

DIVISION 1

BYLAWS

PART I

ADMINISTRATIVE LEGISLATION

Chapter 1

GENERAL PROVISIONS

ARTICLE I Adoption of Revised General Bylaws

§ 1-1. Repeal and continuation of prior bylaws.

ARTICLE II Penalties and Enforcement

§ 1-2. Criminal complaint.

§ 1-3. Noncriminal disposition.

[HISTORY: Adopted by the Town Meeting of the Town of Plympton as indicated in article histories. Amendments noted where applicable.]

ARTICLE I Adoption of Revised General Bylaws

§ 1-1. Repeal and continuation of prior bylaws.

All bylaws or part of bylaws heretofore adopted which are consistent with the provisions of the following bylaws are hereby repealed and annulled; but the provisions of these bylaws, insofar as they are the same as the provisions of bylaws heretofore adopted, shall be construed as a continuation of said bylaws and not as new enactments.

ARTICLE II Penalties and Enforcement

§ 1-2. Criminal complaint.

Any bylaw of the Town of Plympton may be enforced through any lawful means in law or in equity, including but not limited to enforcement by criminal indictment or on complaint before the District Court pursuant to MGL c. 40, § 21. Each day that a violation exists shall constitute a separate offense. A fine of up to \$300 may be imposed for each offense, unless other provision is expressly made in these bylaws.

§ 1-3. Noncriminal disposition.

- A. Alternative methods of enforcement. Any duly adopted bylaw of the Town of Plympton, or rule or regulation of its boards, commissions, and committees and officers, the violation of which is subject to a specific penalty, may, at the discretion of the Town employee who is the appropriate enforcing person, be enforced by the method provided in MGL c. 40, § 21D. Each day on which any violation exists shall be deemed to be a separate offense, but each offense shall require a separate notice to be served in accordance with the requirements of MGL c. 40, § 21D.
- B. Enforcing person. "Enforcing person", as used in this bylaw, shall mean any Selectmen or any police official of the Town of Plympton with respect to any offense, and the

Conservation Commission and its designees, the Board of Health and its designees, and the Zoning Enforcement Officer and such other officials as the Board of Selectmen may from time to time designate, each with respect to violation of bylaws and rules and regulations within their respective jurisdictions. If more than one official has jurisdiction in a given case, any such official may be an enforcing person with respect thereto.

- C. Dog control violations. Whenever a complaint is sought in a District Court for a violation of a bylaw made under the provisions of MGL c. 140, § 173, the clerk shall send a written notice to the person complained against stating that such a complaint has been sought and will issue unless such person appears before such clerk and confesses the offense either personally or through an agent duly authorized in writing, or by mailing to such clerk, with the notice, the fine provided herein. For the first offense committed by a person within a calendar year, the clerk shall dismiss the charge without the payment of a fine. For a second offense in the Town within a calendar year, the payment of a fine of \$50 shall operate as a final disposition of the case. For a third offense in the Town within a calendar year, payment of a fine of \$60 shall operate as a final disposition of the case. For a fourth or subsequent offense in the Town within a calendar year, payment of a fine of \$100 shall operate as a final disposition of the case. Payment shall be made only by postal note, money order or check. Notwithstanding the foregoing procedure and schedule of fines, but subject to all other provisions of this section, the Town may, by bylaw, provide for an alternative procedure and a different schedule of fines.
- D. Procedures.
- (1) Proceedings under this section shall not be deemed criminal; and no person notified to appear before the clerk of a District Court as provided herein shall be required to report to any probation officer, and no record of the case shall be entered in the probation records.
 - (2) If a person notified to appear, as hereinbefore provided, fails to appear or pay the fine within 21 days of the sending of the notice, or, having appeared, does not desire to avail himself of the procedure established by this section, the clerk shall issue the complaint and the procedure established for criminal cases shall be followed.
 - (3) If any person fails to appear in accordance with the summons issued upon such complaint, the clerk of the court shall send such person, by registered mail, return receipt requested, a notice that the complaint is pending and that, if the person fails to appear within 21 days from the sending of such notice, a warrant for his arrest will be issued.

Chapter 5
ADMINISTRATION

ARTICLE I
Bylaws

ARTICLE II
Town Seal

§ 5-1. Amendment at Town Meeting.

§ 5-2. Change at Town Meeting.

[HISTORY: Adopted by the Town Meeting of the Town of Plympton as indicated in article histories. Amendments noted where applicable.]

ARTICLE I
Bylaws

§ 5-1. Amendment at Town Meeting.

Except as otherwise required by general or special law, the bylaws may be amended by a majority vote at any Town Meeting.

ARTICLE II
Town Seal

§ 5-2. Change at Town Meeting.

The design of the seal of the Town of Plympton may be changed by a vote of the Town at an Annual Town Meeting.

Chapter 10

BOARDS, COMMISSIONS AND COMMITTEES

ARTICLE I
Finance Committee

- § 10-1. Membership, term and election.
- § 10-2. Capital Improvement Planning Committee.

ARTICLE II
Planning Board

- § 10-3. Membership and election.
- § 10-4. Duties.
- § 10-5. Meetings; access to records.
- § 10-6. Review of plans for public structures.
- § 10-7. Authority regarding public lands, streets and ways.
- § 10-8. Studies and other information.
- § 10-9. Street names.

§ 10-10. Annual report.

ARTICLE III
Board of Appeals

§ 10-11. Establishment.

ARTICLE IV
Community Preservation Committee

- § 10-12. Establishment and membership.
- § 10-13. Duties.
- § 10-14. Requirements for quorum and cost estimates.
- § 10-15. Amendments.
- § 10-16. Severability.
- § 10-17. Effective date.
- § 10-18. Application for exemption from surcharge.

[HISTORY: Adopted by the Town Meeting of the Town of Plympton as indicated in article histories. Amendments noted where applicable.]

ARTICLE I
Finance Committee

§ 10-1. Membership, term and election.

The Town shall have a Finance Committee (the "Committee") consisting of five members to be elected on the Annual Ballot for a term of three years. Two members of such Committee shall be elected annually, except every third year, when one member shall be elected. No elected or appointed official shall be eligible to membership on this Committee. No Town employee shall be eligible to membership on this committee except as approved by the Board of Selectmen. The only exceptions that can be made by the Board of Selectmen are for individuals not employed by the Town for more than 19 hours per week.

§ 10-2. Capital Improvement Planning Committee.

The Finance Committee shall also serve as and have the duties and responsibilities of the Capital Improvement Planning Committee as set forth under this bylaw and in accordance

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with Chapter 321 of the Acts of 2012, entitled "An Act Authorizing Certain Development Parcel Tax Revenues to be Deposited in a Special Fund in the Town of Plympton". For purposes of said Chapter 321, a vote of the Finance Committee shall be sufficient to constitute a vote of both the Finance Committee and the Capital Improvement Planning Committee, provided that the meeting notice posted under MGL c. 30A, §§ 18 through 25 lists both the Finance Committee and Capital Improvement Planning Committee.

A. Members; officers; compensation.

- (1) The Committee shall consist of the members of the Finance Committee.
- (2) The Committee shall annually elect from its members a Chairperson and such officers as it shall deem appropriate, and shall adopt such rules and regulations affecting its governance as may be deemed necessary.
- (3) Committee members shall serve with no compensation.

B. Capital improvement defined. For the purpose of this bylaw a "capital improvement" is defined as any acquisition or lease, tangible asset or project that costs at least \$20,000 and has a useful life greater than five years as determined by the Committee.

C. Duties of Committee; Town Meeting.

- (1) Department heads and chairpersons of all boards, commissions and committees of the Town, whether elected or appointed, shall submit to the Committee, at a time designated by rules and regulations of the Committee, recommendations and statements of needs and/or proposed plans involving capital expenditure requirements for the subsequent five years.
- (2) The Committee shall present to the Board of Selectmen each year, on or before the date identified by said Board for the close of the Annual Town Meeting warrant, its proposed capital plan for the next fiscal year for possible inclusion in the Annual Town Meeting warrant.
- (3) The Committee shall publish an annual report. The report shall include the Committee's recommendations for the scheduling of capital expenditures. The Committee shall assist the Town Meeting with regard to priorities of projects, financing costs, debt schedules and other related matters.

D. This bylaw shall not apply to emergency capital improvements. The Board of Selectmen shall be responsible for determining what constitutes an emergency.

ARTICLE II Planning Board

§ 10-3. Membership and election.

The Planning Board of the Town of Plympton shall consist of five members to be elected as provided in MGL c. 41, § 81A, as amended.

§ 10-4. Duties.

The duties of the Board shall be such as are provided in MGL c. 41, §§ 81B to 81GG, inclusive, as amended, and further to consider, advise upon, and recommend municipal improvements either at the request of other officials, departments or committees of the Town, or upon request of the Town as evidenced by its vote at the Annual or Special Town Meeting, or upon its own initiative.

§ 10-5. Meetings; access to records.

The Board shall meet at regular intervals, which shall be at least as frequently as monthly. It shall have access at all times to all public documents, plans, or information in the possession, custody, or control of any Town official, department, board or committee, except as otherwise provided by law.

§ 10-6. Review of plans for public structures.

