



## **Town Bylaws**

### **Ashby, Massachusetts**

As Amended to  
April 26, 1988  
November 22, 1988  
May 22, 1989  
June 26, 1990  
April 28, 1992  
October 17, 1992  
April 3, 1993  
June 20, 1993  
May 4, 1996  
May 3, 1997  
May 2, 1998  
March 10, 1999  
May 1, 1999  
May 6, 2000  
November 18, 2000  
November 17, 2001  
May 4, 2002  
January 11, 2003  
May 7, 2005  
May 6, 2006  
May 5, 2007  
May 2, 2009  
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## **TOWN BY-LAWS**

### **ARTICLE I**

#### **GENERAL PROVISIONS**

- Section 1. The following provisions shall constitute the General By-Laws of the Town of Ashby, Massachusetts, which shall be in lieu of all by-laws heretofore in force.
- Section 2. Any and all of these by-laws may be repealed or amended, or other by-laws may be adopted at any Town Meeting, an article or articles for that purpose having been inserted in the warrant for such meeting by the Selectmen.
- Section 3. Except when otherwise provided by law, prosecution of any violation of the by-laws of the Town may be made by any law enforcement officer of the Town.
- Section 4. Whoever violates any of the provisions of these by-laws, whereby any act or thing is enjoined or prohibited, shall, unless other provision is expressly made, forfeit and pay a fine not exceeding \$300 per occurrence,
- Section 5. These by-laws shall take effect upon their acceptance by the Town in Town Meeting, their approval by the Attorney General of the Commonwealth of Massachusetts, and their publication in the manner required by law.

### **ARTICLE II**

#### **TOWN MEETINGS**

- Section 1. The Annual Town Meeting shall be held on the first Saturday in May each year.
- Section 2. The Annual Town Election shall be held on the fourth Monday of April each year. The polls shall be open from 7:00 a.m. and close at 8:00 p.m. every third year, starting April 1999 to coincide with At-Large School District-Wide elections. The other two years the polls shall be open from 12:00 noon and shall close at 7:30 p.m.
- Section 3. The number of voters necessary to constitute a quorum at any Town Meeting shall be fifty; provided, however, that a number less than a quorum may, from time to time, adjourn the same. This section shall not apply to such part of a meeting as is devoted exclusively to the election of officers.
- Section 4. Notice of every Town Meeting shall be given by posting attested copies of the warrant therefore in at least three public places in the Town not less than seven days before the day fixed for such meeting.
- Section 5. At least five days before the day fixed in the warrant for the Annual Town Meeting, the Selectmen shall cause to be mailed to or left at each occupied dwelling in the Town a copy of the warrant for said meeting and recommendations relating to said meeting. Copies of the Town Report will be available at the Town Clerk's office, the Library and on the Town web site.

Section 6. At least five days before the day fixed in the warrant for any Special Town Meeting, the Selectmen shall cause to be mailed to or left at each occupied dwelling in the Town a copy of the warrant for said meeting and a copy of the Finance Committee recommendations relating to said meeting.

Section 7. Copies of the warrant and of the Annual Report of the Finance Committee, and the recommendations of the Finance Committee relating to such meeting shall be available to the voters at all Town Meetings.

Section 8. As soon as practicable after the adjournment of any Town Meeting, on a vote to adjourn to another day, the Town Clerk shall cause a brief statement of the day and hour to which the adjournment was voted and of the business remaining to come before the meeting, to be posted in at least three public places in the Town.

Section 9. No person not a voter in the Town shall address any Town Meeting without the permission of the Moderator and the meeting.

Section 10. Articles of the warrant shall be acted upon in the order in which they appear unless otherwise determined by vote of the meeting.

Section 11. All motions, including motions to amend motions, shall be presented in writing if so directed by the Moderator.

Section 12. When a question is before the meeting, the following motions, namely: to adjourn, to lay on the table, for the previous questions, to postpone to a time certain, to amend, to postpone indefinitely, shall be perceived and shall precede in the foregoing order, and the first three shall be decided without debate. Any procedural questions not controlled by the Town by-laws shall be decided according to "Town Meeting Time".

Section 13. When a question is put, the sense of the meeting shall be determined by the voices of the voters, and the Moderator shall declare the vote as it appears to him. If, however, the Moderator is unable thus to decide the vote, or if his decision is immediately questioned by seven or more voters rising in their places for that purpose, the Moderator shall request all persons in the house to be seated and appoint Tellers. The question shall then be distinctly stated and those voting in the affirmative and negative, respectively, shall rise and stand in their places until they are counted by the Moderator or Tellers, if any. No person shall be counted who does not comply with the request to occupy a seat, if seats in the hall are available. If there are not available seats, those standing shall be counted separately by a show of hands.

Section 14. The meeting may order that the vote on any motion shall be taken by a secret ballot.

Section 15. No vote of the meeting shall be reconsidered unless notice of intention to ask reconsideration shall have been given within one hour after the vote to which such notice relates has been passed. When a motion for reconsideration is decided, that decision shall not be reconsidered, and no question shall be reconsidered more than once; nor shall any vote be reconsidered on a motion to adjourn, to lay on the table, or for the previous question.

Section 16. All committees shall be appointed by the Moderator unless otherwise directed by the meeting, and all committees appointed shall be directed to report within a definite time. If a committee does not report within the time stated, it shall be considered discharged. The Moderator shall not be a member of any committee appointed by him.

Section 17. No motion, the effect of which would be to dissolve the meeting, shall be in order until every article in the warrant therefore has been duly considered and acted upon; but this shall not preclude the postponement of consideration of any article of adjournment of the meeting to a stated time and place.

Section 18. Every article submitted to the Board of Selectmen by the vote of an elected Town board, or by an elected Town official (Moderator, Clerk, Treasurer, or Tax Collector) shall be placed on the warrant for the next Town Meeting, (Special or Annual).

### **ARTICLE III**

#### **TOWN OFFICERS**

Section 1. The Selectmen shall have the general direction and management of the property and affairs of the Town in all matters not otherwise provided for by law or by these by-laws.

Section 2. The Finance Committee shall annually prepare a budget for the Town, which shall be reviewed by the Board of Selectmen and include their recommendations when presented for approval at the Annual Town Meeting.

Section 3. The Selectmen shall, upon behalf of the Town, enter into the necessary contract or contracts for the printing and publication of the Annual Town Report.

Section 4. As authorized by Clause II Section 21 of Chapter 40 of the General Laws, any board or officer in charge of a department of the Town may, with the approval of the Selectmen, sell any personal property of the Town having value of \$100 or less within the possession or control of the department, or trade the same in part payment for replacements for which funds have been provided.

Section 5. Appointment of Inspectors

5.1 The Selectmen shall annually, in March of each year, appoint a Building Inspector or Inspectors who shall perform the duties required of him or her by Chapter 143, Section 3 of the Massachusetts General Laws, and any amendments thereto.

5.2 The Selectmen shall annually, in March of each year, appoint an Inspector of Wires or Inspectors who shall perform the duties required of him or her by Chapter 166, Section 32 of the Massachusetts General Laws, and any amendments thereto.

5.3 The Building Inspector shall annually, in March of each year, appoint a Gas Inspector or Inspectors who shall be approved by the Board of Selectmen and who shall perform the duties required of him or her by Chapter 143, Section 3-O of the Massachusetts General Laws, and any amendments thereto.

5.4 The Building Inspector shall annually, in March of each year, appoint a Plumbing Inspector or Inspectors who shall be approved by the Board of Selectmen and who shall perform the duties required of him or her by Chapter 142 of the Massachusetts General Laws, and any amendments thereto.

5.5 The Board of Health shall annually, in March of each year, nominate an Inspector of Animals who shall perform the duties required of him or her by Chapter 129 of the Massachusetts General Laws, and any amendments thereto.

## ARTICLE IV

### FINANCE COMMITTEE

Section 1. There shall be a Finance Committee consisting of a minimum of three voters and a maximum of seven voters of the Town who shall be appointed by the Moderator as hereinafter provided. With the exception of the Town Accountant, no elective or appointed Town officer or employee shall be eligible to serve on said committee.

Section 2. At each Annual Town Meeting the Moderator thereof shall appoint two members of the Finance Committee for terms of three years. The term of office of said members shall commence immediately upon qualification and shall expire at the close of final adjournment of the Annual Town Meeting at which their successors are appointed. Said committee shall choose its own officers and serve without pay and it shall cause to be kept a true record of its proceedings.

Section 3. The Moderator shall fill any vacancy which may occur in its membership. Notice of the appointment shall be sent by the Moderator to the Town Clerk. If any member is absent from four consecutive meetings of said committee, except in case of illness, his or her position shall be deemed to be vacant and shall be filled as herein provided. The term of office of any person chosen to fill a vacancy shall expire at the final adjournment of the next succeeding Annual Town Meeting and the Moderator thereof shall appoint his successor to complete the unexpired term of the member in whose office such vacancy originally occurred.

