

COUNTY OF MIDDLESEX
COMMONWEALTH OF MASSACHUSETTS

GENERAL BY-LAWS

OF THE

TOWN OF LINCOLN

PRICE - \$10.00

As adopted by vote of the Town March 16, 1959, and thereafter amended,
through the March 26, 2011 Annual Town Meeting.

B. Any owner or fuel oil distributor who violates any provision of this By-law shall be subject to a fine of one hundred dollars (\$100) for each offense. Each day during which such violation continues shall constitute a separate offense.

Section 9. Costs

All costs incurred in complying with the provisions of this By-law and in obtaining compliance shall be paid by the owner and operator of the affected underground tank.

Section 10. Town of Lincoln Underground Tanks

Underground tanks owned by the Town of Lincoln must be removed by December 31, 1997. If such tanks are not removed by December 31, 1994, they shall be tested for leakage annually. **Section 7** shall not apply to underground tanks owned by the Town of Lincoln.

Section 11. Severability

Each part of this By-law shall be construed as separate to the end that if any part or sentence, clause or phrase thereof shall be held invalid for any reason, the remainder of that part and all other parts of the By-law shall continue in full force.

ARTICLE XX Flint's Pond Water Supply Protection By-law

Section 1. Purpose

The purpose of this By-law is to protect the Flint's Pond drinking water supply in the Town of Lincoln by restricting and controlling activities which are likely to have a significant adverse impact, immediate or cumulative, upon the water quality of Flint's Pond.

Section 2. Jurisdiction; Presumption

A. Except as permitted by the Commission pursuant to this By-law, or as otherwise allowed in this By-law, no person shall undertake any activity within the Flint's Pond Watershed that causes a significant adverse impact, as defined in **Section 8**, on the water quality of Flint's Pond.

B. The following activities are hereby found to have a significant adverse impact on the water quality of Flint's Pond and are accordingly prohibited:

- 1) Fishing, swimming, boating (except as authorized by the Water Department for official business) or bathing in Flint's Pond or otherwise being on or within the waters of Flint's Pond;
- 2) Allowing any domestic animal to swim or enter the waters of Flint's Pond;
- 3) Throwing any dirt, rubbish or foreign materials into the waters of Flint's Pond;
- 4) Active or passive recreational activities on public lands within two-hundred (200) feet of Flint's Pond unless allowed by a Recreational Management Plan adopted by the Conservation Commission for public lands within the vicinity of Flint's Pond. The Plan may allow recreational activities which are deemed not to adversely impact water quality; and
- 5) Any activity inconsistent with the Massachusetts Department of Environmental Protection Title V requirements regulating construction of new subsurface sewage disposal systems within four-hundred (400) feet of the shoreline of Flint's Pond. This shall not apply to repairs or replacement of existing systems as long as all relevant Board of Health and Title V requirements are satisfied.

C. It shall be presumed that the following activities will have a significant adverse impact on the water quality of Flint's Pond as protected under this By-law and shall accordingly be subject to the permitting requirements set forth herein:

- 1) Pasturing of domestic grazing animals within four-hundred (400) feet of Flint's Pond or any tributary thereto;
- 2) Storage of animal manure within four-hundred (400) feet of Flint's Pond or any tributary thereto;
- 3) The use of any fill material within four-hundred (400) feet of Flint's Pond or any tributary thereto unless the fill has been designated as "clean fill";
- 4) Any surface or subsurface discharge, including but not limited to stormwater and hazardous materials, within four-hundred (400) feet of Flint's Pond or any tributary thereto (but excluding normal downgradient rain or storm-related surface runoff from residential properties and public roadway discharges which utilize best management practices (BMPs));
- 5) The application of outdoor pesticides, including herbicides, insecticides, fungicides and rodenticides within four-hundred (400) feet of Flint's Pond or any tributary thereto;
- 6) The application of outdoor fertilizers within four-hundred (400) feet of Flint's Pond or any tributary thereto;
- 7) Earth moving/clearing activities which cause a single disturbance or cumulative disturbance over 3 years of more than five-thousand (5000) square feet within four-hundred (400) feet of Flint's Pond or any tributary thereto;
- 8) The removal of earth within the Flint's Pond watershed or within hundred (400) feet of Flint's Pond, including soil, loam, sand, gravel, clay, quarried rock or any other earth products except where such removal is entirely incidental to or in connection with the construction at the site or removal of an approved structure or street; and
- 9) Those activities within the Flint's Pond Watershed or within four-hundred (400) feet of Flint's Pond that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use.