The Board shall examine and review the plans for the exterior of any public building, bridge, monument, memorial, or similar feature or structure, and for the grounds around the same, and may make thereon in writing such recommendations relative thereto as it may deem pertinent and proper.

§ 10-7. Authority regarding public lands, streets and ways.

All plans and all Town Meeting warrant articles providing for 1) acquiring by purchase, gift, or taking any land or buildings for public use; 2) selling, abandoning, or leasing any public lands or buildings; or 3) laying out, extending, revising, or discontinuing any portion of any street, way, park, square, or playground shall be referred to the Board for its study and recommendations, and no action shall be taken by the Town until such Board has reported thereon or has allowed 45 days to elapse after such reference without submitting a report.

§ 10-8. Studies and other information.

In addition to holding meetings, the Board may provide for lectures or other educational programs in connection with the performance of its duties, conduct or examinations and studies, and submission of its recommendations relative to any matter properly within the scope of its work.

§ 10-9. Street names.

The Board shall approve the names of all new streets and public ways, and all changes of name proposed for any existing street, public way, park, square, or playground, and no sign or marker designating any street, public way or other such public area shall be ordered or erected until the Board shall have first indicated in writing its approval of the name therefor and filed the same with the Town Clerk.

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§ 10-10. Annual report.

- A. The Board shall render to the Town at the Annual Town Meeting a report in writing, signed by a majority of the members of the Board, which shall be a public document on file thereafter with the Town Clerk.
- B. Said report shall include:
- (1) A review of the Board's activities during the year immediately preceding the date thereof;
 - (2) A detailed account of any expenditures of the Board's appropriations for the same period;
 - (3) Information regarding the condition of the Town and any plans or proposals for its development and estimates of the cost thereof;
 - (4) Its recommendations, if any, supported by reasons, for special projects or studies to be undertaken or commenced in the ensuing year; and
 - (5) Such additional information or material as the Board may deem pertinent.

ARTICLE III

Board of Appeals**§ 10-11. Establishment.**

The Board of Appeals authorized by and existing under the Town building laws shall constitute the Board of Appeals required by MGL c. 41, § 81Z, as amended.

ARTICLE IV

Community Preservation Committee**§ 10-12. Establishment and membership.**

- A. There is hereby established a Community Preservation Committee, consisting of nine voting members pursuant to the provisions of MGL c. 44B, § 5. The composition of the Committee, the appointing authority and the term of office for the Committee members shall be as follows:
- (1) One member of the Conservation Commission as designated by the Commission;
 - (2) One member of the Historical Commission as designated by the Commission;
 - (3) One member of the Planning Board as designated by the Board;
 - (4) The Highway Surveyor, whose responsibilities include the duties of the Board of Park Commissioners established under MGL c. 45, § 2, or his designee;
 - (5) One member of the Council on Aging as designated by the Council.
- B. The Board of Selectmen shall appoint four at-large members.

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- C. Each member of the Committee shall serve for a term of three years or until the person no longer serves in the position or on the board or committee as set forth above, whichever is earlier.
- D. Should any of the officers and commissions, boards, or committees who have appointing authority under this bylaw be no longer in existence for whatever reason, the Board of Selectmen shall appoint a suitable person to serve in their place.
- E. Any member of the Committee may be removed for cause by their respective appointing authority after a hearing.

§ 10-13. Duties.

- A. The Community Preservation Committee shall study the needs, possibilities, and resources of the Town regarding community preservation, including the consideration of regional projects for community preservation. The Committee shall consult with existing municipal boards, including the Conservation Commission, the Historical Commission, the Planning Board, the Department of Public Works, the Housing Authority, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the Community Preservation 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, in each of two 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, preservation, rehabilitation and restoration of open space; for the acquisition, preservation, rehabilitation and restoration of historic resources; for the acquisition, creation, and preservation of land for recreational use; for the acquisition, creation, preservation and support of community housing; and for rehabilitation or restoration of such open space and community housing that is acquired or created as provided in this section; provided, however, that funds expended pursuant to this bylaw shall not be used for maintenance. 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. With respect to recreational use, the acquisition of artificial turf for athletic fields shall be prohibited.
- 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 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 must recommend either that the legislative body spend, or set aside for later spending, not less than 10% of the annual revenues in the Community Preservation Fund for each of the following purposes: open space (not including land for recreational use); historic resources; and community housing.

§ 10-14. Requirements for quorum and cost estimates.

The Community Preservation Committee shall comply with the provisions of the Open Meetings Law, MGL c. 30A, §§ 18 through 25. The Committee shall not meet or conduct business without the presence of a majority of the members of the Community Preservation Committee. The Community Preservation Committee shall approve its actions by majority vote. Recommendations to the Town Meeting shall include the anticipated costs of the recommendations.

§ 10-15. Amendments.

This bylaw may be amended from time to time by a majority vote of the Town Meeting consistent with the provisions of MGL c. 44B.

§ 10-16. Severability.

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

§ 10-17. Effective date.

Provided that the Community Preservation Act is accepted at the 2008 Annual Town Election, this bylaw shall take effect upon approval of the Attorney General of the Commonwealth, and after all requirements of MGL c. 40, § 32, have been met. Each appointing authority shall have 30 days after approval by the Attorney General to make their initial appointments.

§ 10-18. Application for exemption from surcharge.

Applications for exemption from the Community Preservation Act surcharge must be filed with the Board of Assessors no later than three months after the actual tax bills are mailed for the fiscal year.

Chapter 45
RECORDS AND REPORTS

§ 45-1. Inventory required in budget estimates.

[HISTORY: Adopted by the Town Meeting of the Town of Plympton. Amendments noted where applicable.]

§ 45-1. Inventory required in budget estimates.

When submitting their annual budget estimates to the Finance Committee, all officers and committees shall file therewith an inventory list with approximate date of purchase of all equipment under their jurisdiction.

Chapter 50

REVOLVING FUNDS

§ 50-1. Authority and purpose.

§ 50-4. Limitation on spending.

§ 50-2. Payment of fringe benefits.

§ 50-5. Interest.

§ 50-3. Limitation on liabilities incurred.

§ 50-6. Authorized revolving funds.

§ 50-7. Procedures and reports.

[HISTORY: Adopted by the Town Meeting of the Town of Plympton. Amendments noted where applicable.]

§ 50-1. Authority and purpose.

There are hereby established in the Town of Plympton, pursuant to the provisions of MGL c. 44, § 53E 1/2, the following revolving funds, from which the specified department head, board, committee, or officer may incur liabilities against and spend monies without appropriation in accordance with the limitations set forth in this bylaw.

§ 50-2. Payment of fringe benefits.

Fringe benefits of full-time employees whose salaries or wages are paid from the fund shall also be paid from the fund.

§ 50-3. Limitation on liabilities incurred.

No liability shall be incurred in excess of the available balance of the fund.

§ 50-4. Limitation on spending.

The total amount spent during a fiscal year shall not exceed the amount authorized by Annual Town Meeting or any increase therein as may later be authorized by the Board of Selectmen and Finance Committee in accordance with MGL c. 44, § 53E 1/2.

§ 50-5. Interest.

Interest earned on monies credited to a revolving fund established by this bylaw shall be credited to the General Fund.

§ 50-6. Authorized revolving funds.

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Revolving Fund	Authority to Spend	Revenue Source	Use of Fund	Spending Limit
Recreation Commission	Recreation Commission	Sign Sponsorship Program; fees charged to individuals participating in any Recreation Commission sponsored programs and any private sponsorship of said programs; any fees charged for use of any other recreational facilities under the jurisdiction of the Recreation Commission	Support of youth sports programs, community activities and special events	\$20,000
Tax Title	Treasurer/Collector	Miscellaneous and legal fees collected on tax title accounts when paid. In addition, said account shall also be credited with miscellaneous fees and legal fees related to tax possession from the sale or auction of said tax possession.	Processing tax titles and tax possessions, including legal fees, miscellaneous expenses and salaries of staff in the Treasurer/Collector's department and Land Court fees	\$20,000

§ 50-7. Procedures and reports.

Except as provided in MGL c. 44, § 53E 1/2 and this bylaw, all applicable state and local laws and regulations that govern the receipt, custody, expenditure and payment of Town funds shall apply to the use of revolving funds established and authorized by this bylaw.

Chapter 60
TOWN ADMINISTRATOR

**§ 60-1. Authority to appoint and
remove.**

**[HISTORY: Adopted by the Town Meeting of the Town of Plympton. Amendments
noted where applicable.]**

§ 60-1. Authority to appoint and remove.

The Board of Selectmen is hereby authorized and empowered to appoint a Town Administrator for a term of one year or three years and to remove said Administrator at its discretion pursuant to the provisions of MGL c. 41, § 23A.

Chapter 65

TOWN MEETINGS AND ELECTIONS

ARTICLE I

Elections and Town Meeting Warrants

- § 65-1. Dates and times.
- § 65-2. Polling hours for state elections.
- § 65-3. Notice of Town Meeting.
- § 65-4. Annual Town Meeting warrant closing date.
- § 65-5. Special Town Meetings.
- § 65-6. Identification of petitions.
- § 65-7. Copies of articles to Selectmen and Finance Committee.