Section 4. All articles in any warrant for a Town Meeting shall be referred to the Finance Committee for its consideration. The Selectmen after drawing any such warrant, shall transmit a copy thereof immediately to each member of said committee. Said committee shall, after due consideration of the subject matters of such articles, report thereon to the Town Meeting in writing such recommendations as it deems best for the interests of the Town and its citizens. Failure, for any reason, on the part of the Finance Committee to make such report shall not effect the legality of any action taken at any meeting.

Section 5. It shall be the duty of the Finance Committee annually to consider the expenditure in previous years and the estimated requirements for the ensuing year of the several Boards, Departments, Officers, and Committees of the Town as prepared by the Town Accountant and/or Town Administrator in such form and detail as may be prescribed by said Committee. Said committee shall add to such statement of expenditures and estimates another column, giving the amounts which, in its opinion should be appropriated for the ensuing year, and shall further add thereto such explanations and suggestions relating to the proposed appropriations as it may deem expedient, and report thereon as provided in Section 4.

Section 6. In the discharge of its duty, said committee shall have free access to all books of record and account, bills, and vouchers on which money has been or may be paid from the Town treasury to the extent that such access is permitted by law. Officers, Departments, Boards, and Committees of the Town shall upon request furnish said Committee with facts, figures, and any other information pertaining to their activities to the extent permitted by law.

Section 7. It shall be the duty of the Finance Committee to make an Annual Report of its doings, with recommendations relative to financial matters and the conduct of Town Business, to be contained in the Annual Town Report.

## ARTICLE V

### FINANCIAL AFFAIRS

Section 1. An Audit of the accounts of the Town shall be made annually under the supervision of the State Division of Accounts, as provided by the General Laws.

Section 2. Each Officer, Board, or Committee authorized to spend money shall, on or before December 31 of each year, transmit to the Town Accountant all unpaid bills outstanding as of that date.

Section 3. The Town Accountant shall prescribe the methods of accounting and the forms to be used by the several Officers, Boards and Committees of the Town pertaining to their receipts and disbursements, and shall provide that such methods and forms shall conform to the requirements prescribed by law or any rules and regulations made thereunder.

Section 4. The Collector of Taxes shall collect, under the title of Town Collector, all accounts due the Town except interest on investments of trust funds.

Section 4.1 The Collector of Taxes shall be authorized to issue certificates pursuant to Section 23 of Chapter 60 of the General Laws and to retain the fee authorized therein as compensation for personal services rendered in the preparation of said certificates.

Section 5. All accounts coming due the Town shall forthwith be committed by the several Officers, Boards, and Committees of the Town to the Town Collector, together with all available information in relation thereto.

Section 6. If it shall seem advisable to the Town Collector that suit should be instituted on behalf of the Town for the establishment or collection of any account due the Town, he shall so notify the Selectmen, and he shall report to them, from time to time, as they may direct, upon all uncollected accounts in his hands. The Selectmen shall take such action with respect to all such accounts as they deem expedient and consistent with the interests of the Town.

Section 7. The Town Collector shall, at least once in each week, pay over to the Town Treasurer all money received by him on every such account, including any sums received as interest on money received by him on such accounts and deposited by him in any bank.

Section 8. Except as otherwise provided by law, the Selectmen shall have custody of deeds, bonds, contracts, insurance policies, and other similar documents owned by the Town.

Section 9. Every Officer shall pay into the treasury of the Town all amounts received by him on behalf of the Town, except as otherwise provided by law, and shall make a true return thereof to the Town Accountant, stating the accounts upon which such amounts were received.

Section 10. The Town Administrator will meet at least once a month with all Town Finance Officers to coordinate the financial affairs of the Town.

Section 11. Unless otherwise voted by Town Meeting, beginning in FY 2015, funds appropriated for a special purpose (excluding appropriations for stabilization funds, enterprise funds, other special purpose funds, borrowing, or appropriations that create legally binding obligations or opportunities such as matching funds for grants or gifts) shall automatically close to the General Fund at the end of the third fiscal year following such appropriation, if such appropriation has not been expended or encumbered prior thereto.

## ARTICLE VI

### TOWN CONTRACTS

Section 1. No Officer of the Town shall, in his official capacity, make or pass upon or participate in making or passing upon any sale, contract or agreement or the terms or amount of any payment in which the Town is interested and in which any such officer has any personal financial interest.

Section 2. No Town Officer and no salaried employee of the Town or any agent of any such officer or employee, shall receive any compensation or commission for work done by him for the Town except his official salary and fees allowed by law, without the permission of the Selectmen expressed in a vote which shall appear on their records with the reasons therefore.

Section 3. No contract involving an obligation of the Town in excess of \$200 shall be binding upon the Town unless it is in writing and signed by at least a majority of the Board or Committee duly authorized or having control of the appropriation against which such obligation is incurred; and such Board or Committee shall make a record of every such contract in a book which shall be the property of the Town.

Section 4. Every contract exceeding \$1,000 in amount shall be accompanied by a suitable bond for the performance of the same or by the deposit of money or security to the amount of such contract if so requested by the Officer or Board authorized to make the contract.

Section 5. No board or Officer of the Town shall make any contract in behalf of the Town, the execution of which shall extend necessarily beyond one year from the date thereof, except as otherwise provided by law, unless specific authority to do so has been given by vote of the Town.

Section 6. No contract for construction, whether for repairs or original construction, or for the purchase of apparatus, supplies, or materials, the estimated cost of which amounts to \$25,000 or more, except in cases of special emergency involving the health or safety of the people or their property, shall be awarded unless proposals for the same have been invited by the Officer, Board, or Committee authorized by the Town to make the contract, by advertisement in a newspaper circulating in the Town once a week for at least two successive weeks, the last publication to be at least one week before the time specified for the opening of said proposals. Such advertisements shall state the time and place where plans and specifications of proposed work or apparatus, supplies or materials may be had, and the time and place for opening the proposals in answer to said advertisement, and shall reserve to the Town the right to reject any or all of such proposals. All proposals shall be opened in public. No contract or preliminary plans and specifications therefore shall be split or divided for the purpose of evading the provisions of this Section.

Section 7. Any Special Permit Granting Authority of the Town, including the Zoning Board of Appeals, the Planning Board, and the Board of Health may impose reasonable fees, in accordance with the respective statutory authority of each board. Said fees shall be for their employment of outside consultants to aid them in reviewing applications for permits and approvals by said boards. Applicants aggrieved by the selection of the outside consultant may appeal to the Board of Selectmen as set forth in G.L. C.44, sec 53G. Said fees shall be paid to such board by applicant and said fees shall be deposited in a special account in accordance with G.L. C.44 sec 53G and expended as provided therein.



## **ARTICLE VII**

### **LEGAL AFFAIRS**

Section 1. The Selectmen of the Town shall be agents of the Town to institute, prosecute, and defend any and all claims, action, and proceedings to which the Town is a party or in which the interests of the Town are or may be involved.

Section 2. The Selectmen may, at their discretion, compromise or settle any claim or suit to which the Town is a party which does not require payment by the Town of any amount in excess of \$1,000. No settlement of a claim or suit obligating the Town in an amount in excess of \$1,000 shall be made, except as authorized by law, without the consent of a Town Meeting.

Section 3. The Selectmen in their Annual Report shall state what actions have been brought against and on behalf of the Town, what cases have been compromised and settled, and the current standing of all suits at law involving the town or any of its interests.

Section 4. The Selectmen shall annually in June, after final adjournment of the Annual Town Meeting, appoint a member of the Bar in good standing to serve as Town Counsel for the term of one year or until his successor is appointed and enters upon the performance of his duties. They shall likewise fill any vacancy in said office for the unexpired term and may employ special counsel whenever, in their judgment, necessity therefore arises.

Section 5. It shall be the duty of the Town Counsel to conduct the prosecution, defense, or compromise of claims, actions, and proceedings to which the Town is a party and the prosecutions of actions or proceedings by or on behalf of any Town Board, Officer, or Committee as such; to conduct the defense of any action or proceedings brought against any Town Board, Officer, or Committee, as such, when the Selectmen, having determined that any right or interests of the Town are or may be involved therein, shall so request it; to conduct proceedings brought by or against the Assessors before the Board of Tax Appeals; to assist in the prosecution of complaints for violation of any by-law of the Town, when requested to do so by the Board or Officer enforcing the same; to examine and report upon titles to all land to be acquired by the Town; to prepare or approve contracts, bonds, deeds, and other legal instruments in which the Town is a party or in which any right or interest of the Town is involved; to appear at any and all hearings on behalf of the Town whenever requested by Selectmen; and generally to advise and act for the Town Officers, Boards, and Committees upon and in legal matters touching the duties of their respective offices.

## **ARTICLE VIII**

### **RECORDS AND REPORTS**

Section 1. All Officers, Boards, and Committees of the Town shall cause records of their doings and accounts to be kept in suitable books. Said books shall be kept in their respective offices and shall not be removed therefrom. Said books, shall, unless otherwise provided by law, be open to public inspection at any reasonable time, but shall remain, during such inspection under supervision of the Officer, Board, or Committee having custody thereof.

