GENERAL BY - LAWS

All amendments incorporated as of
AUGUST 2012

TOWN OF UPTON

TOWN OF UPTON

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TITLE 1
GENERAL PROVISIONS

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

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

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

TOWN OF UPTON
TITLE 2
MUNICIPAL GOVERNMENT AND FINANCE
Chapter 1
Town Meetings

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

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

Section 2A The Annual Adjourned Meeting for the transaction of all business other than the election of Town Officers, and the determination of matters required to be by ballot, shall be held at 7:00 P.M. on the Thursday following the first Monday in May of each year.

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

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

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

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

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

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

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

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

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

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

To amend or substitute
To postpone indefinitely

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

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

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

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

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

TOWN OF UPTON
Chapter 2
General Powers and Duties of Town Officers

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

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

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

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

Section 5 – deleted at Annual Town Meeting on May 5, 2011

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

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

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

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

TOWN OF UPTON

Chapter 3
Financial

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

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

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

Chapter 4
Selectmen

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

Section 2 The Selectmen shall have full authority as agents of the Town to institute and prosecute suits in the name of the town or its officers in their official capacities and to appear and defend suits brought against it or its officers in their capacities, unless otherwise ordered by vote of the town, or provided by law.

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

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

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

Section 6 The Selectmen may make such rules and regulations not inconsistent with law as may be deemed proper relative to the licensing of junk or second-hand dealers.

TOWN OF UPTON

Chapter 188 of the Acts of 2005

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

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

SECTION 2 This act shall take effect upon its passage.
Approved January 5, 2006

Chapter 5
Town Clerk

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

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

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

Chapter 6
Treasurer-Collector

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

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

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

TOWN OF UPTON

Chapter 7
Town Counsel

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

Chapter 8
Finance Committee

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

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

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

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

TOWN OF UPTON

Chapter 9.
Capital Budget Committee

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

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

Chapter 10
Personnel Board

Under Separate Cover

Chapter 11
Gas Inspector

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

Section 2 It shall be the duty of the Gas Inspector to enforce the rules and regulations as adopted and from time to time amended by the board, established under section l2H of Chapter 25 of the General Laws.

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

Chapter 12
Water Department

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

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

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

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

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

Section 6 CROSS-CONNECTION CONTROL-GENERAL POLICIES

(a) PURPOSE

The purpose of this by-law is:

1. To protect the public potable water supply of the Town of Upton from the possibility of contamination or pollution by isolating within the customer's internal distribution system(s) or the customer's private water system(s) such contaminants or pollutants that could backflow into the public water system: and,

2. To promote the elimination or control of existing cross connections, actual or potential, between the customer's in-plant potable water system(s) and nonpotable water systems, plumbing fixtures, and industrial piping systems; and,

3. To provide for the maintenance of a continuing program of cross-connection control that will systematically and effectively prevent the contamination or pollution of all potable water systems.

(b) AUTHORITY

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

(c) RESPONSIBILITY

The Upton Water Department shall be responsible for the protection of the public potable water distribution system from contamination or pollution due to the backflow of contaminants or pollutants through the water service connection. If, in the judgment of the Upton Water Department an approved backflow-prevention assembly is required (at the customer's water service connection; or, within the customer's private water system) for the safety of the water system, the Upton Water Department or its designated agent shall give notice in writing to said customer to install such an approved backflow-prevention assembly(s) at specific location(s) on his/her premises. The customer shall immediately install such approved assembly(s) at his/her own expense: and, failure, refusal, or inability on the part of the customer to install, have tested, and maintain said assembly(s) shall constitute grounds for discontinuing water service to the premises until such requirements have been satisfactorily met.

(d) DEFINITIONS

1. WATER SUPERINTENDENT - The Superintendent in charge of the Water Department of the Town of Upton is invested with the authority and responsibility for the implementation of an effective cross-connection control program and for the enforcement of the provisions of this ordinance.

2. APPROVED - Accepted by the authority responsible as meeting an applicable specification stated or cited in this ordinance or as suitable for the proposed use.

3. AUXILIARY WATER SUPPLY - Any water supply on or available to the premises other than the purveyor's approved public water supply. These auxiliary waters may include water from another purveyor's public potable water supply or any natural source(s), such as a well, spring, river, stream, harbor, and so forth; used waters; or industrial fluids. These waters may be contaminated or polluted, or they may be objectionable and constitute an unacceptable water source over which the water purveyor does not have sanitary control.

4. BACKFLOW - The undesirable reversal of flow in a potable water distribution system as a result of a cross connection.

5. BACKPRESSURE - A pressure, higher than the supply pressure, caused by a pump, elevated tank, boiler, or any other means that may cause backflow.

6. BACKSIPHONAGE - Backflow caused by negative or reduced pressure in the supply piping.

7. BACKFLOW PREVENTER - An assembly or means designed to prevent backflow.

7.1 Air gap - The obstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor, or other assembly and the flood level rim of the receptacle. These vertical, physical separations must be at least twice the diameter of the water supply outlet, never less than 1 inch (25 mm).

7.2 Reduced pressure backflow-prevention assembly - The approved reduced-pressure principle backflow-prevention assembly consists of two independently acting approved check valves together with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves and below the first valve. These units are located between two tightly closing resilient-seated shut-off valves as an assembly and equipped with properly located resilient-seated test cocks.

7.3 Double check valve assembly - The approved double check-valve assembly consists of two internally loaded check valves, either spring loaded or internally weighted, installed as a unit between two tightly closing resilient—seated shutoff valves and fittings with properly located resilient-seated test cocks. This assembly shall only be used to protect against a "nonhealth" hazard (that is, a pollutant).

8. CONTAMINATION - An impairment of potable water supply by the introduction or admission of any foreign substance that degrades the quality and creates a health hazard.

9. CROSS CONNECTION - A connection or potential connection between any part of a potable water system and any other environment containing other substances in a manner that,

under any circumstances would allow such substances to enter the potable water system.. Other substances may be gases, liquids. or solids, such as chemicals, waste products, steam, water from other sources (potable or nonpotable), or any matter that may change the color or add odor to the water.

10. CROSS CONNECTIONS-CONTROLLED - A connection between a potable water system and a nonpotable water system with an approved backflow-prevention assembly properly installed and maintained so that it will continuously afford the protection commensurate with the degree of hazard.

11. CROSS-CONNECTION CONTROL BY CONTAINMENT - The installation of an approved backflow-prevention assembly at the water service connection to any customer's premises, where it is physically and economically unfeasible to find and permanently eliminate or control all actual or potential cross connections within the customer's water system; or it shall mean the installation of an approved backflow-prevention assembly on the service line leading to and supplying a portion of a customer's water system where there are actual or potential cross connections that cannot be effectively eliminated or controlled at the point of the cross connection.

12. DEP - The Massachusetts Department of Environmental Protection.

13. HAZARD, DEGREE OF - The term is derived from an evaluation of the potential risk to public health and the adverse effect of the hazard upon the potable water system.

13.1 Hazard--health - A cross connection or potential cross connection involving any substance that could, if introduced in the potable water supply, cause death, illness, spread disease, or have a high probability of causing such effects.

13.2 Hazard--plumbing - A plumbing-type cross connection in a consumer's potable water system that has not been properly protected by an approved air gap or an approved backflow-prevention assembly.

13.3 Hazard--nonhealth - A cross connection or potential cross connection involving any substance that generally would not be a health hazard but would constitute a nuisance or be aesthetically objectionable, if introduced into the potable water supply.

13.4 Hazard--system - An actual or potential threat of severe damage to the physical properties of the public potable water system or the consumer's potable water system or of a pollution or contamination that would have a protracted effect on the quality of the potable water in the system.

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

and so forth; oils, gases, glycerine, paraffins, caustic and acid solutions, and other liquid and gaseous fluids used in industrial or other purposes for fire-fighting purposes.

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

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

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

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

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

(e) ADMINISTRATION

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

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

(f) REQUIREMENTS

1. WATER SYSTEM

1.1 The water system shall be considered as made up of two parts: The utility system and the customer system.

1.2 Utility system shall consist of the source facilities and the distribution system, and shall include all those facilities of the water system under the complete control of the utility, up to the point where the customers system begins (usually at the meter).

1.3 The source shall include all components of the facilities utilized in the production, treatment storage, and delivery of water to the distribution system.

1.4 The distribution system shall include the network of conduits used for the delivery of water from the source to the customers system.

1.5 The customer's system shall include those parts of the facilities beyond the termination of the utility distribution system that are utilized in conveying utility-delivered domestic water to points of use.

2. POLICY

2.1 No water service connection to any premises shall be installed or maintained by the water purveyor unless the water supply is protected as required by state/provincial laws and regulations and this By-Law. Service of water to any premises shall be discontinued by the water purveyor if a backflow-prevention assembly required by the by-law is not installed, tested, and maintained, or if it is found that a backflow-prevention assembly has been removed, bypassed, or if an unprotected cross connection exists on the premises. Service will not be restored until such conditions or defects are corrected.

2.2 The customer's system should be open for inspection at all reasonable times to authorized representatives of the Town of Upton Water Department to determine whether cross connections or other structural or sanitary hazards, including violations of these regulations exist. When such a condition becomes known, the Upton Water Department shall deny or immediately discontinue service to the premises by providing for a physical break in the service line until the customer has corrected the condition(s) in conformance with state/provincial and town statutes relating to plumbing and water supplies and the regulations adopted pursuant thereto.

2.3 An approved backflow-prevention assembly shall be installed on each service line to a customer's water system at or near the property line or immediately inside the building being served; but in all cases, before the first branch line leading off the service line wherever the following conditions exist:

2.3a In the case of premises having an auxiliary water supply that is not or may not be of safe bacteriological or chemical quality and that is not acceptable as an additional source by the Upton Water Department, the public water system shall be protected against backflow from the premises by installing an approved backflow-prevention assembly in the service line, appropriate to the degree of hazard -

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

2.3c In the case of premises having (1) internal cross connections that cannot be permanently corrected and controlled, or (2) intricate plumbing and piping arrangements or where entry to all portions of the premises is not readily accessible for inspection purposes, making it impracticable or impossible to ascertain whether or not dangerous cross connections exist, the public water

system shall be protected against backflow from the premises by installing an approved backflow-prevention assembly in the service line.

2.4 The type of protective assembly required under subsections (f) 23a, (f) 2.3b, and (f) 2.3c shall depend upon the degree of hazard that exists as follow:

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

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

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

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

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

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

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

2.6 It shall be the duty of the customer-user at any premises where backflow

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

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

Section 7 RATE

(a) Residential Connections:

(1) For a single family dwelling that is connected, directly or indirectly, to the municipal water supply, $2,500.00 shall be assessed.

(2) For a multi-family dwelling that is connected, directly or indirectly, to the municipal water supply, $2,500.00 shall be assessed for the first dwelling unit and $1,250.00 shall be assessed for each additional dwelling unit therein or as may be from time to time added thereto. For the purposes of this provision, "multi-family dwelling' shall mean any house, building or other structure (other than a hotel or motel) that has more than one dwelling unit.

(3) For an approved sub-division having branch or secondary mains installed and paid for by any party or parties other than the Town of Upton, $2,500.00 shall be assessed for each connection made, directly or indirectly, to the municipal water supply within five years from the date of initial definitive sub-division plan approval as endorsed by the Upton Planning Board. The provisions of Section 7(a) (1) SUPRA, shall govern any connection made within such development after said five year period.

(4) For a hotel or motel that is connected, directly or indirectly, to the municipal water supply, $2,500.00 shall be assessed for each rentable unit therein or as may be from time to time added thereto; and for any other use therein which is connected, directly or indirectly, to a public water supply an amount shall be assessed in accordance with Section 7(b), INFRA.

