 All records required to be maintained by these regulations or by any other statute, rule or regulation shall be maintained for the time required by the controlling statue, rule or regulation, but in no event shall any records by maintained for

less than two years. Such records shall at all times be open for the inspection of the Westport Board of Selectman, or any person authorized by it to make such inspection, and to members of the Police Department.

5702.8 No shopkeeper shall purchase or take in any item if it appears that such items has had any serial numbers or any other identifying marks, forged, altered, or obliterated. For the purpose of this rule, identifying marks shall include but not be limited to engravings, initials, or similar inscriptions.

5703. PAWNBROKERS – REQUIREMENT THAT RECORDS BE KEPT PROVIDED AND RETAINED

5703.1 Computerized Records

Every pawnbroker doing business in the town shall keep a computerized record of style and design approved by the Chief of Police. Included shall be all transactions of pawn loans and purchases, which shall be recorded, in the English language. A clear distinction shall be made between pawned items and purchased items and shall reflect the amount of the pawn of purchase.

5703.2 Identification of Customer

For all loans and purchases, every pawnbroker shall also require positive identification and record the type of identification, identification number presented and date of birth from any person pawning, selling or pledging any article. Positive identification shall mean any picture identification card issued by a government agency.

5703.3 Requirement That Records Be Kept, Provided and Retained

The pawnbroker shall record the name and residence, date of birth, a photocopy of any picture identification card issued by a government agency of the person pawning, selling or pledging such articles. The pawnbroker shall furnish a correct and complete record of such transactions by an approved method once daily, or as otherwise determined, by the Chief of Police, to the Westport Police Department. The above-described records shall be transmitted electronically in a specifically stored format along with any other information deemed necessary by the Chief of Police, or his designee. No entry of said records should be erased, obliterated, defaced, or changed.

5703.4 Photographs Required

Every pawnbroker shall photograph any person pawning, selling or pledging articles and keep such photographs with said books as part of his records. The required photographs shall be clear and of such quality that the person pawning, selling or pledging the items can be clearly identified. A photograph shall be required each time a person makes a separate transaction. The photographs shall be stored in a digitized format. The image must be retrievable and a clear copy provided to police upon request.

5703.5 Accurate Transaction Record Required

The transaction records shall accurately describe all items including but not limited to, all distinguishing marks, model names or number and serial numbers. Any etching or engravings will be noted. Any jewelry with affiliation of any institution or organization shall include the name and year indicated along with inscribed initials. Jewelry items inventoried shall include a complete description to include the material, ring size, weight, chain length, shapes, carat weight and color, coins, stamps, collectable cards, autographed items, figurines, or other collectibles of any description, including but not limited to all of the following which may apply: particular identifying features such a name of item, date, denomination, color, size, brand name, vintage, and image represented. The Chief of Police or his designee may amend required elements of the description, by written notice to the Licensee.

5703.6 Inventory of Media

All forms of media transmission whatsoever, (cassette or video tapes, compact disc, DVD, electronic games, game cartridges, etc. or any future medium developed) shall be inventoried by the title and artist. Any electronic, or computer or computer associated equipment of software shall have its identifying numbers and titles inventoried.

5703.7 All records required to be maintained by these regulations or by any other statute, rule or regulation shall be maintained for the time required by the controlling statute, rule or regulation, but in no event shall any records be maintained for less than three years. Such records shall at all times be open for the inspection of the Westport Board of Selectman, or any person authorized by it to make such inspection, and to members of the Police Department.

ARTICLE LVIII

BOARD OF SELECTMEN

5801. TERM OF OFFICE, COMPOSITION

There shall be a Board of Selectmen consisting of five members elected for three (3) year terms, so arranged that as nearly an equal number of terms as possible shall expire each year.

5802. VACANCY

Vacancies in the office of selectmen shall be filled by special election in accordance with provisions of Massachusetts General Laws.

5803. POLICY AND EXECUTIVE LEADERSHIP

The Board of Selectmen shall serve as the chief executive of Town government and set policy and provide strategic direction in the best interest of the Town as a whole.

5804. POWERS, DUTIES, AND RESPONSIBILITIES

Except as otherwise provided in Town By-Laws, the Board of Selectmen shall exercise the executive functions given to the Board under the constitution and the General Laws of the Commonwealth, and such additional powers and duties as may be authorized by By-Law or Town Meeting vote.

The Board of Selectmen's executive responsibilities include, among others, establishing and overseeing Town government personnel and procurement systems, managing Town government facilities, and the conduct of all union negotiations for Town employees.

The Board of Selectmen shall cause the laws, By-Laws, and orders for the government of the Town to be enforced and shall cause a record of all its official acts kept. The Board of Selectmen shall ensure that Town government personnel regulations and procurement systems, as well as the terms of the union contracts are available to the public.

5805. APPOINTING POWERS

5805.1 The Board of Selectmen shall appoint a Town Administrator as the chief administrative officer of the Town and may delegate its authority, from time to time, to the Town Administrator. Nevertheless, the ultimate responsibility and accountability for those delegated powers and duties reside with the Board of Selectmen.

5805.2 The Board of Selectmen shall appoint all Town employees for whom no other appointment or election provision is made in the Town By-Laws or Massachusetts General Laws.

5805.3 The Board of Selectmen shall appoint members of all boards, committees, and commissions, for whom no other appointment or election provisions is made in Town By-Laws or Massachusetts General Laws. The Board shall issue terms of reference for such bodies and establish their reporting requirements.

5806. INTER-GOVERNMENT RELATIONS

Members of the Board of Selectmen shall represent the Town on federal, state, regional, and inter-municipal committees, or may designate a town employee or other person to represent the Town; and/or take any other action relative thereto.

ARTICLE LIX

HISTORICAL COMMISSION BY-LAW

5901. There is hereby established under the Historic Districts Act, General Laws Chapter 40C, with all

the powers and duties of an historic commission, a Westport Historical Commission, consisting of seven members to be appointed by the Board of Selectmen, and including one member from two nominees submitted by the local historical society, one member from two nominees submitted by the Chapter of the American Institute of Architects covering the area, and one member from two nominees from the board of realtors, if any, covering the area. If within 30 days after submission of a written request for nominees to any of the organizations herein named no such nominations have been made by the appointing body, the Board of Selectmen may proceed to appoint the Commission without nominations by such organization. The members of the Westport Historical Commission shall include one or more residents or owners of property in a historic district to be administered by the Commission. Alternates need not be from nominees of organizations entitled to nominate members. Each member and alternate shall continue in office after the expiration of his term until his/her successor is duly appointed and qualified. All members and alternates shall serve without compensation.

5902. There is hereby established under provisions of the Historic Districts Act, one historic district to be known as the "Westport Point Historic District" attached to and made a part of the By Law.

5903. The Commission shall have in addition to the powers and duties of an historic district commission the further powers and duties, subject to appropriation or receipt of money gifts, and may in exercise of any of its powers or duties accept and expand such gifts and employ clerical and technical assistants, or consultants,

- A.** To conduct a survey of Westport buildings and sites for the purpose of determining those of historic significance architecturally or otherwise. Copies of this continuing survey shall be placed in the hands of the Westport Planning Board, the Conservation Board, the Board of Selectmen and the Westport Public Library and periodically updated by the Commission;
- B.** To propose from time to time as they deem appropriate the establishment, in accordance with the Historic Districts Act, of additional historic districts and changes in historic districts;
- C.** To determine an appropriate system of markers for selected historic sites and buildings not already sufficiently marked, to arrange for preparation and installation of such markers, and to arrange for care of historic markers.
- D.** To arrange for preparation and publication of maps and brochures and descriptive material about Westport historic sites and buildings'
- E.** To cooperate with and advise the Board of Selectmen, the Planning Board and other town agencies in matters involving historic sites and buildings'
- F.** To cooperate with and enlist assistance for Westport from the Massachusetts Historical Commission, the National Park Service, the National Trust for Historic Preservation, the Society for the Preservation of New England Antiquities, and other agencies public and private from time to time concerned with historic sites

and buildings;