Section 2. All Officers, Boards, Standing Committees, and Special Committees of the Town having charge of the expenditures of Town Money shall annually report thereon in writing in such manner as to give the citizens of the Town a fair and full understanding of the objects and methods of such expenditures,

referring, however, to the report of the Town Accountant for statement in detail of receipts and payments, and may make therein such recommendations as they deem proper. Such reports shall be submitted to the Selectmen for inclusion in the Annual Town Report on or before the 15th day of January of each year.

Section 3. The Annual Town Report shall contain, in addition to the reports of Officers, Boards, and Committees as herein before provided, a detailed report of all moneys received into and paid out of the Town treasury in the financial year next preceding, showing separately payments made from the proceeds of loans as capital outlays for permanent improvements; the report of the Collector of Taxes of receipts, payments, and abatements, statements of all funds belonging to the Town or held for the benefit of its inhabitants, a statement of the liabilities of the Town on bonds, notes, certificates of indebtedness, or otherwise, and of indebtedness authorized but not incurred, and the purposes thereof; a statement of transfers made to or from any appropriations; abstracts of the records of the meetings of the Town held since publication of the last annual report; and such other matters as the Report is required by law to contain, or as may be inserted by the Selectmen under the discretion granted them by law.

Section 4. The Selectmen of the Town may direct that the Assessors' valuation list, the by-laws, and standing votes of the Town and the rules or regulations adopted by any Officer, Board, or Committee, be printed either separately or as a part of the Annual Town Report.

## **ARTICLE IX**

### **USE OF WAYS, WATERWAYS, AND PUBLIC PLACES**

Section 1. No person shall place any table, tent, booth, stall, or other things in a street, highway, sidewalk, or in any of the public grounds of the Town, for the sale of fruit or any other thing, without a license from the Selectmen.

Section 2. No motor boat shall be operated upon any pond lying within the Town, in a manner which negligently endangers the safety of the public or is detrimental or injurious to the neighborhood or to the value of the property therein.

It shall be evidence of the violation of this bylaw if such a motor boat is operated by a motor not having underwater exhaust, in a noisy or obnoxious manner, or at an unreasonable hour, or without slowing down and exercising due caution while approaching and passing persons bathing or other water craft.

No motor boat or other motorized water craft shall be operated at any time upon the body of water known as the Willard Brook Compensating Reservoir, also known as the Ashby Reservoir, located immediately northeast of the intersection of South Road and Richardson Road, with the exception of boats powered by battery-operated electric trolling motors, at speeds no greater than 3 knots. Whoever violates this by-law shall be punished by a fine of three hundred dollars per occurrence for each violation.

No motor boat or other motorized water craft shall be operated at any time upon the body of water known as Little Watatic Pond located in the northwest quadrant of the Town and bisected by West State Road (Route 119), with the exception of boats powered by battery-operated electric trolling motors, at speeds no greater than 3 knots. Whoever violated this by-law shall be punished by a fine of three hundred dollars per occurrence for each violation.

No motor boat shall be operated upon any pond lying within the Town one-half hour after sunset and before sunrise unless it is equipped with red and green running lights that show clearly in that direction

in which it is going and no other water craft shall be on the waters in the aforementioned hours unless equipped with a suitable light to signal other approaching boats.

Section 3. No person shall drink any alcoholic beverage as defined in Chapter 138, Section 1 of the Massachusetts General Laws while on, in, or upon any public way or upon any way to which the public has a right of access, or any public common, park, or playground, or any place to which members of the public have access as invitees or licensees or any private land or place without consent of the owner or person in control of such public or private land or place, All alcoholic beverages being used in violation of this ordinance shall be seized and safely held until final adjudication of the charge against the person or persons arrested or summoned before the court, at which time they shall be returned to the person entitled to lawful possession. This by-law shall not apply to the consumption of such beverages in any park or playground or place to which members of the public have access as invitees or licensees, if said beverages have been dispensed pursuant to a license issued by the Selectmen to be exercised thereon. Whoever violates this by-law shall be punished by a fine of not more than fifty dollars.

Section 4. No person shall plough, or otherwise cause to be ploughed or otherwise placed on driveways, parking areas, or other surfaces, snow accumulated thereon in such a manner as to result in its accumulation on a town road or other public way.

Section 5. The Selectmen may from time to time enact regulations regarding the parking of motor vehicles on the Town ways, including establishments of permanent or temporary no parking zones, fines for violations thereof, and the removal from public ways of illegally parked motor vehicles, provided that no such regulations shall be adopted until the Selectmen shall have a public hearing with respect thereto, notice of which shall have been posted in the same manner as provided in Article II, Section 5., of these by-laws with respect to warrants for Town Meetings.

Section 6. No person, unless such person is the holder of a permit by the Board of Selectmen authorizing work in the public road, and except in accordance with the terms and conditions of such a permit, shall place an obstruction of any kind including but not limited to walls, fences, shrubbery and mailboxes in any street or on any sidewalk within the Town and allow it to remain there, or allow such obstruction so as to impede the free passage of pedestrians, vehicles and snow removal equipment. The placement of mailboxes shall conform to the requirements contained in the attached Mailbox Placement exhibit and shall not be interpreted to be in conflict with any United States Postal rule or regulation on the same subject.

Section 7: No person shall leave a motor vehicle parked and unattended in a public way so that it interferes with the flow of traffic. All vehicles in violation will be towed at the owner's expense. Motor vehicles which are parked while performing construction tasks must not at any time completely block traffic flow on any public way. Vehicles doing so will need authorization from the highway department and must comply with any requirements set by the highway superintendent. Vehicles responding to emergency calls are excluded.

Section 8: No one may unload at any time off road construction equipment in a public roadway without adequate padding to protect the existing road surface. Anyone doing so will be responsible for any needed road repairs and may be fined for repeated violations. The Board of Selectmen will set the fines after considering the damage caused and number of previous offenses.

## **ARTICLE X**

### **BUILDING REGULATIONS**

Section 1. No person shall construct or alter any building which requires a new or enlarged sewage system in the Town, without notifying the Board of Health of the Town, in writing, of intention to do so, prior to commencement of any such construction or alteration.

Section 2. All driveways hereinafter constructed and providing access to a public way shall not be constructed until approved by the Superintendent of Highways.

Section 3. FEES FOR BUILDING PERMITS. A permit shall not be issued to begin work for new construction, alteration, removal, demolition, or other building operations until the reasonable fees, as set out in the schedule as prepared from time to time by the inspector, have been paid to the Town Treasurer or in such other manner as proscribed in the Massachusetts General Laws. In all cases the penalty for working without a permit is triple the fee.

Section 4. For the protection and safety of the inhabitants of the town, all swimming pools now existing or hereafter constructed or installed outdoors for public or private use shall have a fence or structure at least four (4) feet high with necessary gates for entrance and exit, and such fence or structure shall not be more than twenty-five (25) feet from the outside edge of the pool apron, unless otherwise approved by the Zoning Board of Appeals. All covers and all entrances shall be securely locked or fastened when not in use.

Section 5. STREET NUMBER. Each dwelling or business establishment shall display their street number in numerals no less than three (3) inches in height on a post, sign, mail box or other suitable device adjacent to the road right of way. Structures within seventy-five (75) feet of the right of way may display the address number on the structure in numerals no less than four (4) inches in height. Violators shall be notified in writing and shall be given thirty days to correct the offense prior to enforcement of this provision.

Section 6. TRENCH SAFETY. Pursuant to the provisions of M.G.L. c. 82A, the Town hereby adopts and incorporates by reference the regulations of the Division of Public Safety as promulgated under 520 CMR 14.00 as same may be from time to time amended. The Building Inspector shall serve as the permitting authority and may promulgate additional regulations for the administration of this section consistent with such state enactments. The Building Inspector shall promulgate a reasonable fee to defray the cost of issuance and administration of said permit.

Section 6.1 If the Building Inspector is notified of an unattended trench during a time when the permit holder is unavailable and the Building Inspector deems a condition at a trench site to be a threat to public safety, he may order that area around the trench be made safe for the general public and may further order the immediate shutdown of the site until such time as the condition has been corrected. The permit holder shall be assessed and be responsible to the Town for any cost incurred while making the area around the trench safe for the general public.

Section 6.2 Whenever a permit holder is making multiple trenches over the course of a single project, the Town may choose to issue a blanket permit allowing the permit holder to add to the list of trench locations as the permit holder becomes aware that a trench is required. The permit holder shall advise the Building Inspector in writing of the addition of each new trench.

## **ARTICLE XI**

### **REGULATION OF VENDORS AND OTHER SOLICITORS**

Section 1. No person, unless otherwise authorized, shall go from place to place within the Town taking orders for any goods, wares, or merchandise, nor shall any person go begging or soliciting alms on foot or from a vehicle, without having first recorded his name and address with the Chief of Police, and furnished such information as may be requested of him. The Chief of Police shall, thereupon, if satisfied with the honesty of the applicant, issue a permit for a period not exceeding twelve (12) months which must be shown on request, and shall state that said person has duly registered and is entitled to go from place to place within the Town for the purpose specified.