(b) Non—Residential Connections:

(1) For an approved commercial or individual sub-division having branch or secondary mains installed and paid for by a party or parties other than the Town of Upton, $2,500.00 shall be assessed for each connection made, directly or indirectly, to the municipal water supply within five years from the date of the initial definitive sub-division plan approval as endorsed by the Upton Planning Board.. The provisions of Section 7(b) (2), INFRA, shall govern any connection made with such development after such five-year period.

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

(i) Any such facility that is utilized solely by one party, partnership, association, corporation or other entity, and for one enterprise only, and which has floor space not in excess of 10,000 square feet, shall be assessed at $2,500.00.

(ii) Any other such facility shall be assessed a minimum of $2,500.00 together with an additional $2,500.00 for each 10,000 square feet of floor space up to a total of 50,000 square feet, as such floor space may be therein or as may be from time to time added thereto.

Section 8 Water Use Restrictions

8.1 Authority This By-law is adopted by the Town under its police powers to protect public health and welfare and its powers under M.G.L. c.40. §§2l et seq. and implements the Town's authority to regulate water use pursuant to M.G.L. c. 41. §§69B.

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

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

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

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

8.4 Declaration of a State of Water Supply Conservation The Town, through its Board of Selectmen, may declare a State of Water Supply Conservation upon a determination by a majority vote of the Board that a shortage of water exists and conservation measures are required to ensure an adequate supply of water to all water consumers. Public notice of a State of Water Conservation shall be given under section 8.6 of this by-law before it may be enforced.

8.5 Restricted Water Uses A declaration of a State of Water Supply Conservation shall include one or more of the following: restrictions, conditions or requirements limiting the use of the municipal water system as necessary to protect the water supply. The applicable restrictions,

conditions or requirements shall be included in the public notice required under section 8.6.

a) Odd/Even Day Outdoor Watering Outdoor watering by water users with odd numbered addresses is restricted to odd numbered days. Outdoor watering by water users with even numbered addresses is restricted to even numbered days.

b) Outdoor Watering Ban Outdoor watering is prohibited.

c) Outdoor Watering Hours Outdoor watering is permitted only during daily periods of low demand, to be specified in the declaration of a State of Water Supply Conservation and public notice thereof.

d) Filling Swimming Pools Filling of swimming pools is prohibited.

e) Automatic Sprinkler Use The use of automatic sprinkler systems is prohibited.

8.6 Public Notification of a State of Water Supply Conservation: Notification of DEP Notification of any provision, restriction, requirement or condition imposed by the Town as part of a State of Water Supply Conservation shall be published in a newspaper of general circulation within the Town or by such other means reasonably calculated to reach and inform all users of water of the State of Water Supply Conservation. Any restriction imposed under section 8.5 shall not be effective until such notification is provided. Notification of the State of Water Supply Conservation shall also be simultaneously provided to the Massachusetts Department of Environmental Protection.

8.7 Termination of a State of Water Supply Conservation: Notice A State of Water Supply Conservation may be terminated by a majority vote of the Board of Selectmen upon a determination that the water supply shortage no longer exists. Public notification of the termination of a State of Water Supply Conservation shall be given in the same manner required by section 8.6.

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

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

Section 9: Payments for water bills are due to the Treasurer/Collector's Office thirty calendar (30) days after the date of issue. Charges that remain unpaid after that date shall be subject to an interest rate of fourteen percent (14%) per annum.

TOWN OF UPTON

Chapter 13
Sewer Cost Apportionment

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

Section 1 In General:
The owner of any house, building or other structure used for human habitation, employment, recreation or periodic activity, or for which sanitary sewerage facilities are by law required to be installed or maintained, and that is within the Town and upon land abutting upon a public or private way in which there is a public sanitary sewer, shall connect such facilities to said sewer by a sufficient drain (a) within one year after the date that said public sanitary sewer shall have been placed in operation, or (b) in the case of a newly constructed such house, building, or other structure, or where a permit for occupancy, or the like, would be otherwise required, prior to the occupancy thereof.

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

Section 3 Rate:

(a) Residential Connections**:**

(1) For a single family dwelling that is connected, directly or indirectly, to a public sanitary sewer, $5,000.00 shall be assessed.

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

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

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

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

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

(b) Non-Residential Connections:

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

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

(i) Any such facility that is utilized solely by one party, partnership, association, corporation or other entity, and for one enterprise only, and which has floor space not in excess of 10,000 square feet, shall be assessed at $5,000.00.

(ii) Any other such facility shall be assessed a minimum of $5,000.00 together with an additional $5,000.00 for each 10,000 square feet of floor space up to a total of 50,000 square feet, as such floor space may be therein or as may be from time to time added thereto.

Section 4 Manner of Assessment

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

Section 5 Payments for sewer bills are due to the Treasurer/Collector's Office thirty calendar (30) days after the date of issue. Charges that remain unpaid after that date shall be subject to an interest rate of fourteen percent (14%) per annum.

TOWN OF UPTON

Chapter 14
Street Numbering

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

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

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

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

Chapter 15
Civil Defense

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

Section 2 DIRECTOR OF CIVIL DEFENSE: The department shall be under the direction of a director of civil defense (hereinafter called the 'director'), who shall be appointed by the Selectmen. The director shall have direct responsibility for the administration of the department, subject to the direction and control of the Selectmen. The director may, within the limits of the amount appropriated therefor, and subject to the approval of the Selectmen, appoint such experts, clerks and other assistants as the work of the department may require and may remove them, and may make such expenditures as may be necessary to execute effectively the purpose of Chapter 639 of the Acts of 1950.

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

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

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

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

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

Chapter 16
Animal Control

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

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

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

Leash Law

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

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

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

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

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

Chapter 17
Building Committee

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

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

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

Chapter 18
Board of Commissioner of Trust Funds

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

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

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

TOWN OF UPTON

Chapter 19
Non-Criminal Disposition

Any bylaw of the Town of Upton, or rule or regulation of its officers, boards or departments, the violation of which is subject to a specific penalty, may in the discretion of the Town official who is the appropriate enforcing person, be enforced in the method provided in Section 2I-D of Chapter 40 of the Massachusetts General Laws. The non-criminal fine for each such violation, if not otherwise specified, shall be $150.00. "Enforcing person" as used in this bylaw, shall mean: any Town of Upton police officer with respect to any offense; as well as the Building Inspector, the members of the Conservation Commission, the members of the Board of Health and its Health Agent, the Sealer of Weights and Measures, and such other officials as the Board of Selectmen may from time to time designate, each with respect to violation of bylaws and rules and regulations within their respective jurisdictions. If more than one official has jurisdiction in a given case, any such official may be an enforcing person with respect thereto.

Chapter 20
Fire & EMS Department Advisory Committee

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

Responsibility & Duties: The FD/EMS Advisory Committee shall make careful studies of resources, and needs of the FD/EMS Department. The committee will make comprehensive recommendations to the Fire Chief setting forth policies to govern the future growth and development of the FD/EMS Department. These recommendations shall be submitted in written form to the Chief for his review. The Chief shall within a reasonable time respond in writing to the Advisory Committee as to their recommendations.

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

Chapter 21
Planning Board

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

a. **Composition, Term of Office**

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

b. **Responsibilities and Duties**

The Planning Board shall make careful studies of resources, possibilities and needs of the town

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

Chapter 22
Recall of Elected Officials

AN ACT AUTHORIZING RECALL ELECTIONS IN THE TOWN OF UPTON.
Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

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

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

After the town clerk has certified the affidavit, the town clerk shall, within 2 business days, deliver to the voter first named on the affidavit a sufficient number of copies of petition blanks demanding the recall. These blanks shall be issued by the town clerk with the town clerk's signature and official seal attached to them; they shall be dated and addressed to the selectmen of the town, shall contain the name of the person to whom issued, the name of the person sought to be recalled, the office from which recall is sought, the grounds of recall as stated in the affidavit, and shall demand the election of a successor to the office. A copy of the petition shall be entered in a record book to be kept in the office of the town clerk.

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

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

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

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

office after a recall election has been ordered, the election shall nevertheless proceed as provided in this act.

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

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

SECTION 6. Ballots used in a recall election in the town shall submit the following proposition in the order indicated: For the recall of (name of Officer); Against the recall of (name of officer).

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

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

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

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

Approved January 3, 2007.

TOWN OF UPTON

TOWN MANAGER: Chapter 391 of the Acts of 2008

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

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

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

"Board", the board of selectmen.
"Employee s", persons who act on behalf of the town, whether appointed or hired, who receive compensation from the town and are under the jurisdiction of the board. For specific positions refer to the personnel b y-laws of the town.
"Hiring authority", persons, boards and committees specifically empowered to employ individuals on behalf of the town.
"Manager", the town manager.
"Town", the town of Upton.

SECTION 2 There shall be an administrative officer in the town of Upton known as the manager. The manager, reporting directly to and supervised by the board, shall be the chief administrative officer of the town. The manager shall not set town policy but shall ensure that there is appropriate coordination in the implementation of town policy, working with the board and all elected and appointed boards and commissions.
The following responsibilities and authority shall devolve from the board to the manager:
(a) hiring, firing and disciplining employees under the jurisdiction of the board, pursuant to subsection (k) of section 4;
(b) compiling and recommending to the board a balanced budget, for approval in its entirety, for the departments under the jurisdiction of the board;
(c) fixing the compensation, within the appropriated amounts, of all town officers and employees under the jurisdiction of the board;
(d) reorganizing town departments under the jurisdiction of the board for more efficient operation;
(e) acting as the town's chief procurement officer; and
(f) signing the warrants for payment of town obligations.
The manager shall supervise, manage and coordinate the day-to-day activities of all town departments and employees under the jurisdiction of the board and coordinate all activities of said departments with the activities of other departments under the jurisdiction of other elected officials, boards and commissions.
With the exception of the board, all other elected boards, officials, commissions, trustees and committees are exempt from the provisions of this act. This exemption includes the departments, employees and appointments of other elected boards, commissions and committees of the town.

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

manager's employment.

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

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

(b) In conjunction with the chair of the board, prepare and distribute agendas for the board's meetings. The manager or his designee shall be the recording and corresponding secretary for the board;

(c) Ensure that all of the meetings of the board are properly posted and are in accordance with local, state and federal laws. The manager shall attend aforesaid meetings unless requested by the board not to be in attendance or upon approval by the chairman of the board of a request by the manager to be excused from attendance. The manager shall have the right to speak at the aforesaid meetings but shall not have a vote;

(d) Prepare warrants for special and annual town meetings for consideration and signature by the board in compliance with town by-laws. Attend all sessions of annual and special town meetings, unless excused by the board, and be prepared to answer all questions concerning warrant articles;

(e) Work in conjunction with the chair of the board and town counsel regarding any litigation or other legal matters in which the town has an interest, act as liaison between the town counsel and the board and affected town departments and officials, review and approve new requests, other than those of the chairman of the board, for use of town counsel on new matters and provide the board with monthly status reports on legal issues and concerns ;

(f) Have the authority to execute contracts on behalf of the town up to $25,000.00;

(g) Serve as chief procurement officer of the town responsible for purchasing all supplies, materials and equipment for the departments under the jurisdiction of the board. Purchases by other boards shall be reviewed by the manager to ensure that they conform to all state and local laws and regulations. The manager shall keep a full and complete inventory of all town property, both real and personal;

(h) Manage the town's insurance programs and serve as the contact with the insurance providers ;

(i) Be responsible for the administration of personnel and personnel matters , including the personnel by-laws, files and all personnel policies that the board and the town may adopt. Such responsibilities shall include the enforcement of personnel policies, rules and regulations and managing personnel costs such as salaries, benefits, overtime and use of town-owned vehicles for employees under the jurisdiction of the board;

(j) Evaluate all of the town officers and employees under the board in accordance with the personnel by-laws;

(k) Serve as the town's Americans with Disabilities Act director and affirmative action officer and administer the town's affirmative action program;

(l) Fix the compensation of all town officers and employees within the limits established by the personnel board, the relevant body and the appropriation;

(m) Administer all applicable general and special laws, and all applicable by-laws and regulations and implement all lawful goals and policies established by the board and provide reports to the board when appropriate;

(n) Be responsible for keeping full and complete records of the administrative activities of the town and render a full report of the prior fiscal year to the board within 3 months of the end of that year. The manager shall have access to all town books and records for the performance of his duties;

(o) Keep the board informed as to the financial condition and needs of the town and recommend to the board any actions that should be taken;

(p) Serve as arbitrator of grievances and chief union negotiator for all collective bargaining agreements under the jurisdiction of the board. The board, from time to time, may provide advice and guidelines to the manager. The board shall retain the authority to execute the union contract agreements;

(q) Respond to and coordinate local response to emergency situations;

(r) Establish and maintain positive community relations with local organizations, groups and residents;

(s) Receive and act on questions and complaints filed with the board or the manager and inform the board of the status of the resolution;

(t) Serve as the board's liaison to news outlets, including the preparation of news releases and acting as spokesperson to the press when authorized by the board;

(u) Prepare written reports as directed by the board; and

(v) Perform other duties required by the by-laws or votes of the town meeting or by the board.

