

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 24, 2018 Annual Town Meeting.

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# GENERAL BY-LAWS OF THE TOWN OF LINCOLN

## ARTICLE I General Provisions

### **Section 1.**

The following provisions shall constitute the General By-laws of the Town of Lincoln, which shall be in lieu of all General By-laws heretofore in force. These By-laws shall have no retroactive effect. Nothing in these General By-laws shall affect any special By-laws of the Town, including the Zoning By-laws and the Building Code By-laws.

### **Section 2.**

The repeal of a By-law shall not thereby have the effect of reviving any By-laws theretofore repealed.

### **Section 3.**

Whenever a penalty is provided for the violation of a By-law it shall be for each violation.

### **Section 4.**

Whoever violates any provisions of these By-laws whereby any act or thing is enjoined or prohibited, shall, unless other provision is expressly made, pay a fine not exceeding twenty dollars (\$20) for each offense.

### **Section 5.**

Unless otherwise provided in these By-laws, governing instrument or the General Laws, any Board, Commission, or Committee of the Town may act by a majority.

### **Section 6.**

Any or all of these By-laws may be repealed or amended or other By-laws may be adopted at any Town Meeting, an article or articles for that purpose having been inserted in the warrant for such meeting. It shall be sufficient notice of the proposed amendment if the text thereof is on file at the Selectmen's office and available for inspection seven or more days prior to the Town Meeting.

### **Section 7.**

Whenever reference is made in these By-laws to the General Laws, such reference shall mean the General Laws of the Commonwealth of Massachusetts as from time to time amended.

**Section 8.**

Whenever reference is made to committees in these By-laws, for the purposes of these By-laws only the term committees shall include boards and commissions.

**ARTICLE II Town Meetings**

**Section 1. Time**

The Annual Town Meeting shall be held on the Saturday before the last Monday in March in each year at 9:30 A.M. for the transaction of all business except that the election of officers and the determination of such matters as by law are required to be elected or determined by ballot shall take place on the last Monday in March, when the polls shall be open from 7:30 A.M. until 7:00 P.M., or to such later time up to 8:00 P.M. as the Moderator may determine, provided, however, that whenever the date for the Annual Town Meeting, as hereby established, falls on the Saturday before Easter Sunday, the Annual Town Meeting shall be held on the preceding Saturday, although the Election and ballot questions hereinabove described shall still be held on the last Monday in March.

**Section 2. Special Meetings**

Special meetings may be called at any time by the Selectmen or in any other manner provided by law.

**Section 3. Warrant**

Every Town Meeting shall be called pursuant to a Warrant under the hands of the Selectmen stating the time and place of holding the same and the subjects to be acted upon, notice of which Warrant shall be given at least seven (7) days before the Annual Town Meeting and at least fourteen (14) days before any Special Town Meeting by a constable or other person to whom it is directed, who shall attest and post copies thereof in or on three or more buildings belonging to the Town or any three public places in the Town and make his return of service thereof to the Selectmen. In addition, the Selectmen shall send by mail or otherwise to each household within the Town, at least seven days before the time appointed for such meeting, a copy of such notice and Warrant, but failure to receive such notice and Warrant shall not invalidate any action taken at such meeting.

**Section 4. Registered voters**

Admission to the place of meeting or to a defined portion set aside for the holding thereof shall be open only to registered voters whose names appear on the check list thereof. The Moderator shall enforce this Section throughout each meeting.

**Section 5. Quorum**

The number of voters necessary to constitute a quorum at any Town Meeting shall be 100, provided, however, that a number less than a quorum may from time to time adjourn the same. This Section shall not apply to such parts of meetings as are devoted to the election of Town Officers.

**Section 6. Action on Articles**

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

## **Section 7. Motions**

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

## **Section 8. Questions**

When a question is put, the sense of the meeting shall be determined by voice vote unless otherwise provided by law, and the Moderator shall declare the vote as it appears to him. If the Moderator is in doubt as to the result of such voice vote, or if his decision is immediately questioned by seven or more voters rising in their places for that purpose, the Moderator shall call for another vote to be taken, as he may decide, by show of hands, by standing vote, by use of the check list, or by ballots. Whenever a two-thirds vote of a town meeting is required by statute the Moderator may declare the motion passed by voice vote without a count if it appears that the two-thirds vote has been obtained, provided that if seven or more voters question the Moderator's declaration, another vote shall be taken in the manner prescribed in this Section.

## **Section 9. Question - Motions**

When a question is before the meeting, the following motions, to wit:

- 1) To adjourn
- 2) To lay on the table
- 3) For the previous question
- 4) To postpone to a certain time
- 5) To commit, recommit or refer
- 6) To amend
- 7) To postpone indefinitely

shall be received and shall have preference in the foregoing order; and the first three shall be decided without debate, and the second and the third by two-thirds vote.

## **Section 10. Motion to dissolve**

No motion, the effect of which would be to dissolve the meeting, shall be in order until every article in the warrant for such meeting has been finally disposed of, but this shall not preclude an adjournment of the meeting to some other date.

## **Section 11. Amendments involving money**

On proposed amendments involving the expenditure of sums of money, the larger or largest amount to be disbursed shall be put to the question first, and an affirmative vote thereon shall be a negative vote on the other amount or amounts.

## **Section 12. Committee Reports**

A. All committees (hereinafter select committees) the appointment of which was authorized by the Town Meeting, other than permanent committees, shall report as directed by the Town. When a report of such a committee is placed in the hands of the Moderator, it shall be deemed to be properly before the meeting for its action thereon, and a vote to accept the same shall discharge the committee excepting that if a committee requests that it be continued to a specified date in order to complete its assignment and if the Town so votes, said committee shall be continued to said specified date.

B. If a select committee shall make no report by the time specified when it was created or, in the absence of any such specified time, within one year after its appointment, such select committees shall be discharged unless in the meantime the Town shall have granted an extension to a specified date.

C. For the adoption of any of the recommendations of a select committee, a specific vote shall be required.

### **Section 13. Consent Calendar**

Before any Annual Town Meeting the Moderator may select from the Warrant those articles which in his judgment are likely to be adopted without debate and cause such articles and the motions to be made under each one to be published in a Consent Calendar, copies of which shall be sent by mail or otherwise to each household at least seven days before the date of such meeting. At an appropriate time in the meeting, the Moderator may announce consideration of the Consent Calendar. Notwithstanding the provisions of Section 6 and 9 of this Article II, a motion is then in order to adopt the motions in the Consent Calendar as a group without debate. After seconding of the motion the Moderator shall recognize any voter for the purpose of holding out any article and shall cause any article thus held out to be deleted from the motion to adopt. When all requests to hold out articles have been received, he shall put the motion as modified to a vote. Adoption of the motion by unanimous vote shall constitute adoption of all of the motions contained therein. Thereafter all articles held out, or if the motion to adopt is not voted unanimously, all articles in the Consent Calendar, shall be acted upon in accordance with the provisions of Sections 6 and 9 of this Article.

## **ARTICLE III Powers and Duties of Certain Officers**

### **Section 1. Selectmen**

The Selectmen shall have general direction and management of the property and affairs of the Town in all matters not otherwise provided by the General Laws and these By-laws.

### **Section 2. Treasurer**

A. The Town Treasurer shall have custody of all funds belonging to the Town, including trust funds except funds for which other provision is made by law. Unless otherwise provided by law he shall pay no money from the treasury except upon a warrant signed by a majority of the Selectmen. Such warrant shall be sufficient authority to the Treasurer to pay the same, and the payment thereof shall discharge him from all liability on account of the money so paid.

B. The Treasurer shall file and safely keep all receipts, vouchers and canceled obligations of the Town and shall have the custody of all deeds, contracts, insurance policies and other similar documents owned or held by the Town, and, except for fidelity bonds covering Town officers and employees which shall be filed with the Selectmen, shall have custody of all bonds which run to the Town or any of its commissioners, committees or officers.

### **Section 3. Town Collector**

A. The Collector of taxes shall collect, under the title of Town Collector, all accounts due the Town except interest on investments of trust and other funds.

B. 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.

C. 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 thereon, and shall transmit to the Town Accountant a statement thereof.

#### **Section 4. Town Clerk**

A. As soon as may be but in any event within the week following the final adjournment of any Town Meeting, the Town Clerk shall transmit to the Selectmen, to the Town Treasurer, to the Town Accountant, and to the Assessors, certified copies of all votes appropriating money or authorizing the expenditure of money or otherwise affecting the finances of the Town, and within the same period the Town Clerk shall transmit to all other Town officers or committees a certified copy of any vote of the Town affecting their respective powers or duties.

B. The Town Clerk shall have custody of the Town Seal.

C. The Town Clerk shall keep a file of all Town Reports, reports of all committees of the Town, and all original documents relating to the affairs of the Town which may come into his possession. It shall be the duty of the Town Clerk to see that all conveyances of real estate to the Town are properly recorded in the Registry of Deeds.

#### **Section 5. Town Accountant**

A. The Selectmen may appoint a Town Accountant for a term of three years and until his successor is qualified.

B. All heads of departments, officers, and committees shall transmit to the Town Accountant all bills, drafts, orders, and payrolls chargeable to the respective appropriations of which they have the expenditure. The Town Accountant shall draw warrants upon the Treasury for all such bills, drafts, orders, and payrolls as have been approved and are correct and are not in excess of the appropriations therefor, and transmit the same to the Selectmen for their approval.

C. The Town Accountant shall keep a complete set of books indicating the amount of each specific appropriation, the amounts and purposes of expenditures made therefrom, the receipts from each source of income, and the amount of each assessment levied and the abatements made. The Town Accountant shall make an Annual Report of the same to the Selectmen to be printed in the Annual Town Report.

D. At least once each month the Town Accountant shall send to the Selectmen and to each head of department, officer, and committee a statement of the amounts drawn against appropriations under their charge and the balance of such appropriations remaining subject to draft.

#### **Section 6. General**

In addition to the powers and duties hereinbefore set forth, the officers referred to in this Article and all other officers of the Town shall have such powers and duties as may be provided by law or specified in other Articles of these and other By-laws of the Town.

### **ARTICLE IV Finance Committee**

#### **Section 1.**

There shall be a permanent committee known as the Finance Committee, composed of seven registered voters of the Town who shall serve without pay and shall not, while serving on said Committee, hold any elected Town office or elected committee membership, nor be in the employ of the Town, except as otherwise provided in these By-laws or as expressly authorized by vote of the Town.

## **Section 2.**

The Moderator of the Town shall within thirty days after the final adjournment of every Annual Town Meeting appoint for a term of three years either two persons or three persons, as may be necessary, to provide a committee of seven members, except that following the final adjournment of the Annual Town Meeting in 1983, the Moderator shall appoint four persons, two for terms of three years each and two for terms of two years each. The term of office of each member shall commence immediately upon qualification and shall expire upon the final adjournment of the Annual Town Meeting of the last year of such person's term of office.

## **Section 3.**

The Committee shall consider any or all municipal questions for the purpose of making reports and recommendations to the Town, and in particular shall perform the following duties:

- 1) It shall prepare and submit the Annual Budget for consideration at the Annual Town Meeting, and in this connection shall hold a public hearing on said Budget prior to the day of the Annual Town Meeting. Notice of such hearing shall be sent at least three days prior thereto by mail or otherwise to each household within the Town;
- 2) It shall consider and make recommendations respecting all articles involving an expenditure of money appearing in the Warrant for any Town Meeting and shall consult with such officers and committees as it deems advisable;
- 3) It shall make an Annual Report which shall be published as a part of the Annual Report of the Town and which shall include the Annual Budget and such further recommendations regarding the finances of the Town as the Committee deems advisable;
- 4) It shall make such transfers from the Reserve Fund as it deems advisable to provide for extraordinary or unforeseen expenditures; and
- 5) It shall study the long term capital requirements of the Town and report on the same in its Annual Report to the Town.

## **Section 4.**

The Selectmen shall, as soon as may be, transmit to the Secretary of the Committee copies of all articles involving the expenditure of money which are to be included in any Warrant for a Town Meeting.

## **Section 5.**

Each Town Officer and Committee charged with the expenditure of money shall, not later than the fifteenth day of December in each year, file with the Secretary of the Finance Committee detailed estimates of the amounts deemed necessary for the administration of the respective Officer or Committee for the ensuing fiscal year with explanatory statements for the reasons for any changes in the amounts appropriated for the same purposes in the preceding year.

## **Section 6.**

In the discharge of its duty, the Committee shall have free access to all books of record and accounts, bills and vouchers on which money has been or may be paid from the Treasury. Officers and Committees of the Town shall upon request furnish said Committee with facts, figures, and other information pertaining to their several activities.

**ARTICLE V Recreation Committee**

**Section 1.**

There shall be a permanent committee known as the Recreation Committee consisting of six residents of the Town whose duties shall be to plan, administer and coordinate recreational activities and facilities within the Town.

**Section 2.**

Within thirty(30) days after the adjournment of the Town Meeting at which this Article is adopted, the Moderator and the Board of Selectmen shall each appoint three (3) members, one for a term of three (3) years, one for a term of two (2) years, and one for a term of one (1) year. Within thirty (30) days after the adjournment of each Annual Town Meeting thereafter the Board of Selectmen shall appoint one member for a term of three (3) years and one member shall be elected by the Town for a term of three (3) years. The Recreation Committee shall choose from among its members a Chairman, a Secretary, and such other officers as it may determine. The Chairman may appoint subcommittees to assist in carrying out the duties of the Committee.

**Section 3.**

The Committee shall plan and administer programs and facilities which encourage broad recreational uses of leisure time. Consideration shall be given to the balance between formal and informal activities and to the advisability of making certain programs financially self-sustaining, either wholly or in part. The Committee may adopt rules and regulations governing the use of recreational facilities under its jurisdiction.

**ARTICLE VI Contracts by Town Officers**

**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 such officer has directly or indirectly 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 therefor.

**Section 3.**

No contract involving an obligation of the Town in excess of the dollar amount above which all contracts are required to be in writing pursuant to Massachusetts General Laws (MGL) Chapter 30B (as amended from time to time), shall be binding upon the Town unless such contract is in writing and is signed by the officer or a majority of the committee duly authorized or having control of the appropriation against which such obligation is incurred; and such officer or committee shall make and retain a record of every such contract.” No contract involving an obligation of the Town in excess of \$500. shall be binding upon the Town unless it is in writing and is signed by the officer or a majority

of the committee duly authorized or having control of the appropriation against which such obligation is incurred; and such officer or committee shall make and retain a record of every such contract.

**Section 4.**

If so requested by the officer or committee, every contract exceeding \$1,000. 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 bond.

**Section 5.**

That Lincoln's authorizing authorities may solicit and award contracts for terms exceeding three years, but not more than six (6) years, including any renewal, extension or option, provided in each instance that the longer term is determined to be in the best interest of the Town.

**ARTICLE VII Legal Affairs**

**Section 1.**

The Selectmen shall be agents of the Town to institute, prosecute and defend any and all claims, actions 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 the payment by the Town of an amount in excess of \$5,000. No settlement of a claim or suit obligating the Town in an amount in excess of \$5,000. shall be made as authorized by law, without the consent of a Town Meeting.

**Section 3.**

The Selectmen may annually after the final adjournment of the Annual Town Meeting appoint and employ a member of the bar in good standing, to serve as Town Counsel for the term of one year from the first day of April and until his successor is appointed. The Selectmen may appoint and employ special counsel for any matter in which the Town has an interest.

**Section 4.**

Except for matters for which a special counsel has been appointed, it shall be the duty of the Town Counsel, if any, to conduct the prosecution, defense or compromise of claims, actions and proceedings to which the Town is a party, and the prosecution of actions or proceedings by or on behalf of any Town officer or committee as such; to conduct the defense of any action or proceedings brought against any Town officer or committee as such when the Selectmen, having determined that any right or interest of the Town are or may be involved therein, shall so request; 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 so to do by the officer or committee enforcing the same; to examine and report upon titles to all land to be acquired by the Town; upon request of the responsible Town officer or committee 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

his services may be required; and generally to advise and act for the Town officers and committees upon and in legal matters touching the duties of their respective offices.

## **ARTICLE VIII Records and Reports**

### **Section 1.**

All officers and committees of the Town shall cause records of their actions taken and of their accounts to be kept in a suitable manner. Said records and accounts 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 or committee having custody thereof.

### **Section 2.**

All officers and committees of the Town having charge of the receipt or expenditure of Section Town money shall annually report thereon in writing, referring however to the reports of the Town Accountant and Town Treasurer for the details 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 twentieth day of January of each year.

### **Section 3.**

The Annual Town Report shall contain, in addition to the reports of officers and committees as hereinbefore provided, a detailed report of all moneys received into and paid out of the Town Treasury in the financial year next preceding; the report of the Board of Assessors including a recapitulation of the computation of the property tax rate; 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, including the purposes thereof; a statement of transfers made to or from any appropriation; records or abstracts thereof of the meetings of the Town held in the previous year; a statement of all devises, bequests and donations to the Town during the preceding year, and such other matters as the said Report is required by other provisions of these By-laws to contain and as may be inserted by the Selectmen under the discretion granted them by law.

### **Section 4.**

The Selectmen shall from time to time cause to be printed, either separately or as a part of an Annual Town Report, the General and other By-laws and standing votes of the Town, the Assessors valuation list, and the rules and regulations adopted by any officer or committee of the Town; and shall maintain for public inspection a list of the laws of the Commonwealth applicable to the Town by virtue of the acceptance thereof by the Town

### **Section 5.**

The Selectmen shall cause the Annual Town report to be distributed to each household in the Town seven days at least before the Annual Meeting of the Town.

**Section 6.**

No illustrations shall be included in reports of Town officers or committees except as they are expressly authorized by the Selectmen.

**Section 7.**

The Annual Report of the Selectmen shall include, unless such information is included in other reports, a statement as to action taken or authorized in regard to Town ways or County ways within the Town, what damages have been assessed and paid, what claims are outstanding and what claims are in suit against the Town; it shall also give full reports in regard to suits against the Town with all the circumstances relating thereto.

**ARTICLE IX Water Department**

**Section 1.**

The Water Department shall be under the supervision of Water Commissioners of which there shall be three (3), one elected each year for a term of three (3) years. The Water Commissioners shall have such duties and powers as are provided in the General Laws and these By-laws.

**Section 2.**

The Water Commissioners may appoint one or more Registrars who, shall, as directed by the Commissioners, take and tabulate a complete census of all water fixtures connected with the Town Water System, read and record all service meters at such intervals as the Commissioners may direct, and perform any other duties required by the Commissioners.

**Section 3.**

The Water Commissioners shall, at such regular intervals in each year as they may determine, transmit the assessments for water rates to the Town Collector who shall collect the same, turn the proceeds thereof over to the Town Treasurer, and transmit statements thereof to the Town Accountant.

**Section 4.**

A charge of two dollars (\$2.00) or such other larger sum as the Water Commissioners from time to time may determine shall be made whenever the Water Commissioners or their representatives, at the request of the water taker, turn on or shut off the water in any service pipe.

**Section 5.**

No extension of water mains which involves the expenditure of any funds of the Town shall be undertaken unless expressly authorized by a vote of the Town, except in the following situations: (1) if the amount to be expended is less than \$5,000., or (2) if, in the opinion of the Selectmen, an emergency exists, and the amount to be expended is less than \$10,000.

**Section 6.**

No tap for service shall be made unless approved by the Water Commissioners, who may require the payment of a suitable fee for the same.

**Section 7.**

No alteration shall be made in any of the pipes or fixtures installed by the Town except by persons authorized by the Water Commissioners who shall also be allowed to enter the premises, examine the fixtures, read the meters and ascertain if there is any unnecessary waste.

**Section 8.**

If any person shall open a hydrant or remove the cover thereof or make any opening or connection with any Town pipe or turn on or off the water from any Town pipe except in case of fire or by authority of the Water Commissioners or the Selectmen, he shall be liable to a fine of not more than twenty dollars (\$20).

**Section 9.**

It shall be the duty of the Water Department to maintain the hydrants in the Town in good working order and to test them at reasonable intervals.

**Section 10.**

Bills for water rates and charges shall be due and payable thirty (30) days from the date shown thereon. If such bills are not paid by the due date, the provisions of MGL, Chapter 40 of the General Laws respecting the collection of such rates and charges, including the establishment of a lien and shutting off of water, shall apply.

**Section 11.**

The Board of Water Commissioners may make abatements in the water rates and charges in such cases as the Commissioners may deem proper, and may temporarily shut off water from any street after giving notice to those affected of their intention so to do. The Commissioners shall notify the Fire Department of the Town prior to any permanent or temporary shut-off of any water main.

**Section 12.**

The Board of Water Commissioners shall keep suitable records in which shall be entered the names of all water takers and the amounts charged, and these records shall be open to public inspection.

**Section 13.**

The Board of Water Commissioners may make such rules and regulations governing the Water Department as they may deem advisable, not inconsistent with the By-laws of the Town or the General Laws.

## **Section 14. Water Supply**

### **A. Authority**

Section 14 is adopted by the Town of Lincoln under its police powers to protect public health and welfare and its powers under MGL, Chapter 40, §21 et seq and implements the Town's authority to regulate water use pursuant to MGL, Chapter 41, §69B. This Section also implements the Town's authority under MGL, Chapter 40, §41A, conditioned upon a declaration of water supply emergency issued by the Department of Environmental Protection.

### **B. Purpose**

The purpose of Section 14 is to protect, preserve and maintain the public health, safety and welfare by safeguarding the public water supply and to provide for enforcement of any duly imposed restrictions, requirements, provisions or conditions imposed by the Town or by the Department of Environmental Protection whenever there is in force a State of Water Supply Conservation or a State of Water Supply Emergency.

### **C. Definitions:**

**Person** shall mean any individual, corporation, trust, partnership or association, agency or authority, or other entity and any officer, employee, group or agent of such persons.

**State of Water Supply Emergency** shall mean a State of Water Supply Emergency declared by the Department of Environmental Protection under MGL, Chapter 21G, §§15-17.