Section 2. No person, unless otherwise properly licensed by the State or Board of Selectmen, shall go from place to place in the Town selling or bartering or carrying for sale or barter or exposing therefore any goods, wares, or merchandise.

Section 3. The Chief of Police may, however, authorize the director of any worthy cause, to solicit contributions within the Town without having each solicitor under his direction registered. Religious organizations or charitable groups within the Town shall be exempt from this section.

Section 4. Whoever violates the provisions of Articles XI shall be subject to a fine of not more than twenty dollars.

## **ARTICLE XII**

The Selectmen shall have the authority to dispose of surplus personal property of the Town no longer required for use by any Board, Officer, or Department of the Town, by sale at public auction, or by sealed bid. The date and time of such auction, or for the opening of such bids, shall be advertised in a newspaper circulating in the Town at least once a week for two successive weeks, the last publication to be at least one week before the time specified for such auction or opening of bids.

## **ARTICLE XIII**

### **HAZARDOUS MATERIALS**

Section 1. **AUTHORITY:** The By-law is adopted by the Town under its home rule powers, its police powers to protect public health and welfare, and its authorization under Massachusetts General Laws, Chapter 40, Section 21.

Section 2. **PURPOSE:** The purpose of the By-law is to protect, preserve, and maintain the existing and potential groundwater supply, groundwater recharge areas, and surface water within the town from contamination with hazardous materials.

Section 3. **DEFINITIONS:** The following definitions shall apply in the interpretation and implementation of the by-law.

Section 3.1 "Hazardous material" means a product or waste, or combination of substances which because of quantity, concentration, or physical, or chemical, or infectious characteristics, poses in the Chief of the Fire Department's judgment, a substantial present or potential hazard to the human health, safety, or welfare, or the environment when improperly treated, stored, transported, used, or disposed of, or otherwise managed. Any substance deemed a hazardous waste in Massachusetts General Laws, Chapter 21C, shall also be deemed a hazardous material for the purpose of this by-law.

Section 3.2 "Discharge" means the disposal, deposit, injection, dumping, spilling, leaking, incineration, or placing of any hazardous material into or on any land or water so that such hazardous material or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

#### Section 4.

Section 4.1 Every owner or operator of a commercial, industrial, or business establishment (including home occupations) storing hazardous materials in quantities totaling twenty gallons liquid volume or twenty-five pounds dry weight shall register with the Fire Chief the types, quantities, location, and method of storage of said hazardous materials. Registration required by this provision shall be initially submitted by September 15, 1986 and annually thereafter within thirty days of March 1 each year.

Section 4.2 Owners or operators of commercial, industrial, or business establishments who have not previously registered in accordance with Subsection 4.1 shall, if they meet registration requirements, register initially within thirty days of meeting such requirements and thereafter within thirty days of March 1 each year.

Section 4.3 In addition to registration, owners or operators of commercial, industrial, or business establishments registered in accordance with 4.1 and 4.2 shall maintain on the premises an inventory, reconciled on a monthly basis, of purchase, use, sale, and disposal of hazardous materials. The purpose of this account is to detect any product loss and to provide an ongoing record of all quantities of hazardous materials within the town over the registration threshold.

Section 4.4 Upon request of the Chief of the Fire Department, owners or operators shall produce within twenty-four hours the latest reconciled inventory.

Section 4.5 HAZARDOUS WASTES GENERALLY: Wastes containing hazardous materials shall be held on the premises in product-tight containers for removal by a licensed carrier and for disposal in accordance with the Massachusetts Hazardous Waste Management Act, Massachusetts General Laws, Chapter 21C.

Section 4.6 ABOVEGROUND STORAGE AND HAZARDOUS WASTES: Aboveground containers of wastes containing hazardous materials shall be stored on a surface impervious to the material being stored. The storage area shall be enclosed by a permanent dike of impermeable construction. The volume of the area enclosed by the dike shall be equal to or greater than the capacity of the containers within the dike.

#### Section 5. ENFORCEMENT

Section 5.1 PROTECTION: All discharges of hazardous material within the town are prohibited.

Section 5.2 REPORTING OF DISCHARGE: Any person having knowledge of a discharge of hazardous material shall immediately report the discharge to the Chief of the Fire Department or the Hazardous Waste Coordinator.

Section 5.3 PENALTY: Any person who violates any provision of this by-law shall be punished by a fine of not more than \$50.00. Each day or portion thereof during which violation continues shall constitute a separate offense. This by-law may be enforced pursuant to Massachusetts General Laws, Chapter 40, Section 21D by an Ashby Police Officer or other Officer having police powers. Upon request of the Fire Department, the Board of Selectmen and Town Counsel shall take such legal action as may be necessary to enforce this by-law.

Section 6. EXEMPTIONS: Any person or business considered a "small generator" under the Hazardous Waste Management Act, Massachusetts General Laws, Chapter 21C, and registered with the Massachusetts Department of Environmental Quality Engineering (DEQE) is exempt from this by-law. Proof of exemption is required.

## ARTICLE XIV

### EARTH REMOVAL

#### Section 1. GENERAL PROVISIONS:

The excavation in any one year of more than 25 cubic yards of soil, sod, loam, peat, humus, clay, sand, or gravel (herein "earth") from any land within the town shall not be permitted without first obtaining a permit from the Earth Removal Board (The "Board").

The Earth Removal Board is hereby established and shall consist of five members as follows: The Board of Selectmen, Conservation Commission, Planning Board, Board of Health, and Zoning Board of Appeals shall each appoint one member to serve a three year term.

#### Section 2. EXEMPTIONS

A permit shall not be required under this bylaw for the following types of excavation:

1. Excavations from municipal property for a municipal purpose.
2. Excavations incidental to the construction of buildings for which all other permits have been issued, or installation of walks, driveways, septic systems, swimming pools, or other accessory uses to such buildings.
3. Any continuous, legally permitted earth removal activities in actual operation at the time this bylaw is adopted may continue until abandoned for more than twelve (12) consecutive months. However the following conditions apply to existing operations:
  - a. The depth of excavation shall not be increased below the lowest point excavated on the effective date of this by-law of five (5) feet above maximum high water table as specified by this by-law, or whichever is higher.
  - b. The earth removal operation shall be contained within the current property limits of such operation on the effective date of this bylaw. Expansion to additional property must be authorized by a new permit.
  - c. Where current earth removal operations are closer than 100 feet to abutters property lines or to a public way, no further expansion shall be permitted unless specifically authorized by the Board.
  - d. Unless the Board deems it infeasible, current operations will not leave slopes with a grade steeper than a two (2) foot horizontal to a one (1) foot vertical (2:1) and reforestation and/or reseeded of the excavated area should be completed within a reasonable time after ceasing the operation.

#### Section 3. APPLICATION AND PROCEDURE:

An application for an Earth Removal Permit shall be accompanied by a plan describing the premises and the proposed operation. The plan shall be prepared by a registered Land Surveyor or Engineer showing

property lines, current names and addresses of all abutters, name and address of the operator, existing contours at five (5) foot intervals in the area in which the excavation will take place and surrounding areas; natural features such as wetlands, flood plain, ground water elevation; a topographical map showing drainage facilities, existing and final grades, an erosion - sediment control plan and proposed restoration.

The maximum water table elevation shall be determined by test pits and soil borings monitored during the months of April and May. A log of soil boring shall be included, taken to the depth of the proposed excavation.

Upon receipt of an application for an Earth Removal Permit, the Board shall appoint a time and place for a public hearing, not later than 45 days after receipt of a completed application, notice of which shall be given to the applicant, and shall be published at least seven (7) days before such hearing in a newspaper having a general circulation in the town, and, by mailing a copy of said notice to the applicant and to the abutters of the proposed operation. The applicant shall pay the cost of notice and mailing.

#### Section 4. SECURITY REQUIREMENTS:

A performance bond, in an amount determined by the Board, shall be filed with the Town Treasurer assuring satisfactory performance of the requirement by the by-law and of such other conditions as may be imposed in the permit. No performance bond or other security shall be released in whole or in part unless and until the Board determines that all the conditions of the permit have been satisfied.

#### Section 5. PERMIT FOR EARTH REMOVAL

All permits shall conform to the minimum restoration and performance standards contained herein and such other conditions as the Board may deem necessary. No permit for earth removal shall be issued for more than five (5) years duration and may, at the discretion of the Board, be renewed thereafter.

Said permit shall allow the working of only five (5) acres at any one time. Upon completion of the earth removal operation on a five acre parcel and substantial restoration of said parcel according to the restoration standards and permit conditions, application may be made to the Board for a permit renewal. This procedure shall be followed until the operation is completed.

The permit shall be considered a nontransferrable, revocable permit to remove earth materials. If it is found that incorrect information was submitted in the application, or that conditions of the permit are being violated, or that the governing regulations are not being followed, the permit may be revoked or suspended. Failure of the permit holder to comply within the time specified by the Board for correction of violations shall be cause for revocation of the permit and forfeiture of the security to the Town.