ARTICLE II

Town Meeting Procedures

- § 65-8. Call to order.
- § 65-9. Quorum.
- § 65-10. Checklist for admission; nonvoters.
- § 65-11. Acting on articles.
- § 65-12. Public participation.
- § 65-13. Manner of voting.
- § 65-14. Limitation on business activity.

[HISTORY: Adopted by the Town Meeting of the Town of Plympton as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Elections and Town Meeting Warrants

§ 65-1. Dates and times.

- A. The annual election of officers shall be held on the third Saturday in May; the Annual Town Meeting for the transaction of municipal business shall be held on the preceding Wednesday.
- B. Polls will be open at 8:00 a.m. for the election of the officers and shall be continuously open for voting until 6:00 p.m.; the meeting for the transaction of business shall be called at 7:00 p.m.

§ 65-2. Polling hours for state elections.

At State Elections, the polls shall be open from 7:00 a.m. until 8:00 p.m.

§ 65-3. Notice of Town Meeting.

Notice shall be given of every Town Meeting by posting an attested copy of the warrant calling the meeting at the main entrance of the Town House and at four other locations in the Town designated by the Selectmen. These copies shall be posted not less than seven days before the appointed time for the meeting and the officer posting the warrant shall immediately make return to the Town Clerk stating the manner in which the warrant was posted, on the original warrant.

§ 65-4. Annual Town Meeting warrant closing date.

The warrant for the Annual Town Meeting shall be closed on the last Monday in March.

§ 65-5. Special Town Meetings.

The Town Meeting shall also convene in special session:

- A. By call of the Board of Selectmen; or
- B. By petition of at least 200 registered voters of the Town.

§ 65-6. Identification of petitions.

In conjunction with each petitioned article made a part of the warrant for a Town Meeting, there shall be inserted in such warrant the name of the first person signing such petitions and the words "and others".

§ 65-7. Copies of articles to Selectmen and Finance Committee.

Department heads or petitioners submitting articles for the warrant shall furnish a copy to both the Selectmen and Finance Committee at the same time.

ARTICLE II

Town Meeting Procedures**§ 65-8. Call to order.**

The opening and procedure of Town Meeting for the transaction of Town business: Every Town Meeting held for the transaction of Town business shall be called to order by the Moderator at the appointed time or as soon thereafter as a quorum of registered votes is in attendance. In the absence of the Moderator, the meeting shall be called to order by the Town Clerk, who shall preside until a temporary Moderator has been chosen who will preside during the absence of the Moderator.

§ 65-9. Quorum.

The presence of 35 registered voters of the Town shall constitute a quorum; however, a number less than 20 may adjourn a meeting from time to time.

§ 65-10. Checklist for admission; nonvoters.

A checklist shall be used in admitting voters to the Town Meeting, except nonvoters may be seated in a defined and separate portion thereof and nonvoters may address the Meeting if the Meeting so votes.

§ 65-11. Acting on articles.

- A. All articles in the warrant shall be acted upon in the order of their arrangement unless the Meeting votes otherwise.
- B. With respect to any article pertaining to the annual operating budget, or subsequent revisions to the annual budget at the same or subsequent Town Meetings, the Moderator shall give the Finance Committee the opportunity to offer the main motion.

§ 65-12. Public participation.

Any person desiring to speak shall arise, address the chair and upon recognition shall stand while speaking and confine himself to the question.

§ 65-13. Manner of voting.

- A. All votes, unless otherwise provided by law, or otherwise directed by the Moderator, shall be taken by a show of hands. If in doubt by the Moderator, or if seven voters immediately question the vote, the Moderator shall call for a standing vote.
- B. Whenever a two-thirds vote is required by statute, such vote may be declared as such by the Moderator without a count and be recorded as such by the Clerk upon such declaration; provided, however, that if seven or more members doubt the vote, a counted vote shall be taken.
- C. If the majority of the Town Meeting requests a vote by ballot on any question, or if the Moderator feels the need of a written vote, such vote shall be taken with the Town furnishing printed ballots.

§ 65-14. Limitation on business activity.

On the day of Town Meeting, no business activity not directly related to the Town Meeting warrant may take place inside the locale where the meeting is or will be convened or within 50 feet of the building entrance. Business activity includes, but is not limited to, sale of any product or service, solicitation of signatures for any reason, the handing out of promotional brochures or political information, or organized demonstrations. Exceptions can only be granted by the Town Moderator when requested in writing at least two weeks prior to the date of Town Meeting.

Chapter 70
TOWN PROPERTY

§ 70-1. Sale by Selectmen.

[HISTORY: Adopted by the Town Meeting of the Town of Plympton. Amendments noted where applicable.]

§ 70-1. Sale by Selectmen.

The Selectmen may sell, either by advertised bid or auction public sale, any Town-owned personal property valued at \$1,500 or less, without a vote of Town Meeting.

PART II

**GENERAL
LEGISLATION**

Chapter 105

ALARMS

ARTICLE I Fire Alarm Systems

§ 105-1. Definitions.

§ 105-2. Fines for false alarms.

ARTICLE II Burglar Alarm Systems

§ 105-3. Definitions.

§ 105-4. Required contact information.

§ 105-5. False alarms.

[HISTORY: Adopted by the Town Meeting of the Town of Plympton as indicated in article histories. Amendments noted where applicable.]

ARTICLE I Fire Alarm Systems

§ 105-1. Definitions.

As used in this bylaw, the following terms shall have the meanings indicated:

FALSE ALARM — The activation of an alarm which results in the Fire Department responding where no actual fire is occurring or has occurred. A false alarm does not include alarms caused by hurricanes, surges or failures in the transmission of electrical power or other conditions that are beyond the control of the user, or smoke caused by cooking, fireplace and stove use where no damage occurs.

§ 105-2. Fines for false alarms.

The owner of any multi-unit dwelling of four residential units or more, commercial or industrial building, public or private school, or a church shall be subject to a fine of \$250 after three fire alarm activations which are deemed to be either false alarms, system malfunctions or alarms activated due to lack of maintenance in any calendar year. The property owner shall be fined for the fourth Fire Department response and each response thereafter until the end of the calendar year. Said fine shall be collected and deposited to the Fire Department Receipts Reserved Account.

ARTICLE II Burglar Alarm Systems

§ 105-3. Definitions.

As used in this bylaw, the following terms shall have the meanings indicated:

FALSE ALARM — Any signal or oral communication transmitted to the Police Department requesting or requiring or resulting in a response on the part of the Police Department when,

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in fact, there has been no unauthorized intrusion, robbery, or burglary, or attempted threat. For the purpose of this definition, activation of alarm systems by acts of God, including, but not limited to, power outages, hurricanes, tornadoes, earthquakes, and similar weather or atmospheric disturbances, shall not be deemed to be a false alarm.

§ 105-4. Required contact information.

The owner of a dwelling house which is equipped with a burglar alarm system shall be required to provide the Police Department with alternate phone numbers, to include work and cellular phone numbers, if applicable, for the purpose of contacting the owner in the event of an alarm activation at the dwelling while the owner is away. Additionally, the owner of a dwelling and the owners of any businesses equipped with an alarm system shall provide the names and phone numbers of a minimum of two persons who have access to the residence or business and have the ability to shut off or reset the alarm system on the demand of the Police Department. In the case of a dwelling house, caretakers should not be a resident of the dwelling house in question. Caretakers shall be available to respond to the dwelling house or business in a reasonable period of time when summoned by the police. The owner of a dwelling house or business which is equipped with a burglar alarm system shall be required to ensure that information provided to the Police Department is up-to-date and accurate. Whoever violates this section by failing to provide the information required shall be subject to a fine of \$50.

§ 105-5. False alarms.

The Plympton police will respond to all reported burglar alarms. In the event of a false alarm, the Police Department will make a notation in the log. After the police have logged three false alarms in a calendar year at the same location, the owner shall be subject to a fine of \$100 for each additional response to a false alarm.

Chapter 120

BUILDINGS AND BUILDING CONSTRUCTION

ARTICLE I Stretch Energy Code

- § 120-1. Definitions.
- § 120-2. Purpose.
- § 120-3. Applicability.
- § 120-4. Authority.
- § 120-5. Adoption of Stretch Code; enforcement.

ARTICLE II Registration and Maintenance of Foreclosed Properties

- § 120-6. Purpose; enforcement authority.
- § 120-7. Definitions.
- § 120-8. Registration.
- § 120-9. Maintenance and security requirements.
- § 120-10. Inspections.
- § 120-11. Violations and penalties.
- § 120-12. Appeals.
- § 120-13. Applicability.
- § 120-14. Severability.

[HISTORY: Adopted by the Town Meeting of the Town of Plympton as indicated in article histories. Amendments noted where applicable.]

ARTICLE I Stretch Energy Code

§ 120-1. Definitions.

As used in this bylaw, the following terms shall have the meanings indicated:

INTERNATIONAL ENERGY CONSERVATION CODE (IECC) 2015 — A building code created by the International Code Council. It is a model code adopted by many state and municipal governments in the United States for the establishment of minimum design and construction requirements for energy efficiency. The baseline energy conservation requirements of the MA State Building Code will default to IECC 2015 and MA amendments.