G. To advise owners of historic buildings in Westport in problems of preservation.

- 5904.** The Commission may recommend to the Board of Selectmen from time to time as needed the appointment of advisory committee of historians and persons experienced in architecture or other arts or in historic preservation or restoration to assist in manner comparable to the National Park Service Advisory Board or Consulting Committee.
- 5905.** The Commission may formulate and publish guidelines for construction or alteration of buildings or structures or appurtenant fixtures in the areas as defined in Section 5 of Chapter 40C of the General Laws.
- 5906.** When taking action under the provisions of the second paragraph of Section 7 of the Historic Districts Act, the Commission shall make its determination within forty-five (45) days after the filing of the application for a certificate of appropriateness, or such further time as the applicant may in writing allow.
- 5907.** The Commission shall adopt rules and regulations for the conduct of its business, not inconsistent with the provisions of the Historic Districts Act or this ordinance.
- 5908.** In case any section, paragraph or part of this ordinance be for any reason declared invalid or unconstitutional by any court of last resort, every other section, paragraph or part shall continue in full force and effect.
- 5909.** The establishment of the Historic Districts under Section 2 shall not be effective until the first day of third month after this ordinance is ordained.
- 5910.** The Commission should have the powers and duties of a Historical Commission as provided in Section 8D of Chapter 40 of the Massachusetts General Laws.
- 5911.** Limitations on authority of Commission: Except to the extent specifically prohibited by M.G.L., Chapter 40C the authority of the commission shall be limited in that:
- A.** It shall not have the power to review the following:
- 1.** Terraces, walks, driveways, sidewalks, and like structures, provided that any such structures are substantially at grade level;
 - 2.** Walls and fences;
 - 3.** Trees, plants, shrubs, hedges, and the like;
 - 4.** Storm doors and windows, screens, window air conditioners, and antennae for radio and/or television reception;
 - 5.** The color of paint on doors and shutters;

6. The color or nature of materials used on roofs;
 7. Additions, alterations, or appurtenant structures (including but not limited to swimming pools and the like), which are not subject to view from a public street, public way, public park or public body of water.
- B. The public authorities responsible for the maintenance, alteration, demolition, or construction of public school facilities in the district shall not be required to obtain any certificate from the Commission.

ARTICLE LX

STORM WATER EASEMENTS

6001. The Board of Selectmen, following consultation with the Water Resource Management Committee, to the extent such committee may exist from time to time, is authorized to accept on behalf of the Town, without further action by Town Meeting, gifts of land and easements for purposes of draining public ways, provided that no appropriation of funds is necessary for such acquisition.

ARTICLE LXI

DOOR TO DOOR SOLICITORS

6101. DEFINITIONS; APPLICABILITY

- A. As used in this section, the terms “solicit” and “canvass” shall mean and include any one or more of the following activities conducted at residences without the previous consent of the owner:
1. Seeking to obtain the purchase, or orders for the purchase, of goods, wares, merchandise, foodstuffs, or services of any kind, character, or description whatsoever for any consideration whatsoever; or
 2. Seeking to obtain subscriptions to books, magazines, periodicals, newspapers, and every other type or kind of publication.
- B. The provisions of this section shall not apply to officers or employees of the Town, county, state, or federal government, or any subdivision thereof when on official business, or to neighborhood youth and students who solicit for the shoveling of snow or cutting of lawns or similar services to residents, nor shall it be construed to prevent route salespersons or other persons having established customers to whom they make periodic deliveries from calling upon such customers.

- C. If any solicitor or canvasser is under the age of 18 years and is selling goods or periodicals for a commercial purpose, the provisions of M.G.L. c. 101, § 34, shall apply.
- D. The provisions of this section shall not apply to any person soliciting solely for religious, charitable, political or other non-commercial purposes.

6102. REGISTRATION REQUIRED

It shall be unlawful for any person to solicit or canvass or engage in or conduct business as a canvasser or solicitor without first having obtained a certificate of registration from the Chief of Police as provided in this section.

6103. APPLICATION FOR CERTIFICATE OF REGISTRATION

- A. Application for a certificate of registration shall be made upon a form provided by the Police Department along with a nonrefundable application fee of \$25.
- B. An authorized representative of the sponsoring organization shall apply to the Chief of Police or his/her designee either in person or by mail. All statements made on the application or in connection therewith shall be made under the pains and penalties of perjury. The applicant shall provide all information requested on the application, including:
 - 1. Name, address and telephone number of the sponsoring organization, along with a listing of all officers and directors;
 - 2. State and/or federal tax identification number of the sponsoring organization;
 - 3. Name, residential and business address, length of residence at such residential address, telephone number, social security number,* (*this information is provided on a voluntary basis, and is used to verify whether an applicant meets the criteria for issuance of a certificate under subsection (D) below) and date of birth of each representative of the sponsoring organization who will be soliciting or canvassing in the Town;
 - 4. Description sufficient for identification of the subject matter of the soliciting or canvassing in which the organization will engage;
 - 5. Period of time for which the certificate is applied (every certificate shall expire one year from date of issue);
 - 6. The date of the most recent previous application for a certificate under this section;

7. Any previous revocation of a certificate of registration issued to the organization or to any officer, director, or representative of the organization by any city or town and the reasons therefore;
 8. Any convictions for a felony, either state or federal, within five years of the application, by the sponsoring organization, any of its officers or directors, or any representative who will be soliciting or canvassing in the Town;
 9. Names of the three communities where the organization has solicited or canvassed most recently;
 10. Proposed dates, hours, and method of operation in the Town;
 11. Signature of authorized representative of the sponsoring organization.
- C. A photograph of each representative of the sponsoring organization who will be soliciting or canvassing in the Town shall be attached to the application.
- D. No certificate of registration shall be issued to any person or to any organization having an officer or director who was convicted of commission of a felony, either state or federal, within five years of the date of the application, nor to any organization or person whose certificate of registration has previously been revoked as provided below.
- E. Fully completed applications for certificates shall be acted upon within five business days of receipt. The Chief of Police shall cause to be kept accurate records of every application received together with all other information and data pertinent thereto and of all certificates of registration issued under this section and of all denials.
- F. Upon approval of an application, each solicitor or canvasser shall be issued a certificate of registration to carry upon his/her person at all times while soliciting or canvassing in the Town and to display the certificate whenever asked by any police officer or any person solicited.

6104. REVOCATION OF CERTIFICATE

- A. Any certificate of registration issued hereunder may be revoked by the Chief of Police for good cause, including violation of any of the provisions of this By-Law or a false statement in the application. Immediately upon such revocation, the Chief of Police shall give written notice to the holder of the certificate in person or by certified mail addressed to his/her residence address set forth in the application.
- B. Immediately upon the giving of such notice, the certificate of registration shall become null and void. In any event, every certificate of registration shall state its expiration date, which shall be one year from date of issue.

6105. DECEPTIVE PRACTICES

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

6106. DUTIES OF SOLICITORS AND CANVASSERS

- A. It shall be the duty of every solicitor and canvasser going onto any premises in the Town to first examine whether there is a notice posted stating that no solicitors are welcome. If such notice is present, then the solicitor or canvasser shall immediately and peacefully depart from the premises.
- B. Any solicitor or canvasser who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.

6107. LAWFUL HOURS TO SOLICIT OR CANVASS

All canvassing or soliciting under this section shall be confined to the hours between 8:00 a.m. and 9:00 p.m.

6108. PENALTY FOR VIOLATIONS

Violations of any provision of this By-Law may be enforced by any means available in law and in equity, including under Section 3702 of these By-Laws and Regulations and Section 21D of Chapter 40 of the General Laws and shall be punishable by a fine of \$150.00 for the first violation and \$300.00 for the second or any subsequent violations, with each day a violation exists being treated as a separate violation.

ARTICLE LXII

WESTPORT SEX OFFENDER RESIDENCY AND RESTRICTION ZONE

6201. PREAMBLE, FINDINGS, INTENT

- A. It is the intent of this by-law to serve and protect the Town's compelling interest to promote, protect, and improve the health, safety, and welfare of the citizens of the Town by creating areas around locations where children, the elderly, and the mentally impaired regularly congregate in concentrated numbers wherein certain registered sex offenders are prohibited from loitering and establishing temporary or permanent residence.
- B. After careful consideration, the Town finds that this By-Law is the most narrowly-tailored means of limiting, to the fullest extent possible, the opportunity for registered sex offenders to approach or otherwise come in contact with children, the elderly, and the mentally impaired in places where children and the elderly would naturally congregate, and that the protection of the health and safety of our

children, the elderly, and the mentally impaired is a compelling governmental interest.