**State of Water Supply Conservation** shall mean a State of Water Supply Conservation declared by the Town pursuant to Section 14(d) of this By-law.

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

### **D. Declaration of a State of Water Supply Conservation**

The Town, through its Water Commissioners, may declare a State of Water Supply Conservation upon a determination by a majority vote of the Commissioners that a shortage of water exists and conservation measures are appropriate to ensure an adequate supply of water to all water consumers. Public notice of a State of Water Supply Conservation shall be given under Section 14(f) of the By-law before it may be enforced.

### **E. Restricted Water Uses**

A declaration of a State of Water Supply Conservation shall include one or more restrictions, conditions or requirements limiting the use of water as necessary to protect the water supply. The initial applicable restriction(s), condition(s) or requirement(s) shall be included in the public notice required under Section 14(f) and may be amended during the course of the state of water supply conservation as determined from time to time by the Water Commissioners. Restrictions that may be imposed include, but are not limited to the following:

- 1) Odd/Even Day Outdoor Watering – Outdoor watering by water users with odd numbered addresses is restricted to odd numbered days. Outdoor watering by water users with even numbered addresses is restricted to even numbered days.
- 2) Outdoor Watering Hours – Outdoor watering is permitted only during specific daily periods to be specified in the declaration of a State of Water Supply Conservation and public notice thereof or to be determined from time to time by the Water Commissioners.
- 3) Automatic Sprinkler Use – The use of an outdoor lawn sprinkler system which turns on and off automatically is prohibited.
- 4) Outdoor Watering Ban – Outdoor watering is prohibited.
- 5) Vehicle Washing – Vehicle washing is prohibited.

### **F. Public Notification of a State of Water Supply Conservation**

Notification of any provision, restriction, requirement or condition imposed by the Town as part of a State of Water Supply Conservation shall be published in a newspaper of general circulation

within the Town, or by such other means reasonably expected to reach and inform users of water of the State of Water Supply Conservation.

**G. Termination of a State of Water Supply Conservation: Notice**

A State of Water Supply Conservation may be terminated by a majority vote of the Water Commissioners. Public notification of the termination of a State of Water Supply Conservation shall be given in the same manner required by Section 14(f).

**H. State of Water Supply Emergency: Compliance with DEP Orders**

Upon notification of the public that a declaration of a State of Water Supply Emergency has been issued by the Department of Environmental Protection, no person shall violate any provision, restriction, requirement, condition of any order approved or issued by the Department intended to bring about an end to the State of Water Supply Emergency .

**I. Penalties**

Any person violating this Section 14 shall be liable to the Town in the amount of \$50.00 for the first violation and \$100.00 for each subsequent violation which shall inure to the Town. Fines shall be recovered by indictment, or on complaint before the District Court, or by non-criminal disposition in accordance with Article XVI of these By-laws and of MGL Chapter 40 §21D. Each day of violation shall constitute a separate offense.

**J. Right of Entry**

Agents of the enforcement authority may enter any property with the consent of the property owner, lessee or other person with authority to give consent, or pursuant to an administrative search warrant issued by a court of competent jurisdiction or other order of the court for the purpose of inspecting or investigating any violation of this Section 14 or enforcing against the same.

**K. Severability**

The invalidity of any portion or provision of this By-law shall not invalidate any other portion or provision thereof.

**ARTICLE X Cemeteries**

**Section 1.**

The cemeteries of the Town shall be under the supervision of Cemetery Commissioners of which there shall be three, one elected each year for a term of three years. The Cemetery Commissioners shall have such duties and powers as are provided in the General Laws and in these By-laws.

**Section 2.**

The Cemetery Commissioners shall have charge of the maintenance and upkeep of the cemeteries in the Town, and shall make such rules and regulations respecting the cemeteries as they shall deem desirable.

**Section 3.**

The Town shall accept and forever hold in trust any gift or bequest for the perpetual care, preservation, improvement, embellishment or enlargement of any public or private burial place, or any lots or graves therein, which gifts or bequests shall be paid into the Town Treasury. Said gifts and bequests shall be invested and the income therefrom expended as provided in the General Laws.

**Section 4.**

Sale of unsold lots in the cemeteries of the Town shall be in accordance with the regulations of and at prices determined by the Cemetery Commissioners, and deeds for the same shall be delivered

to the purchasers thereof by the Commissioners when payment has been completed. Proceeds of such sales shall be paid into the Town Treasury and shall be held separate from other funds of the Town pending appropriation for cemetery purposes by the Town in accordance with the General Laws.

## **ARTICLE XI Miscellaneous**

### **Section 1. Firearms and Explosives**

No person shall fire or discharge any firearms or explosives of any kind within the limits of any highway, park, or other public property, or on or over any private property except with the consent of the owner or legal occupant thereof, provided, however, that this By-law shall not apply to the lawful defense of life or property nor to any law-enforcement officer acting in the performance of his duties, nor to fireworks displays authorized by vote of the Town. Any person violating this By-law shall be punished by a fine of not more than twenty dollars (\$20.)

### **Section 2. Town Seal and Sealed Instruments**

A. The design of the Town Seal shall be: a circle, in the border the words "Lincoln. Incorporated in 1746 as a precinct; in 1754 as a Town"; in the center, a shield, in the chief or upper part of which on a cross, gules, a fleur-de-lis, gold, from the old seal of Lincoln, England, and in the base of the shield a view of the present Town Hall; crest, the old chestnut tree standing upon the Common in Lincoln; in saltire two shepherd's crooks.

B. All deeds and other legal documents made, given or entered into by the Town requiring a seal shall be sealed with the Town Seal, and signed in behalf of the Town by a majority of the Selectmen or other appropriate authority.

### **Section 3. Public Ways**

A. Names of the public way of the Town shall not be changed except by vote of the Town.

B. No person shall place any obstruction in a public way and allow it to remain there, or break or dig up, or aid in breaking or digging up, any part of any street, or remove any earth or gravel therefrom, without having first obtained a written license from the Selectmen for that purpose.

### **Section 3A. Public Way Access Permits**

#### **A. Purpose**

It is the purpose of this By-law to provide for the review of public way access permit applications and to establish procedures for the predictable, timely, and uniform review of such applications so as to ensure public safety. These procedures apply to public way access permit applications for: (1) new access to a public way; (2) physical modification to existing access to a public way; (3) use of new or existing access to serve the building or expansion of a facility or use that generates a substantial increase in or impacts on traffic on a public way. Such procedures shall not be construed to apply to State owned ways according to MGL Chapter 81, §21.

#### **B. Definitions**

In this By-law, the following terms shall have the meanings prescribed below: (1) "Modification" shall mean any alteration of the physical or traffic operational features of the access. (2) "Substantial" increase or impact on traffic shall mean that generated by a facility which meets or exceeds any of the following thresholds: (a) Residential, including hotels, motels, lodging houses and dormitories: any increase to the existing certificate of occupancy of more than 25 persons; (b) Nonresidential: 50 trips per day as defined in the ITE Trip Generational Manual; (c) Nonresidential: 25 new parking spaces; (d) Nonresidential: 5,000 new square feet.

### **C. Submittal of Permit Application**

The Board of Selectmen shall be responsible for the issuance and/or denial of public way access permits. A permit applicant shall request issuance of a permit on a standard form, supplied by the Board of Selectmen. A permit shall be limited to a single curb cut, unless expressly authorized by the Board of Selectmen following recommendation of the Planning Board. A permit application shall be deemed complete by the Board of Selectmen only after the following items have been submitted:

- 1) standard application form;
- 2) evidence of compliance with the Massachusetts Environmental Policy Act by the Executive Office of Environmental Affairs of the Commonwealth, if determined to be necessary;
- 3) where required by the Board, engineering plans shall be submitted showing:
  - (a) the location of the property, any driveway that is to be created, altered or closed, and the interSection of the driveway with the Town way;
  - (b) specific details of drainage affecting the Town way;
  - (c) specific provisions to minimize slope or soil erosion when required;
  - (d) specific provisions to protect existing trees and vegetation in the public right of way and on any land owned by the Town; and
  - (e) such other information, including a traffic or engineering review conducted at the expense of the applicant, as may be requested.

The Board of Selectmen, by regulation, may adopt a schedule of reasonable fees to accompany said application.

### **D. Procedures of the Board of Selectmen**

- 1) Any application for a public way access permit, other than an application pertaining to a single-family residential structure, shall be transmitted by the Board of Selectmen within three (3) working days to the Planning Board for review and comment. The Planning Board shall, within twenty (20) days of receipt of the application, report to the Board of Selectmen in writing its findings as to the safety of the proposed activity and, in the event of a finding that the proposed activity would be unsafe, its recommendations, if possible, for the adjustment thereof. Failure by the Planning Board to respond within twenty (20) days of the receipt of the application shall be deemed lack of opposition thereto.
- 2) Where an application is deemed complete, the Board of Selectmen shall render a decision within the following timetable, by filing same with the Town Clerk:
  - (a) for an application pertaining to a single-family residential structure: twenty (20) days; and
  - (b) for any other application: forty (40) days.
- 3) Where the Board of Selectmen denies said application, it shall state specific findings for the denial in its decision.

### **E. Powers of the Board of Selectmen**

- 1) The Board of Selectmen may deny the issuance of a public way access permit due to the failure of the applicant to provide sufficient roadway improvements to facilitate safe and efficient roadway operations, or when the construction and use of the access applied for would create a condition that is unsafe or endangers the public safety and welfare. The Board of Selectmen may also deny or condition a public way access permit if the applicant fails to comply with the design guidelines set forth in Section G.
- 2) The Board of Selectmen may, in the alternative, impose conditions upon an access permit to facilitate safe and efficient traffic operations, to mitigate traffic impacts, and to avoid or minimize environmental damage during the construction period and throughout the term of the permit. Such conditions may include, but not be limited to:
  - (a) necessary limitations on turning movements;
  - (b) restrictions on the number and location of access points to serve the parcel;
  - (c) vehicle trip reduction techniques;

- (d) necessary and reasonable efforts to maintain existing levels of service;
  - (e) design and construction of necessary public way improvements by the permittee;
  - (f) reimbursement by the permittee of costs to Town inspection of public way improvement work.
- 3) Variance. Where site or access standards do not allow the proposed access to meet these standards, the Board of Selectmen may vary application of the design standards on a case by case basis, upon the finding that: (a) for either a private applicant or a governmental entity, where there are no reasonable available alternatives which would allow access in compliance with these standards. In this case, the applicant must commit to provide measures to mitigate impacts to traffic and operational safety which the Board of Selectmen determines are necessary; or (b) as an alternative procedure for a governmental entity only, the variance is necessary to accommodate an overriding municipal, regional, or state public interest, including the avoidance of minimization of environmental impacts.

#### **F. Access Permit Provisions**

- 1) Construction under the terms of a public way access permit shall be completed within one year of the date of issue, unless otherwise stated in the permit. The Board of Selectmen may extend the permit for an additional year, at the written request of the permittee, filed prior to the expiration of the original construction period.
- 2) When the Board of Selectmen determines that a permit condition has not been complied with, it may suspend or revoke a public way access permit if, after notice to the permittee of the alleged noncompliance, twenty-four (24) hours have elapsed without compliance.
- 3) The Board of Selectmen may require a performance bond to be posted by the permittee in an amount not to exceed the estimated cost of the work or fifty-thousand dollars (\$50,000.), whichever is the lesser. The performance bond shall be posted prior to the issuance of the permit.
- 4) The Board of Selectmen may issue written orders or regulations to carry out or enforce the provisions of this By-law.

#### **G. Design Guidelines**

In deciding whether to approve an application for a public way access permit, the Board of Selectmen and Planning Board shall be guided by the design requirements set forth in this Section and in **Section E**. The Board of Selectmen may consult with the Building Inspector, Zoning Board of Appeals, or Planning Board with regard to whether the applicant has complied with the design guidelines. A public way access permit may be denied for failure to meet any of the standards set forth below, as well as for the reasons stated in **Section E., 1)**, or may be conditioned by the Board of Selectmen as provided in **Section E., 2)**, or to ensure that the below standards are met.

- 1) Design and location of curb cut shall minimize traffic hazards.
- 2) Design and location of curb cut shall prevent slope/soil erosion.
- 3) Design and location of curb cut shall provide adequate drainage.
- 4) Design and location of curb cut shall protect existing trees and vegetation in the public right of way and on any land owned by the Town; if an applicant cannot meet this requirement, the Board of Selectmen may require compensatory and/or replacement action.
- 5) Design and location of curb cut shall be compatible with local conditions and shall be harmonious with the character of the neighborhood and with local road design.
- 6) One access permit may be allowed per lot. An additional access permit may be allowed only if, in the opinion of the Board, there is a clear necessity for more. A clear necessity may be demonstrated by showing that an additional cut would materially improve safety for vehicular traffic or pedestrians using the site or traveling on adjacent public ways, or, that a secondary curb cut for emergency vehicular access only is desirable. Leasing of a portion of the property shall not affect this requirement. If a number of establishments

will be constructed on one parcel, a service road may be required to connect with an allowable exit and entrance with the approval of the Board of Selectmen.

- 7) Common or shared driveways are favored.
- 8) Driveways shall not normally be approved at interSections of Town ways, particularly an interSection with signals, because of the potential safety hazard which arises when a driver enters a road from a corner driveway and is not faced with a direct signal indication. Access directly into a rotary is also discouraged.
- 9) The maximum width of a residential curb cut shall be twelve (12) feet measured at the property line. The maximum width of a commercial curb cut shall be fifteen (15) feet measured at the property line. The Board of Selectmen may increase the maximum width of a residential curb cut and a commercial curb cut to fifteen (15) feet and twenty-five (25), feet respectively, if it finds that:
  - (a) A larger curb cut is needed to accommodate commercial vehicles; and
  - (b) A larger curb cut is demonstrated not to cause danger to vehicles or pedestrians using the town way and vehicles entering and exiting the property; and
  - (c) The property will not generate traffic which will lower levels of service on the Town way or at any nearby interSection below a level of service C at peak hour.
- 10) No curb cut shall be located closer than twenty-five (25) feet to a street or road interSection or within fifteen (15) feet of a crosswalk.

#### **H. Penalties**

Whoever by him/herself being the owner or occupant, or by his/her agents or servants, violates this By-law shall be punished by a fine of three hundred dollars (\$300.) per day, and shall be liable in tort to the Town of Lincoln for all damages caused thereby, and for the cost and expense of removing the obstructing material and of restoring said way to its former condition.

Every day on which any violation of this By-law exists is deemed to be a separate and continuing offense, subject to the penalty as stated herein.

#### **I. Exceptions**

- 1) Driveways already in existence.
- 2) Driveways reviewed in the first instance by municipal boards under other existing By-laws (e.g., Scenic Roads By-laws, Subdivision Approval and site plan review).

### **Section 4. Removal of Vehicles from Public Ways**

Any vehicle on a public way in the Town interfering with the removal of snow or ice, may be towed or otherwise removed by or under the direction of the Superintendent of the Highway Department to a public garage or any convenient place. Said Superintendent shall, within a reasonable time, notify the Chief of Police of the removal of such vehicle and of the place to which it has been removed, and the Chief of Police shall give like notice to the registered owner of the vehicle. The owner shall pay the cost of removal not exceeding ten dollars (\$10.) and any storage charges resulting therefrom.

### **Section 5. Peddlers**

No person shall sell, display or advertise for sale any articles, goods, wares or merchandise of any description whatsoever within the limits of any public way, park or other public property without a written permit from the Selectmen. No permit shall be granted by the Selectmen unless they determine the same to be in the public interest and not injurious to the health, safety and welfare of the inhabitants of the Town. Each such permit shall stipulate the term thereof and such other provisions as the Selectmen may determine, and a charge not exceeding ten dollars (\$10.) per day may be levied for issuing the same. No permit may be granted which is in conflict with the Zoning By-laws of the Town.

## **Section 6. Junk Dealers**

No person shall collect, deal in, or keep a shop for the purchase, sale or barter of junk, old metals or second-hand articles within the limits of the Town, unless licensed by the Board of Selectmen.

## **Section 7. Billboard and Signs**

Section eliminated March 28, 1998.

## **Section 8. Vacancies in Office**

Unless otherwise provided in these By-laws, governing instrument, or the General Laws, vacancies in any elected office of the Town shall be filled by the Selectmen, and vacancies in any appointive office shall be filled by the person or persons having the authority to make appointments to such office.

## **Section 9. Motorboats**

A. No motorboat shall be operated upon any portion of the Concord River or its tributaries or of any inland lake or pond lying within the Town in a manner which endangers the safety of the public or is detrimental or injurious to the neighborhood or to the value of the property thereon.

B. It shall be prima facie evidence of the violation of this By-law if such boat is operated by a motor not having an underwater exhaust, or in a noisy or obnoxious manner, or at any unreasonable rate of speed, or without slowing down and exercising due caution while approaching and passing persons bathing or any other watercraft, or at any speed in excess of ten (10) miles per hour.

C. Any person violating any provision of this By-law shall be subject to a fine not exceeding twenty dollars (\$20.) for each offense.

D. The Town may join with any other town, through which said Concord River or any of its tributaries flows in the enforcement of this By-law or a similar By-law adopted by such other towns insofar as such By-laws relate to said river or its tributaries, and may appropriate money for the enforcement of this in whole or in part of any and all such By-laws.

## **Section 10. Inspector of Gas Piping and Gas Appliances**

The Board of Selectmen shall in each year appoint an inspector of gas piping and gas appliances in buildings, whose duty shall be the enforcement of the rules and regulations adopted by the Board established by, MGL, Chapter 25, §12 (h), inserted by §1 of Chapter 737 of the Acts of 1960, and amendments thereto.

## **Section 11. Motor Vehicles, Snow Vehicles and Recreation Vehicles**

A. No person shall use or operate a motor vehicle, trail bicycle, motor bicycle or similar motorized vehicle which is eligible for registration under MGL, Chapter 90B of the General Laws of the Commonwealth, or a snow vehicle or recreation vehicle as defined in §20 of said Chapter in any park or other Town owned property, except public roads and streets, without the prior written consent of the Town Board having the responsibility for the management of such property. Any such consent shall be temporary in nature, shall specify the period of time during which it is in force and shall only be granted where the proposed use or operation will not in the judgment of the Board granting the same be detrimental to the purpose for which such property is owned. Notwithstanding anything to the contrary hereinabove contained, parking areas established for use in connection with such park or such other public property may be used for parking purposes without prior consent.

B. No person shall use or operate any such vehicle on or over any private property within the limits of the Town without the written consent of the owner of such property.

C. Any person violating this By-law shall be punished by a fine of not less than five dollars (\$5.) nor more than fifty dollars (\$50.).

### **Section 12. Bicycle Lanes**

Wherever it exists within the Town, a bicycle path is hereby designated as a bicycle lane within the meaning of Clause 16B of §21 of Chapter 40 of the General Laws. Every person operating a bicycle within the Town shall, wherever a bicycle path exists, and whenever requested to do so by a police officer because of traffic conditions, ride on such path and not on the street portion of the way. Any person in violation of this Section may be punished by a fine of not more than twenty dollars (\$20) for each offense.

### **Section 13. Dog Regulations**

#### **A. Purpose**

All citizens are entitled to fully enjoy their property and the public ways and lands. Those citizens who own or keep animals are entitled to enjoy their animals, but only to the extent that they exercise responsibility so that their animals do not unreasonably impinge upon the activities of other persons.

#### **B. Definitions**

As used in this By-law, the terms set forth below shall have the following meanings:

**Owner:** Any person or persons, firm, association or corporation owning, keeping or harboring a dog within the Town.

**Kennel:** One (1) pack or collection of dogs on a single premises, whether maintained for breeding, boarding, sale, training, hunting or other purposes, and also including every pack or collection of four (4) or more dogs, six (6) months old or older, owned or kept by a person on a single premise, irrespective of the purpose for which they are maintained.

**License Period:** From January 1st of each year to December 31st of the same year.

**Animal Shelter:** Any premises designated for the purpose of impounding and caring for animals held under authority of this By-law.

#### **C. Dog Officer**

The Board of Selectmen shall annually appoint a Dog Officer under the provisions of §151 and §151A to carry out the provisions of this By-law, issue citations for violation of any provisions hereof, and perform such other duties and responsibilities as the Board may determine. The Dog Officer shall seek out and notify all owners of all dogs within the Town that have not been licensed within the required time under the provisions of this By-law; it shall be the duty of the Dog Officer to keep, or cause to be kept, accurate and detailed records of the impoundment and disposition of all dogs held in custody; all complaints or calls regarding dogs and all bite cases reported and the investigation of same, and to submit periodic reports to the Board of Selectmen.

#### **D. Registration, Licenses and Fees**

Any owner of a dog which at the commencement of a license period is six (6) months of age or older and is located in the Town of Lincoln shall obtain a license for that dog commencing on January 1 of each year. An owner of a dog which becomes six (6) months old during a license period, or a person who becomes an owner of a dog six (6) months of age or older during a license period shall in each such case also be obligated to obtain a license for such dog for the remainder of the relevant license period.

License fees for all neutered or spayed dogs shall be ten dollars (\$10) annually. The fee for intact male and female dogs shall be fifteen dollars (\$15) annually. A late fee of five dollars (\$5) shall be assessed on any license not paid on or before April 1<sup>st</sup>. If any tag shall be lost, the owner of such dog shall forthwith secure a substitute tag from the Town Clerk. The fee for a duplicate tag shall be one dollar (\$1.00). A valid rabies certificate must be presented each time a dog is licensed.

Any person maintaining a kennel shall obtain a kennel license from the Town Clerk commencing on January 1 of each year. The annual fee for kennel licenses shall be:

- Four (4) dogs: \$25.00
- Five (5) or more dogs: \$50.00

Any dog which is the subject of a kennel license shall not be required to have an individual license during the relevant license period.

**E. Vaccination Requirement**

The owner of a dog six months of age or older shall cause such dog to be vaccinated against rabies by a licensed veterinarian using a vaccine approved by the Department of Public Health. Such owner shall produce a veterinarian's certificate that such dog has been so vaccinated setting forth the date of such vaccination and the duration of immunity, and shall also attach a vaccination tag to such dog's collar or harness. Vaccinated animals shall be revaccinated periodically in accordance with rules and regulations adopted and promulgated by the Massachusetts Department of Public Health.