STRETCH ENERGY CODE — Codified by the Board of Building Regulations and Standards as 780 CMR Appendix 115.AA, the Stretch Energy Code is the International Energy Conservation Code (IECC) 2015 with amendments contained herein.

§ 120-2. Purpose.

The purpose of 780 CMR 115.AA is to provide a more energy-efficient alternative to the base energy code applicable to the relevant sections of the Building Code for new buildings.

§ 120-3. Applicability.

This code applies to residential and commercial buildings. Buildings not included in this scope shall comply with 780 CMR 13 or 34, as applicable.

§ 120-4. Authority.

A municipality seeking to ensure that construction within its boundaries is designed and built above the energy-efficiency requirements of 780 CMR may mandate adherence to this appendix. 780 CMR 115.AA may be adopted or rescinded by any municipality in the commonwealth in the manner prescribed by law.

§ 120-5. Adoption of Stretch Code; enforcement.

- A. The Stretch Code, as codified by the Board of Building Regulations and Standards as 780 CMR Appendix 115.AA, including any amendments or modifications, is herein incorporated by reference into the Town of Plympton Municipal Bylaws, Chapter 120, Article I.
- B. The Stretch Code is enforceable by the Building Inspector.

ARTICLE II

Registration and Maintenance of Foreclosed Properties**§ 120-6. Purpose; enforcement authority.**

- A. Unsecured and unmaintained foreclosed properties present a danger to the safety and health of the public, occupants, abutters, neighbors, and public safety officers. It is the purpose and intent of this bylaw to protect and preserve public safety, health, welfare and security, and the quiet enjoyment of occupants, abutters and neighbors, and to minimize hazards to public safety personnel inspecting or entering such properties by:
 - (1) Requiring all residential, commercial, and industrial property owners, including lenders, trustees and service companies, to register and maintain foreclosed properties with the Town; and
 - (2) Regulating the maintenance and security of foreclosed properties to help prevent blighted and unsecured properties.
- B. The Building Inspector of the Town of Plympton is empowered to enforce this bylaw.

§ 120-7. Definitions.

When used in this bylaw, the following terms shall have the following meanings, unless a contrary intention clearly appears:

DAYS — Consecutive calendar days.

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FORECLOSED — A residential, commercial or industrial property, placed as security for a real estate loan, as to which all rights of the mortgagor or his grantee in the property have been terminated as a result of a default of the loan.

FORECLOSING — The process by which a property, placed as security for a real estate loan, is prepared for sale to satisfy the debt if the borrower defaults.

INSPECTOR — The Building Inspector of the Town of Plympton or his/her designee.

LOCAL — Within 20 miles of the property in question.

MORTGAGEE — The creditor, including but not limited to service companies, lenders in a mortgage agreement, or any successor in interest and/or assignee of the mortgagee's rights, interests or obligations under the mortgage agreement.

OWNER — Every person, entity, service company, trustee or nominee, property manager or real estate broker who alone or severally with others has legal or equitable title to any property or has care, charge or control of any property in any capacity, including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or mortgagee in possession of any such property; or is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or is an officer or trustee of the association of unit owners of a condominium. Each such person is bound to comply with the provisions of these minimum standards as if he/she were the owner. However, this bylaw shall not apply to a condominium association created pursuant to MGL c. 183A to the extent that such association forecloses on or initiates the foreclosure process for unpaid assessments due or owing to the association.

PROPERTY — Any residential, commercial or industrial property, or portion thereof, located in the Town including but not limited to buildings and structures situated on the property; excepted from this definition is any and all property owned by the Town, the state, or the federal government.

RESIDENTIAL PROPERTY — Any property that contains one or more units used, intended, or designed to be occupied for living purposes.

TOWN — The Town of Plympton.

VACANT — A residential, commercial or industrial property which has not been actively used or occupied within the preceding 60 days. This definition does not include property that is unoccupied while undergoing renovations, or while undergoing repairs due to fire or other casualty, or to residential property that is temporarily vacant due to seasonal absences.

§ 120-8. Registration.

- A. All owners of foreclosed properties shall register such properties with the Inspector on forms provided by the Inspector within seven days of the date of foreclosure or within seven days of the effective date of this bylaw if the property was foreclosed upon prior thereto. If the owner is an out-of-state corporation, person, or other entity, the owner shall appoint an in-state agent authorized to accept service of process and other documents under this bylaw.

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- (1) Each registration must state the owner's or agent's name, telephone number and mailing address located within the Commonwealth of Massachusetts, including name of owner, street number, street name, city or town, and zip code; the mailing address shall not be a post office box.
 - (2) Each registration must also certify that the property has been inspected by the owner and must identify whether the property is vacant. Each registration must designate a property manager, who shall be a local individual or local property management company responsible for the maintenance and security of the property. This designation must state the individual's or company's name, direct telephone number, and local mailing address; the mailing addresses shall not be a post office box. The property manager shall be available 24 hours per day, every day, by telephone and/or electronic mail notification, and shall respond to all notifications from the Inspector to secure, maintain, inspect or repair the property within 24 hours.
- B. All property registrations pursuant to this section are valid for one calendar year from the date when the registration is received by the Inspector. Registrations may be renewed for a subsequent year on application submitted at least 30 days prior to expiration. A registration fee of \$100 must accompany the application for registration and each renewal. Subsequent registrations must certify whether the property remains in foreclosure.
 - C. Any owner that has registered a property under this section must report any change in information contained in the registration within 10 days of the change.
 - D. Once the property is sold, the owner shall provide the Inspector with written proof of sale.

§ 120-9. Maintenance and security requirements.

- A. Properties subject to this bylaw must be maintained in accordance with this bylaw, the State Building Code, sanitary code, Town bylaws and regulations and all other applicable laws. The owner or property manager must inspect and maintain the property and correct any violations on at least a monthly basis for as long as the property is vacant.
- B. The owner or property manager shall maintain properties subject to this bylaw in a clean, safe and sanitary condition, including but not limited to maintaining and keeping in good repair any building(s), structure(s), and improvements, the removal of trash and debris, and the regular mowing of lawns, pruning and/or trimming of trees and shrubbery, and upkeep of other landscape features.
- C. The owner or property manager shall repair or replace broken windows or doors within 30 days of breakage. Boarding up doors and windows is prohibited except as a temporary measure for no longer than 30 days.
- D. In accordance with state law, including but not limited to MGL c. 143, §§ 6 through 10 and the State Building Code, property that is vacant must be safe and must be secured from exposure to the elements and so as not to be accessible to unauthorized persons.

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- E. Compliance with this section does not relieve the owner of any applicable obligations set forth in regulations, covenant conditions and restrictions, and/or homeowners' association rules and regulations.

§ 120-10. Inspections.

Pursuant to the State Building Code, the Inspector or his/her designee shall have the authority and the duty to inspect properties subject to this bylaw for compliance with this bylaw and to issue citations for any violations. The Inspector or his/her designee shall have the discretion to determine when and how such inspections are to be made, provided such determination is reasonably calculated to ensure that this bylaw is enforced. Except in the case of emergency, the Inspector or his/her designee will obtain the consent of the owner, occupant or property manager or an administrative search warrant prior to entering any areas not open to the public.

§ 120-11. Violations and penalties.

- A. In addition to any other means of enforcement available to the Inspector, the Inspector may enforce this bylaw by means of noncriminal enforcement pursuant to MGL c. 40, § 21D and Chapter 1, Article II, of the Town's General Bylaws. The following penalties are established for purposes of said noncriminal disposition:
- (1) A failure to initially register with the Inspector pursuant to § 120-8: \$300.
 - (2) A failure to properly designate the name of the local individual or local property management company responsible for the maintenance and the security of the property pursuant to § 120-8: \$300.
 - (3) A failure to maintain and/or to secure the property pursuant to § 120-9: \$300.
- B. The penalties provided in this section shall not be construed to restrict the Town from pursuing other legal remedies available to the Town. Where a specific penalty is not specified for a violation of this bylaw, the violation shall be subject to a fine of \$300.
- C. Each day or portion thereof that a violation exists shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.
- D. Any fee or penalty not paid by its due date shall be subject to the municipal charges lien pursuant to MGL c. 40, § 58.

§ 120-12. Appeals.

Any persons aggrieved by the requirements of this bylaw or by a decision issued hereunder may seek relief in any court of competent jurisdiction as provided by the laws of the commonwealth.

§ 120-13. Applicability.

- A. This bylaw is intended to further the objectives of and to act in concert with any existing federal, state, or local laws concerning the maintenance of property and the abatement of nuisances, and nothing herein shall be deemed to limit or restrict Town officials whatsoever from acting in accordance with such laws.
- B. If any provisions of this bylaw impose greater restrictions or obligations than those imposed by any general law, special law, regulation, rule, ordinance, order or policy, then the provisions of this bylaw shall control.

§ 120-14. Severability.

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

Chapter 130

DEMOLITION DELAY

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| § 130-1. Intent and purpose; authority of Commission. | § 130-5. Emergency demolition; dangerous or abandoned structures. |
| § 130-2. Definitions. | § 130-6. Enforcement and remedies. |
| § 130-3. Procedure. | § 130-7. Historic District Act. |
| § 130-4. Responsibility of owners. | § 130-8. Severability. |

[HISTORY: Adopted by the Town Meeting of the Town of Plympton. Amendments noted where applicable.]