- C. By the enactment of this or any other By-Law, the Town understands that it cannot remove the threat posed to or guarantee the safety of children, the elderly, and the mentally impaired, or assure the public that registered sex offenders will comply with the mandates of this law. This By-Law is intended to create a regulatory scheme in order to protect children, the elderly, and the mentally impaired to the extent possible under the circumstances. Nothing contained herein shall constitute a specific assurance of safety or assistance.
- D. The Town finds that registered sex offenders pose a clear threat to the children, the elderly, and the mentally impaired residing in or visiting in Westport. Because registered sex offenders are more likely than any other type of offenders to re-offend for another sexual offense, the Town desires to impose safety precautions in furtherance of the goal of protecting the children, the elderly, and the mentally impaired in the Town of Westport. The purpose of this by-law is to reduce the potential risk of harm to the children, the elderly, and the mentally impaired of the community by restricting the ability of registered sexual offenders to be in contact with those persons in locations that are primarily designed for use by or are primarily used by children, the elderly, and/or the mentally impaired, namely, the grounds of a public or private school for children, a pre-school, a day care facility, parks or other public recreational facilities, facilities for the elderly, facilities for the mentally impaired, or public libraries.

6202. **DEFINITIONS**

- A. **Child or Children** - Shall mean persons under eighteen (18) years of age.
- B. **Day Care Center** – Shall mean an establishment, whether public or private, which provides care for children and is registered with and licensed pursuant to the laws of the Commonwealth of Massachusetts by the Department of Early Education and Care.
- C. **Elder or Elderly** - Shall mean persons over fifty-five (55) years of age.
- D. **Establishing a Residence** - Shall mean to set up or bring into being a dwelling place or an abode where a person sleeps, which may include more than one location and may be mobile or transitory, including by means of purchasing real property or entering into a lease or rental agreement for real property (including a renewal or extension of a prior agreement whether through written execution or automatic renewal).
- E. **Facility for the Elderly** - Shall mean a building or buildings on the same lot which provides group residence for persons over fifty-five (55) years of age or serves as a center for such persons to gather.

- F. **Facility for the Mentally Impaired** - Shall mean any facility which provides group residence for the mentally impaired or serves as a center for the mentally impaired to gather.
- G. **Loiter** - Shall mean remaining in or around the location in question for a more than fifteen (15) minutes.
- H. **Park or Recreational Facility** - Shall mean public land or facilities designated for active or passive recreational or athletic use by the Town of Westport, the Commonwealth of Massachusetts, or other governmental subdivision, and located within the Town of Westport, including parks, beaches, playgrounds, and athletic fields and facilities.
- I. **Permanent Residence** - Shall mean a place where a person lives, abides, lodges, or resides for five (5) or more consecutive days or fourteen (14) or more days in the aggregate during any calendar year.
- J. **Public Library** - Shall mean a building, structure or other enclosure in which a library is located for use by the general public.
- K. **School** - Shall mean any public or private educational facility that provides educational services to children in grades pre-kindergarten through twelve (12).
- L. **Sex Offender** - Shall mean a person who resides, works, or attends an institution of higher learning in the commonwealth and who has been convicted of a sex offense, or who has been adjudicated as a youthful offender or as a delinquent juvenile by reason of a sex offense, or a person released from incarceration or parole or probation supervision or custody with the Department of Youth Services for such a conviction or adjudication, or a person who has been adjudicated a sexually dangerous person under M.G.L. Chapter 123A, section 14, as in force at the time of adjudication, or a person released from civil commitment pursuant to Section 9 of said Chapter 124A, whichever last occurs, on or after August 1, 1981.
- M. **Sex Offender Registry** - Shall mean the collected information and data that is received by the Sex Offender Registry Board pursuant to M.G.L. Chapter 6, Sections 178C to 178Q, inclusive, as such information and data is modified or amended by the Sex Offender Registry Board or a court of competent jurisdiction pursuant to said Sections 178C to 178Q, inclusive.
- N. **Temporary Residence** – Shall mean a place where a person lives, abides, lodges or resides for a period of less than five (5) consecutive days or less than fourteen (14) days in the aggregate during any calendar year, which is not the person's permanent address or place where the person routinely lives, abides, lodges or resides and which is not the person's permanent address.

6203. **SEXUAL OFFENDER RESIDENCE PROHIBITS, PENALTIES, EXCEPTIONS**

- A. It is unlawful for any sex offender who is classified as a level 2 or 3 offender pursuant to the guidelines of the Sex Offender Registry Board to establish a permanent residence or temporary residence within five hundred (500) feet of any school, day care center, park or recreational facility, facility for the elderly, facility for the mentally impaired, or public library if, after notice, and opportunity for a hearing before the Police Chief, or the Chief's designee, it is determined that the sex offender poses a risk to the public and therefore, that residency should be limited in accordance with this section and subsection (C). The Police Chief shall promulgate regulations to implement this section, including the time in which the Chief or the Chief's designee he shall issue a determination under this paragraph.
- B. For purposes of determining the minimum distance separation, the distance shall be measured by following a straight line from the outer property line of the permanent residence to the nearest outer property line of a school, day care center, park or recreational facility, facility for the elderly, facility for the mentally impaired, or public library.
- C. **Notice to Move:** Any sex offender who is classified as a level 2 or 3 offender pursuant to the guidelines of the Sex Offender Registry Board and who establishes a permanent residence or temporary residence within five hundred (500) feet of any school, day care center, park or recreational facility, facility for the elderly, facility for the mentally impaired, or public library in violation of the prohibition set forth in subsection (A) of Section 6203 shall within thirty (30) days of receipt of written notice of the sex offender's noncompliance with this chapter, move from said location to a new location, but said location may not be within five hundred (500) feet of any school, day care center, park or recreational facility, facility for the elderly, facility for the mentally impaired, or public library. It shall constitute a separate violation for each day beyond the thirty (30) days that the sex offender continues to reside within five hundred (500) feet of any school, day care center, park or recreational facility, facility for the elderly, facility for the mentally impaired, or public library. Furthermore, it shall be a separate violation each day that a sex offender shall move from one location in the Town of Westport to another that is within five hundred (500) feet of any school, day care center, park or recreational facility, facility for the elderly, facility for the mentally impaired, or public library.
- D. **Penalties:** Violation of Section 6203, or of any regulations adopted hereunder, may be enforced through any lawful means in law or in equity by the Westport Police Department or any police officer of the Town of Westport, including, but not limited to, enforcement by non-criminal disposition pursuant to M.G.L. Chapter 40, Section 21D. Each day a violation exists shall constitute a separate violation. The penalties shall be as follows:
1. First Offense: Notification to offender that he/she has thirty (30) days to move.
 2. Subsequent Offense: Non-criminal penalty or fine of \$300.00 and notification to the offender's landlord, parole officer, and/or probation

officer and the Commonwealth's Sex Offender Registry Board that the person has violated a municipal by-law.

- E. Exceptions:** A person residing within five hundred (500) feet of any school, day care center, park or recreational facility, facility for the elderly, facility for the mentally impaired, or public library does not commit a violation of this section if any of the following apply:
1. The person established the permanent residence and reported and registered the residence prior to the effective date of this By-Law;
 2. The person was a minor when he/she committed the offense and was not convicted as an adult;
 3. The person is a minor;
 4. The school, day care center, park or recreational facility, facility for the elderly, facility, facility for the mentally impaired, or public library within 500 feet of the personal permanent residence was established after the person established the permanent residence and reported and registered the residence pursuant to the Sex Offender Registry Law;
 5. The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility;
 6. The person is admitted to and/or subject to an order of commitment at a public or private facility for the care and treatment of mentally ill persons pursuant to M.G.L. Chapter 123; or,
 7. The person is mentally ill person subject to guardianship or a mentally retarded person subject to guardianship residing with his or her guardian or residing within a licensed group residence.