**F. Conduct of Dogs; Restraint**

- 1) No person shall keep in the Town any dog which, by biting, by howling or excessive barking, or in any other manner, endangers the safety of any person or disrupts the peace or quiet of any neighborhood.
- 2) No person shall allow a dog owned or kept by him to be in any municipal building unless the dog is kept on a leash.
- 3) No person shall allow a dog owned or kept by him to be in a school building or on school grounds between thirty (30) minutes before and thirty (30) minutes after the hours when any school or recreation program is in session, unless the cognizant authority otherwise specifically permits.
- 4) The Dog Officer shall order the restraint and/or muzzling, for a period not to exceed thirty (30) days, of any animal which the Officer finds, after a complaint from an identified person or through the Dog Officer's own observation, has:
  - a) Bitten or threatened the safety of any person;
  - b) Worried, killed or maimed any domesticated or farm animal;
  - c) Chased any motor, recreational or pedal vehicle, or any animal carrying or drawing a person upon any public or traveled way;
  - d) Damaged property; and/or
  - e) Committed any act which places its owner or keeper in violation of a prior sub-section of this By-law.

The second time the Dog Officer issues a restraining order or muzzling order regarding the same animal on account of a repeated offense under this sub-section, the Dog Officer shall notify the Selectmen in writing so that they may take any further action.

The owner or keeper of any animal that has been ordered to be restrained or muzzled under the provisions of this sub-section may request the Selectmen in writing to vacate such order.

**G. Penalties**

The owner or keeper of any animal who fails to comply with this By-law shall be subject to the following penalties:

- First offense: maximum fine of \$25.00
- Second offense: maximum fine of \$25.00
- Third offense: maximum fine of \$35.00
- Fourth and subsequent offenses: maximum fine of \$50.00

In addition, for each offense the owner or keeper of the animal shall be subject to the following charges:

Reimbursement to the Dog Officer of the Dog Officer's expenses for maintaining the animal, if the Dog Officer finds it necessary to impound the animal until its owner or keeper can be found. Such expenses must be paid prior to release of the impounded animal.

Before release of an unlicensed dog is made by the Dog Officer, the Officer shall require that a license be secured. A late fee of five dollars (\$5.00) shall be paid to the Town, in addition to the regular license fee, in such instance.

The Town Clerk shall receive payment of such penalties and charges and remit the same to the Town's General Fund.

#### **H. Enforcement**

The Board of Selectmen, or the Dog Officer as the Board's designee, shall enforce, by means available under the General By-laws of the Town or Massachusetts General Laws, the violation of any provision of this By-law.

#### **I. 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.

### **Section 14. Tree Warden**

Upon the expiration of the Tree Warden's term of office in 1984, that office shall thereafter be filled by appointment by the Selectmen, who shall annually appoint a Tree Warden for a term of one year.

### **Section 15. Recycling**

All Lincoln residents or other persons using the Town's Transfer Station facility shall comply with all requirements imposed by the Selectmen from time to time for the physical separation and separate disposal of recyclable waste materials. Categories for such mandatory recycling may include, but are not limited to: glass, cans and other metal, paper and newspaper, leaves and grass clippings or other yard wastes, and other wastes.

### **Section 16. Denial, Revocation or Suspension of Certain Licenses and Permits for Nonpayment of Taxes, Fees or Charges**

A. The Town Collector shall, on an annual basis, furnish to each department, board or commission ("licensing authority") that issues licenses or permits, including renewals and transfers, a list of any person, corporation, or business enterprise that has neglected or refused to pay any local taxes, fees, assessments, betterments, or other municipal charges including amounts assessed under the provisions of MGL Chapter 40, §21D of the for not less than a twelve-month period, and has not filed in good faith a pending application for an abatement of such tax or a pending petition before the Appellate Tax Board.

B. 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 Town Collector or with respect to any activity, event or other matter which is the subject of such license or permit and which activity, event or matter is carried out or exercised or is to be carried out or exercised on or about real estate owned by any party whose name appears on said list furnished to the licensing authority from the Town Collector; provided, however, that written notice is given to the party and the Town Collector, as required by applicable provisions of law, and the party is given a hearing, to be held not earlier than fourteen (14) 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 Town 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 licensing authority receives a certificate issued by the Town 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 Town as of the date of issuance of said certificate.

C. 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.

D. The Board of Selectmen may waive such denial, suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined by MGL Chapter 268A, §1, in the business or activity conducted in or on said property.

E. This By-law shall not apply to the following licenses and permits: open burning permits; bicycle permits; sales of articles for charitable purposes; children work permits; clubs or associations dispensing food or beverage licenses; dog licenses; fishing, hunting and trapping licenses; marriage licenses; and theatrical events and public exhibition permits.

## **Section 17. Stretch Energy Code**

### **A. Adoption.**

The Town of Lincoln has adopted the provisions of 780 CMR 120.AA (i.e., Appendix 120.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.

### **B. 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.

## **Section 18. Civil Fingerprinting By-Law**

### **A. Purpose and Scope**

This By-law authorizes the Police Department to conduct state and national fingerprint based criminal history checks for individuals applying for specific licenses in Town to enhance public safety, as authorized by Massachusetts General Laws Chapter 6, Section 172B½. To carry out the criminal history checks authorized by this by-law, the Police Department shall be authorized to use state and Federal Bureau of Investigation (“FBI”) records, provided, however, that such records shall not be disseminated to unauthorized entities and shall be maintained and disclosed in accordance with all applicable law.

The by-law further authorizes the Board of Selectmen, in consultation with the Chief of Police, to promulgate regulations to implement this by-law, which may include, but shall not be limited to establishment of submission deadlines, procedures for making recommendations to the licensing authority or making a licensing as a result of the criminal history check, procedures for assessing, correcting or amending any such record, criteria for fitness determinations, security of information obtained and penalties for failure to comply with this by-law.

### **B. Criminal History Check Authorization**

The Police Department shall, as authorized by Massachusetts General Laws Chapter 6, Section 172, conduct State and Federal Fingerprint Based Criminal History checks for individuals and entities applying for the following licenses:

- Solicitors and Peddling or other Door-to-Door Salespeople, including manager of the business entity (Police Department-Licensing Authority);

- Alcoholic Beverage License, including manager of the business entity ( Board of Selectmen - Licensing Authority);
- Dealer of Second-hand Articles, including manager of the business entity (Board of Selectmen - Licensing Authority);
- Pawn, Old Metal and Junk Dealers, including manager of the business entity (Board of Selectmen - Licensing Authority) and; and
- Hackney Drivers, including manager of the business entity (Board of Selectmen - Licensing Authority)

At the time of fingerprinting, the Police Department shall notify the individual being fingerprinted that the fingerprints will be used to check the individual's criminal history records and obtain the individual's consent.

After the applicant completes a consent form, provides his/her fingerprints and the appropriate fee, the Police Department shall transmit the fingerprints it has obtained pursuant to this by-law to the Identification Section of the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Services ("DCJIS"), and/or the FBI or the successors of such agencies as may be necessary for the purpose of conducting fingerprint-based state and national criminal records background checks for the license applicants specified in this by-law.

The Town authorizes the Massachusetts State Police, the DCIS and the FBI and their successors, as may be applicable, to conduct fingerprint-based state and national criminal record background checks, including of FBI records, consistent with this by-law. The Town authorizes the Police Department to receive and utilize State and FBI records in connection with such background checks, consistent with this by-law and its implementation regulations. In accordance with its implementation regulations, the Police Department shall communicate the results of fingerprint-based criminal record background checks to the appropriate governmental licensing authority within the Town.

#### **C. Use of Criminal Record by Licensing Authorities**

Licensing authorities of the Town shall utilize the results of fingerprint-based criminal record background checks for the sole purpose of determining the suitability of the subjects of the checks in connection with the license applications specified in this by-law. A Town licensing authority may deny an application for a license on the basis of the results of a fingerprint-based criminal record background check if it determines that the results of the check render the subject unsuitable for the proposed licensed activity. The licensing authority shall consider all applicable laws, regulations and Town policies bearing on an applicant's suitability in making this determination.

Licensing authorities of the Town are hereby authorized to deny an application for any license specified herein and in the implementing regulations, including renewals and transfers of said licenses, from any person who is determined unfit for the license due to information obtained pursuant to this by-law. Factors that shall be considered in making a determination of fitness shall include, but not be limited to, whether the record subject has been convicted of, or is under pending indictment for a crime, that bears upon the subject's ability or fitness to serve in that capacity, including any felony or a misdemeanor that involved force or threat of force, possession of a controlled substance, or sex-related offense.

#### **D. Fees**

The fee charged by the Police Department for the purpose of conducting fingerprint-based criminal record background checks shall be one hundred dollars (\$100) for each fingerprinting and criminal history check.

A portion of the fee, as specified in Massachusetts General Laws Chapter 6, Section 172B 1/2, shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund, and the remainder of the fee may be retained by the Town for costs associated with the administration of the fingerprinting system.

#### **E. Effective Date**

This by-law shall take effect after compliance with all requirements of Massachusetts General Laws Chapter 6, Section 172B ½ and Massachusetts General Laws Chapter 40, Section 32 have been met.

## **ARTICLE XII Personnel Board**

### **Preamble**

Recognizing that an important ingredient in the character of its Town is provided through the harmonious and cooperative efforts of residents, town officials, and employees, the citizens of Lincoln hereby adopt this Personnel Board By-law. It is the objective of this By-law to provide a framework wherein members of the board as established through this By-law act with the consent of the Selectmen to:

- a) Provide working conditions, compensation, and benefits that are consistent, fair, and reasonable to all employees falling within the purview of the By-law.
- b) Provide the mechanism for those Town departments not falling directly under the provisions of this By-law to avail themselves of the resources and experience of Board Members in the above areas.
- c) Provide a forum for the exchange of ideas, opinions, and grievances relative to personnel matters for all citizens, employees, and officials, and to act at all times to maintain helpful channels of communication between all levels of the Town.
- d) Continue to examine matters of personnel policy and practice with an eye toward improving the capability and productivity of Town employees and the opportunities open to them, and to ensure that policy and practice are designed to attract to the Town employees of the highest caliber.

### **Section 1. Application**

A. All Town departments and all positions in the Town service, other than those of the School Committees and positions under its control, shall be subject to the provisions of this By-law, provided, however, that the compensation of elected officers of the Town shall be established annually by vote of the Town Meeting. The terms "personnel" and "employees" as used in the following Sections include only employees of the above departments. If either of the School Committees votes to have certain of its employees come under the provisions of this By-law, they shall be so included under these terms.

B. In any case, the Personnel Board and the School Committees shall confer from time to time about and exchange information on wages, salaries, hours, and conditions of employment of Town employees, exclusive of the professional employees under the School Committees, and shall cooperate for the prevention of inequalities and salary and wage competition between departments which, in the judgment of said Board and Committees, may prove detrimental to the interest of the Town.

### **Section 2. Purpose**

A. The purpose of the Personnel Board is to strive to ensure fair and equitable wages, personnel policies and working conditions for all Town employees and to assist Town departments in the administration of personnel policy.

B. To carry out these functions, the Personnel Board shall recommend appropriate wage classifications and salary schedules for particular jobs and remuneration of particular individuals. To these ends, it may recommend the procedures for the development of appropriate job descriptions.

C. In addition, the Personnel Board shall recommend policies regarding fringe benefits such as health and life insurance, governing remuneration for overtime work training and professional

development in both administrative and operating skills, and procedures for promotion, demotion, and transfer, and all other matters normally considered facets of personnel policy.

### **Section 3. Personnel Board**

A. There is hereby established an unpaid Personnel Board consisting of three (3) members to be appointed by the Moderator. Each member shall serve for a term of three years; and each shall serve until his successor has qualified, except the initial members whose terms shall be for one (1), two (2), and three (3) years.

B. No person shall serve upon said Personnel Board who holds an elective Town office, or who is a member of any other permanent Town committee, board, or commission, if his position involves supervision of any employees, whether full or part-time.

C. If any member of the Personnel Board shall resign or otherwise vacate his office before the expiration of his term, his successor shall be appointed, as provided above, to serve for the balance of the unexpired term. Original appointments to the Board under this By-law shall be made not later than thirty (30) days following the effective date of the By-law, and subsequent appointments shall be made not later than thirty (30) days following the expiration of the term of the Board member who is to be replaced.

D. The Personnel Board is hereby authorized to administer the provisions of this By-law except for such duties as may be specifically assigned by statute for Town By-law to other Town officers, boards, or committees. It shall also have the authority to decide all questions regarding the application of this By-law.

E. The Personnel Board shall annually, not later than thirty (30) days following the Annual Town Meeting, elect its own Chairman and Secretary and shall establish its own rules of procedure. The Board shall keep a record of its official actions, which shall be kept open for public inspection and, subject to appropriation therefor, may make such expenditures as may be necessary for the performance of its duties.

F. The Personnel Board shall meet regularly, as it shall determine in its rules, for the transaction of business under this By-law, and it may hold such special meetings as may be called by the Chairman or Secretary or directed by vote of the Board. Reasonable notice of all meetings shall be given to all members of the Board. A majority of the total membership of the Board shall constitute a quorum for transaction of business of the Board.

G. The Personnel Board may from time to time issue, amend, or revoke administrative orders for the purpose of giving effect to the provisions of this By-law and such other By-laws and votes of the Town pertaining to personnel administration as the Board may be responsible for administering. Each such order shall be numbered in sequence and the Board shall maintain in its office a file of such orders issued, said file to be open to public inspection.

H. Except as otherwise provided by law the Personnel Board shall have access to all facts, figures, records, and other information related to the personnel of Town departments subject to the provisions of this By-law, and the same shall be furnished forthwith by any such department whenever so requested by the Board, in such form as the Board may require.

I. The Personnel Board from time to time, of its own motion, shall review and investigate the work content, standard rates of compensation, and fringe benefits of all positions in the Town departments subject to the provision of this By-law and make such other investigations of the conditions of employment of Town employees, as it deems necessary and proper, and it may investigate any complaint relative to the amendment of this By-law, including the compensation of Town employees, as it deems necessary and proper.

### **Section 4. Grievances**

A. There is hereby established a grievance procedure available to any employee, including any department head, of the Town, whose rights under this By-law have, in his or her opinion, been

prejudiced in any way, or who shall have a dispute with his or her department head, or supervisory body, arising out of the actions of such supervisor.

B. In the case of an employee other than a department head: such employee shall take up a grievance orally with his or her department head. If the employee wishes to have the grievance reviewed, he or she shall then submit it in writing to said department head. The department head shall then reply in writing within seven (7) days. If the department head's response is not to the employee's satisfaction, the employee may send, within seven (7) days of the date of such response, a copy of said grievance to the Personnel Board. In the case of a department head: such department head who wishes to have a grievance reviewed shall submit it in writing to the Personnel Board, with a copy to his or her supervisory board or committee. In either case, the Board, within fourteen (14) days after receipt of any such grievance, shall hold a hearing at which both parties to the grievance shall be present. The Board's decision shall be rendered within fourteen (14) days of the hearing and in both cases shall be final.

### **Section 5. Severance Clause**

The provisions of this By-law are hereby declared to be severable, and if any provision and the application of any such provision to any person or circumstances shall be held to be invalid, illegal, or unconstitutional, such invalidity, illegality, or unconstitutionality shall not be construed to effect the validity, legality, or constitutionality of any of the remaining provisions for the application of this By-law to persons or circumstances other than those as to which it is held invalid, illegal, or unconstitutional.

### **ARTICLE XIII Town Building Committee**

Article rescinded April 5, 1986.

### **ARTICLE XIV Celebration Committee**

There shall be a permanent committee known as the Celebration Committee to consist of five members to be appointed by the Board of Selectmen: two for one year, two for two years, and one for three years; thereafter, as each term expires, a successor shall be appointed for a three-year term.

### **ARTICLE XV Council on Aging**

There shall be established a Council on Aging for the purpose of coordinating and carrying out programs designed to meet the needs of older citizens, pursuant to the provisions of MGL, Chapter 40, Section 8B. The Council shall consist of not less than nine (9) nor more than twelve (12) residents of this Town to be appointed by the Selectmen. Terms shall not exceed three (3) years, and shall be staggered so that no more than four appointments shall be made in any calendar year, except the first year. Officers of the Council shall be elected by the Council from its membership.

### **ARTICLE XVI Non Criminal Disposition of Violations**

Any By-law of the Town of Lincoln or rule or regulation of its Board, Commissions and Committees, the violation of which is subject to a specific penalty, may, in the discretion of the Town official who is the appropriate enforcing person, be enforced in the method provided in of MGL, Chapter 40 §21D NON CRIMINAL DISPOSITION OF CERTAIN VIOLATIONS. Enforcing person as used in this By-law shall mean any Selectmen and any police officer of the Town of

Lincoln with respect to any offense; the Building Inspector and his designee, the Conservation Commission and its designees, the Board of Health and its designees, and any such other official as the Board of Selectmen may from time to time designate, each with respect to violations of By-laws and rules and regulations within their respective jurisdictions. If more than one official has jurisdiction in a given case, any official may be an enforcing person with respect thereto.

## **ARTICLE XVII Scenic Roads**

### **Section 1. Purpose**

A. The Scenic Roads Act, MGL Chapter 40, Section 15C, allows town meeting to designate scenic roads.

B. The effect of designation as a scenic road is that planning board approval is required before trees can be cut or removed, or stone walls can be torn down or destroyed, if this is done in connection with repair, maintenance, reconstruction or paving of a scenic road.

C. Scenic road designation does not require planning board approval for trimming or other cutting of trees, or destruction of stone walls, unless related to roadway work. It also does not require planning board approval for roadway work which does not affect trees or stone walls.

D. These regulations are intended to ensure that:

- 1) ways will be recommended for designation as scenic roads according to stated criteria; and;
- 2) trees and stone walls in the rights-of-way of scenic roads will not be destroyed without following proper procedures.

### **Section 2. Definitions**

The following terms used in the Scenic Roads Act, MGL Chapter 40, Section 15C, shall be defined as follows for purposes of applying that statute in the Town of Lincoln.

#### **Section 2.1. "Cutting or Removal of Trees"**

"Cutting or removal of trees" shall mean the removal of one or more trees, cutting of major branches or cutting of roots.

#### **Section 2.2. "Repair, Maintenance, Reconstruction, or Paving Work"**

"Repair, maintenance, reconstruction, or paving work" shall mean any work done within the right-of-way of a scenic road by any person or agency, public or private. Construction of new driveways, bicycle paths or roadside paths, or alteration of existing ones, is also included, in so far as the work takes place within the right-of-way. Construction or alteration of water, sewer, electric, telephone, cable t.v. or other utilities within the right-of-way is also included.

#### **Section 2.3. "Road"**

"Road" shall mean the right-of-way of any way used and maintained as a public way, not just the paved surface. When the boundary of a scenic road is in issue so that a dispute arises as to whether or not certain trees or stone walls or portions thereof are within the scenic road, the trees or stone walls shall be presumed to be within the way until the contrary is shown. Trees and stone walls located on the boundary line of a scenic road shall be covered by this By-law.

#### **Section 2.4. "Tearing Down or Destruction of Stone Walls"**

"Tearing down or destruction of stone walls" shall mean the removal of more than two (2) linear feet of stone wall involving more than one cubic foot of wall material per linear foot above existing

grade. Temporary removal and replacement at the same location with the same materials is permitted without planning board approval if the Town Department of Public Works is notified before the work begins so that it can confirm that the wall is properly replaced. Repair of a stone wall, not involving tearing down or destruction of the wall, is not covered by this By-law.

### **Section 2.5. "Trees"**

"Trees" shall mean a tree whose trunk has a diameter of four inches or more as measured one foot above the ground.

### **Section 3. Criteria for Designation as a Scenic Road**

The planning board, conservation commission, or historical commission shall, in determining which roads or portions of roads should be recommended for designation as scenic roads, consider the following criteria:

- A. overall scenic beauty;
- B. contribution of trees to scenic beauty;
- C. contribution of stone walls to scenic beauty; and
- D. age and historic significance of road, trees and stone walls.

### **Section 4. Notification of Designation as Scenic Road**

Upon the designation by Town Meeting of any road or portion as a scenic road, the planning board shall take the following steps within 30 days of such designation:

- A. notify all municipal departments that may take any action with respect to such road;
- B. notify the State Department of Public Works;
- C. notify the Commissioners of Middlesex County;
- D. indicate such designation on maps currently in use by municipal departments, as appropriate; and
- E. notify all utility companies or other parties which may be working in or around such road.

### **Section 5. Procedures**

#### **Section 5.1. Filing**

Any person, organization, state or municipal agency seeking the written consent of the planning board, regarding the cutting or removal of trees or the tearing down or destruction of stone walls within the right-of-way of a scenic road shall file a request with the planning board, together with the following:

- A. the text of a legal notice identifying the location of the proposed action in terms enabling readers to locate it with reasonable specificity on the ground without need for additional plats or references, and describing in reasonable detail the proposed changes to trees and stone walls;
- B. a statement of the purpose, or purposes, for the proposed action;
- C. a statement of the feasible alternatives to the proposed action, together with an indication of the advantages and disadvantages of each alternative;
- D. a list of the assessed owners of properties located in whole or in part within 200 feet of the proposed action;
- E. except in the case of town agencies, a deposit sufficient to cover the cost of advertising and notification; and
- F. any further explanatory material useful to adequately inform the planning board.

### **Section 5.2. 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. 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 selectmen, the conservation commission, the historical commission, the municipal engineer, the tree warden, the state department of public works, and the assessed owners of property within two-hundred (200) feet of the proposed action.

### **Section 5.3. Timing of Notice**

The first publication of the notice shall be as soon as feasible after the planning board receives the request from the applicant, and shall in all cases be at least fourteen (14) days before the hearing. The last publication shall occur, as required by statute, at least seven days prior to the hearing.