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

(a) Prepare and present annually to the board for its review, approval and recommendations to the finance committee detailed budgetary estimates of amounts necessary for the administration of all town boards, officers, committees, divisions and departments under the jurisdiction of the board or the manager for the ensuing fiscal year, including both capital and operating items. The manager shall present a requested balanced budget to the finance committee.

(b) Review the warrants for all town meetings and ballot questions to ensure that they are proper and legal and that there are sufficient funds available for implementation.

(c) Approve the warrants for the payment of town obligations after reviewing the expenditures and

ensuring that they are proper and within the appropriation. The signature of the manager is sufficient for payment by the treasurer.

(d) Have the authority to reorganize departments under the jurisdiction of the board for more efficient use of town resources in order to ensure that departmental activities are conducted within the budget as authorized by town meeting.

(e) Ensure that the complete and full records of the financial activity of the town are maintained in accordance with state, federal laws and the town by-laws and render quarterly reports to the board. The board may require interim or condensed reports from time to time.
(f) Seek out, prepare, coordinate and file applications for state, federal and private grants.

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

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

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

SECTION 9 This act shall take effect upon its passage.

Approved December 17, 2008

Chapter 23
Upton Affordable Housing Trust

There shall be an Upton Affordable Housing Trust, the purpose of which shall be to provide for the preservation and creation of affordable housing in the Town of Upton for the benefit of low and moderate income households. The Trust shall be governed by Trustees in accordance with

Massachusetts General Laws Chapter 44, Section 55C and the authority granted by Town Meeting, as revised from time to time.

A. Name of the Trust

The Trust shall be called the "Upton Affordable Housing Trust", herein referred to as the Trust.

B. Purpose

The purpose of the Trust shall be to provide for the preservation and creation of affordable housing in the Town of Upton for the benefit of low and moderate income households.

C. Board of Trustees

There shall be a Board of Trustees (the "Board") consisting of seven (7) Trustees who shall be appointed by the Board of Selectmen. At least one (1) of the Trustees shall be a member of the Board of Selectmen. Only persons who are residents of the Town of Upton shall be eligible to hold the office of Trustee. Trustees shall serve for a term of two (2) years, except that three(3) of the initial appointments shall be for a term of one (1) year. The Board of Selectmen may reappoint Trustees for succeeding terms, and there is no limit on the number of terms that a Trustee can serve. Any Trustee may resign by written instrument signed and acknowledged by such Trustee and duly filed with the Town Clerk. If a Trustee shall die, resign, or for any other reason cease to fulfill the duties of Trustee hereunder before his/her term of office expires, a successor shall be appointed by the Board of Selectmen to fill the remainder of the term of such vacancy provided that said appointment and acceptance in writing by the newly appointed Trustee are filed with the Town Clerk. Upon the appointment of any Trustee and the filing of such appointment with the Town Clerk, the title to the Trust estate shall thereupon and without the necessity of any conveyance be vested in such succeeding Trustee jointly with the remaining Trustees. Reference to the Trustee shall mean the Trustee or Trustees for the time being hereunder. Trustees may be removed at any time for cause by a majority vote of the Board of Selectmen following a properly noticed public hearing. Cause shall include, but not be limited to, violation of any local, state, or federal law; inactivity in business of the Board incapacity to perform the duties of a Trustee; acts of the Trustee, that in the opinion of the Board of Selectmen, are negligent or detrimental to the Town of Upton or the Trust.

D. Meetings of the Trust

The Trust shall meet at least quarterly at such time and at such place as the Trustees shall determine. Notice of all meetings of the Trust shall be given in accordance with the provisions of the Open Meeting Law, Massachusetts General Laws Chapter 39, Sections 23A, 23B and 23C. A quorum at any meeting shall be a majority of the Trustees qualified and present in person. Minutes of all meetings shall be kept with the Town Clerk in accordance with the provisions of the Open Meeting Law, Massachusetts General Laws Chapter 39, Sections 23A, 23B and 23C.

E. Powers of Trustees

The Powers of the Trustees shall be the following, except that (a) any purchase, sale, lease, exchange, transfer or conveyance of any interest in real property is subject to a two-thirds (2/3rds) vote of the Trustees; (b) the Trustees may incur debt, borrow money, grant mortgages and pledge Trust assets only in an amount not to exceed 80% of the total value of the Trust's assets; and (c) any debt incurred by the Trust shall not constitute a pledge of the full faith and credit of the Town of Upton and all documents related to any debt shall contain a statement that the holder of any such debt shall have no recourse against the Town of Upton with an acknowledgement of said statement by the holder:

(1) to accept and receive property, whether real or personal, by gift, grant, contribution, devise, or transfer from any person, firm, corporation or other public or private entity, including without limitation

grants of funds or other property tendered to the Trust in connection with any by-law, general or special law, including the Community Preservation Act, or any other source,;

(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 undertakings relative to Trust property as the Trust 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 income 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, recapitalization, 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 borrow money on such terms and conditions and from such sources as the Board deems advisable, to mortgage and pledge trust assets as collateral;

(11) to carry property for accounting purposes other than acquisition date values;

(12) to make distributions or divisions of principal in kind;

(13) to compromise, 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 state statutes, 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 determines not to be worth retaining;

(15) to hold all or part of the Trust property un-invested for such purposes and for such time as the Board may deem appropriate;

(16) to extend the time for payment of any obligation to the Trust; and

(17) to adopt rules and regulations governing the conduct of the Board, consistent with the General Laws.

F. Funds Paid to the Trust
Notwithstanding any general or special law to the contrary, all monies paid to the Trust in accordance with any Town of Upton zoning bylaw, exaction fee, or private contribution shall be paid directly into the Trust and need not be appropriated or accepted and approved into the Trust.

Funds appropriated by the Town of Upton Town Meeting for payment into the Trust become Trust property and these funds need not be further appropriated to be expended except as set forth in paragraph E herein. All monies remaining in the Trust at the end of any fiscal year, whether or not expended by the Trust, remain Trust property. The Trust shall comply with any conditions stipulated in any Upton Town Meeting vote appropriating monies to the Trust.

G. Acts of Trustees
A majority of Trustees may exercise any or all of the powers of the Trustees hereunder, unless otherwise provided, and may execute on behalf of the Trustees any and all instruments with the same effect as though executed by all the Trustees. No Trustee shall be required to give bond. No license of court shall be required to confirm the validity of any transaction entered into by the Trustees with respect to the Trust Estate. Any expenditure or donation by the Trust to any one party to create a affordable single family dwelling unit shall not exceed $50,000 or a cumulative amount exceeding $200,000 during one calendar year; said vote shall require a super majority vote (2/3) of the total number of Trustees and the Board of Selectmen, nine (9) eligible voters. Any borrowing by the Trust shall require the prior approval of the Upton Town Meeting.

H. Liability
Neither the Trustees nor any agent or office of the Trust shall have the authority to bind the Town of Upton, except in the manner specifically authorized herein. The Trust is a public employer and the Trustees are public employees for the purposes of Massachusetts General Laws Chapter 258. The Trust shall be deemed to be a municipal agency and the Trustees special municipal employees for the purposes of General Laws Chapter 268A.

I. Taxes
The Trust is exempt from General Laws Chapter 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the Commonwealth or any subdivision thereto.

J. Custodian of Funds
The Town of Upton Treasurer shall be the custodian of the funds of the Trust. The books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices for municipalities. Cost associated with the independent audit shall be borne by the Trust.

K. Governmental Body
The Trust is a governmental body for purposes of the Open Meeting Law, G.L. c.30A, §§18-25.

L. Board of the Town
The Trust is a board of the Town for purposes of General Laws Chapter 30B and Section 15A of Massachusetts General Laws Chapter 40; but agreements and conveyances between the Trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the Town shall be exempt from said Chapter 30B.

M. Duration of the Trust
This Trust shall be of indefinite duration until terminated by a vote of the Upton Town Meeting. Upon termination of the Trust, subject to the payment of or making provisions for the payment of all obligations and liabilities of the Trust and the Trustees, the net assets of the Trust shall be transferred to the Town of Upton and held by the Board of Selectmen for affordable housing purposes. In making any such distribution, the Trustees may, subject to the approval of the Board of Selectmen, sell all or any portion of the Trust property and distribute the net proceeds thereof to the Town of Upton. The powers of the Trustees shall continue until the affairs of the Trust are concluded. Once the Upton Town Meeting has voted to terminate the Trust, the Board of Selectmen shall have the power to approve all financial transactions made on behalf of the Trust.

N. Registry of Deeds
The Board of Selectmen may authorize the Trustees to execute, deliver and record with the Registry of Deeds any documents required for any conveyance authorized hereunder.

O. Titles
The titles to the various Articles herein are for convenience only and are not to be considered part of said Articles nor shall they affect the meaning or the language of any such Article.

P. Compensation of Trustees
Trustees shall not receive a salary, stipend, bonus or other means of compensation for their service as a Trustee, nor shall they be eligible for any benefits from the Town of Upton. Trustees may be compensated for reasonable out-of-pocket expenses for travel and other Trust-related expenses. All such out-of-pocket expenses shall be fully documented with receipts for expenses prior to payment by the Trust.

Q. Amendments
The provisions of this Trust can only be amended by a vote of the Upton Town Meeting.

R. Annual Report
The Trustees shall prepare an annual report describing the activities of the Trust on a calendar year basis. The annual report shall be submitted to the Board of Selectmen. The annual report shall list all financial transactions conducted by the Trust including all revenues and costs, provide a balance sheet of liabilities and assets of the Trust, list an inventory of all affordable housing units created, sold, and/or managed by the Trust, and any other pertinent information related to the business of the Trust.

TOWN OF UPTON
TITLE 3
LAND USE

Chapter 1
Earth Removal

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

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

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

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

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

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

Section 7 (Removal within 300 feet of Streets) Soil, loam, sand or gravel may be removed from any parcel of land within such parcel lying within 300 feet of any street or way, provided a permit therefor has been issued by the Board after satisfactory evidence that such removal will not be seriously

detrimental or injurious to the neighborhood; provided further that the Board shall impose reasonable conditions as to the method of removal, the re—establishment of ground levels and grades and the planting of the area to suitable cover, as it may seem necessary.