6204. SEX OFFENDER RESTRICTION ZONE, EXCEPTIONS, PENALTIES

A. Prohibitions

1. A sex offender who is classified as a level 2 or 3 offender pursuant to the guidelines of the Sex Offender Registry Board is prohibited from entering upon the premises of any school, day care center, park or recreational facility, facility for the elderly, facility for the mentally impaired, or public library, unless expressly authorized in advance and in writing by the person or entity having control of said premises.
2. A sex offender who is classified as a level 2 or 3 offender pursuant to the guidelines of the Sex Offender Registry Board is prohibited, after having received notice from the Westport Police Department that he/she is loitering within five hundred (500) feet of a school, day care center, park or recreational facility, facility for the elderly, facility for the mentally

impaired, or public library, from continuing to so loiter or from returning thereto. For purposes of determining the minimum distance separation under this section, the distance shall be measured by following a straight line from the sex offender in question to the outer property line of the school, day care center, park or recreational facility, facility for the elderly, facility for the mentally impaired, or public library.

B. Exceptions

1. The prohibitions in Section 6204.A. above shall not be construed or enforced so as to prohibit a sex offender from exercising his or her right to vote in any federal, state or municipal election, or from attending any religious service.
2. The prohibitions in Sections 6204.A. above do not apply to a sex offender's place of residence when such residence is excepted under Section 6203.E. above.

C. Penalties

Any violation of this Section 6204, or of any regulations adopted hereunder, may be enforced through any lawful means in law or in equity by the Westport Police Department or any police officer of the Town of Westport including, but not limited to, enforcement by non-criminal disposition pursuant to M.G.L. Chapter 40, Section 21D. Each day a violation exists shall constitute a separate violation. The penalties shall be as follows:

1. First Offense: a non-criminal penalty or fine of \$150.00;
2. Subsequent Offense: Non-criminal penalty or fine of \$300.00 and notification to the offender's landlord, parole officer and/or probation officer and the Commonwealth's Sex Offender Registry Board that the person has violated a Town By-Law.

6205. GENERAL EXEMPTION

The provisions of this By-Law, Article LXII, shall not apply to sex offenders incarcerated in any facility owned, maintained, and/or operated by the Town of Westport.

6206. LIST/MAP OF AREAS COVERED

A written list describing the prohibited areas defined in this By-Law, as well as a map depicting the residency restriction areas and safety zones shall be created and maintained by the Westport Highway Department and Westport Police Department, to be updated from time-to-time as necessary. The list, map, and copies of this By-Law will be available to the public at the Westport Town Clerk's Office and Westport Police Department.

6207. SEVERABILITY

If any clause, sentence, paragraph, subdivision, section or other part of this By-Law shall for any reason be adjudged by any court of competent jurisdiction to be unconstitutional, or otherwise invalidated, such judgment shall not affect, impair or invalidate the remainder of this By-Law, and it shall be construed to have been the legislative intent to enact this By-Law without such unconstitutional or invalid parts therein.

6208. EFFECTIVE DATE

This By-Law shall become effective immediately upon approval by Town Meeting and after all the requirements of M.G.L. Chapter 40, Section 32 have been met.

ARTICLE LXIII

COMPLIANCE WITH THE PROVISIONS OF MASSACHUSETTS GENERAL LAW CHAPTER 268A AND RELATED MATTERS

6301. Elected and appointed officers, officials and employees of the Town of Westport, whether or not compensated, and whether serving in a part-time, full-time or volunteer capacity, shall comply with the provisions of M.G.L. c.268A, and in that regard shall demonstrate, in their general conduct and in the performance of their duties and responsibilities, the highest ethical standards; recognize that they hold their offices or positions for the benefit of the public, and while acting in their official capacity, faithfully discharge the duties of their offices or positions in the public interest, regardless of personal considerations. Such persons shall not use their offices or positions to secure or grant special considerations, treatment, advantage, privilege or exemption to themselves or to any person or group beyond that which is available to every person. Further, elected and appointed officers, officials and employees of the Town of Westport shall not represent anyone other than themselves in matters in which the Town has a direct and substantial interest unless they comply with the provisions of M.G.L. c. 268A, §17 and, prior to undertaking such representation, file with the Town Clerk written notice thereof on a form prepared by the Town for such purposes. Such notices shall be maintained in a separate file, and shall be public record subject to mandatory disclosure upon requested.

ARTICLE LXIV

TOWN ADMINISTRATOR

6401. APPOINTMENT; QUALIFICATION, TERM

The Board of Selectmen shall appoint, by an affirmative vote of four (4) members, a Town Administrator for a term of three years that is renewable by the Board of Selectmen upon receiving a satisfactory evaluation from the Selectmen. The Board shall set the Town Administrator's compensation within the amount annually appropriated for this purpose. The Town Administrator shall be appointed solely on the basis of executive, administrative, and educational qualifications.

6401.1 The Town Administrator shall be a professionally qualified person of proven

ability, especially fitted to perform the duties of the office by education, training, and previous related experience. The Town Administrator will have the minimum of a Bachelor Degree, preferably a Master Degree, in Public Administration, Public Policy, Business Management or related field. In addition, the Town Administrator should have at least five (5) years experience in upper level executive positions, or equivalent combination of education and experience.

6401.2 The Administrator shall devote full time to the office and shall not hold any other public office, elected or appointed, or engage in any other business or occupation during his or her term, unless such action is approved in advance, in writing, by the Board of Selectmen.

6402. RELATIONSHIP OF TOWN ADMINISTRATOR WITH THE BOARD OF SELECTMEN

The Town Administrator is appointed by the Board of Selectmen and serves as the chief administrative officer for the executive branch of Town government.

6403. VACANCY IN OFFICE

The Board of Selectmen shall fill any permanent vacancy in the office of Town Administrator as soon as possible. Pending the appointment of the Town Administrator, the Board of Selectmen shall within thirty (30) days, appoint some other qualified person to serve as Acting Town Administrator.

6404. PROCEDURE FOR REMOVAL OF TOWN ADMINISTRATOR

The Board of Selectmen, by affirmative vote of four (4) of its members may initiate the removal of the Town Administrator prior to the expiration of an employment contract. This action must be after a hearing.

6405. POWERS AND DUTIES

The Town Administrator represents the Board of Selectmen in their role as the government's executive branch in relations with elected boards and departments in day to day operations.

6405.1 The Town Administrator serves as the Director of Human Resources for the Town; administers personnel policies, practices, rules and regulations, the compensation plan, and any other related matter for all municipal employees, except school employees.

6405.2 The Town Administrator serves as the chief financial officer for the Town. In this capacity the Town Administrator shall annually submit a balanced budget and capital improvements plan to the Board of Selectmen. After approval by Town Meeting the Town Administrator is responsible for administering the budget.

6405.3 The Town Administrator serves as the Chief Procurement Officer for the Town. In this capacity he oversees and approves all purchases of goods and services including those procured under the provisions of MGL Chapter 30B.

6406. The Town Administrator shall perform such other duties as may be required from time to time by the Board of Selectmen, Town By-Laws, administrative code, or votes of Town Meeting.

ARTICLE LXV

FIREARMS AND WEAPONS

6501. HUNTING ON PRIVATE PROPERTY

No person shall hunt on private property except when in the possession of the carrying for inspection all licenses, permits and stamps required for hunting under state law.

6502. VIOLATIONS AND PENALTIES

The penalty for the violation of any provision of this By-Law shall be a fine of not more than \$200.00 for each day said violation exists, unless otherwise specified in the General Laws of the Commonwealth.

ARTICLE LXVI

ILLICIT DISCHARGE

6601. PURPOSE

Increased and contaminated stormwater runoff is a major cause of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding. Regulation of illicit connections and discharges to the Town of Westport municipal storm drain system is necessary for the protection of the town's water bodies and groundwater and to safeguard the public health, safety, welfare and the environment.

6601.1 The objectives of this By-Law are:

- a.** To prevent pollutants from entering Westport's municipal separate storm water /sewer system (MS4);
- b.** To prohibit illicit connections and discharges to the MS4;
- c.** To require the removal of 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 By-Law through inspection, monitoring, and enforcement.

6602. DEFINITIONS

For the purposes of this By-Law, the following shall mean:

Agent - Employee, Board or Committee of the Town appointed by the Board of Selectmen to assist in enforcing and/or administering this By-Law.

Authorized Enforcement Agency/Applicable Authority - The Board of Selectmen or other employees or agents designated by the Board of Selectmen.