Compliance Review. The Board shall discuss and review the permit annually. The Board, or its designated agent, shall have the authority to inspect the operation a reasonable hours.

Before granting a permit, the Board shall give due consideration to the location of the proposed earth removal and its effect on natural resources, including, but not limited to, the recharge of the water table. No permit shall be issued if such removal will:

1. Endanger the general health, safety, or welfare or constitute a public nuisance, or
2. Result in detriment to the normal use of adjacent property by reason of objectionable noise, dust, erosion, or vibration.

In determining the effect upon the Town, the Board may require that independent consulting fees be paid by the applicant for hydrological testing, noise analysis, and general review of engineering plans submitted, or for other analyses deemed necessary.



## Section 6: PERFORMANCE STANDARDS

The Board may set conditions including, but not limited to, the following:

1. Duration of the permit.
2. Hours of the days which removal is permitted.
3. Hours during which vehicles may be permitted to leave the premises.
4. Drainage.
5. Restoration.

The following standards of operation shall apply to every permitted operation:

1. No excavation shall be closer than 100 feet to a public way or to adjacent property lines unless approved by the Board. Natural vegetation shall be left and maintained on the undisturbed land for screening noise and reduction of dust.
2. No areas shall be excavated so as to cause accumulation of standing water.
3. No earth shall be removed closer to the maximum high water table than five (5) feet. This shall be related to a permanent monument on the property and shall be indicated on the topographic plan.
4. All topsoil stripped from operation areas shall be stockpiled and used in restoring the area.
5. Hours of operation shall be between 8:00 AM and 5:00 PM on weekdays only. However, the Board may further limit hours of operation if it determines the public good will be served.
6. No earth removal operation shall create excessive amount of dust or allow roads leading into or from a site to become excessively dust producing. All access roads leading to public ways shall be treated or paved with suitable material to reduce dust for a distance of 200 feet back from the way. The operator shall clean up any spillage on public ways. All loaded vehicles shall be suitably covered to prevent dust and contents from spilling and blowing from the road.
7. Prior to any excavation or earth removal, adequate siltation basins shall be constructed to prevent run off of silted water from the site. Drainage shall not lead directly into streams or ponds nor shall drainage from access roads drain directly onto public ways.
8. All wood and brush from tree clearing must be piled for removal or chipping. Wood chips may remain on the site. No trees are to be buried on the site. Stumps shall be disposed of only in designated areas approved by the Board.

## Section 7: RESTORATION STANDARDS

1. Following expiration or withdrawal of a permit, or upon cessation of operations, all land shall be graded leaving no slopes with a grade steeper than a two (2) foot horizontal to a one (1) foot vertical (2:1); 4:1 is preferred for erosion control and shall be required in sensitive areas.
2. Retained subsoil and topsoil shall be respread over the disturbed area to a minimum depth of four (4) inches. This soil shall be treated with three (3) tons of lime per acre and 1,000 pounds of 10-10-10 fertilizer per acre and seeded with a grass or legume mixture prescribed by the Soil

Conservation Service. Trees or shrubs of prescribed species will be planted in order to provide screening, natural beauty, and to reduce erosion. The planted area shall be protected from erosion during the establishment period using good conservation practices.

3. Final restoration work must be completed within sixty (60) days after the termination of an Earth Removal Permit or by the first of June if the permit terminates between December first through March thirty-first.

## **ARTICLE XV**

### **LICENSES AND PERMITS OF DELINQUENT TAXPAYERS**

Section 1. Any Board, Officer, or Department shall deny any application or revoke or suspend any local license or permit, including renewals and transfers, for any person, corporation, or business enterprise who has neglected or refused to pay any local taxes, fees, assessments, betterments, or any other municipal charge.

Section 2. The Tax Collector or other municipal official responsible for records of all municipal taxes, assessments, betterment and other municipal charges, hereinafter referred to as the Tax Collector, shall annually furnish to each Department, Board, Commission, or Division, hereinafter referred to as the Licensing Authority, that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the Party, that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than a twelve month period, and that such party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the Appellate Tax Board.

Section 3. The Licensing Authority may deny, revoke, or suspend any license or permit, including renewals and transfers of any Party whose name appears on said list furnished to the Licensing Authority from the Tax Collector; provided however, that written notice is given to the Party and the Tax Collector, as required by applicable provisions of law, and the party is given a hearing to be held not earlier than fourteen days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any Party. The Tax Collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation, or suspension. Any findings made by the Licensing Authority with respect to such license denial, revocation, or suspension shall be made only for the purposes of such proceeding and shall not be relevant to, or introduced in any other proceeding at law, except for any appeal from such license denial, revocation, or suspension. Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the License Authority receives a certificate issued by the Tax Collector that the Party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges, payable to the municipality as of the date of issuance of said certificate.

Section 4. Any Party shall be given an opportunity to enter into a payment agreement, thereby allowing the Licensing Authority to issue a certificate indicating said limitations to the license or permit and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.

Section 5. The Board of Selectmen may waive such denial, suspension, or revocation if it finds there is not direct or indirect business interest by the property owner, its officers, or stockholders, if any, or members

of his immediate family, as defined in Chapter two hundred and sixty eight, Section 1 in the business or activity conducted in or on said property.

Section 6. The provisions of this by-law shall not apply to any licenses and permits exempted by General Laws C.40, S57.

## **ARTICLE XVI**

### **RIGHT TO FARM**

#### Section 1. Legislative Purpose and Intent

The purpose and intent of this By-law is to state with emphasis the Right to Farm accorded to all citizens of the Commonwealth under Article 97, of the Constitution, and all state statutes and regulations thereunder including but not limited to Massachusetts General Laws Chapter 40A, Section 3, Paragraph 1; Chapter 90, Section 9, Chapter 111, Section 125A and Chapter 128 Section 1A. We the citizens of Ashby restate and republish these rights pursuant to the Town's authority conferred by Article 89 of the Articles of Amendment of the Massachusetts Constitution, ("Home Rule Amendment").

This General By-law is intended to encourage the pursuit of agriculture, promote agriculture based economic opportunities, and protect farmlands within the Town of Ashby. This By-law shall apply to all jurisdictional areas within the Town.

#### Section 2. Definitions

The word "farm" shall include any parcel or contiguous parcels of land or water bodies used for the purpose of commercial agriculture, or accessory thereto.

The term "farming" is defined as producing crops, horticultural items, or animal products for consumption or human use as a commercial enterprise. This shall include, but not be limited to the following when performed as a commercial activity:

- the cultivation and tillage of the soil;
- dairying;
- production, cultivation, growing, and harvesting of any agricultural, aquacultural, floricultural, viticultural, or horticultural commodities for commercial purposes;
- growing and harvesting of forest products when performed as part of a written forest management plan, ie., tree farms;
- keeping of horses as a commercial enterprise; and
- keeping and raising of poultry, swine, cattle, ratites (such as emus, ostriches and rheas) and camelids (such as llamas and camels), and other domesticated animals for food and other agricultural purposes, including bees and fur-bearing animals.

"Farming" shall encompass activities including, but not limited to, the following:

- operation and transportation of slow-moving farm equipment over roads within the Town;
- control of pests, including, but not limited to, insects, weeds, predators and disease organism of plants and animals;
- application of manure, fertilizers and pesticides;
- conducting agriculture-related educational and farm-based recreational activities, including agri-tourism, provided that the activities are related to marketing the agricultural output or services of the farm;
- processing and packaging of the agricultural output of the farm and the operation of a farmer's market or farm stand including signage thereto;
- maintenance, repair, or storage of seasonal equipment, or apparatus owned or leased by the farm owner or manager used expressly for the purpose of propagation, processing, management, or sale of

- the agricultural products; and
- on-farm relocation of earth and the clearing of ground for farming operations.

### Section 3. Right To Farm Declaration

The Right to Farm is hereby recognized to exist within the Town of Ashby. The above-described agricultural activities may occur on holidays, weekdays, and weekends and shall include the attendant incidental noise, odors, dust, and fumes associated with generally accepted agricultural best practices. It is hereby determined that whatever impact may be caused to others through the reasonable practice of agriculture is more than offset by the benefits of farming to the neighborhood, community, and society in general. The benefits and protections of this By-law are intended to apply exclusively to those commercial agricultural and farming operations and activities, conducted in accordance with generally accepted agricultural best practices. Moreover, nothing in this Right To Farm By-law shall be deemed as acquiring any interest in land, or as imposing any land use regulation, which is properly the subject of state statute, regulation, or local zoning law.