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

Section 9 Accumulation or Deposit of Soils and Materials
No land owner, occupant, resident, tenant, contractor or other person shall pile, push, shovel or cause the accumulation or deposit of soils or refuse during transportation, placement, removal or by way of allowing land erosion onto any public way, or body of water, including but not limited to lawn areas, wooded areas, driveways, walks and roof areas. This prohibition shall apply during construction as well as after construction. Any person or persons who causes said accumulation or deposit onto any public way, or body of water shall bear all costs associated with fines, damage and costs associated with the cleanup of said deposit or accumulation as may be necessary to restore any such land or body of water to it's pre-exiting condition or, to the condition that otherwise be acceptable to the Town.

Chapter 2
Zoning - Under separate cover

Chapter 3
Motor Vehicle Storage

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

Chapter 4
Public Way Access, Closing, Construction, Excavation

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

Section 2 In issuing a permit under this by-law, the Road Commissioner may impose conditions regarding specifications for work and materials, liability and other insurance, or any other conditions, not specifically provided for herein, that in his judgment are necessary for adequate protection of the public way, the neighborhood, the public, or the Town. The Road Commissioner may require a bond, certified check or other security, to insure compliance with said conditions. All such conditions, and any such requirements for security, shall be attached to and made a part of the permit. All permit applications are to be made on forms provided by the Road Commissioner.

Section 3 Additional requirements as to driveways and other access:
No building permit shall be issued for the construction of any dwelling or other structure until the

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

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

Chapter 5
Snow Obstructing Public Ways

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

TOWN OF UPTON
TITLE 4
POLICE AND PUBLIC ORDER

Chapter 1
Loitering

(a) Whoever continues to stand, sit or loiter in, on or about any street, sidewalk or any public place so as to obstruct the free passage of travelers or vehicles thereon, after being directed by a police officer to move on or disperse, shall be punished by a fine not exceeding twenty-five dollars.

(b) It shall be the duty of any police officer of the Town to order any person, so acting as to obstruct the free passage of travelers or vehicles, to move on and disperse, and if the person so ordered does not forthwith obey, to remove such person, or to arrest and cause such person to be brought before a Justice of the Third District Court of Southern Worcester County, upon a complaint made for violation of the provision of the preceding paragraph (a).

Chapter 2
Public Drinking

(a) Whoever shall, within the limits of any public way located within the town, whether that public way be a town way, county highway, state highway, or a private way open to the public, consume intoxicating beverages, shall be punished by a fine not exceeding fifty dollars. This section shall also be construed so as to prohibit the following: The consumption of intoxicating beverages by any person while such person is standing, sitting, walking, running, or otherwise present within such way or is within any vehicle, whether parked or moving, which is within the limits of such public way.

(b) Whoever shall consume any intoxicating beverages in any public building, or on any public property, including parks, cemeteries, school houses and school grounds, and public squares, or in any private way or parking area regulated under the provisions of General Laws Chapter 90, Section 18 shall be punished by a fine not exceeding fifty dollars.

(c) The foregoing paragraphs (a) and (b) shall not apply to any activity duly licensed by the Board of Selectmen under the applicable provisions of the Massachusetts General Laws.

(d) It shall be the duty of any police officer of the town to arrest any person who violates the provisions of paragraphs (a) or (b) and to cause such person to be brought before a Justice of the Third District Court of Worcester County upon a complaint for violation thereof.

Chapter 3
Cutting or Removal of Firewood

(a) No person or persons shall cut or remove any wood or dead or live trees from any property, public or private, in the Town of Upton, without first obtaining a permit to do so issued by the Upton Police Department. Such permit, or the written authorization referred to in Section b shall be in the possession of, or in a place easily accessible to, such person or persons so engaged in the cutting or removal of wood. Such permit, or the written authorization referred to in Section b shall be produced upon the request of any police officer having jurisdiction in the Town of Upton. Any person or persons violating the provisions of this paragraph shall be punished by a fine not exceeding $100.00 for a first offense, nor less than $100.00 for a second or subsequent offense.

(b) The foregoing paragraph (a) shall not apply to any person being the owner (includes immediate family) or person in lawful control of said property, or any person bearing the written authorization of the owner of the property, nor shall it apply to the Tree Department of the Town of Upton, the State Forestry Department or its authorized representative, or any department in the lawful performance of its duties.

(c) Upon approval of the Board of Selectmen of the Town of Upton, the Upton Police Department shall establish a procedure for the issuance of said permits and the collection of a fee for each.

(d) It shall be the duty of any police officer having jurisdiction in the Town of Upton to summons to court or to arrest any person who violates the provisions of paragraph (a) and cause such person or persons to be brought before a Justice of the Third District Court of Southern Worcester County upon a complaint for violation thereof.

Chapter 4
Gasoline or Automotive Service Stations

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

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

Chapter 5
Entertainment

Section 1 The acts or conduct enumerated in Section 2 of this by-law are deemed contrary to the public need and to common good and therefore are prohibited in or on premises licensed under the provisions of General Laws, Chapter 138, Section 1 and 12, or Chapter 140, Section 181 or l83A.

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

a. To employ or permit any person in or on the licensed premises while such person is unclothed or in such attire as to expose to view any portion of the areola of the female breast or any portion of the pubic hair, cleft of the buttocks, or genitals.

b. To employ or permit any host, hostess or other person to mingle with the patrons while such host, hostess or other person is unclothed or in such attire as described in paragraph (a) above.

c. To encourage or permit any host, hostess or other person in or on the licensed premises to touch, caress or fondle the breasts, buttocks, or genitals of any other person.

d. To employ or permit any person to wear or use any device or covering exposed to view which simulates the breasts, buttocks, pubic hair or genitals or any portions thereof.

e. To employ or permit any person in or on the licensed premises to perform an act or acts, or to simulate the act or acts of:

1. Sexual intercourse, masturbation, sodomy, flagellation or any sexual acts prohibited by law.

2. Touching, caressing or fondling of the breasts, buttocks or genitals of another.

f. To employ or permit any person in or on the licensed premises to show motion pictures, films, television tape cassettes, still pictures or other photographic reproductions depicting any acts, or any simulation of any of the acts prohibited in paragraphs (a, e) hereof.

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

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

Section 5 Violation of the provisions of this by-law shall be cause for the suspension or revocation of any license granted pursuant to General Laws, Chapter 138, Section 1 and 12 or Chapter 140, Section 181 or l83A.

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

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

Chapter 6
Signs

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

1. Such signs are permitted if they are stationary, unlighted and temporary.

2. Such signs shall be displayed no earlier than twenty-one (21) days prior to a voting day, and shall be removed within two (2) days after a voting day.

3. Such signs may not exceed five (5) sq. ft. in area or four (4) feet in height above ground level.

4. Political signs are not allowed to be placed on public property, utility poles, or trees.

5. Violations of any section of this by-law shall be subject to a penalty not exceeding ten dollars

($10.00) for each violation. Each instance shall constitute a separate violation of this by-law.

Section 2 – Severability:

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

Chapter 7
Cigarette Rolling Paper

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

Chapter 8
Soliciting, Canvassing & Peddling

Section 1 PURPOSE: It is the purpose of this Bylaw to regulate persons or organizations engaged in commercial soliciting, canvassing, or peddling in the Town of Upton. The issuance of licenses and other restrictions on such conduct is for the purpose of protecting the Town's residents from disruption of the peaceful enjoyment of their residences and other Town activities. Furthermore, it is the purpose of this Bylaw to protect the citizens of the Town of Upton from crime and fraud, while allowing reasonable access to residents by persons or organizations who wish to engage in commercial solicitation.

Section 2 DEFINITIONS:
For the purpose of this By-law, the following definitions shall apply:

1. "Soliciting" shall mean and include any one or more of the following door-to-door activities:
   - (a) selling, or seeking to obtain orders for the purchase of goods or services, including advertising in any type of publication, for any kind of consideration whatsoever;
   - (b) selling, or seeking to obtain prospective customers for application for purchase of insurance of any kind;
   - (c) selling, or seeking to sell subscriptions to books, magazines, periodicals, newspapers or any other type of publication;
   - (d) seeking to obtain gifts or contributions of money, or any valuable thing for the support or benefit of any association, organization, corporation or project wholly or in part for commercial purposes or by a professional solicitor or commercial co-venturer for a charitable or other non-commercial organization;
   - (e) seeking to obtain information on the background, occupation, economic status, political affiliation, attitudes, viewpoints, or the like of the occupants of a residence for the purpose of selling or using such data, wholly, or in part, for commercial purposes.
2. "Canvassing" shall mean and include any one or more of the following door-to-door activities:
   - (a) person-to-person distribution of literature, periodicals, or other printed materials for commercial purposes, but shall not include placing or dropping off printed materials on the premises;
   - (b) seeking to enlist membership in any organization for commercial purposes;

(c) seeking to present, in person, organizational information for commercial purposes.

3. "Peddler" shall mean and include any person, either principal or agent, who goes from town to town or from place to place in the same town selling or bartering, or carrying for sale or barter or exposing therefor, any goods, wares or merchandise, either on foot, on or from any animal or vehicle.

4. "Residence" shall mean and include every individual dwelling unit occupied for residential purposes by one or more persons.

5. "Registered solicitor" shall mean any person who has obtained a valid certificate of registration from the Town as required by this By-law.

6. "Charitable" shall mean but not be limited to benevolent, educational, philanthropic, humane, patriotic, scientific, literary, religious, eleemosynary, health, safety or welfare-related, or in furtherance of governmental or civic objectives, and benefiting the general public or some indefinite class thereof;

7. "Charitable organization" shall mean any person whose purposes or actual operation are charitable in nature or one holding himself out to be a charitable organization in whole or in part, including any person who in any manner employs a charitable appeal as the basis of any solicitation or an appeal which could be reasonably interpreted to suggest that there is a charitable purpose to any such solicitation;

8. "Commercial co-venturer" shall mean any person who for profit or other commercial consideration, conducts, produces, promotes, underwrites, arranges or sponsors a performance, event, or sale to the public of a good or service which is advertised in conjunction with the name of any charitable organization or as benefiting to any extent any charitable purpose. Any such person who will benefit in good will only shall not be deemed a commercial co-venturer if the collection and distribution of the proceeds of the performance, event or sale are supervised and controlled by the benefiting charitable organization;

Section 3 LICENSE: It shall be unlawful for any solicitor, canvasser or peddler as defined in this Bylaw to engage in such business in the Town of Upton without first obtaining a license in compliance with the provisions of this Bylaw.
Any person who is not properly licensed under this Bylaw shall subject to the penalties outlined in Section 8 of this Bylaw.

Section 4 LICENSE EXEMPTION: Nothing in this Bylaw shall be construed to impose any license requirement or otherwise restrict or in any way regulate any activity for non-commercial purposes, including but not limited to any activity for fraternal, religious, charitable, civic or political purposes, regardless of whether such activity includes acts that would otherwise constitute soliciting, canvassing or peddling.

Section 5 APPLICATION & FEE: Any individual or organization applying for a license under this Bylaw shall complete and submit a written application to the Chief of Police, along with a fee of $25.00 (per application) payable to the Town of Upton. Said application shall include the following information:

1. Organization application forms shall include the following information:

(a) The name and address of the organization applying for registration, and the names and addresses of the organizations' principal officers. If the organization is a charitable organization, a copy of the Annual Registration Statement filed with the Attorney General's Division of Public Charities must be provided with this application. Failure to include a copy of the Annual Registration Statement under such circumstances will render the application incomplete and no action will be taken thereon.
If the organization is a professional solicitor or a commercial co-venturer for a charitable organization, a copy of the contract with the charitable organization must be provided with this application. Failure to include a copy of the contract with the charitable organization under such circumstances will render the application incomplete and no action will be taken thereon.
(b) The name, title and phone number, IRS or Social Security (optional) number and photo identification of the persons filing the application form.
(c) The names and addresses of the person(s), if any, who will be directly supervising the solicitation or canvassing operation in the Town of Upton.
(d) A list of the names, addresses, dates of birth of all individuals who will be employed in solicitation, peddling or canvassing by the applicant.
(e) Period of time for which certificate of registration is needed (note: no certificate may be granted for longer than a 90 day period).
(f) Names of the last three communities (if any) in which the organization has conducted a solicitation, canvassing, or peddling operation, complete with the date issued and date expired.
(g) Insurance information and license, if applicable.
(h) Make, model and registration number of any vehicle to be used by the applicant while soliciting, canvassing or peddling.