### **Section 5.4. Timing of Hearing**

The planning board shall hold a public hearing within thirty (30) days after the planning board meeting at which a properly filed request is received. The date and time of the public hearing shall be set outside of normal weekday work hours (8:00 a.m. - 5:00 p.m., Monday - Friday) so as to encourage maximum citizen participation.

### **Section 5.5. Timing of Decision**

The planning board shall make a decision on the request within twenty-one (21) days after the public hearing. If the planning board fails to mail or deliver to the applicant a copy of its decision within this time period the requested approval shall be deemed granted.

### **Section 5.6. Public Shade Tree Act**

Whenever both the Scenic Road Act and the Public Shade Tree Act (M.G.L. Ch. 87) apply, notice shall be given and the planning board hearing shall be held in conjunction with the hearing held by the tree warden acting under the Public Shade Tree Act. The consent of the planning board to a proposed action shall not be regarded as implying consent by the tree warden, or vice versa. The planning board decision shall contain a condition that no work may be done until all applicable provisions of M.G.L. Ch. 87 have been complied with.

### **Section 5.7. Historic District Commission**

Whenever feasible, notice shall be given and planning board hearings shall be held in conjunction with those held by the Historic District Commission with respect to repair, maintenance, reconstruction or paving work proposed to be done in the Historic district. The consent of the planning board to a proposed action shall not be regarded as implying consent by the Historic District Commission, or vice versa.

### **Section 5.8. Approval of Curb Cuts by Selectmen**

The consent of the planning board to work involving a proposed curb cut shall not be regarded as implying consent by the Selectmen to such curb cut, or vice versa.

### **Section 5.9. Emergency Work**

In the event that the Selectmen determine that emergency conditions require that work otherwise requiring planning board approval must proceed before such approval can be obtained the Selectmen

may authorize the work to proceed before planning board approval is obtained to the extent which the Selectmen deem necessary to protect public health and safety.

### **Section 6. Considerations**

The Planning Board's decision on any application for proposed action involving the cutting or removal of trees or the tearing down or destruction of stone walls within the right-of-way of a scenic road shall be based on consideration of the following:

- A. preservation of natural resources;
- B. environmental values;
- C. historical values;
- D. scenic and aesthetic characteristics;
- E. public safety;
- F. compensatory actions proposed, such as replacement of trees or walls;
- G. existence or absence of reasonable alternatives (including a no-build alternative);
- H. consistency with articulated town policies; and
- I. other sound planning considerations.

### **Section 7. General**

The planning board may adopt more detailed regulations for carrying out provisions hereunder.

## **ARTICLE XVIII Wetlands Protection**

### **Section 1. Purpose**

A. The purpose of this By-law is to maintain the quality of surface water, the quality and level of the ground water table and water recharge areas for existing or potential water supplies, to protect the public health and safety, to protect the community against the costs that may be incurred when development occurs in or adjacent to wetland resource areas; and to provide for the reasonable protection and conservation of certain irreplaceable natural features, resources and amenities for the benefit and welfare of the present and future inhabitants of the Town of Lincoln.

B. Accordingly, this By-law protects the wetlands, related water resources, the adjoining land areas, and important wildlife habitat areas in the Town of Lincoln by controlling activities deemed by the Conservation Commission (the "Commission") likely to have a significant effect, immediate or cumulative, upon resource area values including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, prevention, avoidance and control of water pollution, fisheries, wildlife habitat and habitat for rare species including rare plant and animal species, agriculture, aquaculture, and recreation values deemed important to the community (collectively, the "resource area values protected by this By-law").

C. This By-law utilizes the Home Rule authority of the Town of Lincoln to protect the resource areas subject to regulation under the Wetlands Protection Act MGL, Ch. 131, §40 (the "Act") to a greater degree; to protect additional resource areas recognized by the Town as significant, beyond those subject to regulation under the Act; to protect all resource areas for their additional values beyond those recognized under the Act, and to impose in local regulations and permits additional standards and procedures stricter than those of the Act and its implementing regulations (310 CMR 10.00) (the "Regulations"), subject, however, to the rights and benefits accorded to agricultural uses and agricultural structures of all kinds pursuant to the laws of the Commonwealth.

## **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 commence to remove fill dredge build upon degrade discharge into or otherwise alter the following wetland resource areas: any freshwater wetland, marsh, wet meadow, bog, swamp, vernal pool, bank, reservoir, lake pond of any size, river, stream, brook or creek, whether perennial or intermittent, lands under any water body, land subject to flooding or inundation by groundwater or surface water, or the following upland buffer zone resource areas: lands within two-hundred (200) feet of any river or any perennial stream, brook or creek (the "Riverfront Area"), and lands within one-hundred (100) feet of any freshwater wetland marsh, wet meadow, bog, swamp, vernal pool, bank, reservoir, lake, pond, intermittent stream, brook or creek, lands under any water body and land subject to flooding or inundation by groundwater or surface water. Collectively all such wetland resource areas and upland resource areas shall be deemed to be "resource areas protected by this By-law" whether or not they border surface waters.

B. It shall be presumed that significant adverse effects on the values of a resource area protected by this By-law will result from any filling, dredging, building upon or other alteration within a wetland resource area or within fifty (50) feet of the edge of any freshwater wetland, marsh, wet meadow, bog, or swamp within fifty (50) feet of the top of the bank of any lake, reservoir, pond or intermittent stream, brook or creek or within one-hundred (100) feet of any vernal pool or the top of the bank of any river or any perennial stream, brook or creek unless the applicant demonstrates by clear and convincing evidence that such significant adverse effect will not occur.

C. Lands within two-hundred (200) feet of rivers or perennial streams, brooks and creeks and lands within one-hundred (100) feet of other wetland resource areas protected by this By-law are presumed to be important to the protection of these resource areas because activities undertaken in these upland buffer zone resource areas have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction or clearing, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction, clearing and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, excess nitrogen and phosphorus loading, and loss of wildlife habitat. The Commission may therefore, by regulation, establish design specifications, performance standards setbacks, no-disturb areas, no-build areas, other work limits and other measures and safeguards for the protection of such upland buffer zone resource areas including, without limitation, strips of continuous, undisturbed vegetation or other form of work limit or setback to buildings, roads, landscaping and other features.

## **Section 3. Exemptions and Exceptions**

A. No application or permit shall be required by this By-law for the commencement of an emergency project necessary for the protection of the health or safety of the public, if such project is to be undertaken by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof provided, however, that:

- 1) advance notice, oral or written, has been given to the Commission either prior to commencement of such project or within twenty-four (24) hours after commencement;
- 2) the Commission or its agent certifies the work as an emergency project;
- 3) the project is undertaken only for the time and place certified by the Commission and for the limited purposes necessary to abate the emergency; and
- 4) within twenty-one (21) days of the commencement of an emergency project an application shall be filed with the Commission for review as provided by this By-law.

Upon failure to meet these or other requirements of the Commission, the Commission may, after notice and a public hearing, order the modification or cessation of an emergency project or the implementation of restoration or mitigation measures.

B. No application or permit shall be required by this By-law for work performed for normal maintenance or improvement of land in agricultural use as defined by the Regulations.

C. No application or permit shall be required by this By-law for filling, dredging, building upon or other alteration of a resource area undertaken by the Town of Lincoln Water Board, acting within its lawful authority and in compliance with applicable State and Federal laws and regulations.

D. Mosquito control work that is exempted from regulation under the Act is subject to this By-law; provided, however, that all such mosquito control work proposed throughout the Town in any year may be presented in a single application to the Commission, that no filing fee for such application shall be charged, that no notice to abutters shall be required for such application, and that all such work may be allowed by a single annual permit.

E. Other than as stated in this Section, all work that is exempted from regulation under the Act or the Regulations is subject to this By-law. An application and a permit may be required by this By-law whether or not an Order of Conditions is also required under the Act.

#### **Section 4. Applications and Fees**

A. Any person who proposes to perform activities affecting resource areas protected by this By-law shall file a written Notice of Intent with the Commission that shall include such information and plans as are deemed necessary by the Commission to describe:

1. the proposed activities;
2. their effects on the resource areas protected by this By-law; and
3. where appropriate, any practicable alternatives to such activities. No such activities shall commence without receiving and complying with an Order of Conditions issued pursuant to this By-law.

B. Any person desiring to know whether or not a proposed activity or any area is subject to this By-law may file a written Request for Determination of Applicability from the Commission. Such Request for Determination of Applicability shall contain data and plans sufficient to enable the Commission to identify and understand the proposed activity and its location or the location of the area to which the request relates. A negative Determination of Applicability shall authorize the work described in the Request to proceed subject to certain conditions that the Commission may impose. A positive Determination of Applicability will require the filing of a Notice of Intent.

C. Any person may file an Abbreviated Notice of Resource Area Delineation to determine the boundaries of resource areas protected by this By-law on a specific site. The Commission will issue an Order of Resource Area Delineation either confirming or modifying the boundaries delineated in the filing.

D. The Commission, in an appropriate case, may accept an application and associated plans filed pursuant to the Act and Regulations as the application and associated plans filed pursuant to this By-law.

E. At the time of an application the applicant shall pay a filing fee specified by regulation of the Commission. This fee shall be in addition to that required pursuant to the Act and Regulations. This fee shall not be refundable.

F. At any point prior to or during any hearing on an application filed pursuant to this By-law, the Commission may require the applicant to pay a consultant fee for the reasonable costs and expenses borne by the Commission for the services of specific expert consultants, including engineers, wetlands scientists, wildlife biologists or others deemed necessary by the Commission to aid in the review of proposed projects including, but not limited to performing or verifying the accuracy of any resource area survey or delineation, analyzing resource area functions and values, including wildlife habitat evaluations pursuant to **Section 7**, hydrogeologic and drainage analysis, and researching and interpretation of applicable law.

G. Pursuant to MGL, Chapter 44, §53G and regulations promulgated by the Commission, any such consultant fees shall be deposited with the Town Treasurer, who shall create a special account

specifically for this purpose, separate and apart from other monies held by the Town. Funds in such special account (including accrued interest, if any) may be expended at the direction of the Commission without further appropriation, provided, however, that such funds may be expended only in connection with the project for which the consultant fee has been collected. Upon the completion of the consultant's services pursuant to this Section and the payment of all fees incurred in connection therewith, any excess funds remaining in the special account that are attributable to the project, including any accrued interest, shall be repaid to the applicant or to the applicant's successor in interest and a final report of said account shall be made available to the applicant or to the applicant's successor in interest. The Commission may waive the filing fee or consultant fee of an application filed by a government agency.

H. Failure by the applicant to pay the requested consultant fee within ten (10) business days of the request for payment shall be cause for the Commission to declare the application administratively incomplete and to deny the permit without prejudice, except in the case of an appeal. The Commission shall inform the applicant and DEP of such a decision in writing.

I. Within ten (10) business days of the date that a request for consultant fees is made by the Commission or an applicant is informed of the Commission's selection of an expert consultant pursuant to this Section, whichever is later, the applicant may appeal such selection in writing to the Board of Selectmen, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The filing of an appeal pursuant to this paragraph shall extend the applicable time limits for action upon the application by the amount of time during which such appeal is pending before the Board of Selectmen.

#### **Section 5. Notice and Hearings**

A. Any person filing an application with the Commission, shall, within seven (7) days after such person is informed of the date and time of the public hearing thereon, give written notice thereof, by certified mail (return receipt requested) or hand delivery, to the owner of the land to be affected by the proposed work, if different from the applicant, to all owners according to the most recent records of the assessors, of land abutting the affected land, including owners of land located across a traveled way or body of water therefrom, and to abutters to such abutters whose property is located within three-hundred (300) feet of the, affected land, including any property located in another municipality or across a body of water therefrom. Such notice shall state the time and place of the hearing, shall identify the applicant, the property affected and the work proposed, and shall either:

- 1) enclose a copy of the application or request, with plans; or
- 2) state where copies may be examined and duplicated.

The applicant shall submit to the Commission, at or before the public hearing, receipts for such notices or other satisfactory evidence that such notices have been given. Failure to provide such evidence shall be grounds for rescheduling the hearing or, if intentional or repeated, denial of the requested permit.

B. The Commission shall conduct a public hearing on any application with notice given at the expense of the applicant at least five (5) business days prior to the hearing, in a newspaper of general circulation in the Town of Lincoln.

C. The Commission shall commence the public hearing within twenty-one (21) days from receipt of a completed application unless the applicant authorizes an extension in writing.

D. The Commission shall issue its permit in writing within twenty-one (21) days of the close of the public hearing unless the applicant authorizes an extension in writing.

E. The Commission may, whenever appropriate, combine its hearing pursuant to this By-law with any hearing conducted pursuant to the Act and Regulations.

F. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the receipt of new information.

offered by the applicant or others, or the need for additional information or plans from the applicant or comments and recommendations from boards and officials referenced in **Section 6** of this By-law.

### **Section 6. Coordination With Other Boards**

A. Any person filing an application with the Commission, or any amendment thereto, shall provide a copy thereof, together with any accompanying plans, within seven (7) days after filing with the Commission, by certified mail (return receipt requested) or hand delivery, to the Planning Board, Board of Health, Building Inspector, and such other Town boards and officials as the Commission or its Administrator may request. A copy shall be provided in the same manner to the Conservation Commission of any adjoining municipality, if the application pertains to property within three-hundred (300) feet of that municipality. The applicant shall submit, at or before the public hearing, receipts for such copies or other satisfactory evidence that such copies have been provided in accordance with this Section.

B. Town boards and officials shall be entitled to file written comments and recommendations with the Commission at or before any public hearing. The Commission shall take such comments and recommendations into account during its deliberations but shall not be bound by them. The applicant shall have the right to receive copies of any such comments and recommendations at or before the public hearing.

### **Section 7. Permits, Determinations, Conditions and Appeals**

A. If the Commission, after a public hearing determines that the activities that are the subject of an application, or the land or water uses that will result therefrom, are likely to have an effect, immediate or cumulative, upon the resource area values of the resource areas protected by this By-law, the Commission shall, within twenty-one (21) days of the close of the hearing, issue or deny a permit for the activities requested. When making its decision, the Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt, the proposed activities and foreseeable future activities. If the Commission issues a permit it may impose conditions that it deems necessary or desirable to protect resource area values. All activities authorized by a permit issued pursuant to this Section shall be conducted in accordance with the conditions of such permit.

B. When the Commission determines that a proposed activity would have an adverse effect on the values of resource areas protected by this By-law, the Commission shall not permit such activity unless the applicant demonstrates by a preponderance of the credible evidence that there is no practicable alternative to the proposed activity that would have materially less adverse effect on the values of all resource areas protected by this By-law. The Commission shall regard as practicable an alternative that is reasonably available and feasible considering the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial purpose), logistics, existing technology, costs of the alternatives, and overall project costs.

C. The Commission shall require applicants to avoid all wetland resource area alterations wherever feasible. Where alteration is unavoidable, the Commission shall require such alteration to be minimized, and shall require full mitigation of the adverse effects of such alteration. The Commission may authorize or require replication of wetland resource areas as a form of such mitigation, but only with adequate security, professional design, and monitoring to assure the success of such replication activities.

D. The Commission may require any applicant to obtain and to submit a wildlife habitat study of the project area, regardless of the type of resource area or the amount or type of alteration proposed. Such a requirement shall be based upon the Commission's estimate of the importance of the habitat area considering the project area's proximity to other areas suitable for wildlife, the importance of wildlife corridors in the area, the actual or possible presence of rare plant or animal species in the area

or other relevant factors. The study shall be performed by an individual who at least meets the applicable qualifications set forth in the Regulations.

E. The Commission shall presume that all vernal pools, including their adjacent upland buffer zone resource areas, perform essential wildlife habitat functions. This presumption may be overcome only by the presentation of clear and convincing evidence that the vernal pool does not provide essential habitat functions. Any formal vernal pool evaluation submitted to the Commission by an applicant shall be performed by an individual who at least meets the applicable qualifications set forth in the Regulations.

F. The Commission is empowered to deny or revoke a permit for failure to meet the requirements of this By-law:

- 1) for failure to submit necessary information and plans requested by the Commission;
- 2) for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission;
- 3) if the project as proposed might cause significant adverse effects, immediate or cumulative, upon the values of any resource area protected by this By-law; or
- 4) where no conditions are adequate to protect those values.

G. A permit issued pursuant to this By-law shall expire three (3) years from the date of its issuance, provided, however, that the Commission in its discretion may issue a permit expiring five (5) years from the date of issuance for recurring or continuous maintenance work, subject to the condition that annual notification of the time and location of work is given to the Commission. Permits issued pursuant to this By-law may be extended for one or more periods of up to three (3) years each, if such an extension is requested in writing at least thirty (30) days before the applicable expiration date and the Commission finds that:

- 1) good cause has been shown for such extension; and
- 2) such extension will not have significant adverse effects, immediate or cumulative, upon any of the values of resource areas protected by this By-law.

The Commission may grant such an extension at any public meeting but if it determines that the public interest so requires the Commission may defer action on a request for an extension until after notice is given and a public hearing is conducted, in accordance with the requirements applicable to the original application. If 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.

H. Notwithstanding the time limits established in this Section, a permit may be made subject to conditions or requirements that shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and that apply to all present and future owners of the land.

I. For good cause the Commission may revoke or modify a permit issued pursuant to this By-law after notice and a public hearing provided in the same manner as required by this By-law for an original permit.

J. In an appropriate case the Commission may combine any action on an application filed pursuant to this By-law with an Order of Conditions, Order of Resource Area Delineation, Determination of Applicability or Certificate of Compliance issued pursuant to the Act and Regulations. In the event that conditions are imposed pursuant to this By-law that are not also imposed pursuant to the Act, such conditions shall be imposed by a separate written permit.

K. No activity subject to any Order of Conditions issued pursuant to this By-law shall commence until such permit has been recorded with the appropriate Registry of Deeds and the holder thereof provides satisfactory evidence of such recording to the Commission. If the applicant fails to perform, the Commission may record the documents itself at the applicant's expense.

L. Upon receiving a written request for a Certificate of Compliance, the Commission shall inspect the area where any activity governed by an Order of Conditions issued pursuant to this By-law was undertaken and, if such activity has been completed in accordance with said permit, the

Commission shall, within twenty-one (21) days after such request, issue a Certificate of Compliance evidencing such determination, which may in an appropriate case be combined with a Certificate of Compliance issued pursuant to the Act. A Certificate of Compliance may specify conditions in the permit that will continue to apply after its issuance.

### **Section 8. Regulations**

After public notice and public hearing, the Commission may issue rules and regulations to effectuate the purposes of this By-law, effective when voted and filed with the Town Clerk. Failure by the Commission to issue such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this By-law. At a minimum these regulations may define key terms contained in this By-law, as well as additional terms not inconsistent with this By-law, establish the amount of filing and consultant fees and procedures governing the filing of applications.

### **Section 9. Definitions**

The following definitions shall apply in the interpretation and implementation of this By-law.

A. The term “alter” shall include, without limitation, the following activities when undertaken to, upon, within or actually affecting any resource area protected by this By-law:

- 1) Removal, excavation, or dredging of soil, sand, gravel, organic matter or aggregate materials of any kind;
- 2) Changing of preexisting drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
- 3) Drainage, or other disturbance of water level or water table;
- 4) Dumping, discharging, or filling with any material that may degrade water quality;
- 5) Placing of fill, or removal of material, which would alter elevation;
- 6) Driving of piles, erection, expansion or repair of buildings, or structures of any kind, except (a) work wholly inside a building and (b) exterior repair of existing buildings or structures if such repair presents no risk of alteration of land, waters or vegetation;
- 7) Placing of obstructions or objects in water;
- 8) Destruction of plant life including cutting or trimming of trees and shrubs;
- 9) Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of water;
- 10) Any activities, changes, or work that may cause or tend to contribute to pollution of any body of water or groundwater, including, without limitation, any activity that may cause surface water runoff contaminated with sediments, chemicals or animal wastes; and
- 11) Incremental activities that have, or may have, a cumulative adverse impact on the values of a resource area protected by this By-law.

B. The term “application” shall mean a wetlands filing to the Commission and includes the following: Notice of Intent, Abbreviated Notice of Resource Area Delineation and Request for Determination of Applicability.

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

D. The term “Commission” shall mean the Conservation Commission of the Town of Lincoln.

E. The term “wildlife corridor” shall include any land, the topography, soil structure, plant community composition and structure, proximity to water bodies and waterways, and hydrologic regime of which provides food, shelter, migratory, breeding or overwintering areas for birds, mammals, reptiles or amphibians.

F. The term “permit” shall include the following decisions of the Commission: Order of Conditions, Order of Resource Area Delineation and Determination of Applicability.

G. The term “person” shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust or estate, any regional, county or municipal governmental body, administrative agency or public or quasi-public corporation or body, including the Town of Lincoln, and any other legal entity, its legal representatives, agents, or assigns.

H. The term “pond” shall include any body of water satisfying the definition of “pond” in the Regulations, without regard to the size threshold of ten-thousand (10,000) square feet.

I. The term “rare species” shall include, without limitation, all vertebrate and invertebrate animal and all plant and fungus species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

J. The term “vernal pool” shall include, in addition to scientific definitions found in the Regulations, any confined basin or depression not occurring in existing lawn or driveways that, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least two-hundred (200) cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife, and regardless of whether the site is contained within another resource area. The adjacent upland buffer zone resource area for vernal pools shall extend one-hundred (100) feet outward from the mean annual high-water line defining the depression.

K. Except as otherwise provided in this By-law or in regulations of the Commission, terms and procedures used in this By-law shall have the same definitions as set forth in the Act and Regulations.

L. The Commission shall have copies of the Act and Regulations available for inspection and, at the expense of the person requesting a copy, duplication.

## **Section 10. Security**

As part of any permit issued pursuant to this By-law, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the methods described below:

- a) By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit.
- b) By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

## **Section 11. Enforcement**

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

B. The Commission, its agents, officers, and employees shall have authority to enter upon public or private land for the purpose of performing their duties pursuant to this By-law and may make or

cause to be made such examinations, surveys or sampling as the Commission deems necessary, subject to the limitations imposed by applicable Federal or State law.