### Section 4. Disclosure Notification

At the time the purchase and sale contract is entered into for the purchase or exchange of real property, or prior to the sale or exchange of real property if no purchase and sale agreement exists, or prior to the acquisition of a leasehold interest or other possessory interest in real property, located in the Town of Ashby, the landowner shall present the buyer or occupant with a disclosure notification which states the following:

“It is the policy of this community to conserve, protect and encourage the maintenance and improvement of agricultural land for the production of food, and other agricultural products, and also for its natural and ecological value. This disclosure notification is to inform buyers or occupants that the property they are about to acquire or occupy lies within a town where farming activities occur. Such farming activities may include, but are not limited to, activities that cause noise, dust and odors.”

A copy of the disclosure notification shall be given on a form prepared by the Town and shall be signed by the buyer or occupant prior to the sale, purchase, exchange or occupancy of such real property. A copy of the disclosure notification must be filed with the Board of Selectmen or its designee prior to the sale, purchase, exchange or occupancy of such real property.

### Section 5. Resolution of Disputes

Any person who seeks to complain about the operation of a farm may, notwithstanding pursuing any other available remedy, file a grievance with the Board of Selectmen, the Zoning Enforcement Officer, or the Board of Health, depending upon the nature of the grievance. The filing of the grievance does not suspend the time within which to pursue any other available remedies that the aggrieved may have. The Zoning Enforcement Officer or Board of Selectmen may forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance, and report its recommendations to the referring Town authority within an agreed upon time frame. The Board of Health, except in cases of imminent danger or public health risk, may forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance, and report its recommendations to the Board of Health within an agreed upon time frame.

### Section 6. Severability Clause

If any part of this By-law is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this By-law. The Town of Ashby hereby declares the provisions of this By-law to be severable.

## ARTICLE XVII

### SCENIC ROADS

Section 1. **PURPOSE** To protect the scenic quality and character of certain Town roads, the following regulations are established to control alterations that can take place within public rights of way.

Section 2. **DEFINITIONS** In the absence of contrary meaning established through legislative or judicial action pursuant to M.G.L. Chapter 40, Section 15C, the following terms contained in that statute shall be defined as follows:

- 2.1 Public Right of Way shall mean a strip of land within which is located a public way or a way which the Town Clerk certifies is maintained and used as a public way. The boundary of a public right of way will be determined as accurately as possible by examining plans, descriptions, physical monuments, stone walls, written and oral history, current and past use and any other reasonable means to make such determination. When the boundary of the right-of-way is an issue so that a dispute arises as to whether or not certain trees or stonewalls or portions thereof are within or without the way, the trees and stonewalls shall be presumed to be within the way until the contrary is shown.
- 2.2 Tearing Down or Destruction of Stone Walls shall mean the destruction of more than 20 linear feet of stone wall but shall not be construed to include temporary removal and replacement at the same location with the same materials.
- 2.3 Trees shall include any living tree whose trunk has a diameter of twelve (12) inches or more as measured four feet above the ground.

Section 3. **SCENIC ROADS** The Town may from time-to-time designate appropriate roads within the Town as "scenic roads" by Town Meeting vote.

3.1 **CONTROL** Within the public right of way of designated roads, the tree warden or his designee may approve the cutting or removal of up to three trees per 200 linear feet of right of way. Within the public right of way designated roads, the following activities shall require written approval of the Planning Board in accordance with the provisions of this bylaw:

1. The tearing down, painting or destruction of stone walls;
2. The cutting or removal of trees the scope of which is outside the responsibility of the tree warden, as defined above;
3. Repair, maintenance, reconstruction or paving work, including the construction of new driveways or alteration of existing ones, if such work affects stone walls or trees within the public right of way.

In cases where a threat to public safety does not allow sufficient time to obtain approvals from the tree warden or the Planning Board, the Planning Board must be notified within five business days of any action which, had the threat not existed, would be a violation of this ordinance.

3.2 **HEARINGS** The Planning Board shall hold a public hearing within thirty (30) days of receipt of an application, and shall approve, conditionally approve or deny an application within sixty (60) days of receipt. In making its decision, the Planning Board shall consider the following criteria and shall not grant approval if the proposed action will be in violation of one or more of them:

1. Public Safety
2. Preservation of road bounds and historic values;
3. Preservation of scenic and aesthetic quality of the area;
4. Protection of natural resource and environmental systems;
5. Compatibility with surrounding neighborhood.

3.3 COMPENSATORY ACTIONS, Since the purpose of these regulations is to protect the scenic quality and character of designated roads, the Planning Board may take into account compensatory actions such as the planting of new trees or the reconstruction of stone walls in making its decision. If the overall effect of the proposed alteration, including compensatory action, is to maintain or improve the scenic quality and character of the road, the Board may grant approval that otherwise would be denied.

3.4 NOTICE The Planning Board shall, as required by statute, give notice of its public hearing by advertising twice in a newspaper of general circulation in the area, the first notice being at least fourteen days in advance of the hearing and the last notice being at least seven days in advance of the hearing . This notice shall contain a statement as to the time, date, place and purpose of the hearing with a reasonable description of the action proposed by the applicant. Copies of this notice shall also be sent to the Town Administrator, the Conservation Commission, the Historical Commission, the Tree Warden, the Highway Department, and the owners of property within 100 feet of the proposed action.

3.5 PUBLIC SHADE TREE ACT Notice shall be given and Planning Board hearings shall be held in conjunction with those held by the tree warden acting under M.G.L. Chapter 87. The consent of the Planning Board to a proposed action shall not be regarded as inferring consent by the tree warden, or visa versa. The Planning Board decision shall contain a condition that no work should be done until all applicable provisions of the Public Shade Tree Law, M.G.L. Chapter 87, have been complied with.

3.6 ENFORCEMENT The building inspector, tree warden, and others designated by the Selectmen may enforce these regulations by issuing a cease and desist order. Failure to respond to properly issued cease and desist order or failure to take responsible compensatory action shall be construed as a violation, subject to a fine as provided by these bylaws. Each day that such violation continues shall constitute a separate offense.

3.7 GENERAL The Planning Board may adopt reasonable regulations for carrying out provisions hereunder.

## **ARTICLE XVIII**

### **STRETCH ENERGY CODE**

#### Section 1 - Adoption

The Town of Ashby has adopted the provisions of 780 CMR 115.AA (i.e., Appendix 115.AA of the State Building Code or the "Stretch Energy Code"), as may be amended from time to time, in place of the provisions set forth under 780 CMR 13.00, 34.00, 61.00 and 93.00.

#### Section 2 - Purpose

The purpose of the Stretch Energy Code shall be to provide the Town with a more energy efficient alternative to the base energy code otherwise set forth under the State Building Code.

## **ARTICLE XIX**

### **COUNCIL ON AGING**

Section 1. The Board of Selectmen shall appoint a Council on Aging for the purpose of coordinating or carrying out programs designed to meet the problems of the aging in cooperation with programs of the Commission on Aging established under Chapter 40, Section 8B of the General Laws.

Section 2. The Board of Selectmen shall appoint the Council on Aging consisting of seven (7) members, including three (3) members for three (3) years; two (2) members for two (2) years; and two (2) members for one (1) year terms. Members can be reappointed for consecutive terms. The members of the Council shall serve without pay.

Section 3. Whenever a vacancy shall occur in the membership of the Council, by reason of death, resignation, inability to act, or for any other reason, the vacancy shall be filled by appointment, by the Selectmen, for the remainder of the term.

Section 4. The Council on Aging, annually in April of each year, shall elect from its membership a President, 1<sup>st</sup> Vice President, 2<sup>nd</sup> Vice President, Secretary, and Treasurer. Each officer shall hold office until the next annual election. In the event a vacancy occurs in any of the offices above, the Council shall hold a special meeting for the purpose of electing one of its members to fill such vacancy.

Section 5. The Council shall prepare and submit an annual report of its activities to the Town and shall send a copy thereof to the Commission on Aging.

Section 6. The Council may appoint such clerks and other employees as it may require.

## **Chapter 109**

### **THE COMMONWEALTH OF MASSACHUSETTS**

In the Year One Thousand Nine Hundred and Eighty-nine

#### **AN ACT PROVIDING FOR RECALL ELECTIONS IN THE TOWN OF ASHBY**

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 elective office in the Town of Ashby may be recalled and removed therefrom by the qualified voters of said town as herein provided.

Section 2. One hundred or more registered voters may initiate a recall petition by filing with the town clerk an affidavit containing the name of the officer and the office held whose recall is sought and a statement of the grounds of recall. Upon certification by the town clerk, the town clerk shall, within two business days, deliver to the voter first named on such affidavit, a sufficient number of copies of petition blanks demanding such recall. The blanks shall be issued by the town clerk with the town clerk's signature and official seal attached thereto; they shall be dated and addressed to the board of selectmen; shall contain the name of the person whose recall is sought, the office from which recall is sought, the grounds for recall as stated in the affidavit, and shall demand the election of a successor to such 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 within twenty days following the date of issuance of said petition. Said recall petition shall be signed by at least twenty percent of the registered voters in said town, and to every signature shall be added the place of residence of the signer, giving the street and number. The town clerk shall, within two business days following the date such filing, submit the recall petition to the board of registrars of voters, who shall within five business days after the day of receipt, certify in writing thereon the number of signatures which are names of voters in said town as of the date such affidavit was filed with the town clerk. The board of registrars shall, upon completion of its certification, return the petition to the town clerk.