2. Individual registration forms shall be required for all individuals, including those who are affiliated with an organization registered under Section 5.1 hereof. Individual registration forms shall contain the following information:

(a) Name and address of the present place of residence and length of residence at that address; if less than three years residence at present address, the address of residence(s) during the past three years.
(b) Date of birth.
(c) Name, address and telephone number of the person or organization whom the applicant represents and the length of time the applicant has been associated with or employed by that person or organization. If the individual is a professional solicitor or a commercial co-venturer for a charitable organization, a copy of the contract, if any, with the charitable organization must be provided with this application. Failure to include a copy of the contract with the charitable organization under such circumstances will render the application incomplete and no action will be taken thereon.
(d) Name and address of employer during the past three years.
(e) Period of time for which certificate of registration is needed (note: no certificate may be granted for longer than a 90 day period).
(f) Name of the last three communities (if any) in which the applicant has solicited or canvassed door-to-door, complete with the date of issue and expiration date.
(g) Social Security number. (Optional)

(h) Photo identification and recent passport-sized photograph of the applicant to be affixed to registration card.

(i) Make, model and registration number of any vehicle to be used by the applicant while soliciting or canvassing.

Section 6 INVESTIGATION & ISSUANCE: If after an investigation into the facts contained in the license application the Police Chief is satisfied that the applicant therein named is of "good repute as to morals and integrity" (as that term is used in G.L. c. 101 § 22), the Police Chief, or his designee shall grant the requested license within ten (10) business days.
The Police Chief or his designee shall refuse to issue a license to any organization or individual whose license has been revoked for violation of this Bylaw within the previous two-year period.

Section 7 IDENTIFICATION CARD: The Police Chief, after a review of the information contained in the license application, but in no more than ten (10) business days after receipt, shall issue to each successful applicant an identification card which shall contain the following:

1. the words "Licensed Solicitor/Canvasser/Peddler";
2. the individual's picture;
3. the issuance date and expiration date of the license; and
4. the name and address of the individual and/or organization.

Persons engaged in solicitation, canvassing or peddling as defined in this Bylaw must display the identification card while soliciting, canvassing or peddling and present the card to any police officer or person solicited, canvassed, or peddled to upon request.

Section 8 ENFORCEMENT: Any person or organization engaged in soliciting, canvassing or peddling shall produce his or her solicitor's license to any police officer of the Town. Any person violating any provision of this Bylaw shall be fined in accordance with Title 1 Chapter 19 of the Town's General Bylaws. The enforcing agent for purposes of this Bylaw shall be the Chief of Police or his/her designee. Any license issued under this section shall be the property of the Town and shall be surrendered to the Chief of Police or officers of the Town upon demand.
After investigation, licenses issued under the provisions of this Bylaw may be revoked by the Chief of Police or his designee after written notice delivered to the holder of the registration in person, or sent to the holder by certified mail at the address set forth in the application for any of the following reasons:

1. Fraud, misrepresentation or false statement contained in the license application;
2. Fraud, misrepresentation or false statements made in the course of carrying on the business of solicitation;
3. Any violation of this Bylaw;
4. Conviction of any felony crime or classification as a Level 2 or Level 3 Sex Offender;
5. Conducting the business of soliciting, canvassing or peddling in an unlawful manner or in such a manner as to constitute a breach of the peace, menace to health, safety or general welfare of the public;

Whoever continues to solicit, canvass or peddle in willful violation of this Bylaw by continuing to solicit, canvass or peddle after being informed by a police officer to cease and desist, may be prosecuted to the full extent of the law.

Section 9 APPEALS: Any person or organization who is denied registration or whose registration has been revoked may appeal by filing a written notice of appeal with the Board of Selectmen. Such appeal must be filed within 5 business days after receipt of the notice of denial or revocation. The

Board of Selectmen shall hear the appeal after the filing of the written notice of appeal.

Section 10 EXPIRATION: All licenses for soliciting in the Town of Upton are valid only for the particular dates or time period specified thereon, and in no case for longer than 90 days.

Section 11 SEVERABILITY: Invalidity of any individual provision of this section shall not affect the validity of the by-law as a whole.

TOWN OF UPTON
TITLE 5
COMMUNITY PRESERVATION COMMITTEE

Section I Establishment

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

- One member of the Conservation Commission as designated by the Commission for a term of three years.
- One member of the Historical Commission as designated by the Commission for a term of three years.
- One member of the Planning Board as designated by the Board for a term of three years.
- One member of the Recreation Commission as designated by the Commission for an initial term of one year and thereafter for a term of three years.
- One member of the Housing Authority as designated by the Authority for an initial term of two years and thereafter for a term of three years.
- One member of the Open Space Committee as designated by the Committee for an initial term of one year and thereafter for a term of three years.
- Three members to be appointed by the Board of Selectmen, one member to be appointed for a term of one year and thereafter for a term of three years and one member to be appointed for a term of one year and thereafter for a term of three years and one member to be appointed for a term of three years.
- Should any of the Commissions, Boards, Councils or Committees who have appointment authority under this Chapter be no longer in existence for what ever reason, the appointment authority for that Commission, Board, Council, or Committee shall become the responsibility of the Board of Selectmen.

Section II Duties

(1). The community preservation committee shall study the needs, possibilities and resources of the town regarding community preservation. The committee shall consult with existing municipal boards, including the conservation commission, the historical commission, the planning board, the recreation council and the housing authority, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the committee shall hold one or more public informational hearings on the needs, possibilities and resources of the town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the town.
(2). The community preservation committee shall make recommendations to the Town Meeting for the acquisition, creation and preservation of open space, for the acquisition and preservation of historic resources, for the acquisition, creation and preservation of land for recreational use, for the creation, preservation and support of community housing and for rehabilitation or restoration of such open space, historic resources, land for recreational use and community housing that is acquired or created as provided in this section. With respect to community housing, the community preservation committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.
(3). The community preservation committee may include in its recommendation to the Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community

Preservation Fund to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.

Section III Requirement for a quorum and cost estimates

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

Section IV Amendments

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

Section V Severability

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

Section VI Effective Date

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

Section VII Records, Accounting and Reporting

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

TOWN OF UPTON
TITLE 6
WETLAND PROTECTION BYLAW

I. Purpose

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

II. Jurisdiction

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

III. Exemptions and Exceptions

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

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

The application and permit required by this bylaw shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

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

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

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

IV. Applications and Fees

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

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

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

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

system. Fees for review of subdivisions and commercial development shall be set by the Commission after appropriate public hearings.

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

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

V. Notice and Hearings

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

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

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

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

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

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

VI. Coordination with Other Boards

Any person filing a notice of intent with the Conservation Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested) or hand delivery, to the planning board, board

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

VII. Permits and Conditions

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

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

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

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

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

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

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

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

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

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

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

VIII. Regulations

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

rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw.

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

IX. Definitions

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

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

A. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind

B. Changing of preexisting drainage characteristics, flushing characteristics, salinity, sedimentation patterns, flow patterns, or flood retention characteristics

C. Drainage, or other disturbance of water level or water table

D. Dumping, discharging, or filling with any material which may degrade water quality

E. Placing of fill, or removal of material, which would alter elevation

F. Driving of piles, erection, expansion or repair of buildings, or structures of any kind

G. Placing of obstructions or objects in water

H. Destruction of plant life including cutting or trimming of trees and shrubs

I. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters

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

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

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

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

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

The term “rare species” shall include, without limitation, all vertebrate and invertebrate animal and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of

Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

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

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

X. Security

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

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

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

XI. Enforcement

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

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

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

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

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

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

XII. Burden of Proof

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

XIII. Appeals

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

XIV. Relation to the Wetlands Protection Act

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

XV. Severability

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

TOWN OF UPTON
TITLE 7
Storm Water By-law

Localities in the Commonwealth of Massachusetts are required to comply with a number of both State and Federal laws, regulations and permits which require a locality to address the impacts of development and post-development stormwater runoff quality and nonpoint source pollution. One such regulation, under the Clean Water Act (33 U.S.C. 1251 & seq.), is the Town's National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System Permit, referred to herein as the MS4 Permit.

The Town of Upton has established this stormwater management bylaw to eliminate non-stormwater discharges to the Town's stormwater management system, and to provide reasonable guidance for the regulation of development and post-development stormwater runoff for the purpose of protecting local water resources from degradation. This bylaw prohibits the discharges of illicit materials to the Town's stormwater management system and requires the removal of all such illicit connections. This bylaw also regulates the construction stormwater controls for both new and re-development projects. For the purposes of this Bylaw, the term development includes new construction as well as re-development of existing parcels.

It has been determined that it is in the public interest to reduce the discharge of contaminated water into the waters of the United States, and that reducing these discharges is protective of the quality of the receiving waters. It has further been determined that it is in the public interest to regulate development stormwater runoff discharges in order to control and minimize increases in stormwater runoff rates and volumes, construction soil erosion and sedimentation, stream channel erosion, and nonpoint source pollution associated with development stormwater runoff.

1.0 PURPOSE

A) The purpose of this Bylaw is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased development stormwater runoff and nonpoint source pollution associated with development. It has been determined that proper management of development stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, environment and general welfare of the public, protect water and aquatic resources, and promote groundwater recharge to protect surface and groundwater drinking supplies. This Bylaw seeks to meet that purpose through the following objectives:

1. Establish decision-making processes surrounding land development activities that protect the integrity of the watershed and preserve the health of water resources;
2. Require that development and all land conversion activities maintain the after-development runoff characteristics as equal to or less than the pre-development runoff characteristics in order to reduce flooding, stream bank erosion, siltation, nonpoint source pollution, property damage, and to maintain the integrity of stream channels and aquatic habitats;
3. Establish minimum development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality; establish minimum design criteria for the protection of properties and aquatic resources

downstream from land development and land conversion activities from damages due to increases in volume, velocity, frequency, duration, and peak flow rate of storm water runoff; establish minimum design criteria for measures to minimize nonpoint source pollution from stormwater runoff which would otherwise degrade water quality;

4. Establish design and application criteria for the construction and use of structural stormwater control facilities that can be used to meet the minimum development stormwater management standards;
5. Encourage the use of nonstructural stormwater management, stormwater better site design practices or "low-impact development practices", such as reducing impervious cover and the preservation of greenspace and other natural areas, to the maximum extent practicable.
6. Establish provisions for the long-term responsibility for and maintenance of structural stormwater control facilities and nonstructural stormwater management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety;
7. Establish provisions to ensure there is an adequate funding mechanism, including surety, for the proper review, inspection and long-term maintenance of stormwater facilities implemented as part of this Bylaw;
8. Establish administrative procedures for the submission, review, approval or disapproval of Stormwater Management Plans, and for the inspection of approved active projects, and long-term follow up; Establish certain administrative procedures and fees for the submission, review, approval, or disapproval of stormwater plans, and the inspection of approved projects.
9. Prevent and eliminate non-stormwater discharges to the Town's municipal separate storm sewer system (MS4).
10. Prohibit illicit connections and unauthorized discharges to the MS4, and require the removal of all such illicit connections.