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

Clean Water Act - The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) as hereafter amended.

Discharge of Pollutants - The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.

Groundwater - Water beneath the surface of the ground and not confined in a conduit or container.

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

Illicit Discharge - Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted herein

Municipal Separate Storm Sewer System (MS4) or Municipal Storm Drain System - 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 Westport.

National Pollutant Discharge Elimination System (NPDES) General Permit For Storm Water Discharges - A permit issued by United States Environmental Protection Agency or

jointly with the State that authorizes the discharge of stormwater to waters of the United States.

Non-Stormwater Discharge - Discharge to the municipal storm drain system not composed entirely of stormwater.

Person - Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town By-Laws, administrative agency, public or quasi-public corporation or body, the Town of Westport, and any other legal entity, its legal representatives, agents, or assigns.

Pollutant - Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any storm water system, sewage treatment works or waters of the Commonwealth. Pollutants shall include, but not be limited to, the following:

- a. Paints, varnishes, and solvents;
- b. Oil and other automotive fluids;
- c. Non-hazardous liquid and solid wastes and yard wastes;
- d. Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
- e. Pesticides, herbicides, and fertilizers;
- f. Hazardous materials and wastes; sewage, fecal coliform and pathogens;
- g. Dissolved and particulate metals;
- h. Animal wastes;
- i. Rock, sand, salt, soils;
- j. Construction wastes and residues; and
- k. Noxious or offensive matter of any kind.

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. Process wastewater includes water, which has increased in temperature as a result of manufacturing or other processes.

Recharge - The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil, or by injection of collected precipitation, run off or adequately treated wastewater.

Stormwater/Runoff - Rainwater, snowmelt and/or other water that flows off impervious surfaces and across or over the ground surface rather than being absorbed into the soil.

Surface Water Discharge Permit - A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts.

Toxic or Hazardous Material or Waste - Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and 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 40.0000.

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

Wastewater - Any sanitary waste, sludge, or septic tank or cesspool contents or discharge, and/or process wastewater.

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

6603. APPLICABILITY

This By-Law shall apply to flows entering the municipally owned storm drainage system.

6604. AUTHORITY

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

6605. ADMINISTRATION

The Board of Selectmen is delegated hereby the responsibility and authority to administer, implement and enforce this By-Law. The Board of Selectmen may appoint a Town employee, department, board or commission to aid the Board of Selectmen in the enforcement and/or administration of this By-Law.

6605.1 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

Agent, and other employees designated by the Board of Selectmen may enter upon privately owned property for the purpose of performing their duties under this By-Law and regulations and may make or cause to be made such examinations, surveys or sampling as the Agent deems reasonably necessary.

6606. REGULATIONS

The Board of Selectmen shall promulgate rules and regulations to effectuate the purposes of this By-Law. Failure to promulgate such rules and regulations shall not have the effect of suspending or invalidating this By-Law.

6607. PROHIBITED ACTIVITIES

6607.1 Illicit Discharges - No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the municipal separate storm sewer system (MS4).

6607.2 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.

6607.3 Obstruction of Municipal Storm Drain System - No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior written approval from the Applicable Authority.

6607.4 Other Prohibited Activities - No person shall discharge, or cause to be discharged, water or any other liquid, on to the streets, sidewalks or ways of the Town in such a manner as to cause an obstruction of traffic or to endanger travel by freezing or otherwise.

- a.** Drains – No one shall tie any pump, cellar, yard, roof or area drain directly into the storm water drainage system without approval from the Applicable Authority.
- b.** Catch Basins – No Person shall directly or indirectly dump, discharge or cause or allow to be discharged into any catch basin, any solid waste, construction debris, paint or paint product, antifreeze, hazardous waste, oil, gasoline, grease and all other automotive and petroleum products, solvents and degreasers, drain cleaners, commercial or household cleaners, soap, detergent, ammonia, food and food waste, grease or yard waste, animal feces, dirt, sand gravel or other pollutant. Any person determined by the applicable authority to be responsible for the discharge of any of the above substances to a catch basin may be held responsible for

cleaning the catch basin and any other portions of the storm water system impacted according to Town standards and requirements or paying the cost for such cleaning. In addition, the Person shall be responsible for paying any penalties assessed by the Town.

- c. Septage – No person shall discharge or cause or allow to be discharged any septage, or septage tank or cesspool overflow into the Town’s storm water drainage system.
- d. Storage & Disposal of Hazardous Material – No one shall dispose of anything other than clear water into the Town’s storm drainage system. The disposal of waste, gasoline or any other hazardous material into the storm drainage system is strictly prohibited and is in violation of state and federal pollution laws.
- e. Private drainage systems – It is prohibited for anyone with a private drainage system from tying into the public storm water disposal system without written approval from the Applicable Authority. The maintenance of any and all private drainage systems shall be the responsibility of the owners.

6608. EXEMPTIONS

Discharge or flow resulting from fire fighting activities are exempt from the prohibition of non-stormwater discharges.

The following non-stormwater discharges or flows are also exempt from the prohibition of non-stormwaters provided that the source is not a significant contributor of a pollutant to the municipal storm drain system, and will not damage or threaten public health and the environment:

- a. Waterline flushing and flow from potable water sources;
- b. Springs, natural flow from riparian habitats and wetlands, diverted stream flow and rising groundwater;
- c. Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
- d. Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, sump pumps or air conditioning condensation;
- e. Discharge from landscape irrigation or lawn watering;
- f. Water from individual residential car washing;

- g. Discharge from dechlorinated swimming pool or hot tub water (less than one ppm chlorine) provided the pool or hot tub is drained in such a way as not to cause a nuisance;
- h. Discharge from street sweeping, discharge of sand and deicers used for public safety purposes;
- i. Emergency repairs to the municipal storm drain system, and any stormwater management structure or practice that poses a threat to public health or safety, or as deemed necessary by the Highway Surveyor;
- j. Dye testing, provided verbal notification is given to the Applicable Authority prior to the time of the test;
- k. Non-stormwater discharge permitted under an NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
- l. Discharge for which advanced written approval is received from the Applicable Authority as necessary to protect public health, safety, welfare or the environment.

6609. EMERGENCY SUSPENSION OF STORM DRAINAGE SYSTEM ACCESS

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

6610. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Applicable Authority prior to the allowing of discharges to the MS4.

6611. MONITORING DISCHARGES

Upon notice of an alleged illicit discharge or connection, the Applicable Authority shall have the right to investigate any facility that has storm water discharges associated with industrial activity, including construction activity. The exercise of this right does not constitute a replacement or substitution for enforcement by federal or state agencies for facilities that are adequately owned structures within or adjacent to a watercourse so that

such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

6612. NOTIFICATION OF SPILLS

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants into the municipal drainage system, a wetland resource area or the waters of the Commonwealth, the person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the Applicable Authority and the Highway Surveyor. In the event of a release of non-hazardous material, the reporting person shall notify the Applicable Authority and the Highway Surveyor no later than the next business day. The reporting person shall provide to the Applicable Authority and the Highway Surveyor written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall 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.

6613. ENFORCEMENT

6613.1 The Board of Selectmen, or other authorized agent of the Board of Selectmen shall enforce this By-Law and any regulations, and may pursue all civil and criminal remedies for violations.

6613.2 Civil Relief - If a person violates the provisions of this By-Law or regulations, or of any permit, notice or order issued thereunder, the Board of Selectmen may seek injunctive relief in a court of competent jurisdiction to restrain the person from activities that would create further violations or to compel the person to perform abatement or remediation of the violation.

6613.3 Orders - The authorized agent of the Board of Selectmen may issue a written order to enforce the provisions of this By-Law or the regulations thereunder, which may include:

- a. Elimination of illicit connections or discharges to the MS4;
- b. Performance of monitoring, analysis, and reporting;
- c. That unlawful discharges, practices, or operations shall cease and desist; and
- d. Remediation of contamination in connection therewith.

- 6613.3.1** If the enforcing person determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the town may, at its option, undertake such work, and expenses thereof shall be charged to the violator.
- 6613.3.2** 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 including administrative costs.
- 6613.3.3** The violator or property owner may file a written protest objecting to the amount or basis of costs with the Board of Selectmen within thirty (30) days of receipt of the notification of the costs incurred.
- 6613.3.4** 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 Authorized Agent 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, 57 after the thirty-first day at which the costs first become due.