Section 3. If the petition shall be found and certified by said town clerk to be sufficient, he shall submit the same with his certificate thereon to said selectmen without delay, and said selectmen shall forthwith give to said elected officer whose recall is being sought, written notice of the receipt of said certificate and shall, if the officer sought to be removed does not resign within five days thereafter, thereupon order a recall election to be held not less than sixty nor more than ninety days after the date of town clerk's certificate that a sufficient petition has been filed; provided however, that if any other town election is to occur within one hundred days after the date of said certificate, the selectmen may, in their discretion postpone the holding of the removal election to the date of such other election. If a vacancy occurs in said office after a recall election has been ordered, the election shall nevertheless proceed as herein provided.

Section 4. Any officer sought to be recalled may be a candidate to succeed himself, and unless he requests otherwise in writing, said town clerk shall place his 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 same, shall all be in accordance with the provisions of law relating to election, unless otherwise provided in this act.

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

Section 6. Ballots used in a recall election in said town shall submit the following proposition in the order indicated:

For the recall of (name of officer) (office held)  
Against the recall of (name of officer) (office held)

Immediately at the right of each proposition there shall be a square in which the voter by making a cross mark (X) may vote for either of such propositions. Just above said squares, there shall appear the direction "Vote for one". Under the proposition shall appear the word "Candidates" and the direction "Vote for one" and beneath this the names of candidates nominated as hereinbefore provided.

In case of machine voting or punch card balloting, or other forms of balloting, appropriate provisions 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 of the special election to the vacancy shall be elected. If a majority of the votes cast on the recall question is in the negative, the ballot for candidates to fill the potential vacancy need not be counted.

Section 7. No recall petition shall be filed against an officer of said town within six months after he takes office, nor, in the case of an officer subjected to recall election and not removed thereby, until at least six months after the election at which his recall was submitted to the voters.

Section 8. No person who has been recalled 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 two years after such removal by recall or resignation.

Section 9. This act shall take effect upon its passage.



## MUNICIPAL DOG CONTROL LAW

Section 1. Licensing of Dogs: The owner or keeper of any dog shall license such animal in accordance with the provisions of General Laws, Chapter 140, S137-139 inclusive except that fees for such licenses shall be as follows:

For a Male Dog:	\$10.00
For a Male Dog which shall have been neutered:	\$6.00
For a Female Dog:	\$10.00
For a Female Dog which shall have been spayed:	\$6.00

Section 2. Definition of Terms: As used in this by-law, unless the context indicated otherwise:

- (A) "Dogs" shall mean all animals of the canine species, both male and female.
- (B) "Owner" shall mean any person or persons, Firm, Association or Corporation owning, keeping, or harboring a dog as defined herein.
- (C) "Keeper" shall mean any person, Corporation or Society, other than the owner, harboring or having in his possession any dog.
- (D) "Kennel", one pack or collection of dogs on a single premises, whether maintained for breeding, boarding, sale, training, hunting or other purposes and including any shop where dogs are on sale, and also including every pack or collection of more than three dogs three months old or over owned or kept by a person on a single premises irrespective of the purpose for which they are maintained.
- (E) "Run at large" shall mean free to wander on public or private ways at will, or on the property of another.

Section 3. Permitting a Dog to Run at Large: No owner or keeper of a dog shall permit such dog, whether licensed or unlicensed, to run at large within the Town of Ashby, except that a dog may, for the purpose of sporting events, (such as hunting, Field Trials, or training purposes) or for agricultural assistance, or while working as a canine guard of mercantile, commercial or industrial establishment, be exempt from the restraining order during such period of time as the dog is actually engaged in the event, sport, agricultural function, or guard work.

(3A) Dogs may be taken from the owner's premises provided that such dogs are on a leash or under the control of the owner or keeper.

Section 4. Impounding: It shall be the duty of the Dog Officer, duly appointed, to apprehend any dog found unrestrained and running at large, and to impound such dog in a suitable place or to order the owner or keeper thereof to restrain said dog.

Section 5. Notice to Owners and Release: If such dog so impounded has upon it the name and address of the owner thereof, or if name of said owner is otherwise known, then the Dog Officer shall immediately notify the owner and if the owner is not known, then no notice shall be necessary. The owner of any dog so impounded may reclaim such dog upon payment of the sum of Ten Dollars (\$10.00) for the first reclaiming, for each twenty-four hour period, or any part thereof, that the dog is held thereafter, the sum of Twenty-five Dollars (\$25.00) for the second and subsequent reclaimings, for each twenty-four hour period or any part thereof, that the dog is held thereafter, provided however, if the dog is not licensed, that before release to any person, a license as required by the Town of Ashby be secured.

Section 6. Disposition of Funds: The sums collected pursuant to the provisions of the by-law shall be accounted for and paid to the Town Treasurer, however, under the provisions of the State Law, the Dog Officer shall be entitled to all fees paid to him for the care of the impounded dogs by the owners thereof.

Section 7. Disposition of Unclaimed Dogs: Any dog which has been impounded and has not been reclaimed by the owner within ten (10) days shall be disposed of as provided by Chapter 140, S152 of the General Laws of the Commonwealth of Massachusetts and amendments thereto.

Section 8. Penalty: Any owner found in violation of the provisions of this by-law shall be subject to a fine in accordance with the following schedule:

1st offense:	Fifteen dollars (\$15.00)
2nd offense:	Thirty-five dollars (\$35.00)
3rd offense in any 12 month period:	Fifty Dollars (\$50.00)

Further, if the owner or keeper of a dog be a minor, the parent or guardian of such minor shall be held liable for any violation of this by-law.

Section 9. Enforcement: The Dog Officer or Officers duly appointed shall enforce the provisions of the by-law relating to dogs in the Town of Ashby.

Section 10. Alternative Procedures under General Laws, Chapter 140, s173A.

- (10A) Notwithstanding any provisions of the General Laws to the contrary, any Dog Officer who takes cognizance of a violation of:
  - (A) This by-law
  - (B) Chapter 140, S137, failure to acquire kennel license pursuant to General Laws, Chapter 140, S137A
  - (C) Failure to vaccinate against rabies pursuant to General Laws, S145B may issue or mail a Notice of Complaint of Violation of Municipal Dog Control Law to the owner or keeper of such dog or dogs, and if the owner or keeper of a dog or dogs is a minor, the parent or guardian of such minor shall be liable for any violation of this by-law.
  
- (10B) Any owner or keeper found in violation of the above mentioned procedures shall be subject to a fine of Twenty-five dollars (\$25.00). If the owner or keeper of a dog or dogs is a minor, the parent or guardian of such minor shall be liable for any violation of this by-law.
  
- (10C) The procedure set forth above shall also include the provisions of paragraphs 2-4 of General Laws, Chapter 140, S173A as amended.

Section 11. Any application for a kennel license shall be reviewed by the Selectmen for compliance with Massachusetts General Laws Chapter 140, Sections 137A through 137D and with local bylaws. Upon satisfactory review the Selectmen shall transmit a letter to the Town Clerk noting the same whereupon the Clerk shall issue the kennel license. This section shall not apply to kennel license renewals.

Section 12. Effective Date: This by-law shall take effect upon its passage by the town meeting and approval by the Attorney General's Office.

### **ASHBY HISTORIC DISTRICT BYLAW**

Section 1. TITLE:

This bylaw shall be entitled the Ashby Historic District Bylaw.

Section 2. PURPOSE

The purpose of this bylaw is to promote the educational, economic, cultural and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings and places

significant in the history of the Town of Ashby and through the maintenance and improvement of setting for such buildings and places and the encouragement of design compatible therewith. This bylaw shall be construed to be consistent with the requirements of Chapter 40C of the General Laws.

### Section 3. DEFINITIONS

Alteration, to Alter shall include of rebuilding, reconstruction, restoration, removal, demolition, and other similar activities.

Building shall mean a combination of materials forming a shelter for persons, animals or property.

Certificate, A Certificate of Appropriateness, a Certificate of Non-Applicability, or a Certificate of Hardship as set forth in this bylaw.

Commission shall mean the Ashby Historic District Commission as established by this bylaw.

Construction, to Construct shall include building, erecting, installing, enlarging, moving and other similar activities.

District, the Local Historic District as established by this bylaw.

Exterior Architectural Feature means such portion of the exterior of a building or a structure as is open to view from a public way or ways, including but not limited to architectural style and general arrangement and setting thereof, the kind and texture of exterior building materials and other materials applied to exterior surfaces and the type and style of windows, doors, signs and other appurtenant exterior fixtures.

Person Aggrieved, the applicant, an owner of an adjoining property or an owner of property within the District.

Sign, any symbol, design or device used to identify or advertise any place of business, product, activity or person.

Structure, a combination of materials other than a building, including but not limited to a sign, fence or wall.

Temporary Structure or Building, a building not intended to be in existence for a period of more than two years. A structure not intended to be in existence for a period of more than one year.