B) Nothing in this Bylaw is intended to replace the requirements of either, United States Environmental Protection Agency Construction General Permit, the Army Corps of Engineers Flood Plain Easement requirements, the Town of Upton General Wetlands Protection Bylaw, or any other Bylaw that may be adopted by the Town of Upton. Any activity subject to the provisions of the above-cited Bylaws must comply with the specifications of each.

2.0 DEFINITIONS

The following definitions shall apply in the interpretation and implementation of this Bylaw. Additional definitions may be adopted by separate regulation:

AGRICULTURE – The normal maintenance or improvement of land in agricultural or aquacultural use as defined by the Massachusetts Wetlands Protection Act and its implementing regulations.

ALTER – Any activity, which will measurably change the ability of a ground surface area to absorb water or will change existing surface drainage patterns. Alter may be similarly

represented as "alteration of drainage characteristics," and "conducting land disturbance activities." Improvements to the MS4, including normal maintenance, completed by the Town shall not be considered alterations.

ALTERATION OF DRAINAGE CHARACTERISTICS — Any activity on an area of land that changes the water quality, force, direction, timing or location of runoff flowing from the area. Such changes include: change from distributed runoff to confined, discrete discharge, change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater on the area.

APPROVAL NOT REQUIRED (ANR) — If the Conservation Commission or their Authorized Representative determines that the project does not require approval, based on the guidelines outlined below, the project plan shall be endorsed with "Approval Not Required".

BEST MANAGEMENT PRACTICE (BMP) – Structural, non-structural and managerial techniques that are recognized to be the most effective and practical means to prevent and/or reduce increases in stormwater volumes and flows, reduce point source and nonpoint source pollution, and promote stormwater quality and protection of the environment. "Structural" BMPs are devices that are engineered and constructed to provide temporary storage and treatment of stormwater runoff. "Nonstructural" BMPs use natural measures to reduce pollution levels, do not require extensive construction efforts, and/or promote pollutant reduction by eliminating the pollutant source.

CLEARING— Any activity that removes the vegetative surface cover.

COLD WATER FISHERY— Environmental recourses defined by Massachusetts Division of Fisheries and Wildlife as meeting at least one of three criteria:

1. Brook, brown or rainbow trout has been determined;
2. Slimy sculpin or long nosesucker are present; or
3. The water is part of the Atlantic Salmon restoration effort or is stocked with Atlantic Salmon fry or parr.

DESIGN STORM — A rainfall event of specified size and return frequency that is used to calculate the runoff volume and peak discharge rate to best management practices (BMP).

DETENTION — The temporary storage of storm runoff in a best management practice, which is used to control the peak discharge rates, and which provides gravity settling of pollutants.

DISCHARGE OF POLLUTANTS – The addition from any source of any pollutant or combination of pollutants into the MS4.

DRAINAGE WAY — Any channel that conveys surface runoff throughout the site.

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

EROSION CONTROL — A measure that prevents erosion.

EROSION AND SEDIMENT CONTROL PLAN — A set of plans prepared by or under the direction of a licensed professional engineer, certified professional in erosion and sediment control, or other appropriately licensed and experienced professional, indicating the specific

measures and sequencing to be used to control sediment and erosion on a development site during and after construction.

GRADING — Excavation or fill of material, including the resulting conditions thereof.

GRUBBING — The act of clearing land surface by digging up roots and stumps.

HOTSPOT – Land uses or activities with higher potential pollutant loadings, such as auto salvage yards, auto fueling facilities, fleet storage yards, commercial parking lots with high intensity use, road salt storage areas, commercial nurseries and landscaping, outdoor storage and loading areas of hazardous substances, or marinas.

ILLICIT CONNECTION – A surface or subsurface drain, conduit, or conveyance that allows an illicit discharge to enter the MS4, including without limitation sewage , septage, process wastewater, or wash water, and any connection from indoor drains, sinks, or toilets, regardless of whether said connection was permissible under applicable law, regulation, or custom at the time of construction.

ILLICIT DISCHARGE – Direct or indirect discharge to the MS4 that is not composed entirely of stormwater, except as exempted herein.

IMPERVIOUS SURFACES — Areas, such as pavement or rooftops, which prevent the infiltration of water into the soil.

INFILTRATION — The downward movement of water from the surface to the subsoil.

MASSACHUSETTS STORMWATER MANAGEMENT POLICY – The Policy issued by the Department of Environmental Protection, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act G.L. c. 131 § 40 and Massachusetts Clean Waters Act G.L. c. 21, §. 23-56. The Policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site. The standards established by the Policy have subsequently been incorporated in the Regulations to the Wetlands Protection Act at 310 CMR 10.05(6)(k) through (q), and the Water Quality Certification Regulations at 314 CMR 9.06(6)(a).

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) — The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or manmade or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Upton.

NEW DEVELOPMENT — Any construction or land disturbance of a parcel of land that is currently in a natural vegetated state and does not contain alteration by man-made activities.

NONPOINT SOURCE POLLUTION — Pollution from many diffuse sources caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into water resource areas.

NON-STORMWATER DISCHARGE — Discharge to the MS4 not composed entirely of stormwater.

OPERATION AND MAINTENANCE PLAN (O&M PLAN) — A plan describing the functional, financial, and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to ensure that it continues to function as designed.

OWNER – a person with a legal or equitable interest in property.

PERIMETER CONTROL — A barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to an on-site sediment trap or basin.

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 Bylaws, administrative agency, public or quasi-public corporation or body, the Town of Upton, and any other legal entity, its legal representatives, agents, or assigns.

PHASING — Clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

PRE-DEVELOPMENT – The conditions that exist at the time that plans for the land development of a tract of land are submitted to the Town of Upton Planning Board and/or Conservation Commission. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first plan submission shall establish pre-development conditions.

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 the MS4 or any Wetland Resource Areas. Effluent waters from dewatering operations are adequately regulated under NPDES. Pollutants shall include without limitation:

1. Paints, varnishes and solvents;
2. Gasoline, diesel fuel, oil, grease and other automotive fluids;
3. Non-hazardous liquid and solid wastes and yard wastes;
4. Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
5. Pesticides, herbicides, fertilizers, and nutrients;
6. Hazardous materials and wastes;
7. Heavy metals and toxins;
8. Solvents, chemicals and detergents;
9. Sewage, viruses, bacteria, and pathogens;
10. Dissolved and particulate metals;
11. Animal wastes;
12. Rock, sand, salt and soils;
13. Construction wastes and residues; and
14. Noxious or offensive matter of any kind;
15. Vegetable oil and waste vegetable oil.

POST-DEVELOPMENT – The conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land. Post-development refers to the phase of a new development or redevelopment project after completion.

RECHARGE – The replenishment of underground water reserves.

REDEVELOPMENT – Any construction, alteration, improvement, repaving or resurfacing of a previously-developed site, where the existing land use is commercial, industrial, institutional, or multi-family residential.

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

SEDIMENT CONTROL — Measures that prevent eroded sediment from leaving the site or entering off-site drainage structures.

SITE — A parcel of land or a contiguous combination thereof, where grading work is performed as a single unified operation.

STABILIZATION — The use of practices that prevent exposed soil from eroding.

START OF CONSTRUCTION — The first land-disturbing activity associated with a development, including but not limited to land preparation such as clearing, grading and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

STORMWATER AUTHORITY – the Town of Upton Conservation Commission (the Commission), OR its authorized agent(s). The Upton Conservation Commission is responsible for coordinating the review, approval and permit process as defined in this Bylaw. Other Boards and/or departments participate in the review process as defined in the Stormwater Regulations adopted by the Upton Conservation Commission.

STORMWATER MANAGEMENT PERMIT (SMP) – A permit issued by the Upton Conservation Commission after review of an application, plans, calculations, and other supporting documents, which is designed to protect the environment of the Town from the deleterious affects of uncontrolled and untreated stormwater runoff during development.

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

TOTAL CUMULATIVE DISTURBED AREA – The total land area (square feet) affected by any action (land clearing, grading, bulldozing, digging or similar activity) that causes a change in the position, location, or arrangement of soil, sand, rock, gravel or similar earth material.

WATERCOURSE — Any body of water, including, but not limited to, lakes, ponds, rivers, streams, and bodies of water.

WATERWAY — A channel that directs surface runoff to a watercourse or to the public storm drain.

Wetlands – Resource areas as defined in the Wetlands Protection Act, G.L. c. 131, § 40, and its Regulations, 310 CMR 10.00 et seq., and the Upton Wetland Bylaw.

WAIVER — An intentional relinquishment of some right, interest, or the like. An express or written statement of such relinquishment.

3.0 AUTHORITY

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34, and as authorized by the residents of the Town of Upton at Town Meeting, dated May 10, 2012.

4.0 ADMINISTRATION

A) The Upton Conservation Commission shall administer, implement and enforce this Bylaw. Any powers granted to or duties imposed upon the Commission may be delegated in writing by the Commission to its employees or agents.

B) Stormwater Regulations. The Upton Conservation Commission may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), procedures and administration of this Stormwater Management Bylaw by majority vote of the Commission, after conducting a public hearing to receive comments on any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation, at least seven (7) days prior to the hearing date. After public notice and public hearing, the Commission may promulgate rules and regulations to effectuate the purposes of this Bylaw. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this Bylaw.

C) Stormwater Handbook. The Upton Conservation Commission will utilize the policy, criteria and information including specifications and standards of the latest edition of the Massachusetts Stormwater Handbook for execution of the provisions of this Bylaw. This Handbook includes a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. The Handbook may be updated and expanded periodically, based on improvements in engineering, science, monitoring, and local maintenance experience. Unless specifically altered in the Stormwater Regulations, stormwater management practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to be protective of Massachusetts water quality standards.

D) Permit Waiver. The Upton Conservation Commission shall have the authority to waive the requirement for a Stormwater Management Permit for specific types of projects, such as, without limitation Construction of a Deck, Patio, Retaining Wall, Existing Driveway Expansion, Shed, Swimming Pool, Tennis or Basketball Court. Any Stormwater Management Permit waiver shall be subject to the conditions as presented in Section 9.B of this Bylaw.

E) Actions by the Upton Conservation Commission. The Upton Conservation Commission may take any of the following actions as a result of an application for a Stormwater Management Permit as more specifically defined as part of Stormwater Regulations promulgated as a result of this Bylaw: Approval, Approval with Conditions, or Disapproval.

5.0 APPLICABILITY

A) This bylaw shall apply to flows entering the municipally-owned storm drainage system, a

watercourse, and any wetland resource area located within the boundaries of the Town of Upton. It shall be applicable to all new development and re-development, including, but not limited to, site plan applications, subdivision applications, grading applications, land use conversion applications, and any other activity that will result in an increased amount of stormwater runoff or pollutants flowing from the a parcel of land, or any activity that will alter the drainage characteristics of a parcel of land, unless exempt pursuant to Section 5.D of this Bylaw.

B) Development Tiers. All new development and re-development shall be classified in a two-tier system. No person shall start a project subject to the provisions of this Bylaw without first obtaining the approval by the Conservation Commission or their Authorized Representative.

1. Tier I: Notification

   a. Disturbance of more than 5,000 square feet up to 1 acre (43,560 square feet) of land

   OR

   b. Stockpiling more than 100 cubic yards of excavated soil or fill

Tier I classification requires the applicant to comply with the following procedures:

a. Notify Conservation Commission or their Authorized Representative in writing of the date and nature (including a sketch) of the proposed project at least 10 days prior to commencement of site clearing or stockpiling activities;
b. Implement measures to prevent the offsite discharge of sediment;
c. Construction materials (paints, glue, thinners, etc.) shall be managed so as not to pollute stormwater. Containers/materials shall be stored and disposed of properly;
d. Implement other stormwater management measures at the direction of the Conservation Commission or their Authorized Representative;
e. The erosion control system shall be inspected by the Conservation Commission or their Authorized Representative prior to disturbing the site. The applicant shall be responsible for maintaining and removing this system at project completion.
f. Provide additional stormwater-related information at the request of the Conservation Commission or their Authorized Representative. This may include providing an engineered plan prepared and stamped by a Massachusetts Registered Professional Engineer or a Certified Professional In Erosion and Sediment Control, evaluating existing drainage systems, or a complete Stormwater Management Plan, as deemed applicable by the Conservation Commission or their Authorized Representative because of the size or character of the development project or because of the natural conditions at the site.