C. The Commission and the Board of Selectmen shall have authority to enforce this By-law, its regulations, and permits issued hereunder by letters, phone calls, electronic communication and other informal methods, violation notices, administrative orders, non-criminal citations pursuant to MGL Ch .40, §21D, and civil and criminal court actions.

D. Upon request of the Commission, the Board of Selectmen and the Town Counsel may take appropriate legal action for civil enforcement of this By-law pursuant to applicable law. Upon request of the Commission, the Chief of Police may initiate criminal proceedings charging violation of this By-law.

E. Town boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement of this By-law.

F. Any person who violates provisions of this By-law, or regulations, permits, or administrative orders issued hereunder, shall be served with a Notice of Violation and may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

G. Violations shall be punishable by an amount up to or equal to the maximum fine allowed under MGL, Ch .40 §21D as allowed by Article XVI of Lincoln's General By-laws. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and violation of each provision of this By-law or of regulations, permits or administrative orders issued hereunder shall constitute a separate offense.

H. As an alternative to criminal prosecution in a specific case, the Commission may issue citations with specific penalties pursuant to the non-criminal disposition procedure set forth in MGL Ch. 40, §21D, which has been adopted by the Town in Article XVI of the General By-laws.

I. Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of this By-law or in violation of any permit issued pursuant to this By-law shall forthwith comply with any such order or restore such land to its condition prior to any such violation, provided, however, that no action, civil or criminal, shall be brought against any such person who at the time such property was acquired, had no actual or constructive knowledge of such violation unless such action is commenced within three years following the date of acquisition of the real estate by such person.

### **Section 12. Burden of Proof**

Except where a higher burden of proof is specified in this By-law or regulations, the applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have adverse effects, immediate or cumulative, upon the resource area values protected by this By-law. Failure to provide adequate credible evidence to the Commission satisfying this burden shall be sufficient cause for the Commission to deny an application or to impose conditions sufficient to prevent any adverse effects on the values of any resource area protected by this By-law.

### **Section 13. Appeals**

A decision of the Commission shall be reviewable in the Superior Court in accordance with *M.G.L. C.249, §4*.

### **Section 14. Severability**

If any provision of this By-law shall be found invalid for any reason, such invalidity shall be construed as narrowly as possible and the balance of the By-law shall be deemed to be amended to the minimum extent necessary to provide to the Town substantially the benefits set forth in this By-

law. No judicial determination of invalidity of any Section or provision or phrase of this By-law shall be construed to invalidate any Permit, Determination, Order or other decision issued prior to such determination to which such determination does not specifically apply.

## **ARTICLE XIX Underground Storage Tanks**

### **Section 1. Authority and Purpose**

A. This By-law is adopted by the Town of Lincoln under its Home Rule powers, its police powers to protect the public health and welfare, its authorization under MGL, Chapter 40, §21 and Chapter 148, §9, and other provisions of law.

B. The purpose of this By-law is to control the use and maintenance of underground tanks for the storage of hazardous substances that are generally exempt from State and Federal regulation, to protect groundwater and surface water from contamination because of leakage, and to prevent damage to persons or property because of fire. The purpose of the By-law is also to protect the owners of these tanks and the Town of Lincoln from the potentially devastating financial and environmental consequences of contamination of wells or groundwater due to leakage arising from tank corrosion, improper installation or other causes.

### **Section 2. Definitions**

A. **Code** means the Board of Fire Prevention Regulations Governing Tanks and Containers as set forth at 527 CMR 9.00 and following.

B. **Fire Chief** means the Fire Chief of the Town of Lincoln.

C. **Hazardous substance** means any liquid hydrocarbon product, including but not limited to gasoline, heating oil and diesel oil, and any other substance controlled as being toxic or hazardous under MGL, Chapter 21E.

D. **Owner** with respect to a tank means the owner of the land on which an underground tank is located.

E. **Underground tank** means any containment system (including associated piping) used to contain a hazardous substance ten percent (10%) or more of the volume of which is beneath the surface of the ground, but excluding:

- 1) a tank of over eleven-hundred (1,100) gallons capacity for storing motor fuel;
- 2) a tank for storing motor fuel for commercial purposes;
- 3) a tank for storing heating oil other than for consumptive use on the premises where stored;
- 4) a septic tank used to contain sewage;
- 5) a pipeline facility regulated under State or Federal law;
- 6) a tank situated upon or above the surface of the floor in an underground area, such as the basement of a home.

### **Section 3. Registration of Existing Tanks**

A. On or before October 1, 1991, the owner of each underground tank shall file with the Fire Chief a form setting forth the size, type, age (with proof of age), contents and location of the underground tank. This form shall be made available to the public by the Fire Chief. The age of a tank is to be determined from the date when it was first installed. If the owner cannot document the age of a tank to the satisfaction of the Fire Chief, the installation date will be presumed to be 1974. The registration tag issued by the Fire Chief shall be visibly affixed to the fill pipe by the owner on or before October 1, 1991.

B. On or after October 2, 1991, each distributor of heating oil or other hazardous substance that is requested to fill an underground tank without a registration tag shall notify the Fire Chief within

forty-eight (48) hours of such request of the existence and location of the tank. It shall not be considered a violation of any provision of this By-law for a fuel oil distributor to fill an underground tank without a registration tag provided that the distributor duly notifies the Fire Chief in accordance with the provisions of the previous sentence.

#### **Section 4. New Tanks**

A. No underground tank shall be installed or put in service after the effective date of this By-law. A new above ground tank for containing a hazardous substance must be constructed and installed in accordance with the Code.

B. A tank may be installed below grade provided that it is placed within a concrete vault having sufficient capacity to contain not less than one-hundred-fifty percent (150%) of the capacity of the tank and provided that the interior surface of the vault is finished with an epoxy sealant, or comparable material, capable of rendering the vault impervious. The vault shall have a weatherproof cover and the tank or tanks located within the vault shall be readily accessible for inspection by the owner or the Fire Chief. The vault shall be inspected and approved by the Fire Chief prior to the issuance of a license pursuant to MGL, Chapter 148, §13.

C. A tank used to contain motor fuel with a capacity of eleven-hundred (1,100) gallons or less may be installed underground in compliance with the Code.

#### **Section 5. Removal of Underground Tanks**

A. On or before December 31, 1994, the owner shall empty and remove any underground tank that was installed before January 1, 1975.

B. Any tank which is not required to be removed under paragraph A. of this Section shall be emptied and removed in accordance with the schedule set forth in Appendix 1 to this By-law.

C. As required by the provisions of the Code, the owner must empty and remove any underground tank that is either out-of service for a period of six months or abandoned.

D. Removal of an underground tank shall be performed under the supervision of the Fire Chief in compliance with the removal provisions of the Code. The Fire Chief may approve decommissioning of a tank instead of removal where permitted by the Code, provided that, immediately prior to decommissioning, the tank shall be tested for leakage of a hazardous substance using a method acceptable to the Fire Chief.

E. Notwithstanding **Section 5 A & B**, any underground tank that meets the requirements of 527 CMR 9.08(3)(a) shall be emptied and removed no later than thirty (30) years following the date of installation.

#### **Section 6. Procedure in Case of Spill or Leak**

A. Any person who:

- 1) is aware of a spill or an unaccounted for increase in consumption of a hazardous substance in connection with an underground tank; or
- 2) detects the vapors of a hazardous substance in a neighboring structure, sewer, well or area, shall report the same immediately to the Fire Chief. The Fire Chief shall investigate the report and may inspect the premises, order testing, review records and require containment or cleanup. The Fire Chief shall also notify the Bureau of Waste Site Cleanup at the Department of Environmental Protection, when required by law, and take reasonable steps to notify absentee owners.

B. If a leak from an underground tank is confirmed, the owner must empty and remove or decommission the tank in accordance with the Code.

**Section 7. Variances**

A. The Board of Selectmen may, after receiving comment from the Fire Chief and after a public hearing, vary the application of this By-law in accordance with the provisions of this Section, when the applicant has demonstrated financial hardship. Notice of the hearing shall be given by the Selectmen, at the applicant's expense, at least ten days prior thereto, by certified mail to all abutters to the property on which the tank is located. The notice shall include a statement of the variance sought and the reasons therefor. Any grant or denial of a variance shall be in writing and shall contain a brief statement of the reasons for the grant or denial.

B. In considering the variance request, the Board of Selectmen shall take into consideration factors such as the direction of the groundwater flow, soil conditions, depth to groundwater, size, shape and slope of the lot, and proximity of existing and potential water supplies. No variance shall be granted unless the Board of Selectmen finds that the variance, as granted, would result in the same degree of environmental protection as required by the By-law.

C. Any variance granted under this Section shall be limited in effect to extending the period of compliance with the removal provisions of this By-law, as set forth in **Section 5**. In no event shall any variance extend to the period of compliance thirty-six (36) months or more beyond the time otherwise required by the By-law.

**Section 8. Administration-and Enforcement**

A. This By-law shall be administered by the Fire Chief.

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.

## Appendix 1

### UNDERGROUND STORAGE TANK

<u>Installation Date</u>	<u>Final Removal Date</u>
1975	December 31, 1995
1976	December 31, 1996
1977	December 31, 1997
1978	December 31, 1998
1979	December 31, 1999
1980	December 31, 2000
1981	December 31, 2001
1982	December 31, 2002
1983	December 31, 2003
1984	December 31, 2004
1985	December 31, 2005
1986	December 31, 2006
1987	December 31, 2007
1988	December 31, 2008
1989	December 31, 2009
1990	December 31, 2010
1991	December 31, 2011

### **ARTICLE XX Surface Water Supply Protection By-law**

#### **Section 1. Purpose**

The purpose of this By-law is to protect the 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 surface waters used as sources of drinking water supply.

#### **Section 2. Definitions**

Commission: The Conservation Commission of the Town of Lincoln.

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).

Department: the Department of Environmental Protection of the Commonwealth of Massachusetts.

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.

Significant Adverse Impact: That which causes or potentially causes a deterioration in the quality of the drinking water supply.

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.

Tributary: any body of running, or intermittently running, water which moves in a definite channel, naturally or artificially created, in the ground due to a hydraulic gradient, and which ultimately flows into a Class A surface water source, as defined in 314 CMR 4.05(3)(a).

Zone A: (a) the land area between the surface water sources and the upper boundary of the bank; (b) the land area within a 400 foot lateral distance from the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3)(a); and (c) the land area within a 200 foot lateral distance from the upper boundary of the bank of a tributary or associated surface water body.

### **Section 3. Jurisdiction; Presumption, Regulations**

A. Except as allowed in this By-Law, no person shall undertake any activity within the Zone A of Flint's Pond that causes a significant adverse impact on the water quality of this surface water body.

B. The following regulations applied to the Zone A of Flint's Pond or to a smaller area if specified in the regulation:

1. No stabling, hitching, standing, feeding or grazing of livestock or other domestic animals shall be located, constructed, or maintained within 100 feet of the bank of Flint's Pond or of any tributary to Flint's Pond.
2. No burial shall be made, except by permission in writing by the Board of Water Commissioners or like body having jurisdiction over the source of supply, in any cemetery or other place within 100 feet of the high water mark of Flint's or of any tributary to Flint's Pond. No lands not under the control of cemetery authorities and used for cemetery purposes, from which lands the natural drainage flows into said source of water supply or tributary thereto, shall be taken or used for cemetery purposes until a plan and sufficient description of the lands is presented to the Department and until such taking or use is expressly approved in writing by the Department.
3. No person shall swim, wade or bathe in Flint's Pond, and no person shall, unless permitted by written permit by the Board of Water Commissioners or like body having jurisdiction over these surface water sources, fish in; enter or go in any boat, seaplane, or other vehicle; enter upon the ice for any purpose, including the cutting or taking of ice; or cause or allow any animal to go into, or upon, Flint's Pond or any tributary to Flint's Pond.
4. No person shall apply herbicides to Flint's Pond or its tributaries without a permit issued by the Department pursuant to M.G.L. c. 111, § 5E. This requirement does not apply to the application of algaecides containing copper by the public water system. However, the public water system shall notify the Department in writing prior to the application of such algaecides.
5. No person shall throw any dirt, rubbish or foreign materials into the waters of Flint's Pond;

6. No person shall engage in active or passive recreational activities on public lands within two-hundred (200) feet of Flint's Pond unless these activities are 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;
- C. The following new or expanded land uses introduced or expanded after August 1, 2012 are hereby found to have a significant adverse impact on water quality and are accordingly prohibited in the Zone A of Flint's Pond:
1. all underground storage tanks,
  2. above-ground storage of liquid hazardous material as defined in M.G.L. c. 21E, or liquid propane or liquid petroleum products, except as follows:
    - (a) The storage is incidental to:
      1. normal household use, outdoor maintenance, or the heating of a structure;
      2. use of emergency generators;
      3. a response action conducted or performed in accordance with M.G.L. c. 21E and 310 CMR 40.000 and which is exempt from a ground water discharge permit pursuant to 314 CMR 5.05(14); or
    - (b) The storage is either in container(s) or above-ground tank(s) within a building, or outdoors in covered container(s) or above-ground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater. However, these storage requirements do not apply to the replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline provided the replacement is performed in accordance with applicable state and local requirements;
  3. treatment or disposal works subject to 314 CMR 3.00 or 5.00, except the following:
    - (a) the replacement or repair of an existing treatment or disposal works that will not result in a design capacity greater than the design capacity of the existing treatment or disposal works;
    - (b) treatment or disposal works for sanitary sewage if necessary to treat existing sanitary sewage discharges in non-compliance with 310 CMR 15.000: The State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage, provided the facility owner demonstrates to the Department's satisfaction that there are no feasible siting locations outside of the Zone A. Any such facility shall be permitted in accordance with 314 CMR 5.00 and shall be required to disinfect the effluent. The Department may also require the facility to provide a higher level of treatment prior to discharge;
    - (c) treatment works approved by the Department designed for the treatment of contaminated ground or surface waters and operated in compliance with 314 CMR 5.05(3) or 5.05(13).
    - (d) discharge by public water system of waters incidental to water treatment processes.

4. facilities that, through their acts or processes, generate, treat, store or dispose of hazardous waste that are subject to M.G.L. c. 21C and 310 CMR 30.000, except for the following:
  - (a) very small quantity generators, as defined by 310 CMR 30.000;
  - (b) treatment works approved by the Department designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground or surface waters;
5. sand and gravel excavation operations;
6. uncovered or uncontained storage of fertilizers;
7. uncovered or uncontained storage of road or parking lot de-icing and sanding materials;
8. storage or disposal of snow or ice, removed from highways and streets outside the Zone A, that contains deicing chemicals;
9. uncovered or uncontained storage of manure;
10. junk and salvage operations;
11. commercial motor vehicle repair operations;
12. cemeteries (human and animal) and mausoleums;
13. solid waste combustion facilities or handling facilities as defined at 310 CMR 16.00;
14. land uses that result in the rendering impervious of more than 15%, or more than 20% with artificial recharge, or 2500 square feet of any lot, whichever is greater; and
15. commercial outdoor washing of vehicles, commercial car washes.

#### **Section 4. Regulations**

After public notice and public hearing, the Commission may issue rules and regulations to effectuate the purposes of this bylaw, effective when voted and filed with the Town Clerk. Failure by the Commission to issue such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw. At a minimum these regulations may define key terms contained in this bylaw, as well as additional terms not inconsistent with this bylaw.

#### **Section 5. 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 applicable Federal or State law.
- B. The Commission shall have authority to enforce this By-law and 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 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 6. 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.

Appendix 1. Map of Flint's Pond Area

## **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.

**2.5 Historic District:** an historic district established by the Town pursuant to Chapter-40C of the MGL or special law.

**2.6 LBI:** the Lincoln Building Inspector, or other person authorized by state law or local By-law to issue demolition permits in the Town.

**2.7 LHC:** the Lincoln Historical Commission.

**2.8 Neighborhood Conservation District:** a Neighborhood Conservation District established by the Town pursuant to **Article XXIII** of the Town's General By-law.

**2.9 Preferably Preserved Significant Building or Structure:** any historically or architecturally significant building or structure which is established, after a public hearing by the LHC, to be worthy of preservation in whole or in part.

**2.10 Premises:** the entire parcel of land upon which the significant building or structure is or was located.

**2.11 Significant Building or Structure:** any building and/or structure, or portion thereof, not within an historic district or a Neighborhood Conservation District, but which meets one or more of the following criteria:

- a) it is listed on, is within an area listed on, or is within two-hundred (200) feet of the boundary line of an area listed on, the National or State Register of Historic Places, or is the subject of a pending application for listing on said National or State Register;
- b) it is listed in the Inventory of the Historic Assets of the Commonwealth, or designated by the LHC for inclusion in said inventory; or
- c) it is:
  - (1) determined by majority vote of the LHC to be importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the Town of Lincoln, The Commonwealth of Massachusetts, or the United States of America; or;
  - (2) determined by majority vote of the LHC to be historically or architecturally important by reason of period, style, method of construction, or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures.

**2.12 Structure:** the combination of materials or part thereof other than a building, including but not limited to a bridge, dam, tower, silo, monument, stone wall, fence, path or roadway.

**2.13 Twelve-Month Delay:** the twelve-month period, dated from the submission of the LHC report.

### **Section 3. Procedure**

**3.1** No owner, tenant or occupant of any premises shall undertake any demolition of a building or structure on such premises without first submitting an application for a demolition permit in accordance with this By-law. A permit for the demolition of a building or structure shall be issued only upon compliance with the provisions of this By-law.

**3.2** The LBI shall forward a copy of each demolition permit application for a building or structure identified in Section 2. of this By-law to the LHC within seven (7) days after the filing of such application. Every application for a demolition permit for a building and/or structure subject to the provisions of this By-law, as provided in Section 2 of this By-law, shall be made or be co-signed by the owner of record or by the holder of a bona-fide purchase and sale agreement and be signed by the applicant and (if different) by the owner at the time of the application and be filed with the LBI. Separate applications shall be filed for each building or structure on the property for which a demolition permit is being sought, and each application shall contain or be accompanied by the following information, without which the application shall not be considered complete, requiring a resubmission of the application(s):

- a) the address of the building or structure to be demolished, along with the map and lot number for the premises as listed with the Board of Assessors;
- b) the owner's name, current address and telephone number, as well as the applicant's name, current address and telephone number if different from the owner;
- c) a brief description of the type of building or structure and of the proposed demolition;
- d) the date of construction of the building and/or structure as established by the Board of Assessors, deed, or other documentation;
- e) photographs of all elevations of the building or structure, as well as photographs showing any other buildings on the premises; and
- f) a map showing the location of the building or structure to be demolished with reference to lot lines and to neighboring buildings and structures.

**3.3** Within forty-five (45) days after its receipt of such application, the LHC shall determine whether or not it is a significant building or structure. The applicant shall be informed of the date of a

meeting at least seven (7) days prior to the meeting, and the LHC shall require the applicant or the applicant's designated representative to make a presentation and/or respond to questions on the proposal at the meeting, and failure to do so shall require the resubmission of the application.

**3.4** If the LHC determines that the building or structure is not significant, it shall so notify the LBI and the applicant in writing and the LBI may issue a demolition permit, but the LHC may require that specified visual or other documentation be made of the building or structure prior to the issuance of the demolition permit. If the LHC determines that the building or structure is significant, it shall notify the LBI and the applicant in writing that a demolition plan review must be made prior to the issuance of a demolition permit. A non-transferable decision by the LHC shall remain valid for a period of two (2) years from the date of the decision or until the sale of the property to a party other than the applicant, whichever comes first. If the LHC fails to notify the LBI and the applicant of its determination within forty-five (45) days after its receipt of the application, then the building or structure shall be deemed not significant and the LBI may issue a demolition permit subject to same conditions as a non-transferable decision.

**3.5** If the applicant decides to proceed, then within sixty (60) days after the applicant is notified that the LHC has determined that a building or structure is significant, the applicant for the permit shall submit to the LHC seven (7) copies of a demolition plan, which shall include the following information:

- a) a copy of the Board of Assessors map showing the parcel, as well as a map or plan showing the location of the building or structure to be demolished with reference to lot lines and to neighboring buildings and structures;
- b) photographs showing:
  - (1) all elevations of the building and/or structure;
  - (2) the view from the street of the building and/or structure;
  - (3) any other buildings on the premises; and
  - (4) at least two (2) street or neighborhood views that place the building and/or structure in proximate context to neighboring buildings and structures.
- c) a description of the building or structure, or part thereof, to be demolished;
- d) the reason for the proposed demolition and data supporting said reason;
- e) plans for proposed restoration or building or other alterations to the site; and
- f) the signature of the applicant and of the owner of record (if different), along with proof of ownership.

**3.6** Within forty-five (45) days of receipt of the materials required under Section 3.5, the LHC shall hold a public hearing with respect to the application for a demolition permit, and shall give public notice at the expense of the applicant in a local newspaper of the time, place and purposes thereof at least fourteen (14) days before said hearing in such manner as it may determine, and by mailing, postage prepaid, a copy of said notice to the applicant, to the owners of all adjoining property and other property deemed by the LHC to be materially affected thereby as they appear on the most recent real estate tax list of the Board of Assessors, or the Planning Board, or any person filing written request for notice of hearings, and to such other persons as the LHC shall deem appropriate to receive notice. Within thirty (30) days after the closing of the public hearing, the LHC shall file a written report with the LBI on the demolition plan which shall include the following:

- a) a description of the age, architectural style, historical association and importance of the building or structure to be demolished; and
- b) a determination as to whether or not the building or structure should be preferably preserved and the reasons therefore.

**3.7** If, following the demolition plan review, (1) the LHC does not determine that the building or structure should be preferably preserved, or (2) where less than a complete demolition is being proposed the LHC determines, that the work to be done will not materially diminish its historical or architectural significance, or (3) if the LHC fails to file a report with the LBI within the time limit set

out in Section 3.6, then the LBI may issue a demolition permit subject to the conditions set forth in Section 3.4.