§ 130-1. Intent and purpose; authority of Commission.

The Demolition Delay Bylaw is enacted for the purpose of preserving and protecting significant buildings within the Town of Plympton which are outside local historic districts. Such buildings reflect distinctive features of the architectural, cultural, economic, political or social history of the Town, and their preservation promotes the public welfare by making the Town a more attractive and desirable place to live and work. The intent of the bylaw is to provide an opportunity to develop preservation solutions for significant, preferably preserved properties threatened with demolition. The bylaw is intended to encourage owners and townspeople to seek out persons who might be willing to purchase, preserve, rehabilitate or restore such buildings rather than demolish them, and to limit the detrimental effect of demolition on the historical architectural resources of the Town. To achieve these purposes, the Plympton Historical Commission ("the Commission") is empowered to advise the Building Inspector with respect to the issuance of permits for demolition of significant buildings, and, where appropriate and consistent with the intent and purpose of this bylaw, to allow demolition under conditions designed to minimize the loss of distinctive features of significant buildings.

§ 130-2. Definitions.

As used in this bylaw, the following terms shall have the meanings indicated:

BUILDING — A structure enclosed within exterior walls or firewalls, built, erected and framed of a combination of any materials to form a structure for the shelter of persons, animals or property.

BUILDING INSPECTOR — The administrative chief of the Building Department who is charged with the administration and enforcement of the State Building Code, 780 CMR, and is authorized to issue demolition permits.

COMMISSION — The Plympton Historical Commission.

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

DEMOLITION PERMIT — The permit issued by the Building Inspector as required by the State Building Code for a demolition, substantial demolition or removal of a building.

HISTORICALLY OR ARCHITECTURALLY SIGNIFICANT BUILDING — Any building, in whole or in part, which is at least 75 years old, or is of unknown age and:

- A. Which is listed on or is a contributing building within an area listed on the National Register of Historic Places, or which is the subject of a pending application for such listing, or is eligible for such listing; or
- B. Is included in the Cultural Resources Inventory prepared by the Commission; or
- C. Has been determined by vote of the Commission to be a significant building after a finding by the Commission that the building meets one or more of the following three criteria:
 - (1) Historical importance. The building meets the criteria of historical importance if it:
 - (a) Has character, interest or value as part of the development, heritage or cultural characteristics of the Town of Plympton, the Commonwealth of Massachusetts or the nation; or
 - (b) Is the site of an historic event; or
 - (c) Is identified with a person or group of persons who has some influence on society; or
 - (d) Exemplifies the cultural, political, economic, social or historic heritage of the community.
 - (2) Architectural importance. The structure meets the criteria of architectural importance if it:
 - (a) Portrays the environment of a group of people in an era of history characterized by a distinctive architectural style; or
 - (b) Embodies those distinguishing characteristics of an architectural type; or
 - (c) Is the work of an architect, master builder or craftsman whose individual work has influenced the development of the Town; or
 - (d) Contains elements of architectural design, detail, materials or craftsmanship which represents a significant innovation.
 - (3) Geographic importance. The structure meets the criteria of geographic importance if:
 - (a) The site is part of, related to, a square, park, or other distinctive area; or

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- (b) The structure, as to its unique location or its physical characteristics, represents an established and familiar visual feature of the neighborhood, village center, or the community as a whole.

§ 130-3. Procedure.

- A. No permit for the demolition of a significant structure or part thereof shall be issued except as provided in this bylaw, as well as in conformity with the provisions of other laws and ordinances applicable to the demolition of buildings and the issuance of permits generally.
- B. Application contents. Every application for a demolition shall be filed with the Building Inspector and shall contain the following information:
- (1) The address of the building to be demolished;
 - (2) The owner's name, address and telephone number;
 - (3) A brief description of the type of building and the condition requiring issuance of the permit;
 - (4) Date of building as established by the Board of Assessors, deed or documentation verifying year of construction; and
 - (5) A brief description of the proposed reuse, reconstruction or replacement on the premises upon which the building is located.
- C. Within seven working days from receipt of any application for demolition permit, the Building Inspector shall forward a copy to the Plympton Historical Commission. No demolition permit shall be issued during this time.
- D. Within 10 working days after receipt of the application for demolition permit by the Commission, the Commission or its designee shall make a determination of architectural and/or historical significance. Upon determination by the Commission that the building is not architecturally and/or historically significant, the Commission shall so notify the Building Inspector in writing. Upon receipt of such notification, or after the expiration of 15 working days from the date of submission to the Commission, if the Building Inspector has not received notification from the Commission, the Building Inspector may issue the demolition permit.
- E. Upon determination by the Commission that the building is historically and/or architecturally significant, the Building Inspector and applicant shall be so notified in writing, and a demolition permit shall not be issued. The Commission shall hold a public hearing within 30 days of the determination of significance to determine whether the building should be preferably preserved. Public notice of the time, place and purpose of the hearing shall be published by the Building Department at the expense of the applicant in a newspaper of general circulation in the Town not less than seven days before the day of said hearing and shall be posted in a conspicuous place in the Town House for a period of not less than seven days before the day of said hearing.

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- F. If after a public hearing the Commission determines that the significant building should not be preferably preserved, the Commission shall notify the Building Inspector, who may issue a demolition permit upon receipt of the written decision.
- G. If after a public hearing the Commission determines that the significant building should be preferably preserved, the Commission shall so notify the Building Inspector in writing within five working days of the hearing, and no demolition permit may be issued until 18 months after the date of the determination by the Commission.
- H. Notwithstanding anything contained in Subsection G, the Building Inspector may issue a demolition permit for a preferably preserved building at any time after receipt of written advice from the Commission to the effect that either:
 - (1) The Commission is satisfied that there is no reasonable likelihood that either the owner or some other person or group is willing to purchase, preserve, rehabilitate or restore such building; or
 - (2) The Commission is satisfied that for at least 18 months the owner has made continuing, bona fide and reasonable efforts to locate a purchaser to preserve, rehabilitate or restore the subject building, and that such efforts have been unsuccessful.

§ 130-4. Responsibility of owners.

Once a significant building is determined to be a preferably preserved building, the owner shall be responsible for properly securing the building, if vacant, to the satisfaction of the Building Inspector. Should the owner fail to so secure the building, a subsequent destruction of the building at any time during the eighteen-month demolition delay period, which destruction could have been prevented by the required security measures, shall be considered a demolition in violation of this bylaw.

§ 130-5. Emergency demolition; dangerous or abandoned structures.

- A. Notwithstanding the above provisions, the Building Inspector may issue a demolition permit at any time in the event of imminent and substantial danger to the health and safety of the public due to deteriorating conditions. Prior to doing so, the Building Inspector shall inspect the building and document, in writing, the findings and reasons requiring an emergency demolition, a copy of which shall be forwarded immediately to the Commission. Before allowing emergency demolition, the Building Inspector shall make every effort to inform the Chairperson of the Commission of his intention to allow demolition before he issues a permit for emergency demolition.
- B. No provision of this bylaw is intended to conflict with or abridge any obligations or rights conferred by Massachusetts General Laws Chapter 143 regarding removal or demolition of dangerous or abandoned structures. In the event of a conflict, the applicable provisions of Chapter 143 shall control.

§ 130-6. Enforcement and remedies.

- A. The Commission is authorized to adopt rules and regulations to carry out its duties and functions under this bylaw.
- B. The Commission and/or the Building Inspector are each specifically authorized to institute any and all actions and proceedings, in law or equity, as they may deem necessary and appropriate to obtain compliance with the requirements of this bylaw or to prevent a threatened violation thereof.
- C. No building permit shall be issued with respect to any premises upon which a significant building has been voluntarily demolished in violation of this bylaw for a period of two years after the date of the completion of such demolition. As used herein, "premises" refers to the parcel of land upon which the demolished significant building was located and all adjoining parcels of land under common ownership or control.
- D. Notwithstanding the foregoing, whenever the Commission shall, on its own initiative or on application of the landowner, determine that earlier reconstruction, restoration or other remediation of any demolition in violation of this bylaw better serves the intent and purpose of this bylaw, it may, prior to the expiration of said period of two years, authorize issuance of a building permit, upon such conditions as the Commission deems necessary or appropriate to effectuate the purposes of this bylaw, and may so notify the Building Inspector pursuant to § 130-3H of this bylaw.

§ 130-7. Historic District Act.

Nothing in this bylaw shall be deemed to conflict with the provisions of the Historic District Act, Massachusetts General Laws Chapter 40C. If any of the provisions of this bylaw do so conflict, that act shall prevail.

§ 130-8. Severability.