2. Tier II: Stormwater Management Permit

   a. Total cumulative disturbed area of more than one (1) acre (43,560 square feet) (see Section 2.0 – DEFINITIONS)

   OR

   b. New Development or redevelopment which causes alteration of drainage

characteristics (see Section 2.0 – DEFINITIONS)

Under the jurisdiction of this Bylaw, Tier II classification requires a Stormwater Management Permit, including the submittal of an Erosion and Sediment Control Plan, as prescribed in this Bylaw.

3. Hotspots
   Notwithstanding any other provisions of Section 5.B of this Bylaw, an alteration, re-development, or conversion of land use to a hotspot, as defined in Section 2.0 of this Bylaw, shall require a Stormwater Management Permit.

C) Stormwater Management Permit

The Stormwater Management Permit (SMP) shall be designed to meet the Massachusetts Stormwater Standards and DEP Stormwater Handbook, as revised. The plans, documents and calculations submitted must be stamped by a Massachusetts Professional Engineer or a Certified Professional in Erosion and Sediment Control.

The applicant shall complete and sign the SMP Application and deliver the application, Stormwater Management Plan and drawings to the Conservation Commission or their Authorized Representative.

The Stormwater Management Plan shall fully describe the project in drawings and narrative. It shall include:

1. Contact information
   a. The location of the Stormwater Management Plan;
   b. The name, address and the beeper or cell phone number, if applicable, of the:
      1. Owner of the project;
      2. Operator of the project;
      3. Emergency Contact;
      4. Person responsible for routine inspections of Best Management Practices;
      5. Person responsible for maintaining the Best Management Practices;
      6. Person responsible for documenting changes to the Stormwater Management Plan; and
      7. Person responsible for communicating changes in the Stormwater Management Plan to the people working on the site.

2. Site map requirements:
   a. A locus map showing the parcel in relation to the surrounding properties;
   b. A North arrow, scale and date;
   c. The property lines;
   d. Easements and/or legal rights of other persons within the property lines;
   e. All structures, utilities, downstream culverts, roads and other paved areas ;
   f. Topographic contours at two foot intervals ;
   g. Critical area boundaries at the site;
   h. Surface water and wetlands, drainage patterns and watershed boundaries;
   i. Existing vegetation at the site;
   j. The extent of one-hundred-year floodplain boundaries if identified on the Federal Emergency Management Agency floodplain maps;

k. Soils information for design purposes from the Natural Resources Conservation Services soil survey and available site soil samples;
l. A depiction of areas of soil disturbance;
m. A depiction of areas of cut and fill; and
n. A construction details sheet showing notes specifying materials to be used and construction specifications.

3. Site and activity description including:
    a. Location;
    b. Existing conditions;
    c. Proposed conditions;
    d. Area to be disturbed in square feet and acres;
    e. Topography;
    f. Wetlands and water bodies; and
    g. Land type

4. Identification of potential pollutant sources such as paint, pesticides, oil, or other toxic chemicals etc.

5. Description of controls to reduce pollutants
    a. List and discuss each Best Management Practice, its purpose, its construction sequence and installation timing as they apply to the site and the project proposed.
    b. Design calculations of all temporary and permanent stormwater management and erosion and sediment control best management practices.
    c. Erosion and Sediment Control Plan, as defined in Section 6.0.

6. Phases as related to soil disturbance
    a. Tabulated sequence of construction
    b. The construction schedule
    c. The earth movement schedule

7. Maintenance/inspection procedures
    a. Proposed schedule for the inspection and maintenance of all best management practices.
    b. Proposed inspection forms to be filled out by the person responsible for routine inspections of Best Management Practices.

The Conservation Commission or their Authorized Representative may waive all, or some, of the requirements for a stormwater management and erosion control application if it determines that some, or all, of the application requirements are unnecessary because of the size or character of the development project or because of the natural conditions at the site.

The Conservation Commission shall act on an original or revised SMP Application within 30 calendar days of receipt. Applicant shall proceed only when approval of the full SMP has been granted by the Commission. Pending preparation and approval of a revised SMP, development activities shall be allowed to proceed in accordance with conditions established by the Commission.

The applicant shall make all requests for waivers in writing. The applicant must submit

supporting technical information and documentation to demonstrate that, because of minimal environmental impact, some, or all, of the requirements are unnecessary. The Enforcing Agent's decision to grant or deny waiver shall be in writing and shall set forth the reasons for the grant or denial.

D) Exemptions

No person shall alter land within the Town of Upton without having completed Notification procedures or obtained a SMP for the property with the following exceptions:

1. Any activity that will disturb an area less than 5,000 square feet or less than 25% of a contiguous property, whichever is less; provided that Best Management Practices are implemented for the activity. This exception may not be applied for contiguous properties held in common ownership at the time of adoption of this Bylaw that may have been previously subdivided and/or are attributed to multiple separate owners;

2. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04 and MGL Chapter 40A Section 3.

3. Normal town maintenance and improvements of town-owned public land, ways, and appurtenances, including the MS4.

4. Activities conducted in accordance with an approved Forest Cutting Plan under the provisions of the Forest Cutting Practices Act (M.G.L.c. 132, sec 40-46) and its implementing regulations (304 CMR 11.00).

5. Any construction activity or project wholly within the jurisdiction of the Conservation Commission provided that an order of condition has been issued by the Conservation Commission.

6. Any construction activity or project requiring approval under the subdivision control law where the planning board has approved an application for definitive subdivision approval and any construction activity or project requiring site plan review, provided that the plans include storm water management provisions for the site that are consistent with the requirements of this Bylaw.

7. Maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling;

8. Simple repair or replacement of an existing roof of a single-family dwelling or a duplex-style dwelling, as determined by the Conservation Commission to be equivalent in square footage to that of a single-family dwelling;

9. The construction or repair of any fence or wall that will not alter existing terrain or drainage patterns;

10. Construction of utilities (gas, water, electric, telephone, etc.) other than drainage, which will not significantly alter terrain, ground cover, or drainage patterns;

11. Emergency repairs to any utilities (gas, water, sewer, electric, telephone, etc.), storm water management facility or practice that poses a threat to public health or safety, or as deemed necessary by the Conservation Commission or their Authorized Representative.

12. Any work or projects for which all necessary approvals and permits have been issued before the effective date of this Bylaw;

13. Re-development projects for which the total impervious cover is reduced by 40% from existing conditions; providing that all erosion and sediment control requirements presented herein are met.

14. Habitat management or restoration activities on Conservation or Town owned land conducted in accordance with an approved Land Stewardship or Forest Management Plan.

6.0 EROSION AND SEDIMENT CONTROL PLAN

A) Purpose

The purpose of this section is to eliminate or reduce the adverse effects of soil erosion and sedimentation on the environment, public welfare/health, and municipal facilities. These adverse effects may be the result of managed construction and other activities including but not limited to earth alteration, excavation, removal of vegetation and general construction activities.

B) Jurisdiction

No person shall excavate, cut, grade or perform any land-disturbing activities of significance, without an approved Stormwater Management Permit and Erosion and Sediment Control Plan. Activities of significance are those which meet or exceed the following thresholds:

1. Any change of existing grade of more than 5,000 sq. ft. or 25% of the lot whichever is smaller;
2. Removal of existing vegetation of more than 5,000 sq. ft. or 25% of the lot whichever is smaller;
3. Storage of more than 100 cubic yards of excavated soil or fill.
4. Activity disturbing an area of 2,500 sq. ft. or greater if the slope of the disturbance is 4:1 (25%) or greater.

Activities which are exempt from the requirement of an approved Erosion and Sediment Control Plan are as follows:

1. Emergency activities for the protection of life, property, or natural resources;
2. Existing permitted nursery and agricultural operations.

C) Erosion and Sediment Control Plan

1. Activities which require the change of existing grade or removal of existing vegetation

on any parcel of less than 20,000 sq. ft. or storage of excavated soil or fill between 100 and 1300 cubic yards shall be deemed a project of minor significance and will require that the following information to be included in the Erosion and Sediment Control Plan:

a. Name, address and telephone number of owner, civil engineer and person responsible for implementation of the plan.

b. Property lines.

c. Location of all existing and proposed building and impervious surfaces.

d. Location of all existing and proposed stormwater utilities, including structures, pipes, swales and detention basins.

e. Erosion and sediment control provisions to minimize on-site erosion and prevent off-site sediment transport, including provisions to preserve topsoil and limit disturbance.

f. Design details for both temporary and permanent erosion control structures.

g. The Upton Conservation Commission may require any additional information or data deemed appropriate and/or may impose such conditions thereto as maybe deemed necessary to the preservation of public health and safety.

2. Activities which require:

a. the change of existing grade or removal of exiting vegetation on more than 20,000 sq. ft. or

b. storage of excavate or fill in excess of 1300 c.y. shall be deemed a project of significant impact and will require that the Erosion and Sediment Control Plan include all of the information required of projects of minor significance plus the following additional information:

1. An attached vicinity map showing the location of the site in relationship to the surrounding area's watercourses, water bodies and other significant geographic features, and roads and other significant structures.

2. Suitable contours for the existing and proposed topography.

3. A clear and definite delineation of any areas of vegetation or trees. Note all vegetation that is to be removed and all vegetation that is to be saved.

4. A clear and definite delineation of any wetlands, natural or artificial water storage detention areas, and drainage ditches on the site.

5. A sequence of construction of the development site, including stripping and clearing; rough grading; construction of utilities; infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, and establishment of permanent vegetation.

D) Performance Standards

A construction project shall be considered in conformance with this section if soils or other eroded matter has been prevented from being deposited onto adjacent properties, rights-of-ways, public storm drainage system, or wetland or watercourse. The design, testing, installation, and maintenance of erosion and sediment control operations and facilities shall adhere to the standards and specifications contained in the Massachusetts Erosion and

Sediment Control Guidelines for Urban and Suburban Areas dated March 1997 or the latest edition thereof.

E) Review and Approval

An Erosion and Sediment Control review is triggered by a building permit application or other activity that falls within the jurisdiction described in paragraphs B and C above. Applicants are referred by the permit issuing agency to the Upton Conservation Commission to conduct the Erosion and Sediment Control review for issuance of a Stormwater Management Permit. Activities that fall within the jurisdiction described in paragraphs B and C above that do not require a permit from any Town department are not exempt from this provision. In this situation, the applicant must seek Erosion and Sediment Control review directly from the Upton Conservation Commission.

The Upton Conservation Commission will review each Erosion and Sediment Control Plan to determine its conformance with the provisions of this section.

Within 30 calendar days, or additional period requested by the Applicant or Commission and agreed by both parties, after receiving an application, the Upton Conservation Commission shall, in writing:

1. Approve the plan as submitted.
2. Approve the plan subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or
3. Disapprove the plan, indicating the reason(s) and procedure for submitting a revised application and/or submission.

Failure of the Upton Conservation Commission to act on an original or revised plan within 30 calendar days of receipt shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by agreement between the applicant and the Commission. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the Commission.