**3.8** If, following the demolition plan review, the LHC determines that the building or structure should be preferably preserved, then the LBI shall not issue a demolition permit for a period of twelve (12) months from the date of the filing of the LHC's report unless the LHC informs the LBI prior to the expiration of such twelve (12) month period that it is satisfied that the applicant for the demolition permit has made a continuing bona-fide, reasonable and unsuccessful effort to find a way to preserve, rehabilitate or restore the building or structure, or has agreed to accept a demolition permit on specified conditions approved by the LHC. During the twelve (12) month period, the LHC shall invite the applicant to participate in an investigation of alternatives to demolition. On or before the expiration of the twelve (12) month period, the applicant or a designated representative must appear before the LHC and document that the applicant has made a continuing, bona-fide and reasonable effort to locate a purchaser to preserve, rehabilitate and restore the building or structure, and that such efforts have been unsuccessful. If the LHC concurs that such an effort has been made and no means can be found, then the LHC shall so inform the LBI in writing, and the LBI may issue a demolition permit for a period of one (1) year from that date, following which time a new application must be submitted. In all such cases, the LHC may require that specified visual or other documentation be made of the building or structure prior to the issuance of the demolition permit.

#### **Section 4. Emergency Demolition**

If the condition of a building or structure poses a serious and imminent threat to public health or safety due to its deteriorated condition, the owner of such building or structure may request the issuance of an emergency demolition permit from the LBI. As soon as practicable after the receipt of such a request, the LBI shall arrange to have the property inspected by a board consisting of the LBI, the Chairs of the LHC and the Board of Health, and the Chief of the Fire Department, or their respective designees. After the inspection of the building or structure and consultation of this board, the LBI shall determine whether the condition of the building or structure represents a serious and imminent threat to public health or safety and whether there is any reasonable alternative to the immediate demolition of the building or structure which would protect the public health and safety. If the LBI finds that the condition of the building or structure poses a serious and imminent threat to public health or safety, and that there is no reasonable alternative to the immediate demolition thereof, he or she may issue an emergency demolition permit to the owner of the building or structure. Whenever the LBI issues an emergency demolition permit under the provisions of this Section 4, he or she shall prepare a written report describing the condition of the building or structure and the basis of the decision to issue an emergency demolition permit with the LHC. Nothing in this Section 4 shall be inconsistent with the procedures for the demolition and/or securing of buildings and structures established by MGL Chapter 143, §§ 6-10. In the event that a Board of Survey is convened under the provisions of said MGL, Chapter 143 §8 with regard to any building or structure identified in Section 2 of this By-law, the LBI shall request the Chair of the LHC or his or her designee to accompany that Board of Survey during its inspection. A copy of the written report prepared as a result of such inspection shall be filed with the LHC.

#### **Section 5. Non-compliance**

Anyone who demolishes a building or structure identified in Section 2 of this By-law without first obtaining, and complying fully with the provisions of, a demolition permit, shall be subject to a fine of three hundred-dollars (\$300) for each day, not to exceed sixty (60) days, in which such person was not in compliance with the provisions of a demolition permit. This fine shall be handled in the manner set forth under Bylaw Article XVI Non Criminal Disposition of Violation. Upon a determination by the LHC that a building or structure is a preferably preserved significant building or structure, the owner shall be responsible for properly securing the building or structure, if vacant, to

the satisfaction of the LBI. Should the owner fail to secure the building or structure, the loss of such building or structure through fire or other cause shall be considered demolition. In addition, unless a demolition permit was obtained for such demolition, and unless such permit was fully complied with, the LBI shall not for a period of three (3) years after the date of demolition issue a building permit for erection of a building and/or structure, paving of driveways or for parking pertaining to any premises on which a building or structure identified in Section 2 of this By-law has been demolished.

### **Section 6. Building Permits**

A. No permit for the erection of a new structure on the site of an existing significant building or structure may be issued prior to the issuance of a demolition permit for such existing building or structure.

B. No building permit shall be issued unless and until the applicant has satisfied all obligations for approvals under the Lincoln Zoning By-law, Lincoln Wetlands Protection By-law, Wetlands Protection Act, sanitary codes, and other pertinent federal, state and local laws.

### **Section 7. InterSection with Lincoln By-law**

The granting of permission to demolish by the LHC under this By-law shall not be construed as approval by the Town of Lincoln for the construction or reconstruction of any building or structure on the property. Once demolition has been approved by the LHC under this By-law, the recipient of that demolition approval must obtain all other approvals required under Lincoln By-laws for any such construction or reconstruction before a building permit shall be issued.

### **Section 8. Appeals to Court**

Any person aggrieved by a determination of the Historical Commission under this By-law may seek judicial review of such determination pursuant to the provision of MGL, Chapter 249, §4.

### **Section 9. Severability**

In case any Section, paragraph or part of this By-law is declared invalid or unconstitutional by any court of competent jurisdiction, every other Section, paragraph and part of this By-law shall continue in full force and effect.

## **ARTICLE XXII Community Preservation Committee**

### **Section 1. Establishment**

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

- 1) One member of the Conservation Commission as designated by the Commission for a term of three (3) years;
- 2) One member of the Historical Commission as designated by the Commission for a term of three (3) years;
- 3) One member of the Planning Board as designated by the Board for a term of three (3) years;
- 4) One member of the Recreation Committee as designated by the Committee for an initial term of one (1) year and thereafter for a term of three (3) years;
- 5) One member of the Housing Commission as designated by the Commission for an initial term of two (2) years and thereafter for a term of three (3) years; and

6) Four members to be appointed by the Board of Selectmen, two members to be appointed for a term of one (1) year and thereafter for a term of three (3) years and two members to be appointed for a term of two (2) years and thereafter for a term of three (3) years.

B. Each member of the Committee shall serve for the term as set forth above to which such member is appointed, or until the person no longer serves as a member due to resignation or removal, or by virtue of no longer serving on the appointing commission, board or committee as set forth above, whichever is earlier. Any resulting vacancy in the Committee's membership shall be filled by the same commission, board or committee which originally appointed the vacating member, for the unexpired portion of such vacating member's appointed term.

C. Should any of the Commissions, Boards, or Committees who have appointment authority under this By-law be no longer in existence for whatever reason, the appointment authority for that Commission, Board or Committee shall become the responsibility of the Board of Selectmen.

D. Any member of the Committee may be removed for cause by his or her respective appointing authority after a hearing conducted by such appointing authority.

## **Section 2. Duties**

A. The Community Preservation Committee shall study the needs, possibilities, and resources of the Town regarding community preservation. The Committee shall consult with existing municipal boards, including the Conservation Commission, the Historical Commission, the Planning Board, the Recreation Committee, and the Housing Commission, in conducting such studies. As part of its study, the Committee shall hold one or more public informational hearings on the needs, possibilities, and resources of the Town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two (2) weeks preceding a hearing in a newspaper of general circulation in the Town.

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

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

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

## **Section 3. Requirement for a Quorum and Cost Estimates**

The Community Preservation Committee shall comply with the provisions of the Open Meeting Law, MGL, Chapter 39, §§ 23A-C. The Committee shall not meet or conduct business without the presence of a majority of its members. The Committee shall approve its actions by majority vote. Recommendations by the Committee to the Town Meeting shall include the anticipated costs of any such recommendations.

#### **Section 4. Records**

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

#### **Section 5. Amendments**

This By-law may be amended from time to time by a majority vote of the Town Meeting, consistent with the provisions of the Community Preservation Act.

#### **Section 6. Severability**

In case any Section, paragraph, or part of this By-law is declared invalid or unconstitutional by any court of competitive jurisdiction, every other Section, paragraph or part shall continue in full force and effect.

#### **Section 7. Definitions**

Terms used in this By-law which appear in the Community Preservation Act shall have the respective meanings as set forth in the Community Preservation Act.

**Effective Date:** The foregoing By-law shall become effective only upon (a) completion of compliance with all requirements of MGL, Chapter 40, §32 of the respecting the adoption of General By-laws, and (b) the acceptance by the voters of the Town of **Sections 3-7** of the Community Preservation Act, as approved by the 2002 Annual Town Meeting under *Article 9* of the Warrant therefor, pursuant to a ballot question presented at the next regular municipal or state election in accordance with **Section 3(f)** of the Community Preservation Act. If the ballot question described above is approved, each appointing authority shall make its initial appointment(s) to the Community Preservation Committee not later than thirty (30) days following such approval.

### **ARTICLE XXIII Neighborhood Conservation District By-law**

#### **Section 1. Purposes**

A. This Neighborhood Conservation District By-law of the Town of Lincoln is enacted under the Home Rule Amendment of the Massachusetts Constitution.

B. The purpose of this By-law is to enable the establishment in the Town of Lincoln of Neighborhood Conservation Districts (NCD), for the following purposes:

- 1) To preserve, conserve and protect the beauty and heritage of Lincoln, and the quality of its environment, through identification and conservation of particular neighborhoods and areas which constitute or reflect distinctive features of the architectural, aesthetic, cultural, political, economic or social history of Lincoln, to preserve the diversity of housing choices and neighborhoods within Lincoln, and to limit and restrain the detrimental effects of inappropriate alterations, demolitions and new construction adverse to this purpose;
- 2) To encourage preservation of existing buildings, to ensure that new construction will complement existing buildings, settings and neighborhood character, and to foster appropriate reuse, updating and upgrading of structures in such neighborhoods and areas.
- 3) To promote wider public knowledge and appreciation of such neighborhoods, areas or structures in Lincoln; and

4) By furthering these purposes, to promote the public welfare by making Lincoln a more diverse, attractive and desirable place in which to live.

C. The buildings in and characteristics of a neighborhood are not intended to be frozen in time by their designation as an NCD under this By-law; the neighborhood should be able to grow and change to meet the needs of current and future owners and of current and future times, while conserving the neighborhood's distinctive qualities as changes occur.

D. The designation of an NCD is intended as recognition of the significance to Lincoln of the neighborhood and its distinctive architectural and historical character.

## **Section 2. Designation of Districts**

A. To be considered for an NCD, a neighborhood shall satisfy the following criteria:

- 1) The area as a whole constitutes a distinctive neighborhood or has a distinctive character; and
- 2) The area contains buildings, structures or landscapes which are significant to the architectural, aesthetic, cultural, political, economic or social history of Lincoln; or the area has generally cohesive features, such as the scale, size, type of construction, materials or style of its buildings, or its land use patterns, siting and landscaping.

B. The designation of an NCD shall be initiated by neighborhood residents. A petition shall be submitted to the Historical Commission, containing the signatures of the owners of at least fifty percent (50%) of the building lots in the area proposed to be included in the NCD (Area), which petition shall include: 1) a general statement of the historical; architectural or other qualities of the Area that make it appropriate for designation; 2) a map of the Area; and 3) a general outline of the scope of guidelines and review authority that would be proposed for an NCD for the Area.

C. Following receipt of a petition for designation, the Historical Commission shall appoint a Study Committee to investigate and report on the appropriateness of such a designation for the Area. The Study Committee shall consist of five (5) members, at least two (2) of which shall be residents of the Area. Notice of the appointment of the Study Committee shall be provided to all owners of building lots in the Area and all owners of building lots abutting the Area, at the address for such owners as listed in the real estate tax list of the Board of Assessors.

D. The Study Committee shall, working with residents of the Area, prepare a Report, which shall include: 1) an overview of the significant historical, architectural or other qualities of the Area; 2) a map of the boundaries of the proposed NCD, and 3) guidelines (Guidelines) for the proposed NCD.

Each NCD shall have its own Guidelines which are applicable only to that NCD. The Guidelines shall, as and to the extent appropriate for the conservation of the particular qualities of the particular neighborhood: 1) establish design guidelines for the NCD; and 2) establish the scope of review authority under this By-law for activities within the NCD (including categories and types of changes which are exempt from review or are subject to review, as provided for in **Section 4** below). The Guidelines shall be based to the extent appropriate on the guidelines proposed in the petition submitted by the neighborhood residents.

E. The Historical Commission shall, within sixty (60) days after receipt of the completed Report, hold a public hearing to present the Report, including the proposed Guidelines, for the Area. Public notice of the hearing shall be given at least fourteen (14) days before the hearing date, in such manner as the Historical Commission may determine, and by mailing said notice, together with copies of the Report, to all owners of building lots in the Area and of building lots abutting the Area, at the address for such owners as listed in the real estate tax list of the Board of Assessors. At least fourteen (14) days prior to the hearing date, the Historical Commission shall also transmit notice of the hearing, together with copies of the Report, to the Planning Board for its consideration and recommendations, which shall be advisory only.

F. Following the public hearing, the Historical Commission may, by majority vote, recommend the Area for designation as an NCD. If the Historical Commission does not vote to recommend the

Area for designation, or if, at or prior to the public hearing, the owners of at least thirty-three percent (33%) of the building lots in the Area object in writing to the proposed designation, then the proposed designation shall be deemed rejected. If the NCD is recommended by the Historical Commission, and not deemed rejected, the designation of the NCD shall be brought to Town Meeting for approval.

G. The establishment of an NCD, and the adoption of its Guidelines, under this By-law shall be by a majority vote at an Annual or Special Town Meeting.

H. The establishment of an NCD shall not be construed to prevent the construction or alteration of a structure in the NCD under a building permit, zoning permit or other municipal approval (Permit) duly issued prior to the date of the establishment of the NCD by the Town Meeting; provided, following the submission of a petition by a neighborhood and until the establishment or rejection of the NCD, other Town Boards shall give due and appropriate weight to the pendency of such petition with respect to any Alterations within the Area which come before such other Boards during such period.

I. Subsequent amendments to the Guidelines of a designated NCD may be initiated either by residents of the NCD, by the submission of a petition signed by the owners of at least fifty percent (50%) of building lots in the NCD to the Commission, or by the Commission (established in **Section 3** below), and shall follow the same procedures governing the creation of an NCD, except that no Study Committee shall be established. Subsequent amendments changing the boundaries of a designated NCD shall follow the same procedures governing the creation of an NCD.

### **Section 3. Neighborhood Conservation District Commission**

A. Following the designation of an NCD, a Neighborhood Conservation District Commission (Commission) shall be appointed for the NCD. The Commission shall consist of five (5) members and at least 2 alternates. Three (3) of the members and one (1) of the alternates shall be current members or alternates of the Historic District Commission, as designated by the Historical Commission, and two (2) of the members and 1 or more of the alternates shall be appointed by the Board of Selectmen. At least two (2) of the members and at least one (1) of the alternates shall, if possible, be residents of the NCD.

B. Members and alternates of the Commission designated by the Historical Commission shall serve for a term co-terminus with their term as a member or alternate of the Historic District Commission. Members and alternates appointed by the Board of Selectmen shall initially be appointed to staggered terms, and to terms of three (3) years thereafter. Each member or alternate shall continue to serve in office after the expiration of his or her term until a successor is duly appointed.

C. Members of the Commission shall annually elect a Chair. In the case of absence, inability to act or recusal due to conflict of interest of a member, his or her place shall be taken by an alternate member designated by the Chair (if available) or by a majority vote of members present.

D. A quorum shall consist of three (3) members of the Commission. The Commission shall act by majority vote, provided if less than five (5) members are present, at least three (3) affirmative votes shall be required for any approval.

E. Meetings of the Commission shall be held at the call of the Chair, or at the request of two (2) members.

F. The Commission, after a public hearing, may adopt and from time to time amend rules and regulations not inconsistent with the provisions of this By-law or the Guidelines for any of the NCDs, including setting such forms and procedures as it deems necessary and desirable for the regulation of its affairs and the conduct of its business.

#### **Section 4. Review Of Alterations**

A. The Guidelines for each NCD shall establish separately the extent of review of alterations, additions, changes, demolitions or new construction (Alterations) that will be required within that NCD.

B. Except as otherwise provided in the By-law, and except as otherwise provided in the Guidelines of an NCD, no Alterations to any building or other structure or feature within an NCD shall be permitted unless the Commission shall first have issued a Certificate of Compatibility.

#### **C. Exemptions from Review.**

- 1) None of the following categories or types of Alterations shall require review by the Commission:
  - a) Temporary structures.
  - b) Interior Alterations.
  - c) Storm windows, doors, and screens.
  - d) Colors.
  - e) Accessory structures of less than one-hundred (100) square feet of floor area and less than fifteen (15) feet in height.
  - f) Alterations not visible from a public way or other areas open to public access.
  - g) The ordinary maintenance, repair or replacement of exterior architectural features; the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition; or the reconstruction, substantially similar in exterior design to the prior structure, of a structure damaged or destroyed by fire, storm or other casualty.

In addition, the Guidelines for an NCD may provide for other categories or types of Alterations within such NCD which shall not require review by the Commission.

Although not a condition of obtaining a Permit for Alterations which do not require review by the Commission, at the request of any owner, the Commission shall issue a Certificate of Exemption for any Alterations that are exempt from the review of the Commission pursuant to the foregoing.

#### **D. Review.**

- 1) All Alterations that are not exempt from review shall be subject to review by the Commission.
- 2) Any person wishing to perform Alterations which require review, shall first file an application for a Certificate of Compatibility, in such form as the Commission may reasonably determine, together with such plans, elevations, specifications, material and other information as may be reasonably deemed necessary by the Commission to enable it to make a determination on the application.
- 3) Following the submittal of an application for an Alteration deemed by the Commission to be complete, the Commission shall hold a public hearing. Public notice of the hearing shall be given at least fourteen (14) days before the hearing date, in such manner as the Commission may determine, and by mailing said notice to all owners of building lots in the NCD and building lots abutting the property subject to the hearing, at the address for such owners as listed in the real estate tax list of the Board of Assessors.
- 4) Following the hearing, the Commission shall determine whether the proposed Alteration is appropriate for the NCD and compatible with the Guidelines for the NCD and the purposes of this By-law. If the Commission decides that the proposed Alterations are compatible, the Commission shall issue a Certificate of Compatibility. A Certificate of Compatibility may be granted subject to such reasonable conditions as the Commission may deem necessary or appropriate, which conditions shall be included in the Certificate of Compatibility. If the Commission decides that the Alteration is not compatible, the

Commission shall provide the applicant a written statement with the reasons for their disapproval.

- 5) If the Commission shall fail to make a determination within sixty (60) days after the complete application is filed, or such further time as the applicant may allow in writing, the Certificate of Compatibility applied for shall be deemed granted.
- 6) The Guidelines for the NCD may provide that certain categories or types of Alterations shall be subject to advisory, non-binding review by the Commission, or an owner may request such non-binding review of otherwise exempt Alterations, in which event the foregoing procedures applicable to a review hereunder shall be followed, but without the Commission voting or rendering a binding decision thereon.

E. Except to the extent the Guidelines for an NCD provide otherwise, the Commission, after a public hearing, may determine from time to time that certain additional designated categories or types of Alterations may be undertaken in the NCD without review by the Commission, or with only advisory, non-binding review, without causing substantial derogation from the intent and purposes of the By-law.

### **Section 5. Factors**

- A. In passing upon matters before it, the Commission shall consider, among other things:
  - 1) The historical and architectural value and significance of the particular structures, and their settings, being affected, as well as the effects of same on the NCD;
  - 2) The suitability of the general design, arrangement, composition, scale, massing, texture and material of the features involved in the Alterations, as well as the effects of same on the NCD;
  - 3) The siting and landscape characteristics, including relation to the street, topography and existing vegetation, of the particular site involved in the Alterations, as well as the effects of same on the NCD;
  - 4) For demolitions, the structure proposed to replace the existing structure; and
  - 5) The standards, factors and other matters contained in the Guidelines for the NCD.
- B. In making its determination, the Commission shall, among other things:
  - 1) Allow for and encourage appropriate architectural diversity and individualized Alterations while respecting the characteristics of the neighborhood; and
  - 2) Encourage the compatible updating, expansion and renovation of structures in the neighborhood, consistent with the foregoing.

### **Section 6. Judicial Review, Enforcement, Lapse**

- A. [Disallowed by the Attorney General.]
- B. The provisions of the By-law may be enforced in the same manner as, and violations shall carry the same penalties as are applicable to, a violation under the Historic District By-law.
- C. Certificates of Compatibility shall lapse within a period of 18 months (plus such time as is required to pursue or await the determination of a judicial review as provided above) from the date of the issuance thereof, if construction has not begun by such date except for good cause.

### **Section 7. Coordination With Other Town Boards And By-laws**

A. The provisions of the Demolition Delay By-law of the Town of Lincoln shall not be applicable to the demolition of any structure within the NCD if the Commission has issued a Certificate of Compatibility permitting the demolition of such structure. Except as provided in (a) above, nothing in this By-law is intended to waive any of the provisions of any other Town By-laws, general or zoning, or limit the jurisdiction of any other Town Boards

B. The Commission shall use reasonable efforts to coordinate its reviews with those of other Town Boards.

C. Other Town Boards shall give due and appropriate weight to the determinations of the Commission made hereunder with respect to any Alterations within the NCD which come before such other Boards.

## **ARTICLE XXIV Solicitors and Peddlers**

### **Purpose:**

It is the purpose of this By-law to regulate persons or organizations engaged in soliciting or peddling in the Town of Lincoln through the issuance of licenses and imposition of other limitations on such conduct for the purpose of protecting the Town's residents from disruption of the peaceful enjoyment of their residences and from crime and fraud, and further, to allow reasonable access to residents in their homes by persons or organizations who wish to engage in commercial solicitation.

### **Section 1. Definition**

A solicitor or peddler is defined as any individual, whether a resident of the Town of Lincoln or not, traveling either by foot, motor vehicle, or any other type of conveyance, from place to place, house to house, taking or attempting to take orders for sale of goods, wares, merchandise, personal property of any nature for immediate or future delivery or for services to be furnished or performed immediately or in the future and whether or not he or she collects advance payments on such sales.

### **Section 2. License Required**

It shall be unlawful for any solicitor or peddler as defined in **Section 1** of this By-law to engage in such business in the Town of Lincoln without first obtaining a license in compliance with the provisions of this By-law. Any person who is not properly licensed under this By-law shall be ordered to immediately cease and desist all solicitation in the Town until they attain a proper license.