Section 3. Exceptions

A. The permit and application required by this By-law shall not apply to emergency projects necessary for the protection of public health or safety; provided the activity is to be performed by or has been ordered performed by an agency of the Commonwealth or a political subdivision thereof, provided that advance notice, oral or written, has been given to the Commission prior to the commencement of the activity or within twenty-four (24) hours after commencement, provided that the Commission or its agent certifies that the activity is an emergency and provided that within twenty-one (21) days of commencement of an emergency project, a permit application shall be filed with the Commission for review as provided by this By-law. Upon failure to meet these and other requirements of the Commission, the Commission, after notice and a public meeting, revoke or modify an emergency project approval and order immediate restoration and mitigation measures to protect the water quality of Flint's Pond.

B. No permit shall be required under this By-law for any activity other than those listed in **Section 2C** above.

C. No permit shall be required for any activity undertaken by the Lincoln Water Commission, acting within its lawful authority to protect the water supply of Flint's Pond.

Section 4. Application for Permit

A written application shall be filed by any person who proposes to conduct activities (as defined in **Section 2**) that are presumed to cause a significant adverse impact on the water quality of Flint's

Pond. The application shall include such information and plans as are deemed necessary by the Conservation Commission to describe:

- 1) the proposed activities; and
- 2) their potential effects on the water quality of Flint's Pond as protected under this By-law, and any feasible alternatives to such activities. No such activities shall commence without receiving and complying with a written permit issued by the Conservation Commission.

Section 5. Notice and Meetings

A. The Conservation Commission shall conduct a public meeting within twenty-one (21) days from receipt of an application to conduct any activity (as defined in **Section 2C**) which is presumed to cause a significant adverse impact on the water quality of Flint's Pond. The Commission shall give to each applicant at least seven (7) days prior written notice, by certified mail or hand delivery, of the meeting date at which such application will be considered. In addition, the notice posted by the Commission pursuant to the requirements of the Open Meeting Law (MGL, Chapter 39, §23A-C) shall include a reference to such application as an agenda item for such meeting.

B. The Commission shall have authority to continue its consideration of the application to the date of a subsequent public meeting, for reasons stated at the meeting, which may include receipt of additional information offered of the applicant or others, information and plans required of the applicant which are deemed necessary by the Commission in its discretion, or comments and recommendations of boards or officials listed in **Section 6**. In the event the applicant objects to a continuance or postponement of consideration of its application, the Commission shall take action on such information as is available.

Section 6. Coordination With Other Boards

Any person filing a permit application with the Conservation Commission shall provide a copy thereof, together with any accompanying plans, within five (5) days after filing with the Conservation Commission, to the Water Commission, Board of Health, and to such other boards and officials as the Commission may request. Town boards and officials shall be entitled to file written comments and recommendations with the Conservation Commission at or before the public meeting. The Commission shall consider any such comments in their final decision. The applicant shall have the right to receive copies of any such comments and recommendations at or before the public meeting.

Section 7. Permits, Conditions and Appeals

A. The Commission, within twenty-one (21) days of the last meeting at which the application is considered, shall issue or deny a permit for the activities requested. If the Commission determines that the activities which are the subject of the application are likely to have a significant adverse impact, immediate or cumulative, upon the water quality of Flint's Pond then the Commission shall deny a permit for the activities requested. If the Commission issues a permit, it shall impose conditions which the Commission deems necessary to protect the water quality of Flint's Pond.

B. The Commission is empowered to deny a permit for failure to meet the requirements of this By-law; for failure to submit necessary information and plans requested by the Commission; if the activity as proposed is likely to have significant adverse impact, immediate or cumulative, upon the water quality of Flint's Pond; or where no permit conditions are adequate to protect the water quality. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public meeting.

C. A permit shall expire three (3) years from the date of issuance. Permits issued under this By-law may be extended for one or more periods of up to three (3) years each, if requested in writing at least 30 days before the expiration of the permit, provided that the Commission finds that:

- 1) good cause has been shown for such extension; and
- 2) such extension will not have a significant adverse impact, immediate or cumulative, upon the water quality of Flint's Pond. The Commission shall grant such extension at a public meeting for which the applicant for an extension and the general public have received the same prior notice as is required in **Section 5** hereof. If such an extension is not obtained and a permit expires before all activities authorized by such permit have been completed, then all such activities shall cease until a new permit has been issued pursuant to the procedures set forth in this By-law.