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

Chapter 135

DOGS

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| § 135-1. Definitions. | § 135-10. Disturbing the peace. |
| § 135-2. Licenses and tags; fees. | § 135-11. Restraint or muzzling. |
| § 135-3. Kennel licenses; fees. | § 135-12. Complaint of nuisance and dangerous dogs; procedure. |
| § 135-4. Kennel inspection and regulation. | § 135-13. Authority to kill dogs. |
| § 135-5. Violations and penalties. | § 135-14. Killing of dog known to have done damage; bond alternative. |
| § 135-6. Rabies. | § 135-15. Compensation for loss. |
| § 135-7. License records and forms. | § 135-16. Limitations on compensation. |
| § 135-8. Animal Control Officer. | § 135-17. Liability of owner. |
| § 135-9. Animal Control Officer duties. | |

[HISTORY: Adopted by the Town Meeting of the Town of Plympton. Amendments noted where applicable.]

§ 135-1. Definitions.

As used in this bylaw, the following words and phrases shall have the following meanings:

ANIMAL CONTROL OFFICER — Any officer appointed under these rules and regulations for the enforcement of said rules and regulations.

BOARD OF HEALTH — The Plympton Board of Health.

CLERK — The Town of Plympton Clerk.

COMMERCIAL KENNEL — A single premises with a collection of 11 or more dogs six months or older that are maintained for any purpose, or where four or more litters per year are raised, or where the boarding or grooming of dogs is performed as a business.

DANGEROUS DOG — A dog that either:

- A. Without justification, attacks a person or domestic animal causing physical injury or death; or
- B. Behaves in a manner that a reasonable person would believe poses an unjustified imminent threat of physical injury or death to a person or to a domestic or owned animal.

DOMESTIC ANIMALS — Shall include but not be limited to dogs and cats.

HOBBY KENNEL — A single premises with a collection of six to 10 dogs, six months or older, that are maintained for any purpose, and where fewer than four litters per year are raised.

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KEEPER — Any person, corporation or society, other than the owner, harboring or having in his possession any dog.

KENNEL — A single premises with a collection of four or more dogs, six months or older, that are maintained for breeding, boarding, sale, training, hunting, or any other purpose.

LICENSE LATE FEE — A fee of \$50 in addition to the license fee will be imposed after April 1 following to December 31 for any overdue license, as provided for hereunder.

LICENSE PERIOD — The time between January 1 and December 31 annually.

LIVESTOCK OR FOWL — Animals or fowl kept or propagated by the owner for food or recreational purposes.

NUISANCE DOG — A dog that:

- A. By excessive barking or other disturbance, is a source of annoyance to a sick person residing in the vicinity; or
- B. By excessive barking, causing damage or other interference, a reasonable person would find such behavior disruptive to one's quiet and peaceful enjoyment; or
- C. Has threatened or attacked livestock, a domestic animal or a person, but such threat or attack was not a grossly disproportionate reaction under all the circumstances.

SELECTMAN — The Plympton Board of Selectmen.

TOWN — The Town of Plympton.

§ 135-2. Licenses and tags; fees.

- A. The owner or keeper of a dog kept in the Town of Plympton is subject to these regulations when the dog attains the age of six months and annually thereafter as required by MGL c. 140, § 145B.
- B. The Town Clerk shall issue dog licenses and tags on a form prescribed and furnished by the Town of Plympton. The Animal Control Officer may accept applications and fees for licenses and shall transmit same to the Clerk, who shall cause the license to be issued. Subject to the approval of the Board of Selectmen, the Town may permit licensing to be conducted through the mail.
- C. The Clerk shall record each license issued, the name of the owner or keeper of each dog so licensed, and the name, registered number and description of each dog. The owner or keeper of any dog so licensed shall state upon the license form the breed, color, and age of the dog. Such paperwork shall be open to public inspection during the usual office hours of such Clerk.
- D. Each tag shall include the license number, a statement that the dog is licensed in the Town of Plympton, and the year issued.
- E. The owner or keeper shall cause said dog to wear around its neck or body a collar or harness to which the tag shall be securely attached. In the event that any tag is lost,

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defaced or destroyed, the owner or keeper shall obtain substitute tags from the Town Clerk at a cost of \$2 to be paid to the Town.

- F. The fee for each dog licensed shall be \$10; unless a certificate from a veterinarian stating that the dog has been spayed or neutered has been presented to the Clerk, in which case the fee shall be \$7.
- G. No fee shall be charged for a service animal as defined by the Americans with Disabilities Act or regulations promulgated thereunder, upon presentation to the Clerk of a certificate of such training and a copy of a current rabies certificate. No fee shall be charged for a dog specially trained for police work and actively serving in law enforcement.
- H. A license fee shall not be refunded because of a subsequent death, loss, spaying or neutering, or removal from the Town or other disposition of such dog, nor because a license fee has been mistakenly paid to the Town.
- I. The provisions of this section shall not apply to institutions licensed under MGL c. 140, § 174D, to shops licensed under MGL c. 129, § 39A, to any person operating a licensed kennel and where otherwise provided by law.

§ 135-3. Kennel licenses; fees.

- A. Any owner or keeper of four or more dogs, six months of age or over, shall obtain a kennel license; provided, however, that if necessary to operate a kennel under Chapter 300, Zoning, of the Town Bylaws, the written approval of the Board of Appeals or special permit granting authority must be presented to the Town Clerk prior to the issuance of such license. Kennels are defined and classified in § 135-1 of this bylaw.
- B. The fees for each classification of kennel license shall be as follows:
 - (1) Kennel license: \$30 per year.
 - (2) Hobby kennel license: \$60 per year.
 - (3) Commercial kennel license: \$150 per year.
- C. A kennel license shall be in lieu of any other license required for any dog which may be kept in such kennel for any portion of the period for which the license is issued. The owner or keeper of such kennel shall renew the license prior to the commencement of each succeeding license period.
- D. While at large, each dog in a kennel shall wear a collar or harness to which shall be securely attached a tag upon which shall appear the number of the kennel license, the name "Town of Plympton", and the year of issuance. Such tag shall be in a form prescribed and furnished by the Town of Plympton and shall be issued by the Town Clerk along with the kennel license.
- E. If a kennel owner desires to increase the capacity of his kennel during a license period, he shall apply for a license modification to the Town Clerk, and, if necessary, present the Town Clerk with the written approval of the Board of Appeals prior to the issuance of such license modification. The Clerk shall issue such modification upon payment by

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the owner of the difference between his existing kennel license and the fee for the kennel license most recently approved.

- F. The Clerk shall issue, without charge, upon written application and written approval of the Board of Appeals, a kennel license to any domestic charitable corporation incorporated in the Commonwealth of Massachusetts exclusively for the purpose of protecting animals from cruelty, neglect or abuse.
- G. A veterinary hospital shall not be considered a kennel unless it contains an area for the grooming or selling of dogs, or for the boarding of dogs for other than medical or surgical purposes, in which case it shall supply to the Clerk proof of obtaining a special permit from the Board of Appeals prior to the issuance of a kennel license.
- H. All holders of kennel licenses shall notify the Town Clerk, in writing, of the sale of any dog or pup, including a description of the animal, the age, color, identifying marks, sex and whether the dog has been spayed or neutered. The kennel owner will forward a copy of such notice to the clerk of the city or town in which the new owner of the dog resides.

§ 135-4. Kennel inspection and regulation.

- A. The Animal Control Officer or the Chief of Police of the Town of Plympton, or other persons authorized under the General Laws, shall at any time inspect or cause to be inspected any kennel and if, in his or her judgment, the kennel is not being maintained in a sanitary and humane manner, or if records are not properly kept as required by law, the Board of Selectmen shall by order revoke or suspend said kennel license. In the case of suspension of said license, the Board of Selectmen may reinstate such kennel license and impose conditions and regulations upon the operation of said kennel.
- B. Upon the petition of six citizens filed with the Board of Selectmen setting forth that they are aggrieved or annoyed to an unreasonable extent by one or more dogs at a kennel located in the Town of Plympton because of excessive barking or vicious disposition of such dogs or other conditions connected with the kennel that constitute a public nuisance, the Board of Selectmen shall, within seven days of the filing of such petition, give notice to all parties concerned of a public hearing to be held within 14 days after the date of such notice. Within seven days after the public hearing, the Board of Selectmen shall make an order either revoking or suspending such kennel license or otherwise regulating the operation of said kennel, or shall dismiss such petition.
- C. Any person maintaining a kennel after the license has been suspended or revoked shall be punished by a fine of not less than \$50 per day payable to the Town of Plympton.

§ 135-5. Violations and penalties.

- A. Whoever violates any provision of § 135-2 or § 135-3 of these rules and regulations may be fined through the noncriminal disposition process or through the District Court process. If any person(s) refuses to answer, or answers falsely, questions of a police officer or an Animal Control Officer pertaining to his ownership of a dog, he shall be punished by a fine of \$50, which shall be paid to the Town.

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- B. Noncriminal disposition. A noncriminal citation for violation of this Dog Control Bylaw may be pursued by the Animal Control Officer or the Board of Selectmen's designee by writing and serving notice as provided for under MGL c. 40, § 21D, as an alternative to initiating criminal proceedings, with the violator able to avoid an appearance before the District Court by paying an imposed amount disclosed in the writing of \$50 for the first offense, \$100 for a second offense, \$300 for a third offense and \$500 for a fourth or any additional offense within a calendar year, in accordance with MGL c. 140, § 173A.

§ 135-6. Rabies.