6613.4 Criminal Penalties

Any person who violates any provision of this By-Law, regulation, order or permit issued hereunder, shall be punished by a fine of not more than \$300. Each day a violation exists shall constitute a separate violation.

6613.5 Non-Criminal Disposition

As an alternative to criminal prosecution or civil action, the town may utilize the non-criminal disposition procedure set forth in M.G.L. Ch. 40, §21D and Article V of the Town By-Laws, in which case any police officer of the Town of Westport, or other persons as are authorized by the Board of Selectmen shall be the enforcing person. If non-criminal disposition is used, any person who violates any provision of this by-law, regulation, order or permit issued thereunder, shall be punished as follows:

First violation: Warning

Second violation: \$100
Third violation: \$200
Fourth and subsequent violations: \$300
Each day a violation exists shall constitute a separate violation.

6614. APPEALS

The decisions or orders shall be final. Further relief shall be to a court of competent jurisdiction.

6614.1 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.

6615. SEVERABILITY

The provisions of this By-Law are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this By-Law or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this By-Law.

6616. TRANSITIONAL PROVISIONS

Residential property owners shall have 180 days from the effective date of the By-Law to comply with its provisions provided good cause is shown for the failure to comply with the by-law during that period.

ARTICLE LXVII

REVOLVING FUNDS

- 6701.** There are hereby established in the Town of Westport pursuant to the provisions of G.L. c.44, §53E½, the following Revolving Funds, from which the specified department head, board, committee, or officer may incur liabilities against and spend monies from without appropriation in accordance with the limitations set forth in this By-Law.
- 6702.** Fringe benefits of full-time employees whose salaries or wages are paid from the fund shall also be paid from the fund.
- 6703.** No liability shall be incurred in excess of the available balance of the fund.
- 6704.** The total amount spent during a fiscal year shall not exceed the amount authorized by Town Meeting or any increase therein as may later be authorized by the Board of Selectmen and Finance Committee in accordance with G.L. c.44, §53E½.
- 6705.** Interest earned on monies credited to a revolving fund established by this By-Law shall be credited to the General Fund.

6706. Authorized Revolving Funds

<u>Revolving Fund</u>	<u>Authority To Spend</u>	<u>Revenue Source</u>	<u>Use of Fund</u>
Council on Aging - Programs	Council on Aging & Board of Selectmen	Receipts from health care promotion, recreational and social programs for seniors	Health care promotion, recreational and social programs for seniors
Council on Aging- Social Day Care	Council on Aging & Board of Selectmen	Receipts from the Social Day Care Program	Social Day Care Program
Council on Aging - Outreach Coordinator & Specialists	Council on Aging & Board of Selectmen	Reimbursement from UMass Medical for Outreach Department staff assistance with seniors applying for SNAP, food program services	(SNAP = Supplemental Nutrition Assistance Program) Outreach Department staff wages and expenses, mileage, trainings and other miscellaneous expenses
Council on Aging - Transportation	Council on Aging & Board of Selectmen	Receipts from transportation for seniors	Transportation for seniors
Fire Department - Ambulance	Fire Department	Receipts from Ambulance fees	Purchase of an ambulance, ambulance equipment and/or any incurred ambulance related expense, not to include salaries
Fire Department - Haz Mat	Fire Department	Receipts from Haz-Mat fees	Purchase of Haz-Mat equipment and/or any incurred Haz-Mat related expense, not to include salaries
Electrical, Plumbing and Gas Inspectors and Assistant Building Inspector	Electrical, Plumbing and Gas Departments and Building Department	Receipts from fees and fines paid for electrical, plumbing and gas permits and building permits	Fees for inspections performed and mileage, schooling, supplies, clerical & Assistant Building Inspector wages, equipment and other miscellaneous expenses; any fund balance in excess of \$40,000.00 at the end of the fiscal year will be transferred into the General Fund.

Planning Board/Zoning Board of Appeals	Planning Board	Receipts from subdivision and comprehensive permit filing fees	Maintaining the Assessor's parcel GIS database
Police Department	Police Department and Board of Selectmen	Receipts from Police Cruiser fees associated with private details	Purchase of cruisers, associated equipment and/or any incurred police cruiser related expense, not to include salaries
Westport Economic Development Task Force	Westport Economic Development Task Force	Receipts from vendors at the Westport Winter Market and subscribers to the Westport Advertising App	To cover expenses of the Farmers' Market(s) and the App
Board of Health	Board of Health	Receipts from vaccine purchases and administration reimbursements	Vaccine purchases and all supplies and expenses associated with vaccine administrations
Library	Library Director	Receipts from fines, lost book payments and computer printing services at the Library	Library programs and operations, including purchasing and maintaining books and other technology used at the Library
Energy Conservation	Board of Selectmen	Receipts from Utility Incentives	Energy Conservation projects & Services including consultants

6707. Procedures and Reports. Except as provided in General Laws Chapter 44, §53E½ and this by-law, all applicable state and local laws and regulations that govern the receipt, custody, expenditure and payment of town funds shall apply to the use of revolving funds established and authorized by this by-law.

And, further, to establish the following fiscal year spending limit for such funds:

<u>Revolving Fund</u>	<u>Maximum Expenditure</u>
Council on Aging - Programs	\$ 55,000.00
Council on Aging- Social Day Care	\$155,000.00
Council on Aging - Outreach	\$ 10,000.00
Council on Aging - Transportation	\$ 55,000.00
Fire Department - Ambulance, Ambulance Equipment or Ambulance Expenses	\$160,000.00
Fire Department - Haz Mat Equipment or Related Expenses	\$ 40,000.00

Electrical, Plumbing and Gas Inspectors & Assistant Building Inspector - Fees for Inspections Performed, Mileage, Schooling, Clerical, Assistant Building Inspector Wages & Equipment	\$ 85,000.00
Planning Board/Zoning Board of Appeals - GIS Database Maintenance	\$ 20,000.00
Police Department - Cruisers, Associated Equipment or Cruiser Related Expenses	\$ 50,000.00
Westport Economic Development Task Force - Farmer's Market Expense & App	\$ 6,000.00
Board of Health - Vaccine Purchases, Supplies & Expenses	\$ 10,000.00
Library - Programs & Operations, Purchasing & Maintaining Books & Tech	\$ 3,000.00
Energy Conservation - Energy Conservation Projects & Services including Consultants	\$200,000.00

ARTICLE LXVIII

STRETCH ENERGY CODE

6801. DEFINITIONS

International Energy Code (IECC) – The International Energy Conservation Code (IECC) is a building energy code created by the International Code Council. It is a model code adopted by many state and municipal governments in the United States for the establishment of minimum design and construction requirements for energy efficiency, and is updated on a three-year cycle. The baseline energy conservation requirements of the Massachusetts State Building Code are the IECC with Massachusetts amendments, as approved by the Board of Building Regulations and Standards.

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

6802. PURPOSE

The purpose of 780 CMR 115.AA is to provide a more energy efficient alternative to the Base Energy Code applicable to the relevant sections of the building code for new buildings.

6803. APPLICABILITY

This code applies to residential and commercial buildings. Buildings not included in this scope shall comply with 780 CMR 115.AA, as indicated.

6804. STRETCH CODE

The Stretch Code, as codified by the Board of Building Regulations and Standards as 790 CMR Appendix 115.AA, including any future editions, amendments or modifications, is

herein incorporated by reference into the Town of Westport General By-Laws, Article LXVII.

The Stretch Code shall be enforceable by the Westport Building Commissioner and effective with a concurrency start date of July 1, 2018, and a sole effective date of January 1, 2019.

ARTICLE LXIX

REGULATION OF NON-MEDICAL MARIJUANA ESTABLISHMENTS PURPOSE

6901. Consistent with M.G.L. Chapter 94 G, all types of Non-Medical Marijuana establishments shall be regulated by the Town of Westport in the same manner as the Town regulates Medical Marijuana facilities, or in any other manner prescribed by the Zoning By-Laws of the Town of Westport, and shall be subject to the same limitations and requirements established by the Zoning By-Laws of the Town of Westport.