### Section 4. ESTABLISHMENT

The district shall include all properties shown within the boundary inscribed on the map(s) entitled Ashby Historical District Boundary. Said map(s) are incorporated as part of this bylaw. The district shall not become effective until said map(s) are recorded with the South Middlesex Registry of Deeds. The map(s) shall be reviewed for accuracy and signed by a majority of the Planning Board prior to recording.

### Section 5. HISTORIC DISTRICT COMMISSION

The Historic District Commission is hereby established which shall consist of five members and two alternates, appointed by the Selectmen, including when possible, one member who is a property owner or representative of a property owner in the district, including one member of the Ashby Historical Society, one member of the local Chapter of the American Institute of Architects or one licensed contractor, one member of the local Board of Realtors and one member who is a resident of the Town at large. If within thirty days of submission of written request to any of the organizations or persons herein named, no nominations have been made, the Board of Selectmen may proceed to appoint the Historic District Commission without nominations by such organizations. In the case of absence or inability to act due to self interest on the part of a member of the Commission, the Chairman may select an alternate to fill his/her place. The appointees shall be residents of the Town and said appointment shall be for a three year term, unless to fill a vacancy created by the resignation or removal of a member. In the year of the commission's establishment the Selectmen shall appoint one member to a one year term, two members to a two year term and two members to a three year term. The Selectmen shall further appoint two alternates, one for a term of one year and the other for a term of two years.

### Section 6. POWERS AND DUTIES OF THE COMMISSION

The Historic District Commission shall administer and regulate the district in accordance with procedures and criteria established in this bylaw and any amendments thereto.

The commission shall adopt rules and regulations regarding the procedure for applications for certificate of appropriateness or non-applicability or hardship. The commission may also adopt rules and regulations not inconsistent with this bylaw and the applicable provisions of Chapter 40C of the General Laws.

The commission may, subject to appropriation, incur expenses appropriate to carrying out its work and may accept money gifts and expend same for such purposes. The commission may administer on behalf of the Town, any properties or easements or other interest in real property, which the Town may own located within the district if the Commission is designated as the custodian by the Town.

#### Section 7. JURISDICTION

Except as noted in section 8 below, no building or structure within the Historic District shall be constructed or altered in any way that affects the exterior architectural features unless the commission first issues a certificate of appropriateness or of non-applicability or of hardship with respect to such construction or alteration.

Any person wishing to obtain said certificate shall file with the commission an application for a certificate of appropriateness, of non-applicability or of hardship, in such form as the commission provides together with such plans, specification, material and other information as the commission may reasonably deem necessary. No building permit for the construction of a building or a structure or for an alteration of an exterior architectural feature within the District and no demolition permit for demolition or removal of a building or structure within the District shall be issued by the Town of Ashby or any department thereof until the certificate required by this Bylaw has been issued by the Commission.

#### Section 8. EXEMPTIONS

Nothing in this bylaw shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior architectural feature which does not involve a change in design or material or the outward appearance thereof, nor to prevent landscaping with plants, trees, or shrubs, nor to prevent meeting the requirements certified by a duly authorized public officer to be necessary for public safety, nor to prevent the implementation of the requirements of the Americans with Disabilities Act.

The following exterior architectural features or structures within the historic district may be constructed or altered without review by the commission:

Temporary structures, provided such structure is not in place for a period of more than one year.

Walks, driveways, sidewalks and similar structures provided that any such structure is substantially at grade level.

Storm windows or storm doors, screens, window air conditioners.

Color or paint.

Color of materials used on roofs.

Exterior lightings and lighting fixtures for buildings.

A sign not more than one square foot in area in connection with the use of a residence for a home occupation or a sign not more than twelve (12) square feet in area in connection with a non-residential use. All such signs shall consist of letters painted on a flat surface, and if illuminated shall be illuminated only indirectly.

The reconstruction, substantially similar in exterior design, of a building or structure or exterior architectural feature damaged or destroyed by fire or natural disaster provided that such reconstruction is begun within one year.

This bylaw shall regulate only those external architectural features that can be viewed from the following public ways and parks, Main Street, New Ipswich Road and the Town Common.

Upon request the commission shall issue a certificate of non-applicability with respect to any construction or alteration that does not require the Commission's approval.

#### Section 9. PROCEDURE FOR REVIEW

Meetings of the commission shall be held at the call of the chairman or at the request of two members of the commission or in such manner as the commission shall determine. A majority of the members shall constitute a quorum. A concurring vote of a majority of the members shall be necessary to issue a certificate of appropriateness, of non-applicability or of hardship.

The commission shall determine promptly and in all events within fourteen (14) days after filing of an application for a certificate of appropriateness or a certificate of non-applicability or a certificate of hardship whether the application involves any exterior architectural feature subject to approval by the commission. If the commission determines such application involves any such feature the commission shall hold a public hearing on the application unless such hearing is dispensed with a hereinafter provided.

If the application requires action by the Commission, the Commission shall fix a reasonable time for the hearing and shall give public notice of the time, place and purpose thereof at least fourteen (14) days before said hearing and shall notify in writing, by regular mail, the applicant, all abutters and other property owners deemed by the commission to be materially affected thereby, to the Planning Board, and to other persons filing written request or who the Commission deems entitled to notice. As soon as convenient but in all events not more than forty-five (45) days following the application or within such further time as the applicant may allow in writing, the commission shall make a determination on the application. Failure to make a determination within the time allotted shall thereupon issue a certificate of hardship.

In the case of disapproval of an application for a certificate of appropriateness the Commission shall forthwith notify the applicant of such determination and the reasons therefore. The Commission may make recommendations for changes in the applicant's proposal, which, if made, would make the application acceptable to the Commission. If within fourteen (14) days of receipt of such notice the applicant files a written modification of his application in conformity with changes recommended by the Commission, the Commission shall issue a certificate of appropriateness to the applicant.

A public hearing need not be held if such hearing is waived in writing from all persons entitled to notice thereof. A public hearing may be waived by the commission if it determines the external architectural feature is insubstantial in its effect on the district.

#### Section 10. CRITERIA FOR DETERMINATION

In making a determination the Commission shall consider among other things the historic and architectural value and significance of the site, building or structure, the general design, arrangement, texture and materials of buildings and structures in the surrounding area. In the case of new construction the Commission shall consider the appropriateness of the size and shape of the building or structure, both in relation to the land area upon which the building or structure is situated and to the buildings and structures in the vicinity. The commission shall not consider interior arrangements of architectural features not subject to public view.

#### Section 11. APPEAL

Any person aggrieved by a decision or determination of the Commission may, within twenty (20) days after the filing of notice of the determination with the Town Clerk, file a written request with the Town Clerk and the Montachusett Regional Planning Commission for a review by a qualified person or persons appointed for the purpose by the Montachusett Regional Planning Commission. The finding of

the person or persons shall be filed with the Town Clerk within forty-five (45) days after the request. The finding shall be binding on the Commission and the applicant unless further appeal is sought in Superior Court as provided in G.L.c. 40C, s. 12a.

**Section 12. ENFORCEMENT**

The Commission shall enforce the provisions of this bylaw as provided for in G.L. c. 40C., s.13. The Historic District Commission shall enforce these bylaws pursuant to Article 1., section 4 of the Town Bylaws, where each and every day of violation shall be a separate offense.

**Section 13. AMENDMENT**

This bylaw may be amended from time to time by a two thirds vote of the Town Meeting subject to the requirements set forth in G.L.c. 40C, s3.

**Section 14. SEVERABILITY**

The provisions of this bylaw shall be deemed severable. If any of its provisions are deemed invalid or unconstitutional by a court of competent jurisdiction the remaining provisions shall continue in full force and effect.

**Section 15.**

This bylaw shall take effect on July 1, 1997.

**TOBACCO REGULATIONS  
PROVISIONS OF CHAPTER 40, SEC. 21D  
OF THE GENERAL LAWS AND AMEND THE  
TOWN BY-LAWS AS FOLLOWS:**

The Health Agent duly authorized by the Board of Health shall have the authority to enforce the Board of Health Rules and Regulations relating to Sales of Tobacco Products to Minors in the Town of Ashby (Tobacco Regulations) in accordance WITH G.L. C.40, SEC. 21D.

A permittee found by the Board of Health, or its designee, to have violated Section 3 of the Tobacco Regulations shall be penalized as follows:

- |                                                               |                                                        |
|---------------------------------------------------------------|--------------------------------------------------------|
| First violation:                                              | written warning                                        |
| Second violation within a twelve month period:                | \$25.00 fine and ten consecutive day suspension        |
| Third violation within a twelve month period:                 | \$50.00 fine and twenty-one consecutive day suspension |
| Fourth and subsequent violation within a twelve month period: | \$50.00 fine and forty-five consecutive day suspension |

All tobacco products shall be removed from the permitted premises upon suspension of the tobacco sales permit. Each day such violation continues constitutes a separate offense and the permittee shall pay an additional fine of \$100.00 per day.