### **Section 3. License Exemption**

Nothing in this By-law shall be construed to impose any license requirement or otherwise restrict or in any way regulate any activity for non-commercial purposes, including but not limited to any activity for religious, charitable, civic or political purposes, regardless of whether such activity includes acts that would otherwise constitute soliciting.

### **Section 4. Application and Fee**

A. Each individual applicant for a license under this By-law shall submit to the Chief of Police or his/her designee an application along with a fee of twenty-five dollars (\$25.00) (per individual applicant) payable to the Town of Lincoln which will be used to cover the cost of investigating the facts stated in the application.

B. Each applicant must complete a sworn application in writing at least ten (10) working days prior to the requested starting date for solicitation, on a form provided by the Police Department. Said form shall include the following information:

- 1) Name, physical description, and date of birth;
- 2) Social security number of the applicant ;
- 3) Permanent home address as well as full local address of the applicant;
- 4) A brief description of the nature of the business and/or goods to be sold;
- 5) If employed, name and address of employer, including credentials which establish the exact relationship;

- 6) The length of time for which the license is desired (not to exceed ninety (90) days);
- 7) Names of manufacturer, of source of merchandise, proposed method of delivery;
- 8) Two photographs of the applicant, taken within the past sixty (60) days prior to filing of the application, showing only the head and shoulders of the applicant in a clear and distinguishing manner; and
- 9) A statement as to whether or not the applicant has been convicted of any crime listed in **Section 5** of the By-law or is a Level 2 or Level 3 Sex Offender required to register with the Massachusetts Sex Offenders Registry Board.

### **Section 5. Investigation & Issuance**

A. If after an investigation into the facts contained in the license application the Police Chief is satisfied the applicant is of suitable character, the Police Chief, or his designee shall grant the requested license.

B. The Police Chief or his designee shall refuse to issue a license to any organization or individual whose license has been revoked for violation of this By-law within the previous two (2) year period or who has been convicted of murder/manslaughter, rape, robbery, arson, burglary/breaking and entering, felony assault, or larceny over two-hundred fifty dollars (\$250), as such persons pose a substantial degree of dangerousness to minors and other persons vulnerable to becoming victims of the violent crimes so listed. The Police Chief shall also refuse to grant a license to a person who is a sex offender required to register with the Massachusetts Sex Offenders Registry Board and who is finally classified as Level 2 or Level 3 Sex Offender, as such persons have been found to have a moderate to high risk of re-offense and pose a substantial degree of dangerousness to minors and other persons vulnerable to becoming victims of sex crimes.

### **Section 6. Identification Card**

The Police Department, after a review of the information contained in the license application, but in no event more than ten (10) working days after receipt of a fully-completed application, shall issue to each successful applicant an identification card which shall contain the words "Licensed Solicitor", the individual's picture, identification and expiration date of the license. Persons engaged in solicitation or peddling as defined in this By-law must display the registration card while soliciting or peddling and present the card to any police officer or person solicited upon request.

### **Section 7. Duty of Police to Enforce**

It shall be the duty of any police officer of the Town to require any person seen soliciting or peddling and who is not known by such officer to be duly licensed, to produce his or her solicitor's license and to enforce the provisions of this By-law against any person found to be violating the same.

### **Section 8. Solicitation Hours**

A properly licensed solicitor or peddler may solicit between the following hours where there is no sign posted otherwise limiting solicitation or the hours of solicitation and/or where the residence address is not listed on the "Do Not Solicit List" maintained by Town Clerk:

**Monday through Friday: 8 a.m. through 9 p.m.**  
**Saturday, Sunday & Holidays: 9 a.m. through 9 p.m.**

### **Section 9. Do Not Solicit List**

A. Any person or entity who owns or rents property within the Town of Lincoln may register such property on a "Do Not Solicit" list. Registration for the Do Not Solicit List shall be made as follows:

- 1) The Do Not Solicit list shall be maintained by the Town Clerk;

- 2) The Do Not Solicit list shall consist solely of property addresses, and shall include no further identifying information concerning the ownership of each property; and
- 3) The Tax Assessor shall notify the Town Clerk of any change in ownership of property within the Town. The Town Clerk shall remove from the Do Not Solicit list any property which has changed ownership.

B. The Police Chief shall provide a copy of the Do Not Solicit list to every applicant to whom a license is issued pursuant to this By-law. Solicitation of any nature at any address identified on the Do Not Solicit list shall constitute a violation of this By-law.

### **Section 10. Records**

The Chief of Police shall maintain all pertinent records of licenses issued and violations recorded.

### **Section 11. Enforcement and Penalties**

A. The provisions of this By-law may be enforced by the Board of Selectmen, or any Police Officer of the Town of Lincoln by any available means in law or equity, including but not limited to enforcement by non-criminal disposition pursuant to of MGL, Chapter 40 §21D and **Article XVI** of the General By-laws. Each day on which a violation exists shall be deemed to be a separate offense. The penalty for each violation shall be three-hundred dollars (\$300.00.)

B. Whoever continues to solicit in the town in willful violation of this By-law, by continuing to solicit after being informed by a police officer to cease and desist, may be arrested without a warrant by a police officer in accordance with the provisions of MGL Chapter 272, §59 and subject to a penalty of three hundred dollars (\$300.)

C. Notwithstanding the above licensing procedures, no licensee may enter private property after being forbidden to do so either directly by the person in charge of the property or by a conspicuously posted Notice of “No Trespassing” or “No Soliciting.” Such Trespass violations are controlled by Mass. Gen. Laws Ch. 266, §120, which authorizes the arrest (without a warrant) of a person found committing such a trespass in the presence of a police officer.

D. After investigation by a police officer, licenses issued under the provisions of this By-law may be revoked by the Chief of Police or his designee after notice and hearing, provided however, that a license may be suspended immediately, without notice and a hearing, if the public safety or welfare so requires, for any of the following causes:

- 1) Fraud, misrepresentation, or false statement contained in the license application;
- 2) Fraud, misrepresentation or false statements made in the course of carrying on the business of solicitation;
- 3) Any violation of this By-law;
- 4) Conviction of any crime listed in **Section 5** of this By-law or classification as a Level 2 or Level 3 Sex Offender;
- 5) Conducting the business of soliciting or peddling in an unlawful manner or in such a manner as to constitute a breach of the peace, or to constitute a menace to health, safety, or the general welfare of the public; and
- 6) High-pressure tactics, harassment, or a refusal to accept a refusal as an answer, when verified in writing.

If a license is suspended under the provisions of this Section, notice of a hearing with regard to the same shall be given forthwith in accordance with the following sub-Section.

E. Notice of hearing for revocation or suspension of a license shall be given in writing, setting forth specifically the grounds of the complaint and a time and place of the hearing. Such notice shall be hand delivered to the licensee or forwarded by Certified Mail to the licensee at his or her last known address at least five (5) days prior to the hearing date.

## **Section 12. Expiration of License**

All licenses for soliciting in the Town are valid only for the particular dates or time period specified thereon, and in no case for longer than ninety (90) days.

## **Section 13. Appeals**

Any person or organization who is denied a license or whose license has been revoked may appeal by filing a written notice of appeal with the Board of Selectmen. Such appeal must be filed within five (5) days after receipt of the notice of denial or revocation. The Board of Selectmen shall hear the appeal at its next scheduled meeting after the filing of the written notice of appeal, provided, however, that if the Board of Selectmen fails to make a determination within thirty (30) days after the filing of the appeal, the license shall be deemed granted or reinstated, as the case may be.

## **Section 14. Severance Clause**

The provisions of this By-law are declared to be severable, and if any section, sentence, clause or phrase of this By-law shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this By-law and they shall remain in effect, it being the legislative intent that this By-law shall stand, notwithstanding the invalidity of any part.

# **ARTICLE XXV Historic District**

## **Preamble**

The purpose of this By-law is to promote the educational, cultural, economic, and general welfare of the residents of Lincoln through the preservation and protection of the distinctive architectural characteristics of buildings and places significant in the history of the Commonwealth and of the Town, through the maintenance and improvement of the settings for such buildings and places, and through the encouragement of the spirit of sensitive and innovative design compatible with the conceptual significance of the Town's historical development. This By-law does not seek to establish an architectural museum, but instead to inform the historical process of architectural growth and adaptation with a sense of educated pride in our heritage.

## **Section 1. Historic District**

**1.1. An Historic District** (the District) is hereby established in the Town of Lincoln, Massachusetts, in accordance with provisions of MGL, Chapter 40C of the Commonwealth. The District consists of areas, the locations and boundaries of which are as shown on a plan to be filed with the Lincoln Town Clerk and the Massachusetts Historical Commission and to be recorded with the Middlesex South Registry of Deeds. The District is intended to preserve and protect as a permanent legacy the significant historical areas and distinctive architectural characteristics of the Town of Lincoln in their settings.

**1.2. A Brown's Wood Historic District** (the Brown's Wood District) is hereby established in the Town of Lincoln, Massachusetts, in accordance with provisions of MGL, Chapter 40C of the Commonwealth. The Brown's Wood District consists of areas, the locations and boundaries of which are as shown on a plan to be filed with the Lincoln Town Clerk and the Massachusetts Historical Commission and to be recorded with the Middlesex South Registry of Deeds. The Brown's Wood District is intended to preserve and protect as a permanent legacy the significant historical areas and distinctive architectural characteristics of the Town of Lincoln in their settings.

## **Section 2. Historic District Commission**

**2.1 Membership** An Historic District Commission (the Commission) is hereby established as required by said MGL Chapter 40C, consisting of seven members, all residents of Lincoln, appointed by the Selectmen. The Commission shall include one member from two nominees submitted by the Lincoln Historical Society, one member from two nominees submitted by the Massachusetts State Association of Architects, and one member from two nominees submitted by the Board of Realtors covering Lincoln, if any. If, within thirty (30) days after submission of a written request for nominees to any of the organizations herein named, no such nominations have been made, the Selectmen may proceed to appoint the Commission without nomination by such organization. Further, at all times one member shall be a resident of or an owner of property in the District and two shall be members of the Lincoln Planning Board nominated by that body. Five members shall be drawn, if otherwise qualified, from the Lincoln Historical Commission. All members shall serve without compensation. Further, a Brown's Wood Historic District Commission (the Brown's Wood Commission) is hereby established for the Brown's Wood District, consisting of seven members, all residents of Lincoln appointed by the Selectmen. Appointments shall be made as provided in this Section 2 for the Historic District Commission, provided that at least one member of the Brown's Wood Commission shall be a resident or property owner of the Brown's Wood District. Some of all of the members of the Historic District Commission may also be appointed as members of the Brown's Wood Commission. All members shall serve without compensation.

**2.1.1. Alternates.** There shall also be two alternate members appointed by the Selectmen, one of whom at all times shall be a resident of the District

**2.2. Terms.** The terms of members on the Commission shall be so arranged that the term of at least one member shall expire each year and shall, if possible, coincide with their membership on the other Town body on which they serve. Successors shall be appointed in the same manner as the original appointments for terms of three (3) years. Vacancies shall be filled in the same manner as the original appointment by the Selectmen for the remainder of the unexpired term. Each member and each alternate shall continue in office after the expiration of his or her term until a qualified successor is duly appointed by the Selectmen and accepts the appointment.

**2.3. Officers.** The Commission shall annually elect a chairman and a vice-chairman from within its number and a secretary from within or without its number.

**2.4. Replacements.** In case of absence, inability to act, or self-interest on the part of a member of the Commission, that member's place shall be taken for the duration of that condition by an alternate member designated by the Chairman.

## **Section 3. Definitions.**

In this By-law, the following terms shall have the meanings described below:

**3.1. Altered.** The word "altered" includes the words "rebuilt", "reconstructed", "restored", "removed", and "demolished."

**3.2. Building.** The word "building" means a combination of materials forming a shelter for persons, animals or property.

**3.3. Commission.** Except as used in Subsection 2.1 of Article XXV of the By-Law, the word "Commission" as used in Article XXV of the By-Law shall refer both to the Historic District Commission and the Brown's Wood Historic District Commission.

**3.4. Constructed:** The word "constructed" includes the words "built", "erected", "installed", "enlarged", and "moved".

**3.5. Exterior Architectural Feature:** The words "exterior architectural feature" mean such portion of the exterior of a building or structure as is open to view from a public street, public way, public park, or public body of water, including but not limited to the architectural style and general arrangement and setting thereof, the kind, color, and texture of exterior building materials, the color

of paint or other materials applied to exterior surfaces, and the type and style of windows, doors, lights, signs, and other appurtenant exterior fixtures.

**3.6. Structure:** The word “structure” means a combination of materials other than a building, including a sign, fence, wall, terrace, walk, or driveway.

**3.7. Historic District or District.** Except as used in Subsections 1.1, 1.2, 2.1, and 5.3 of Article XXV of the By-Law, the words “Historic District” and “District” as used in Article XXV of the By-Law shall refer both to the Historic District and the Brown’s Wood Historic District.

#### **Section 4. Duties, Power, And Authority of Historic District Commission.**

**4.1. Duties.** The Commission shall have the duty of implementing this By-law by receiving and reviewing applications in connection with the alteration or construction of any building or structure within the Historic District and by acting on each such application as hereinafter provided in this By-law. The Commission shall have the further duty of informing the Massachusetts Historical Commission of the likely impact on the District of any state or federally funded, licensed, or assisted project.

**4.2 Authority.** Except as otherwise provided in **Section 6**, of this By-law, no building or structure within the Historic District shall be constructed or altered in any way that affects exterior architectural features unless the Commission shall first have issued a Certificate of Appropriateness, a Certificate of Non-Applicability, or a Certificate of Hardship with respect to such construction or alteration.

A. Any person who desires to obtain a certificate from the Commission shall file with the Commission an application for a Certificate of Appropriateness, a Certificate of Non-Applicability, or a Certificate of Hardship, as the case may be, in such form as the Commission may reasonably determine, together with such plans, elevations, specifications, material, and other information, including, in the case of demolition or removal, a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the Commission to enable it to make a determination on the application.

B. No Building Permit for a construction of a building or structure or for alteration of an exterior architectural feature within the Historic District and no Demolition Permit for demolition or removal of a building or structure within the Historic District shall be issued by the Building Inspector of the Town of Lincoln until the certificate required by this Section has been issued by the Commission.

**4.3. Augmentations.** The Commission shall have such other duties, powers, and authority within the scope of MGL Chapter 40C as may be delegated or assigned to it by vote of a Town Meeting.

#### **Section 5. Criteria**

**5.1. Standards.** In passing upon matters before it, 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 material of the features involved, and the relation of such features to similar features of buildings and structures in the surrounding area. In the case of new construction or additions to existing buildings or structures, 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 buildings and structures in the vicinity, and the Commission may, in appropriate cases, impose dimensional and set-back requirements in addition to those required by applicable By-law. In the event of any conflict between the provisions of this By-law and the Zoning By-law of the Town, which apply to the same property, the conflict shall be resolved by application by the appropriate body of the most restrictive provisions first.

**5.2. Limitations.** The Commission shall not consider interior arrangements or architectural features not subject to public view. The Commission shall not make any recommendation or

requirement except for the purpose of preventing developments incongruous to the historic aspects or the architectural characteristics of the surroundings and of the Historic District.

### **5.3. Standards Applicable to the Brown's Wood District**

#### **a. General Objectives of the Brown's Wood District:**

- (i) The maintenance and enhancement of the Modern design ideas and characteristics that inform the homes of the Brown's Wood District, while supporting the updating of its homes and the diversity of the characteristic architectural expression of the Brown's Wood District
- (ii) The preservation of the woodland landscape, ensuring that the houses fit into that landscape rather than dominate it. The woodland is a major unifying factor that ties this Brown's Wood District together, establishing its setting and context.

#### **b. General Description of Neighborhood, Architectural and Historical Characteristics of the Brown's Wood District:**

- (i) The absence of traditional or historical architectural styles as it was put by the founding homeowners in the 1950s: "no colonials and no ranches."
- (ii) The diversity of the architectural forms within the Modern architectural idiom.
- (iii) The dominance of the natural landscape, topography and woodland setting.
- (iv) Houses are sited within the landscape and topography, with massing and scale that are reflective of the sites, fit into the woodland and embrace nature, rather than competing with it.
- (v) Houses are set in the woods, rather than set on a lot surrounded by yard space. The houses are seen through a natural screen of trees and woodland.
- (vi) Property lines are generally invisible, without fences or large landscaped areas separating properties.
- (vii) Lawns and formal landscaping do not extend to the street. Large trees and natural woodland vegetation are preserved, and landscaping and plantings are natural or naturalized, maintaining the woodlands character.
- (viii) Varying setbacks, orientation and massing are used to minimize impacts and maximize privacy and access to nature. Houses are sited and oriented without reference to the streets of the neighborhood, and avoid the typical suburban relationship of houses to street.
- (ix) Houses are generally horizontal and low in their massing, utilizing flat or low-pitch roofs, either eave-less or with deep overhanging eaves.
- (x) Windows often serve to connect the inside and outside, bringing the outside into the house, rather than walling it off, economically expanding the apparent living areas.
- (xi) Houses have little in the way of decorative elements (shutters, gables etc.), so that decoration and interest arises out of the form, the materials used and especially the setting and surroundings.
- (xii) Houses have incorporated and experimented with new technologies and forms, in particular reflecting an early interest in sustainable design, including the use of industrial materials, sensitive siting, passive and active solar and efficient use of space and materials.

## **Section 6. Exemptions and Exclusions**

**6.1. Exemptions.** Use, interior arrangements, and exterior architectural features not subject to public view are exempt from the jurisdiction of the Commission.

**6.2. Exclusions.** The authority of the Commission shall not extend to review of the following categories of buildings or structures or exterior architectural features in the Historic District, and the buildings or structures or exterior architectural features so excluded may be constructed or altered within the Historic District without review by the Commission:

**6.2.1.** Temporary structures of signs, subject, however, to such conditions as to duration of use, location, lighting, removal, and similar matters as the Commission may reasonably specify;

**6.2.2.** Terraces, walks, driveways, sidewalks, roadside paths, and similar structures, provided that any such structure is substantially at grade level;

**6.2.3.** Storm doors and windows, screens, window air-conditioners, lighting fixtures, antennae, and similar appurtenances;

**6.2.4.** The color of paint;

**6.2.5.** The color of materials used on roofs; and

**6.2.6.** Signs of not more than one (1) square foot in area in connection with use of a residence for a customary home occupation or for professional purposes, provided only one such sign is displayed in connection with each residence and, if illuminated, is illuminated only indirectly; and one sign in connection with the non-residential use of each building or structure which is not more than twelve (12) square feet in area, consists of letters painted on wood without symbol or trademark, and, if illuminated, is illuminated only indirectly.

**6.3. Additional Exclusions.** The Commission may determine from time to time after public hearing that additional categories of exterior architectural features and structures enumerated in MGL Chapter 40C may be constructed or altered without review by the Commission without causing substantial derogation from the intent and purpose of this By-law.

**6.4. Non-Applicability to Ordinary Maintenance and Related Actions.** Nothing in this By-law shall be construed to prevent the ordinary maintenance, repair, or replacement of any exterior architectural feature within the Historic District 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 construed to prevent the meeting of requirements certified by a duly-authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, nor construed to prevent any construction or alteration under a permit duly issued prior to the effective date of this By-law.

**6.5. Energy Conserving or Producing Devices.** . The Commission shall, after public hearing, set forth in such manner as it may determine, a variety of designs of certain appurtenances, such as solar energy equipment and wind-activated power-generating equipment, which will meet the requirements of the Historic District, but no such roster of designs shall limit the right of an applicant to present other designs to the Commission for its approval.

**6.6. Certificates of Non-Applicability.** Upon request, the Commission shall issue a Certificate of Non-Applicability with respect to construction or alteration in any category then not subject to review by the Commission in accordance with the provisions of this Section.

## **Section 7. Commission Procedure**

**7.1. Meetings.** Meetings of the Commission shall be held at the call of the Chairman and shall be called at the request of two members of the Commission and in such other manner, including, in the absence of the Chairman, at the call of the Vice-chairman, as the Commission shall determine in its rules. Notice of meetings shall be posted at least forty-eight (48) hours in advance.

**7.2. Quorums and Voting.** The majority of the members of the Commission shall constitute a quorum, but the concurring vote of at least four (4) members of the Commission shall be necessary to issue any certificate and to determine whether a public hearing is required as specified below.

**7.3. Initial Determinations.** The Commission shall determine promptly, and in all events within fourteen (14) days after the filing of an application for a Certificate of Appropriateness, a Certificate of Non-Applicability, or a Certificate of Hardship, as the case may be, whether the application involves any exterior architectural features which are subject to approval by the Commission. If the Commission determines that such application involves any such features which are subject to approval by the Commission, the Commission shall hold a public hearing on such application unless such hearing is dispensed with as hereinafter provided.

**7.4. Dispensing with Public Hearings.** A public hearing on an application need not be held if:

- 1) such hearing is waived in writing by all persons entitled to notice thereof; or
- 2) if the Commission determines that the exterior architectural feature involved or its category, as the case may be, is so insubstantial in its effect on the Historic District that it may be reviewed by the Commission without public hearing on the application, provided, however, that, if the Commission dispenses with a public hearing on an application, notice of the application shall be given to the owners of all adjoining property and other property deemed by the Commission to be materially affected thereby as hereinafter provided, and ten (10) days shall elapse after the mailing of such notice before the Commission may act upon such application.

**7.5. Public Hearings.** If the Commission decides to hold a public hearing on any application, it shall fix a reasonable time for such hearing and shall give public notice of the time, place and purposes thereof, at least fourteen (14) days before said hearing, in such manner as it may determine, and by mailing, postage prepaid, a copy of said notice to the applicant, to the owners of all adjoining property and other property deemed by the Commission to be materially affected thereby, as they

appear on the most recent real estate tax list of the Board of Assessors, to the Planning Board, to any person filing written request for notice of hearings (such request to be renewed yearly in December), and to such other persons as the Commission shall deem entitled to notice.