F) Inspections

The Upton Conservation Commission, or designated agent shall make inspections as hereinafter required and either shall approve that portion of the work completed or shall notify the owner or person responsible for the implementation of the plan wherein the work fails to comply with the Erosion and Sediment Control Plan as approved. Plans for grading, stripping, excavating, and filling work bearing the stamp of approval of the Upton Conservation Commission shall be maintained at the site during the progress of the work. To obtain inspections, the permittee shall notify the Commission at least two working days before the following:

1. Installation of sediment and erosion control measures
2. Start of construction
3. Completion of site clearing
4. Completion of rough grading
5. Close of the construction season

6. Completion of final landscaping

The person responsible for implementation of the plan shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved Erosion and Sediment Control Plan(s).The purpose of such inspections will be to determine the overall effectiveness of the control plan and the need for additional control measures. All inspections shall be documented in written form and submitted to the Upton Conservation Commission at the time intervals specified in the approved permit.

To the extent permitted by law, or if authorized by the applicant or other party in control of the property, the Upton Conservation Commission or its designated agent may enter the property of the applicant as deemed necessary to make regular inspections to ensure the validity of the reports filed as noted above.

G) Enforcement

Suspension of Construction or Site Alteration Activity—In the event that the activity at a site violates the conditions as stated or shown on the approved Erosion and Sediment Control Plan in such a manner as to adversely affect the environment, public welfare/health and municipal facilities, then the Upton Conservation Commission may suspend work until the violations are corrected. The Upton Conservation Commission will notify the applicant in writing identifying the nature of the violation and corrective action required.

7.0 ILLICIT DISCHARGES

1. No person or entity shall dump, discharge, cause, or allow to be discharged any pollutant or non-stormwater discharge into any pipe, drain, catch basin, or other structure in the MS4 such that it discharges into the MS4, a water body, or a wetland resource area, whether by direct or indirect connection. No person shall construct, use, allow, maintain, or continue any illicit connection to the MS4, regardless of whether the connection was permissible under applicable law, regulation, or custom at the time of construction. No person or entity shall discharge, cause, or allow to be discharged any septage or septic tank or cesspool overflow into the MS4.

2. A discharge or flow resulting from firefighting activities is exempt from the above prohibition. The following non-stormwater discharges or flows are exempt from the prohibition, provided that the source is not a significant contributor of a pollutant to the MS4: water line or hydrant flushing; foundation or footing drains; landscape irrigation and lawn watering; air conditioning condensation; dechlorinated (<1 part per million chlorine) swimming pool discharges; water from individual residential car washing; discharge from street sweeping; flow from potable water sources; flow from springs, wetlands, diverted streams, or riparian habitats; rising groundwater, including uncontaminated infiltrated or pumped groundwater; and others with prior approval of the Conservation Commission.

8.0 PROCEDURES

Permit Procedures and Requirements shall be defined and included as part of any rules and regulations promulgated as permitted under Section 4 of this Bylaw.

9.0 NOTICE

A) Application: A completed application for a Stormwater Management Permit shall be filed with the Upton Conservation Commission. A permit must be obtained prior to commencement of land disturbing activity.

B) Waiver: The Upton Conservation Commission may waive strict compliance with any requirement of this Bylaw or the rules and regulations promulgated hereunder, where such action:

1. Is allowed by federal, state and local statutes and/or regulations;
2. Is in the public interest; and
3. Is not inconsistent with the purpose and intent of this Bylaw.

Any applicant may submit a written request to be granted such a waiver. Such a waiver request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of this Bylaw does not further the purposes or objectives of this Bylaw.

All waiver requests shall be discussed by the Upton Conservation Commission and a decision will be made by the Commission within 30 days of the waiver request.

If, in the opinion of the Commission, additional time or information is required for a review of the waiver request, the Commission may continue consideration of the waiver request to a date determined by the Commission and agreed by the applicant. In the event the applicant refuses a continuance, or fails to provide the requested information, the waiver request shall be denied.

10.0 OPERATION AND MAINTENANCE PLAN

An operation and maintenance plan (O&M Plan) is required at the time of application for all projects subject to the provisions of Section 5.B of this Bylaw. The maintenance plan shall be designed to ensure compliance with the permit, this Bylaw and that the Massachusetts Surface Water Quality Standards, 314 CMR 4.00, are met in all seasons and throughout the life of the development. The Commission shall make the final decision on what maintenance option is appropriate in a given situation. The Commission will consider natural features, proximity of the site to water bodies and wetlands resource areas, extent of impervious surfaces, size of the site, the types of stormwater management structures, and potential need for ongoing maintenance activities when making this decision. The O&M Plan shall remain on file with the Commission and shall be an ongoing requirement.

11.0 CERTIFICATE OF COMPLETION

Upon completion of activities allowed under a Stormwater Management Permit, the applicant shall notify the Commission and request a final inspection and certificate of completion. For projects subject to the provisions of Section 5.B.2 or 5.B.3 of this Bylaw, the applicant shall submit an as-built plan prepared by a professional land surveyor and certification from a registered professional engineer that all construction has been done in accordance with the approved Stormwater Management Permit.

12.0 SECURITY

The Commission may require the applicant to post a performance bond, issued by a surety or

guarantee company properly qualified and licensed to issue such a bond in the state of Massachusetts, before the start of any land disturbing activity. The form of the bond/surety, and the terms of an accompanying performance agreement among the Applicant, the surety, and the Commission, shall be approved by Town Counsel, and be in an amount deemed sufficient by the Commission to insure that the land disturbance activity will be completed in accordance with the Stormwater Management Permit. In the alternative, the Commission may permit the Applicant to provide equivalent cash security, to be held by a designated escrow agent approved by the Commission, pursuant to an agreement that authorizes the agent to complete the land disturbance activity in accordance with the Stormwater Management Permit.

13.0 ENFORCEMENT

A) The Upton Conservation Commission, or an authorized agent of the Commission shall enforce this Bylaw, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations. Enforcement shall be further defined and included as part of any Stormwater regulations promulgated as permitted under Section 4 of this Bylaw.

1. Any person who violates any provision of this Bylaw, regulation, order or permit issued thereunder, shall be punished by a fine of not more than $300. Each day or part thereunder that such violation occurs or continues shall constitute a separate offence.

2. As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in M.G.L. C. 40 & 21D, in which case the Commission or its agent shall be the enforcing person. The non-criminal penalty for violations shall be $50 for the first violation, $100 for the second violation, and $300 for the third violation and each subsequent violation(s). Each day or part thereof that such violation occurs or continues shall constitute a separate offence.

3. Any person who violates any provision of this Bylaw, regulation, order or permit issued thereunder, shall be notified by Certified mail of said violation, with the date of mailing of the notice serving as the first violation. Failure to receive or accept the notice of violation shall not relieve the Applicant from their obligations under the provisions of this Section 13.

14.0 FEES

The Upton Conservation Commission by regulation shall promulgate an application fee schedule for stormwater permit applications and completion certificates. The fee schedule shall be reasonably related to the costs of processing, reviewing and acting upon the application. The fee specified in such a fee schedule shall be made payable to the Town of Upton and shall accompany the permit application or request for certificate of completion. The Commission may require an additional fee for review of any change in or alteration from an approved permit. Said fee shall be paid into a special account set up by the Town Treasurer and may be expended by the Commission for the purpose allocated without further appropriation in accordance with the provisions of M.G.L. C.44, § 55E ½.

15.0 APPEALS

A decision by the Commission made under this Bylaw shall be final. Further review shall be by

a court of competent jurisdiction.

16.0 SEVERABILITY

The invalidity of any section, provision, paragraph, sentence, or clause of this Bylaw shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

TOWN OF UPTON
Title 8
Preservation of Historically Significant Buildings

Intent and Purpose

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

Definitions

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

APPLICATION – An application for the demolition of the building.

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

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

COMMISSION – The Upton Historical Commission or its designee.

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

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

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

SIGNIFICANT BUILDING – A building determined by the Commission or its designee to be significant based on any of the following criteria:

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

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

Procedure

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

An applicant proposing to demolish a building subject to this bylaw shall file with the Building

Commissioner 2 copies of a demolition permit application containing the following information:

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

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

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

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

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

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

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

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

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

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

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

Administration

The Commission may adopt such rules and regulations as are necessary to administer the terms of this bylaw.
The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this bylaw.
The Commission may delegate authority to one or more members of the Commission.
The Commission may delegate authority to municipal staff under this bylaw.
The Commission may proactively develop a list of significant buildings that will be subject to this bylaw.
Buildings proposed for the significant building list shall be added following a public hearing. Public notice of the time, place and purpose of the hearing shall be posted in a conspicuous place in Town Hall for a period of not less than 7 days prior to the date of said hearing.

Emergency Demolition

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

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

Enforcement and Remedies

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

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

Historic District Act

If any of the provisions of this bylaw conflict with the provisions of the Historic District Act,

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

Severability

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

Town of Upton By-laws As Amended
All amendments incorporated as of August 2012.

TOWN OF UPTON
Index
Dates of Bylaws Changes

Title 2 MUNICIPAL GOVERNMENT AND FINANCE

Chapter 1:

Section 2A Voted at ATM May 2002 to change day to Thursday
Section 15 Voted at ATM to add this section.

Chapter 2:

Section 5 Contracts over $500 be filed with Town Clerk deleted at ATM May 2011
Section 5 Voted at ATM May 1996 to delete Section 5 and renumber the subsequent sections of said Chapter 2 as required
Section 8 Updated to reflect research showing no vote was taken to change section to reference M.G.L. 30B

Chapter 4:

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

Chapter 6:

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

Chapter 8:

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

Chapter 9:

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

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

Chapter 10:

Chapter 12:

Town of Upton Water Department, Rules and Regulations, Voted at ATM May 1995
Section 6 Voted at ATM May 1996 to add a new Section 6, entitled Cross-Connection Control General Policy
Section 7 Voted at ATM May 1997 to add a new Section 7, entitled Rates
Section 8 Voted at STM May 1998 to add a new section 8 entitled Water Use Restriction
Section 8 Voted at ATM May 1999 to add final line to section 8.8
Section 9 Voted at ATM May 2011 to add section 9

Chapter 13:

Section 3 Voted at ATM May 1997 to add a new Section 3 entitled Rate
Section 5 Voted at ATM May 2011 to add section 5

Chapter 16:

Section 3 Voted at STM June 1994 to add a new Section 3 entitled Animal Control
Section 1 & 2 Voted at ATM May 1998 to increase the fee and late charge
Leash Law Voted at STM November 1996 to add Leash Law.

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

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

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

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

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

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

Chapter 391 of the Acts of 2008
An Act Establishing the Office of the Town Manager in the Town of Upton
Voted at ATM May 2007 to Petition General Court for an Act to Establish Town Manager
Chapter 23: Voted at ATM May 2012 to add chapter 23 entitled Upton Affordable Housing Trust Fund

Title 3 LAND USE

Chapter 1:
Section 2 Voted at ATM May 1998 to amend Section 2
Section 9: Voted at ATM May 2008 to add Section 9

Chapter 5:

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

Title 4 POLICE AND PUBLIC ORDER

Chapter 6:

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

Section 2 – Severability

Voted at ATM May 2009 to add Section 2

Chapter 7:

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

Chapter 8:

Voted at ATM May 2010 to add Chapter 8 Soliciting, Canvassing & Peddling

Title 5 COMMUNITY PESERVATION COMMITTEE

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

Title 6 WETLAND PROTECTION BYLAW

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

Title 7 STORMWATER BYLAW

Voted at ATM May 2012 to add Title 7 entitled Stormwater Bylaw

Title 8 PRESERVATION OF SIGNIFICANT HISTORICALLY BUILDINGS

Voted at STM September 2005 to add Title 7 entitled Demolition Delay Bylaw
Voted at ATM May 2012 to change the number from 7 to 8