D. For good cause the Commission may revoke or modify a permit issued under this By-law upon notice to the holder of the permit and public notice and public meeting, all in the same manner as required in **Section 5** hereof.

E. If the Commission has failed to hold a meeting within the twenty-one (21) day period provided in this By-law, or if the Commission, after completing such a meeting has failed to issue a permit within twenty-one (21) days of the close of the public meeting, or where the Commission has issued or denied a permit, the applicant or any other person authorized by law may seek judicial relief as provided by law.

Section 8. Definitions

A. **Significant Adverse Impact:** That which causes or potentially causes a deterioration in the quality of the drinking water supply for Flint's Pond.

B. **Clean Fill:** Inert fill that is non-polluting such as soil containing no pesticides or fertilizers, brick, cured concrete, stone, tree or stumps, wood chips or yard waste.

C. **Commission:** The Conservation Commission of the Town of Lincoln.

D. **Flint's Pond:** The area containing the surface water drinking water supply for the Town of Lincoln (the boundaries of which are shown on Assessor's Map/Parcel 27-8).

E. **Toxic or Hazardous Material:** Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water of the Town of Lincoln. Toxic or hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as Toxic or Hazardous under MGL Chapter 21C and 21E and 310 CMR 30.00 and also include such products as solvents and thinners in quantities greater than normal household use.

F. **Person:** Any individual, group of individuals, association, partnership, corporation, company, business organization, trust or estate, any federal, state, regional, county or municipal government body administrative agency or public or quasi public corporation or body, including the Town of Lincoln, and any other legal entity.

G. **Tributary:** Any stream or other water body which flows into Flint's Pond.

H. **Watershed:** The area of land that creates the catchment or drainage area of the surface water supply.

Section 9. Enforcement

A. The Commission, its agents, officers, and employees shall have authority to enter upon public or private land for the purpose of performing their duties under this By-law and may make or cause to be made examinations, surveys or sampling as necessary, subject to the limitations imposed by the applicable Federal or State law.

B. The Commission and the Board of Selectmen shall have authority to enforce this By-law and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions.

C. Upon request of the Commission, the Board of Selectmen and the Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the chief of police shall take legal action for enforcement under criminal law.

D. Any person who violates any provision of this By-law or any permit issued thereunder, shall be punished by a fine of up to one-hundred dollars (\$100.00.) Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the By-law or permit violated shall constitute a separate offense.

Section 10. Burden of Proof

The applicant for a permit shall have the burden of providing credible evidence that the activity (as specified in **Section 2**) proposed in the application will not have significant adverse impacts on the water quality of Flint's Pond. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit, or to impose conditions sufficient to prevent any adverse impact on the water quality of Flint's Pond.

Section 11. Severability

The invalidity of any Section or provision or phrase of this By-law, or disapproval of any Section or provision or phrase of this By-law by the Attorney General, shall not invalidate any other Section or provision or phrase thereof, nor shall it invalidate any permit or decision which previously had been issued.

ARTICLE XXI Demolition of Significant Buildings or Structures

Section 1. Intent and Purpose

This By-law is adopted for the purpose of protecting the historic and aesthetic qualities of the Town by preserving, rehabilitating or restoring, whenever possible, buildings or structures which constitute or reflect distinctive features of the architectural and historic resources of the Town, thereby promoting the public welfare and preserving the cultural heritage of the Town. The intent of the By-law is to provide an opportunity to develop preservation solutions for significant, preferably preserved buildings or structures threatened with demolition. The By-law is intended to encourage owners and townspeople to seek out persons or parties who might be willing to purchase, preserve, rehabilitate or restore such buildings rather than demolish them, or to find other solutions that might limit the detrimental effect of demolition on the historical and architectural resources and character of the Town. It is also intended to provide time to document historical resources before they are lost from Lincoln's cultural landscape. This By-law applies only to the exteriors of buildings and structures.

Section 2. Definitions

For the purposes of this By-law, the following words and phrases have the following meanings:

2.1 Building: any combination of materials forming a shelter for persons, animals or property.

2.2 Day: calendar day.

2.3 Demolition: any act of pulling down, destroying, removing, burning by arson, dismantling, or razing a building or structure, or any substantial portion thereof, or commencing the work of total or substantial destruction with the intent of completion of the same. Substantial portion is defined as twenty-five percent (25%) of the volume of the building or structure, or twenty-five percent (25%) of the roof structure.

2.4 Demolition Permit: a written approval for demolition of a building or structure, issued by the LBI in response to an application for such a permit.