As soon as convenient after such public hearing, but in any event within sixty (60) days after the filing of the application or within such further time as the applicant may allow in writing, the Commission shall make a determination of the application. If the Commission shall fail to make a determination within such period, the Commission shall thereupon issue a Certificate of Hardship.

**7.6. Certificate of Appropriateness.** If the Commission determines that the construction or alteration for which an application for a Certificate of Appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the Historic district, the Commission shall cause a Certificate of Appropriateness to be issued to the applicant.

In the case of a disapproval of an application for a Certificate of Appropriateness, the Commission shall place upon its records the reasons for such determination and shall forthwith cause a notice of its determination, accompanied by a copy of the reasons therefor as set forth in the records of the Commission, to be issued to the applicant, and the Commission may make recommendations to the applicant with respect to the appropriateness of design, arrangement, texture, materials, and similar features. Prior to the issuance of any disapproval, the Commission may notify the applicant of its proposed action accompanied by recommendations of changes in the applicant's proposal which, if made, would make the application acceptable to the Commission. If, within fourteen (14) days of the receipt of such notice, the applicant files a written modification of his application in conformity with the recommended changes of the Commission, the Commission shall cause a Certificate of Appropriateness to be issued to the applicant.

**7.7. Certificate of Non-Applicability.** In the case of a determination by the Commission that an application for a Certificate of Non-Appropriateness or for a Certificate of Non-Applicability does not involve any exterior architectural feature, or involves an exterior architectural feature which is not then subject to review by the Commission in accordance with the provisions of **Section 6**, the Commission shall cause a Certificate of Non-Applicability to be issued to the applicant.

**7.8. Certificate of Hardship.** If the construction or alteration for which an application for a Certificate of Appropriateness has been filed shall be inappropriate, or in the event of an application for a Certificate of Hardship, the Commission shall determine whether, owing to conditions especially affecting the building or structure involved, but not affecting the Historic District generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant, and whether such application may be approved without substantial derogation from the intent and purpose of this By-law. If the Commission determines that, owing to such conditions, failure to approve an application will involve substantial hardship to the applicant, and approval thereof may be made without such substantial detriment or derogation, or, in the event of failure to make a determination on an application within the time specified in **Section 7.5** above, the Commission shall cause a Certificate of Hardship to be issued to the applicant.

**7.9. Execution of Certificates.** Each Certificate issued by the Commission shall be dated and signed by its Chairman, Vice-Chairman, Secretary, or other person designated by the Commission to sign such Certificates on its behalf.

**7.10. Rules, Regulations, and Permanent Records.** The Commission shall keep a permanent record of its resolutions, transactions, and determinations, and of the vote of each member participating therein, and may adopt and amend such rules and regulations not inconsistent with the provisions of this By-law and MGL, Chapter 40C, and prescribe such forms as it shall deem desirable and necessary for the regulation of its affairs and the conduct of its business. The Commission shall file a copy of any such rules and regulations with the Town Clerk.

**7.11. Final Dispositions.** The Commission shall file with the Town Clerk and with the Building Inspector a copy or notice of all Certificates and determinations of disapproval issued by it.

**Section 8. Review Procedure.**

**8.1. Authorized Review.** Any applicant aggrieved by a determination of the Commission may, within twenty (20) days after the filing of the notice of such determination with the Town Clerk, file a written request with the Commission for a review by a person or persons of competence and experience in such matters, designated by the Metropolitan Area Planning Council, of which the Town of Lincoln is a member.

**8.2. Review Finding.** The finding of the person or persons asking such review shall be filed with the Town Clerk within forty-five (45) days after the request, and shall be binding on the applicant and the Commission, unless a further appeal is sought in the Superior Court, as provided below.

**Section 9. Remedy by Superior Court.**

**9.1. Appeal to Superior Court.** Any applicant aggrieved by a determination of the Commission or by the finding of a person or persons making a review may, within twenty (20) days after the filing of the notice of such determination or such finding with the Town Clerk, appeal to the Superior Court sitting in equity for Middlesex County. The Court shall hear all pertinent evidence and shall annul the determination of the Commission if it finds the decision of the Commission to be unsupported by the evidence, or to exceed the authority of the Commission, or may remand the case for further action by the Commission, or make such other decree as justice and equity may require. The remedy provided in this Section shall be exclusive; but the parties shall have all rights of appeal and exception as in other equity cases. Costs shall not be allowed against the Commission unless it shall appear to the Court that the Commission acted with gross negligence, in bad faith, or with malice in the matter from which the appeal was taken. Costs shall not be allowed against the party appealing from such determination of the Commission unless it shall appear to the Court that the appellant acted in bad faith or with malice in making the appeal to the Court.

**9.2. Jurisdiction of Superior Court.** The Superior court sitting in equity for Middlesex County shall have jurisdiction to enforce the provisions of this By-law and the determinations, rulings and regulations issued pursuant thereto, and may, upon petition of the Board of Selectmen or of the Commission, restrain by injunction violations thereof; and without limitations, such Court may order the removal of any building, structure, or exterior architectural feature constructed in violation thereof, or the substantial restoration of any building, structure, or exterior architectural feature altered or demolished in violation thereof, and may issue such other orders for relief as may be equitable.

Whoever violates any of the provisions of this By-law shall be punished by a fine of not less than ten dollars (\$10) nor more than five-hundred dollars (\$500). Each day during any portion of which a violation continues to exist shall constitute a separate offense.

**Section 10. Reports to the Massachusetts Historical Commission.**

**10.1.** This By-law, amendments thereto, maps of areas in the Historic District created thereunder, and annual reports and other publications of the Commission, and rosters of membership therein, shall be filed with the Massachusetts Historical Commission.

*Adopted at the 1981 Annual Town Meeting; integrated into General By-Laws, 2008 et seq.*

## **ARTICLE XXVI Right to Farm By-law**

### **Section 1. Legislative Purpose and Intent**

This “Right to Farm” By-law establishes a process by which the Town of Lincoln will provide information to all present and future residents regarding existing state law pertaining to agriculture. The mechanism for providing notice is to be determined by the town. This By-law provides no new benefits or protections beyond those already contained in the Massachusetts State laws.

The purpose and intent of this By-law is to embrace and explain the rights to farm accorded to all citizens of the Commonwealth under Article 97, of the Articles of Amendment 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 Lincoln 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 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 primary purpose of agriculture, or accessory thereto.

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

- Farming in all its branches and the cultivation and tillage of the soil;
- Dairying;
- Production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural, viticultural, or horticultural commodities;
- Farmers markets, CSA programs;
- Growing and harvesting of forest products upon forest land, and any other forestry or lumbering operations;
- Raising of livestock, including horses;
- Keeping of horses as a commercial enterprise;
- Keeping and raising of poultry, swine, cattle, sheep, rabbits, ratites, camelids and other domesticated animals for food and other agricultural purposes, including bees, fiber, fur-bearing animals, and any forestry and lumbering operations;
- Preparations for market, delivery to storage or to market or to carriers for transport to market.

Farming in Lincoln may 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;
- Storage and 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 or propagation, processing, management or sale of the agricultural products;
- On-farm relocation of earth and the clearing of ground for farming and or agricultural operations.

### **Section 3. Applicability**

The benefits and protections affirmed by this By-law are intended to apply exclusively to those commercial agricultural and farming operations and activities conducted in accordance with generally accepted agricultural practices.

### **Section 4. Right to Farm Declaration**

The Right to Farm is hereby recognized to exist within the Town of Lincoln. The above-described agricultural and farm-related activities may occur on holidays, weekdays, and weekends by night or day and shall include the attendant incidental noise, odors, dust, and fumes associated with normally accepted agricultural practices. Impacts that may be caused to others through the normal practice of agriculture may be more than offset by the benefits of farming to the neighborhood, community, and society in general. The benefits and protections affirmed by this By-law are intended to apply exclusively to those agricultural operations and activities conducted in accordance with generally accepted agricultural practices. No benefits and protections are conferred to agricultural activities whenever adverse impact results from negligence or willful or reckless misconduct in the operation of any such agricultural or farming operation, place, establishment or facility or any of its appurtenances. 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 5. Disclosure Notification**

Within 30 days after this By-law becomes effective, the Board of Selectmen shall post the following disclosure on the official bulletin board and website of the Town, at any other location at its discretion, and make such disclosure available for distribution upon request in the offices of the Board of Selectmen, Board of Assessors, and the Town Clerk.

“It is the policy of the Town of Lincoln to conserve, protect and encourage the maintenance and improvement of agricultural land for the production of food and agricultural products, and also for its natural and ecological value. This disclosure notification is to inform buyers and 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. Buyers or occupants are also informed that the location of property within the Town may be impacted by commercial agricultural operations including the ability to access water services for agricultural use under certain circumstances.”

### **Section 6. Resolution of Disputes**

Any person having a complaint about a farm or farming activity or practice is encouraged to seek an amicable solution through resolution directly with the owner or operator of the farm at issue. Such person may also, notwithstanding the pursuit of other available remedies, file such a complaint with the Board of Selectmen. The Board of Selectmen may, at its sole discretion and to the extent the Board believes resolution of the matter may be facilitated by involvement of the Town, forward the complaint to the Agriculture Commission, or other appropriate board or officer, and request that recommendations for resolution be provided within an agreed upon timeframe. Notwithstanding any

other provision of this section, however, the Board of Selectmen shall not be required to forward a complaint filed in accordance herewith or to take any other action.

### **Section 7. 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 Lincoln hereby declares the provisions of this By-law to be severable.

## **ARTICLE XXVII Capital Planning**

### **Establishment, Purpose, and Duties**

There shall be a committee known as the Capital Planning Committee (the “CapCom”). The fundamental purpose of the CapCom shall be to work with the Finance Committee to enhance the Town’s capacity to identify, prioritize, and understand the financial implications of capital projects and land acquisitions, including but not limited to: A) all proposed real estate acquisitions that have a cost over \$10,000; and (B) all proposed construction projects, preventive maintenance, repairs, replacements, and equipment acquisitions that will have a useful life of at least five years and a cost that requires capitalization in accordance with the Town’s financial accounting policies, in all cases regardless of the method by which they are or may be funded, including but not limited to: (a) annual appropriations (a/k/a cash-capital); (b) debt-financing; (c) capital-exclusions; and (d) Community Preservation Act appropriations.

The CapCom shall develop and consult with the Finance Committee regarding a long-term Capital Plan that addresses the timing and estimated costs of capital projects anticipated by the agencies whose budgets are considered by the Town Meeting, including Lincoln-Sudbury Regional High School and the Water Commission.

The CapCom shall also review and make recommendations regarding capital projects and maintenance expenditures that will be funded by annual appropriations in accordance with the Finance Committee’s annual financial guidelines.

### **Membership, Appointment, Qualifications, and Terms**

The CapCom shall be comprised of nine Members:

Five At-Large Members, three of whom are appointed by the Board of Selectmen and two of whom are appointed by the Moderator. No At-Large Member shall either: (a) serve as a member of the Board of Selectmen, the School Committee, the Conservation Commission, or the Library Board during their term on the CapCom; or (b) have served on such boards, commission, or committee within the two years preceding his or her appointment to the CapCom.

Four Representative Members, consisting of one appointed by and from each of the Board of Selectmen, the School Committee, the Conservation Commission, and the Library Board.

The At-Large Members shall be divided into three classes with staggered three-year terms as follows: (a) one class consisting of an At-Large Member appointed by the Board of Selectmen and an At-Large Member appointed by the Moderator; (b) one class consisting of an At-Large Member appointed by the Board of Selectmen and an At-Large Member appointed by the Moderator; and (c)

one class consisting of an At-Large Member appointed by the Board of Selectmen. Following the final adjournment of the Annual Town Meeting at which this Bylaw is first adopted, the following actions shall be taken to establish the staggered three-year terms and classes: (1) the Board of Selectmen shall appoint one At-Large Member for a three-year term, one At-Large Member for a two-year term, and one At-Large Member for a one-year term; and (2) the Moderator shall appoint one At Large Member for a three-year term and one At-Large Member for a two-year term.

The term of office of each At-Large Member shall commence immediately upon qualification and shall expire upon the final adjournment of the Annual Town Meeting of the last year of such person's term of office.

The term of office of each Representative Member shall commence immediately upon appointment and shall expire upon the final adjournment of the Annual Town Meeting of the last year of such person's term of office on the appointing board, committee, or commission, unless removed sooner by the appointing board, committee, or commission.

The Town Administrator (or his or her designee) and/or the Finance Director, as determined by the Town Administrator, shall serve as ex-officio, non-voting members of the CapCom. A member of the Finance Committee appointed by the Finance Committee shall serve as a liaison to the CapCom.

The CapCom shall choose its own Chair and other officers.

**ARTICLE XXVIII Revolving Funds**

**Section 1. Revolving Funds**

There are hereby established in the Town of Lincoln pursuant to the provisions of G.L. c.44, §53E½, the following Revolving Funds:

<b>PROGRAM or PURPOSE</b>	<b>REVENUE SOURCE</b>	<b>AUTHORITY TO SPEND FUNDS</b>	<b>USE OF FUNDS</b>	<b>FISCAL YEARS</b>
Student Transportation	Bus Fees	School Committee	To defray expenses related to student transportation.	2018& subsequent years
Preschool Program	User Fees	School Committee	To defray expenses related to Preschool Program services.	2018 & subsequent years
Fire Alarm	Alarm Fees	Lincoln Fire Department	To defray expenses related to fire alarm services.	2018 & subsequent years

Affordable Housing	Rental Income	Housing Commission	To defray expenses for maintenance and rehabilitation of town-owned affordable homes, to cover administrative costs of running the housing program, and to defray miscellaneous costs of memberships and training for the housing commission members, staff, and members of related boards.	2018 & subsequent years
Firearms Licenses	Firearm Fees	Lincoln Police Department	To defray expenses related to the administration of the firearms licensing program.	2018 & subsequent years
Ambulance	Service charges	Lincoln Fire Department	To defray expenses related to ambulance service operations and to build the balance in the fund to offset the purchase of a future ambulance.	2018 & subsequent years
Parks & Recreation	Parks & Rec Fees	Parks & Recreation Committee	To defray expenses related to Town activities organized or sponsored by the Parks & Recreation Committee.	2018 & subsequent years
Transfer Station/Recycling	Recycling Program receipts	Highway Department	To defray expenses related to transfer station operations.	2018 & subsequent years
Codman Farmhouse	Lease Fees	Board of Selectmen	To defray expenses related to the care and maintenance of the Codman Farmhouse.	2018 & subsequent years

**Section 2. Expenditures Limitation**

Expenditures from each revolving fund set forth herein shall be subject to the limitation established annually by Town Meeting or any increase therein as may be authorized in accordance with G.L. c.44, §53E½.

**ARTICLE XXIX Plastic Bag Ban**

## **Section 1. Findings and Purpose**

Plastic check-out bags have a significant impact on the marine and terrestrial environment, including but not limited to: 1) harming marine and terrestrial animals through ingestion and entanglement; 2) polluting and degrading the terrestrial and marine environments; 3) clogging storm drainage systems; 4) creating a burden for solid waste disposal and recycling facilities; 5) requiring the use of non-renewable fossil-fuel in their composition. Studies have shown that even alternative “compostable” or “biodegradable” bags require very specific and controlled conditions in order to biodegrade, and have potentially negative environmental effects similar to conventional plastic bags. Such bags should therefore be subject to the same restrictions as conventional plastic check-out bags.

The purpose of this Bylaw is to protect the Town’s unique natural beauty and irreplaceable natural resources by reducing the number of single-use plastic check-out bags that are distributed in the Town of Lincoln and to promote the use of reusable bags.

## **Section 2. Definitions**

The following words shall, unless the context clearly requires otherwise, have the following meanings:

“Check-out bag” shall mean a bag provided by a store to a customer at the point of sale. Check-out bags shall not include bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or check-out area of the store.

“Health Agent” shall mean the Health Agent for the Lincoln Board of Health or his/her designee.

“Recyclable paper bag” shall mean a paper bag that is 100% recyclable and contains at least 40% post-consumer recycled content, and displays in a visible manner on the outside of the bag (1) the word “recyclable” or a symbol identifying the bag as recyclable and (2) a label identifying the bag as being made from post-consumer recycled content and the percentage of postconsumer recycled content in the bag.

“Reusable Check-out bag” shall mean a sewn bag with stitched handles that is specifically designed for multiple reuse and that (1) can carry 25 pounds over a distance of 300 feet; (2) is machine washable; and, (3) is either (a) made of natural fibers (such as cotton or linen); or (b) made of durable, non-toxic plastic other than polyethylene or polyvinyl chloride that is generally considered a food-grade material that is more than 4 mils thick.

“Retail Establishment” shall mean any business facility that sells goods directly to the consumer whether or not for profit, including, but not limited to, retail stores, restaurants, pharmacies, convenience and grocery stores, liquor stores, seasonal and temporary businesses.

“Thin-Film, Single-Use Plastic Check-Out Bags” shall mean those bags typically with handles, constructed of high-density polyethylene (HDPE), low density polyethylene (LDPE), linear low density polyethylene (LLDPE), polyvinyl chloride (PVC), polyethylene terephthalate (PET), or polypropylene (other than woven and non-woven polypropylene fabric), if said film is less than 4.0 mils in thickness.

## **Section 3. Regulated Conduct**

a. No Retail Establishment in the Town of Lincoln shall provide Thin-Film, Single-Use Plastic Check-Out Bags to customers after January 1, 2019.

b. If a Retail Establishment provides or sells Check-Out Bags to customers, the bags must be one of the following:

1. Recyclable paper bag; or
  2. Reusable Check-Out bag. For reusable bags, public information advising customers to sanitize reusable bags to prevent food-borne illness must be displayed at the point of checkout.
- c. Charges.

1. Any charge for a Checkout Bag shall be separately stated on a receipt provided to the customer at the time of sale and shall be identified as the “Checkout Bag Charge” thereon.

#### **Section 4. Exemption**

Thin-film plastic bags typically without handles which are used to contain dry cleaning, newspapers, produce, meat, bulk foods, wet items, and other similar merchandise are not prohibited under this law.

#### **Section 5. Enforcement**

Police officers and Health Agents shall have the authority to enforce this bylaw. This bylaw may be enforced through any lawful means in law or in equity, including but not limited to, noncriminal disposition pursuant to G.L. c 40, §21D and Article VI of the General Bylaws. Violations of this bylaw are punishable by a fine of up to \$200 per violation. If non-criminal disposition is elected, then any Retail Establishment that violates any provision of this bylaw shall be subject to the following penalties:

First Offense: written warning

Second Offense: \$50 penalty

Third and subsequent offense: \$200 penalty

#### **Section 6. Regulations**

The Board of Health may adopt and amend rules and regulations to effectuate the purposes of this bylaw.

#### **Section 7. Severability**

If any provision of this bylaw is declared invalid or unenforceable the other provisions shall not be affected thereby.

### **ARTICLE XXX The Regulation of Sale and Use of Bottled Water**

#### **Section 1. Findings and Purpose**

Plastic “disposable” water bottles made of polyethylene terephthalate (PET) contribute hazards to human health, societal economies, wildlife, and the environment. Examples of these problems include:

1. Americans discard more than 30 million tons of plastic a year. Only 8 percent of that gets recycled. The rest ends up in landfills, is incinerated, or becomes the invasive species known as “litter.” The amount of solid waste created by one-use plastic water bottles is staggering.
2. Chemicals leached by plastics are in the blood and tissue of nearly all of us. Exposure to them is linked to cancers, birth defects, impaired immunity, endocrine disruption and other ailments.
3. There are thousands of landfills in the United States. Buried beneath each one of them, plastic leachate full of toxic chemicals is seeping into groundwater and flowing downstream into lakes and rivers.
4. Manufacturers’ additives in plastics, like flame retardants, BPAs and PVCs, can leach their own toxicants. These oily poisons repel water and stick to petroleum-based objects like plastic debris.

5. Entanglement, ingestion and habitat disruption all result from plastic ending up in the spaces where animals live. In our oceans alone, plastic debris outweighs zooplankton by a ratio of 36-to-1. Plastic cannot biodegrade; it breaks down into smaller and smaller pieces over time, but is still plastic.
6. In the face of a growing global water crisis, water bottling corporations are turning water into a profit-driven commodity when it needs to be regarded as a human right.
7. The town of Lincoln has high quality tap water, and provides regular governmental reports on its quality. The recommended eight glasses of water a day, at U.S. tap rates equals about \$.49 per year; that same amount of bottled water is about \$1,400.

The purpose of this Bylaw is to protect the town's beauty, reduce litter, protect the health of present and future generations, and save the citizens of the Town money that is needlessly spent on packaged water from distant sources in one-use bottles.

### **Section 2. Regulated Conduct**

It shall be unlawful to sell non-reusable polyethylene terephthalate (PET) bottles of 1 litre (34 ounces) or less containing uncarbonated, unflavored drinking water in the Town of Lincoln on or after the effective date of this bylaw. Water may be provided for free in any form.

In the event of a declaration (by Emergency Management Director, other duly-authorized Town, Commonwealth, or United States official) of an emergency affecting the availability and/or quality of drinking water to Lincoln residents, citizens and officials shall be exempt from this bylaw until seven days after such declaration has ended.

### **Section 3. Enforcement**

This shall be enforced by the Town Administrator and/or his/her designees. Police officers and Health Agents shall have the authority to enforce this bylaw. This bylaw may be enforced through any lawful means in law or in equity, including but not limited to, noncriminal disposition pursuant to G.L. c. 40, §21D and Article VI of the General Bylaws.

Violations of this bylaw are punishable by a fine of up to \$200 per violation.

If non-criminal disposition is elected, then any person that violates any provision of this bylaw shall be subject to the following penalties:

First Offense: written warning

Second Offense: \$50 penalty

Third and Subsequent Offense: \$200 penalty

### **Section 4.**

In any provision of this bylaw shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions of this bylaw, which shall remain in full force and effect.

Proposed effective date of this bylaw: January 1<sup>st</sup>, 2019