- A. The owner or keeper of a dog which has reached the age of six months shall cause that dog to be vaccinated against rabies by a veterinarian using a vaccine approved by the Department of Public Health.
- B. Upon vaccination, the veterinarian shall provide a tag, which shall be secured to the collar or harness of the dog, which shall show the year the vaccination was given; and he shall prepare three copies of a form which shall specify the name and address of the owner or keeper of the dog, the name, registration number, rabies tag number, license number, life of the vaccine and the name of the company that produced the vaccine. The veterinarian shall mail one copy to the Plympton Town Clerk, present one copy to the owner or keeper of the dog and keep one copy.
- C. The Plympton Board of Health shall furnish upon request to any uninsured resident of the Town who has been or may be exposed to rabies, anti-rabic vaccine and treatment free of charge in accordance with the rules and regulations of the Department of Public Health and accepted medical practice. Such person shall have the right to select his own physician, who shall be paid by the Town at a rate established by the Board of Health. The Board of Health shall provide a rabies vaccination free of charge upon request of the Animal Control Officer.
- D. Unvaccinated dogs acquired or brought into the Town of Plympton shall be vaccinated within 30 days or upon reaching the age of six months, whichever is later. Vaccinated dogs shall be revaccinated as required in accordance with rules adopted and promulgated by the Department of Public Health.
- E. Whoever violates the provisions of this section shall pay a fine under MGL c. 40, § 21D of \$100, which shall be paid to the Town.

§ 135-7. License records and forms.

The Town Clerk shall make a record of each license issued, the name and address of the owner or keeper of each dog so licensed, the registered number and description of each dog, and such paperwork shall be open to public inspection during regular office hours. The Town shall pay for all license forms, tags, printed records and all standard operating forms.

§ 135-8. Animal Control Officer.

- A. The Board of Selectmen shall, from time to time, appoint one or more Animal Control Officers, who shall receive an annual salary which shall be set by the Board of Selectmen within the amount appropriated by the Town. The Animal Control Officer may be a police officer or constable.
- B. The Board of Selectmen, on behalf of the Town, may enter into a contract with a domestic charitable corporation incorporated exclusively for the purpose of protecting animals from cruelty, neglect or abuse to perform the duties of the Animal Control Officer.

§ 135-9. Animal Control Officer duties.

- A. The Animal Control Officer shall attend to all complaints, except as assigned to the Chief of Police, or other matters regarding dogs in the Town.
- B. The Animal Control Officer shall, at least twice in each year, inspect every premises holding a kennel license and shall issue a written report of the conditions of said kennel to the Board of Selectmen and the Board of Health, stating his opinion as to the maintenance, humane and sanitary conditions, and if records are properly kept by the owner or keeper of said kennel.
- C. The Animal Control Officer shall be responsible for maintaining records of all animals that become the subject of any action and shall record each complaint and the nature thereof and what action, if any, was taken by the Animal Control Officer or any other authority of the Town.
- D. The Animal Control Officer shall maintain records of each dog confined under his care and custody for any reason whatsoever, stating the reasons for such confinement, the breed and color of the dog, the date the dog came under the control of the Animal Control Officer, the final disposition of the dog and the date of this disposition.
- E. The records maintained by the Animal Control Officer are considered public documents and available upon request.
- F. The Animal Control Officer shall examine any premises to be used as a proposed kennel and must submit a written report to the Board of Selectmen, or if a special permit is required the Zoning Board of Appeals as well, stating their opinion as to whether or not such a site would be suitable for the type of kennel license requested.
- G. No Animal Control Officer shall be a licensed animal dealer registered with the United States Department of Agriculture, and no Animal Control Officer or any representative shall sell any animal to any licensed animal dealer registered with the United States Department of Agriculture. Whoever violates the provision of this section may be fined \$50 under MGL c. 40, § 21D.

§ 135-10. Disturbing the peace.

- A. If any person shall make a complaint in writing to the Animal Control Officer or Board of Selectmen that any dog owned or harbored within the Town of Plympton is a

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nuisance dog or dangerous dog, as those terms are defined in MGL c. 140, § 136A and 157, the Animal Control Officer shall investigate or cause to be investigated such complaint, which may include an examination under oath of the complainant, submit a written report to the Selectmen of his/her findings and recommendations, together with the written complaint. Upon receipt of such report, the Selectmen shall call a hearing, giving the owner or keeper of the dog due notice to appear, to interview, under oath, the complainant and the owner or keeper of the dog. After the hearing, the Selectmen may make such order concerning the restraint or disposal of such dog, as authorized by MGL c. 140, § 157, dismissal of the complaint or such other action as may be deemed necessary. The Animal Control Officer, after investigation, may issue an interim order that such dog be restrained or muzzled for a period not to exceed 14 days to enable the Selectmen to issue their order following receipt of the report of the Animal Control Officer. If the Selectmen fail to act during the period of the interim order, upon expiration of the interim period, the order is automatically vacated.

- B. Any owner or keeper who fails to comply with an order of the Board of Selectmen, Animal Control Officer, or District Court shall face a complaint in the District Court or may pay a noncriminal disposition fine to the Town of \$50 for the first offense, \$100 for a second offense, \$300 for a third offense and \$500 for a fourth or subsequent offense under MGL c. 40, § 21D.

§ 135-11. Restraint or muzzling.

- A. The Animal Control Officer may restrain or muzzle, or issue an interim order to restrain or muzzle, for a period not to exceed 14 days, any dog for any of the following reasons:
- (1) For having bitten or threatened (worried) any person.
 - (2) If found at large or unmuzzled, as the case may be, while an order for restraint of such dog is in effect. For the purpose of this bylaw, the term "at large" means a dog which is defined as any and all of the following:
 - (a) Is outside the enclosure of the owner or keeper and not under the immediate care of the owner or keeper of such dog.
 - (b) Is not restrained by a lead or chain of less than seven feet that is of suitable test for the size of the dog being restrained.
 - (3) If found in a school, or schoolyard or other recreational area.
 - (4) For having killed or maimed or otherwise damaged any domestic animal, livestock, or fowl.
 - (5) For chasing any vehicle (including bicycles) upon any public way or way open to public travel in the Town.
 - (6) For chasing people walking or running on any public way or way open to public travel in the Town.
- B. All dogs must be muzzled or restrained within 12 hours of issuance of such order. If the owner or keeper refuses or neglects to restrain or muzzle such dog as required, he

may be fined \$50 for the first offense, \$100 for the second offense, \$300 for a third offense and \$500 for a fourth or subsequent offense under MGL c. 40, § 21D.

§ 135-12. Complaint of nuisance and dangerous dogs; procedure.

- A. If any person shall make a complaint to the Animal Control Officer that any dog harbored within the Town of Plympton is a nuisance or dangerous dog as defined in § 135-1 of this bylaw, the Animal Control Officer shall investigate or cause to be investigated such complaint, which may include an examination under oath of the complainant, and submit a written report of his findings and recommendations to the Board of Selectmen, together with the written complaint.
- B. The Animal Control Officer, after his investigation, may issue an interim order that such dog be restrained or muzzled for a period not to exceed 14 days to enable the Selectmen to issue their order following receipt of the report of the Animal Control Officer. If the Selectmen fail to act during the period of the interim order, upon expiration of the interim period, the order is automatically vacated. In accordance with MGL c. 140, § 157, the Selectmen shall call a hearing, giving the owner or keeper of the dog due notice to appear, giving sufficient notice to all interested parties, and publishing the hearing notice in accordance with the Open Meeting Law. It is recommended that the proceedings be recorded and the recording is preserved.
- C. Public hearing.
- (1) There shall be three phases: complainant's case; owner's case; deliberation and decision. The Selectmen, after credible evidence and testimony is presented at the public hearing, shall a) dismiss the complaint; b) deem the dog a nuisance dog, and they may further order that the owner or keeper of the dog take remedial action to ameliorate the cause of the nuisance behavior; or c) deem the dog a dangerous dog, in which case they may make such order concerning the restraint, muzzling, or euthanization of such dog, but excluding banishment and tethering, or such other action as may be deemed necessary.
 - (2) The decision should be announced at the close of the hearing and the Selectmen should issue a written decision, which should be sent to the owner by certified mail. The owner may bring an appeal in the District Court within 10 days of issuance of a decision. The time for appeal is commonly understood to run from the date on the written notice. The District Court may issue order of confinement pending appeal.
 - (a) An owner or keeper of a dog who fails to comply with a lawful order shall be subject to a noncriminal disposition fine of \$300 under MGL c. 40, § 21D or to the fine or penalty imposed by the District Court.
 - (b) No person over the age of 17 who has actual knowledge that a dog has been deemed dangerous under MGL c. 40, § 157 shall permit a child under the age of 17 to own, possess or have the care or custody of such dog.
 - (c) No person shall transfer ownership or possession of a dog which such person knows, or reasonably should have known, has been deemed dangerous under MGL c. 40, § 157 or offer such dangerous dog for sale or

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breeding without informing the recipient of the dog of the finding of dangerousness.

- (3) A police officer, constable or Animal Control Officer may capture, detain or, in the case of a threat to public safety, euthanize a dog in a humane manner if found to be in violation of an order of a hearing authority or a District Court and may euthanize a dog, in a humane manner, if it is living in a wild state as provided for by law.