All so called Medical Marijuana Establishments subject of a Provisional Certificate of Registration by the Commonwealth of Massachusetts, and a so called letter of Non Opposition by the Town of Westport, on or before January 1, 2020, for a location within the Town of Westport shall be exempt from the provisions of Article LXIX and be allowed to operate as a recreational Marijuana Establishment in addition to a Medical Marijuana Establishment.

ARTICLE LXX

AUDIT COMMITTEE

7001. The Board of Selectmen shall appoint an Audit Committee. The specific duties of the Audit Committee shall include, but are not limited to:

- a.** Make recommendations to the Board of Selectmen on the selection of, and scope of services for, an independent auditor.
- b.** Review the annual financial statements and reports prepared by the independent auditor and make recommendations with respect thereto.
- c.** Make recommendations for areas of operations where expanded scope audits or reviews of the internal controls may be appropriate.
- d.** Review and make recommendations with respect to the Town's financial management practices and controls.
- e.** Report to the Board of Selectmen on the recommendations the Committee has made during the preceding twelve months.

7002. Said Committee, which shall serve without compensation, shall consist of five (5) members appointed by the Board of Selectmen, as follow: one (1) current member each from the

Board of Selectmen, School Committee and Finance Committee plus two (2) at-large members. Member's terms beginning July 1st of the year of appointment until June 30th of the third year following. Initial appointments, however, shall be made, upon the effective date of this By-Law, by the Board as follows: two (2) members for three (3) years, two (2) members for two (2) years, and one (1) member for one (1) year.

- 7003.** Whenever a vacancy shall occur in the membership of the Committee, by reason of death, resignation, inability to act or any other reason, the vacancy shall be filled by appointment by the Selectmen for the remainder of the term.
- 7004.** The Committee shall meet and organize in July of each year, and shall elect from its membership a chairperson, who shall serve for one year or until their sooner vacating of office, at which time the remaining members shall elect a new chair. The Committee shall meet at least two (2) times of each year, one of which must be held within thirty (30) days of receiving the audit reports, and otherwise at its discretion.

HISTORICAL NOTES AS OF 1/15/2020

In Reference To: See The Following:

ARTICLE I 0101.	Article 28	1929 ATM
0101. Article 58		2004 ATM
0102. Article 17		1973 ATM
0102. Article 59		2004 ATM
0103. Article 27		1975 ATM
FOOTNOTES:	Article 28	1929 ATM
	Article 27, 28	1939 ATM
	Article 1 (5/7)	1974 STM
	Article 40	1975 ATM
0104. Article 6		2013 STM
ARTICLE II 0201.	Article 34	1983 ATM
0201. Article 25		2014 ATM
0202. - 0208. Article 28		1929 ATM
0202. Article 26		2014 ATM
0202.1 - 0202.2 Article 29		1976 ATM
0208. Article 33		1982 ATM
0209. Article 45		1963 ATM
0210. Article 20		1980 ATM
FOOTNOTE: Article 37		1977 ATM
ARTICLE III 0301.	Article 47	1961 ATM
0301.1 – 0303.2 Article 32		2012 ATM
0302. Article 28		1929 ATM
0303. Article 40		1973 ATM
0303.1 - 0303.2 Article 39		1973 ATM
0303.1 - 0303.2 Article 38, 39		1994 ATM
0304. Article 41		1975 ATM
0304. Article 41		2006 ATM
ARTICLE IV 0401. - 0402.	Article 28	1929 ATM
0401. Article 2 (9/27)		1994 STM
0403. Article 4 (10/22)		1935 STM
0404. Article 11		1943 ATM
0405. Article 46		1961 ATM
0406. Article 24		1977 ATM
0407. Article 1 (3/27)		1973 ATM
ARTICLE V 0501. - 0503.	Article 28	1929 ATM
0503. Article 56		1986 ATM
0503. Article 31		2012 ATM
0504.1 - 0504.8 Article 54		1986 ATM
0504.1 Article 34		1990 ATM

In Reference To: See The Following:

	0504.1 Article 61	2004 ATM
	0504.7 Article 40	1991 ATM
	0504.9 Article 38	1981 ATM
	0501.1 Article 52	2001 ATM
	FOOTNOTE: Article 29	1979 ATM
ARTICLE VI 0601. - 0602.	Article 28	1929 ATM
	0601. Article 57	1958 ATM
ARTICLE VII 0701.	Article 28	1929 ATM
	0702. Article 10	1929 ATM
	0705. - 0706. Article 4	1946 ATM
	0705. Article 39	1979 ATM
	0705. Article 31	1980 ATM
	0705. Article 58	1959 ATM
	0708. Article 61	1986 ATM
	0708. Article 41	1995 ATM
	0709. Article 39	1984 ATM
	0710. Article 42	1980 ATM
	0710. Article 55	1986 ATM
	FOOTNOTE: Article 27	1976 ATM
ARTICLE VIII 0801.	Article 28	1929 ATM
	0801. Article 29	2011 ATM
	0801.1 Article 41	1963 ATM
	0802. Article 46	1963 ATM
	0803. - 0805. Article 35	1983 ATM
	0805. Article 55	1986 ATM
ARTICLE IX 0901.	Article 28	1929 ATM
	0901. Article 42	1980 ATM
	0901. Article 55	1986 ATM
ARTICLE X 1001. - 1013.	Article 28	1929 ATM
	1006. Article 49	1999 ATM
	1013. - 1016., 1020. Article 55	1986 ATM
	1019. Article 35	1989 ATM
	FOOTNOTE: Records indicate the By-Laws for the government of public and town landings were approved in June 1848 and June 28, 1889.	
ARTICLE XI 1101.1	Article 27	1965 ATM
	1101.1 Article 25	1974 ATM
	1101.2 - 1101.11 Article 12 (8/13)	1952 STM
	1101.2 - 1101.4 &	

	1101.6 - 1101.7	Article 40	1963 ATM
	1102.6, 1102.6.1 & 1102.6.2 & 1102.6.3	Article 18	2019 ATM
<u>In Reference To:</u>	<u>See The Following:</u>		
	1101.2 Article 4 (9/29)		1976 STM
	1101.2 - A & B	Article 40	1963 ATM
	1101.1 - 1101.13	Article 49	1976 ATM
	1101.10	Article 55	1986 ATM
	1101.11	Article 2 (7/14)	1987 STM
	1101.12	Article 26	1965 ATM
	1101.12	Article 69	1987 ATM
	1101.1 – 1101.15	Article 40	1995 ATM
ARTICLE XI	1102.1 - 1102.5	Article 50	1976 ATM
	1102.5	Article 55	1986 ATM
	FOOTNOTE:	Article 45	1961 ATM
ARTICLE XII	1201.	Article 32	1973 ATM
	1202.	Article 37	1975 ATM
	1203.	(Chapter 802 of the Acts of 1972 as amended)	
	FOOTNOTE:	Article 35	1953 ATM
	(As of January 1, 1975 the State Building Code superceded previous Town By-Laws on Building Codes)		
ARTICLE XIII	1301.	Article 16	1956 ATM
	1301. - 1311.	Article 28	1976 ATM
	1307.	(In its present form after 1971)	
ARTICLE XIV	1401 - ZONING BY-LAWS (SEE SEPARATE PUBLICATION)		
ARTICLE XV	1501.	Article 23	1959 ATM
	1501.	Article 44	1961 ATM
	1501.	Article 48	1981 ATM
	1501.1 - 1501.4	Article 53	1964 ATM
	1501.5 – 1501.8	Article 32	1960 ATM
	1501.9	Article 39	1976 ATM
	1502.	Article 39	1963 ATM
	1502.	Article 53	1964 ATM
	1502.1 - 1502.3	Article 53	1964 ATM
	1502.3	Article 51	1981 ATM
	1502.3	Article 51	1985 ATM
	1504.	Article 53	1964 ATM
	1504.	Article 42	1980 ATM
	1507.	Article 55	1986 ATM
ARTICLE XVI	1601.	Article 10 (5/26)	1970 STM

In Reference To: See The Following:

ARTICLE XVII	1701.	Article 13	1967 ATM
	1701. Article 55		1986 ATM
	1701. Article 6 (10/1)		1991 STM
	1702. Article 31		1978 ATM
ARTICLE XVIII	1801. - 1803. &		
	1805. - 1806. Article 42		1972 ATM
	1802. Article 24		1975 ATM
ARTICLE XVIII	1802.	Article 3 (10/15)	1980 STM
	1804. Article 30		1976 ATM
ARTICLE XIX	1901. - 1905.	Article 32	1975 ATM
	1902. Article 13 (7/31)		1973 STM
	1903. Article 41		1977 ATM
	1904. - 1905.4 Article 55		1986 ATM
ARTICLE XIX	1906.	Article 26	1992 ATM
	1907. Article 38		1996 ATM
	FOOTNOTE: Article 19		1975 ATM
ARTICLE XX	2001. - 2004.	Article 59	1973 ATM
	2001. Article 28		1976 ATM
	2001. Article 60		1986 ATM
	2004. Article 23		1975 ATM
ARTICLE XXI	PERSONNEL BY-LAWS (See Separate Publication)		
ARTICLE XXII	2201.	Article 51	1972 ATM
	2201. Article 8		2013 STM
	2201 Article 16		2019 ATM
	2201, 2207, 2208 & 2209	Article 40	2010 ATM
	2201. - 2222. Article 37		1991 ATM
	2203.2 Article 4 (12/15)		1992 STM
	(See Article 4701.)		
	2206. Article 27		1977 ATM
	2219.1 Article 37		2015 ATM
	2221., 2222. Article 21		1976 ATM
	2222. Article 55		1986 ATM
	FOOTNOTE: Article 29		1975 ATM
	(Article 37, 1991 ATM completely revised this article)		

ARTICLE XXIII	YOUTH ACTIVITY BOARD (Not a By-Law)	
	2301. - 2302 Article 54	1962 ATM
	2301. Article 28	1975 ATM
	2301 – 2302 Article 11	1978 ATM

In reference to: **See the following:**

ARTICLE XXIV	CEMETERY REGULATIONS (Not a By-Law)	
	2401. - 2401.14 Article 9	1970 ATM
	2401.15 Article 30	1975 ATM
	2401.16 Article 51	1989 ATM
	2401.17 Article 44	2006 ATM
ARTICLE XXV	2501. Article 34	1975 ATM
	2502. Article 35	1975 ATM
	2503 Article 36	1981 ATM
ARTICLE XXVI	2601. - 2613. Article 29	1978 ATM
ARTICLE XXVI	2603. Article 66	1987 ATM
	2604. Article 33	1983 ATM
	2612. Article 32	1981 ATM
	2612. Article 55	1986 ATM
ARTICLE XXVII	2701. - 2707. Article 30	1978 ATM
	2727. Article 55	1986 ATM
ARTICLE XXVIII	2801. Article 5 (4/3)	1979 STM
	2802. Article 5 (6/24)	1986 STM
ARTICLE XXIX	2901. - 2907. Article 9 (7/24)	1979 STM
	2907. Article 55	1986 ATM
ARTICLE XXX	3001. - 3004. Article 26	1980 ATM
	3002. Article 48	2005 ATM
ARTICLE XXXI	3101. - 3102 Article 41	1980 ATM
	3101. Article 1 (11/16)	1976 STM
ARTICLE XXXII	3201. - 3202 Article 34	1981 ATM
	3202. Article 52	1985 ATM
ARTICLE XXXIII	3301. - 3305. Article 41	1981 ATM
	3302. Article 18 (9/13)	1983 STM
	3305. Article 55	1986 ATM

ARTICLE XXXIV	3401. - 3403.	Article 23 (8/24)	1982 STM
	3403. Article 55		1986 ATM
	3401. - 3403. Article 46		2000 ATM

ARTICLE XXXV	3501. - 3502.	Article 36	1983 ATM
	3502.2 Article 62		2004 ATM

In Reference To: See The Following:

3502.2 Article 7	2013 STM
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ARTICLE XXXVI	3601. - 3603.	Article 37	1984 ATM
	3603. Article 55		1986 ATM

ARTICLE XXXVII	3701. - 3702.	Article 38	1984 ATM
	3702.5 - 3702.5B	Article 37	2002 ATM
	3702.5, 3702.5A, 3702.5B	Article 17	2019 ATM
	3702.5A – 3702.5B	Article 34	2011 ATM
	3702.6 Article 44		2006 ATM
	FOOTNOTE: Article 55		1986 ATM

ARTICLE XXXVIII	3801.	Article 51	1986 ATM
	3801. Article 67		1987 ATM
	3802. - 3803. Article 73		1987 ATM
	3801. - 3803. Article 9		12/1/15 STM
	3801. - 3803.	Article 19	2018 ATM

ARTICLE XXXIX	3901.	Article 52	1986 ATM
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ARTICLE XL 4001.		Article 53	1986 ATM
	4001. Article 39		1991 ATM

ARTICLE XLI	4101.	Article 64	1987 ATM
	4101. Article 37		1996 ATM

ARTICLE XLII	4201.	Article 58	1988 ATM
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ARTICLE XLIII	4301.	Article 58	1990 ATM
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ARTICLE XLIV	4401. SHELLFISH & SCALLOP RULES & REGULATIONS		
	FOOTNOTE: (Not a By-Law) - originally voted upon at the March 11, 1947 ATM. The regulations were amended and became effective March 1, 1985 and amended November 28, 1994, effective to June 1, 1993. (See M.G.L. Chapter 130, Section 52). Amendments were made to 4403. effective August 1, 2001; 4404.5, 4405.16 and 4407.7 effective October 7, 2002.		
	4402.1 Article 32		2009 ATM

ARTICLE XLV	4501. WATERWAYS REGULATIONS (Not a By-Law)		
ARTICLE XLVI	4601.	Article 24	1992 ATM
	4601. Article 40		2002 ATM
	4602.3 Article 40		2002 ATM
	4603.1 - 4603.3	Article 62	1998 ATM
	4606. – 4610. Article 40		2002 ATM

In Reference To: See The Following:

ARTICLE XLVII	4701.	Article 4 (12/15)	1992 STM
ARTICLE XLVIII	4801. - 4804.	Article 53	1993 ATM
	4805. Article 56		1993 ATM
	FOOTNOTE:(Numbered wrong in article as written)		
ARTICLE XLIX	4901. - 4903.	Article 55	1993 ATM
ARTICLE L	5001. - 5004.	Article 51	1999 ATM
	5001. Article 42		2006 ATM
	5003. Article 43		2007 ATM
ARTICLE LI	5101. - 5105.	Article 51	2001 ATM
ARTICLE LII	5201. - 5206.	Article 21	2001 ATM
ARTICLE LIII	5301. - 5305.2	Article 38	2002 ATM
	5301. – 5303.2	Article 44	2007 ATM
ARTICLE LIV	RIGHT TO FARM	Article 63	2004 ATM
ARTICLE LV	5501. – 5504.	Article 36	2008 ATM
ARTICLE LVI	5601.	Article 29	2009 ATM
	5601. Article 39		2010 ATM
ARTICLE LVII	5701.	Article 30	2011 ATM
ARTICLE LVIII	5801.	Article 31	2011 ATM
ARTICLE LIX	HISTORICAL COMMISSION BY-LAW		
	5901. Article 25		1973 ATM
	5901. Article 46		2008 ATM
	5906 Article 62		2006 ATM
ARTICLE LX	6001	Article 19	2013 STM

ARTICLE LXI	6101	Article 27	2014 ATM
ARTICLE LXII	6201	Article 28	2014 ATM
ARTICLE LXIII	6301	Article 24	2014 ATM
ARTICLE LXIV	6401	Article 39	2015 ATM

In Reference To: See The Following:

ARTICLE LXV	6501	Article 40	2015 ATM
ARTICLE LXVI	6601	Article 21	2017 ATM
ARTICLE LXVII	6701	Article 8	2017 ATM
	6706	Article 2	1/23/18 STM
	6706	Article 11	2019 ATM
	6707	Article 11	2019 ATM
ARTICLE LXVIII	6801	Article 21	2018 ATM
ARTICLE LXIX	6901	Article 22	2018 ATM
6901		Article 4	2/11/20 STM
6901		Article 5	2/11/20 STM
ARTICLE LXX	7001	Article 19	2019 ATM