§ 135-13. Authority to kill dogs.

- A. Any person may kill a dog as provided for by law. Any person who kills or wounds a dog under this section shall, within 24 hours, report such action to the Animal Control Officer and Police Department.
- B. Any Animal Control Officer, police officer or constable shall kill a dog, as provided for by law, when the Board of Selectmen, or, upon review, a magistrate or judge of the District Court shall have ordered the dog to be restrained or destroyed for vicious behavior, and if such dog is again found outside the enclosure of its owner or keeper and not under his immediate care. Any Animal Control Officer, police officer or constable may kill a dog, as provided for by law, which is living in a wild state.

§ 135-14. Killing of dog known to have done damage; bond alternative.

The Selectmen or their agents duly authorized in writing may, as provided for by law, after written notice to the owner or keeper of the dog, enter upon the premises of the owner or keeper of any dog known to have done damage to domestic animals, livestock, or fowl, and cause such dog to be euthanized in a humane manner, unless such owner or keeper whose premises are thus entered shall give a bond in the sum of \$200, with sufficient sureties, approved by the Board of Selectmen, conditioned that the dog be under permanent restraint. If the owner or keeper declares his intention to provide such bond, he shall be allowed seven business days, excluding holidays, in which to provide said bond to the Town Clerk.

§ 135-15. Compensation for loss.

Whoever suffers loss by the worrying, killing or maiming of domestic animals, livestock or fowl by a dog(s) shall be compensated as provided for by law.

§ 135-16. Limitations on compensation.

No owner of domestic animals, livestock or fowl shall be compensated for damages inflicted by his own dog or dogs, nor shall he be compensated if he, himself, was the owner or keeper of an unlicensed dog six months of age or older. Compensation shall be only in accordance with law.

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§ 135-17. Liability of owner.

The owner or keeper of a dog which has done damage to domestic animals, livestock or fowl shall be liable for such damage, as provided for by law.

Chapter 145

EARTH REMOVAL

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| § 145-1. Purpose. | § 145-6. Operating conditions. |
| § 145-2. Definitions. | § 145-7. Permit prohibitions. |
| § 145-3. Permit required; compliance with other laws and regulations. | § 145-8. Permit renewal. |
| § 145-4. Existing operations; exemptions. | § 145-9. Right of entry; fees; consultants; access to records. |
| § 145-5. Procedures for permit applications, site plan requirements and hearings. | § 145-10. Rules and regulations. |
| | § 145-11. Enforcement; violations and penalties. |
| | § 145-12. Severability. |

[HISTORY: Adopted by the Town Meeting of the Town of Plympton. Amendments noted where applicable.]

§ 145-1. Purpose.

The purpose of this bylaw is to support the maintenance of the Town of Plympton's rural character, including its natural, scenic, historic, and agricultural qualities and to protect its water resources.

§ 145-2. Definitions.

As used in this bylaw, the following terms shall have the meanings indicated:

AGRICULTURE — Agriculture shall be defined in accordance with MGL c. 128, §1A, and in accordance with MGL c. 131, § 40, including Massachusetts Wetlands Regulations, 310 CMR 10.04.

BOARD — The Board of Selectmen of the Town of Plympton shall act as the permit granting authority (PGA).

COMMERCIAL MINING — The business of extracting ore, earth or minerals from the ground for sale or profit that is not incidental or related to any other use or activity on the property.

EARTH — All forms of soil, including, without limitation, decomposed organic matter, topsoil, loam, sand, gravel, clay, peat, hard-pan, or rock.

EARTH REMOVAL OPERATION or OPERATION — The processing or removal, or both, from a site, by hand or by machinery, of any earth material, including but not limited to loam, sand, gravel, clay, peat, hard-pan, or rock, from the surface or subsurface without the aid of drilling and/or blasting, together with all activities associated with the removal, including, but not limited to, the stripping of vegetation, loam, topsoil, or sod, the digging, stockpiling, processing, moving, depositing, or transportation of earth products in any form,

natural, altered or otherwise. "Earth removal operation" includes the moving of equipment required for the operation to, from, or within the site, and all land affected by the operation (e.g., fill, or storage piles, access ways, or structures). Earth removal operations shall include all land impacted by the operation (e.g., pits, fill or storage piles, access ways and structures).

GROSS LANDSCAPE MODIFICATION — The alteration of more than 50% of any single lot or more than one acre of land, whichever is less.

PERSON — Any individual, partnership, corporation, firm, association, trust or group.

PROCESSING — The sorting or separation of earth materials into distinct categories based on particle size or type, usually through the use of a screening process but not exclusively so. Processing does not include stone crushing.

QUARRYING — The removal of stone (from the ground) by cutting, blasting, ripping or hammering or any other method other than collection of distinct particles (e.g., glacial erratics, boulders and similar distinct, separate stone objects).

SENSITIVE AREA — Sensitive areas shall be considered as the following:

- A. Areas subject to the jurisdiction of either the State Wetlands Protection Act (MGL c. 131, § 40), Chapter 290, Wetlands Protection, of the Town Bylaws, or both.
- B. Areas delineated as Priority or Estimated Habitats for Rare Species as defined by the Natural Heritage and Endangered Species Program (NHESP), a Division of the Department of Fisheries and Wildlife.
- C. Areas designated as Watershed Protection:
 - (1) Department of Environmental Protection Estimated or Defined Zones 1 and 2 to Public Water Supply Sources.
 - (2) Areas included in MA DEP, Chapter 91, Waterways Program.
 - (3) Areas delineated on the Town of Plympton's Aquifer Protection Overlay District and areas that are essential for safe and adequate water supply to private wells.
 - (4) Areas subject to the Department of Conservation and Recreation (DCR), Watershed Protection per the Watershed Protection Act (313 CMR 11.00).
 - (5) Community potable water supply wells, agricultural farm ponds and reservoirs, Zone A and C to public surface water supplies.
- D. Areas that are designated as flood zones as defined by FEMA.

SENSITIVE RECEPTORS — Existing structures and uses that are not compatible with earth removal operations. These include: schools, libraries, senior housing facilities, hospitals, residential areas, scenic roads, multifamily or cluster developments and other uses by their nature, as determined by the Board, that are sensitive to noise, air and traffic caused by earth removal operations.

TOPSOIL — The upper, outermost layer of soil, usually the top two inches (5.1 cm) to 12 inches (30.5 cm). It has the highest concentration of organic matter and microorganisms and is where most of the Earth's biological soil activity occurs.

§ 145-3. Permit required; compliance with other laws and regulations.

- A. No person shall conduct an earth removal operation in the Town of Plympton unless they are the holder of an earth removal permit issued by the Board or the operation qualifies for an exemption set forth in this bylaw. The burden shall be on the operator to prove the applicability of an exemption.
- B. Earth removal permits shall be in effect for a period of one year from the date of issue.
- C. All earth removal operations shall be conducted in accordance with the requirements of this bylaw, regulations of the Board adopted pursuant thereto and all conditions imposed by the Board.
- D. All earth removal operations shall be conducted in accordance with applicable federal, state and local laws concerning the operation, including but not limited to the requirements of the Conservation Commission. It shall be the applicant's responsibility to ensure compliance with such laws, and the issuance of an earth removal permit by the Board shall not authorize any earth removal operation undertaken in violation of any other applicable statute, rule or regulation.

§ 145-4. Existing operations; exemptions.

- A. Existing operations. All earth removal operations in existence prior to the effective date of this bylaw shall be subject to the requirements stated in the bylaw and regulations enacted pursuant thereto. Any person conducting an existing earth removal operation shall submit an application for an earth removal permit within 30 days of the effective date of this bylaw, unless the operation qualifies for an exemption.
- B. Exemptions.
 - (1) Exempt activities.
 - (a) The following earth removal operations may be conducted without an earth removal permit.
 - [1] Earth removal operations for any federal, state or municipal purpose by or on behalf of the Town of Plympton or any department or agency thereof.
 - [2] Earth removal of up to 50 cubic yards in a calendar year in the course of normal gardening or landscaping.
 - [3] The removal of earth that is merely incidental to the construction or installation of buildings, structures, swimming pools, septic systems, utilities, fences, athletic courts, driveways, parking lots, walkways and other construction or installations occurring on the site from which the earth is removed; provided that the project is being done in accordance with all required permits and approvals, the amount of earth removed does not exceed the amount needed for the construction or installation and the removal of earth does not result in topographical changes to the surrounding land.

- [4] The removal of earth in connection with agricultural use of land which is customarily incidental to agricultural maintenance and improvement practices as defined under MGL c. 131, § 40, 310 CMR 10.04: (a) land in agricultural use, (b) normal maintenance of land in agricultural use and (c) normal improvement of land in agricultural use, and/or which may be cited in an order of conditions by the Conservation Commission. Exempt agricultural-related projects must follow USDA Natural Resources Conservation Service or established best management practices. Upon completion of an exempt project, where applicable, restoration or stabilization activities should follow Natural Resources Conservation Service Practice Standard "Critical Area Planting" Code 342, with regional conditions applied. Agricultural earth removal activities are further defined as earth necessary to maintain or improve the applicant's/owner's contiguous or noncontiguous land for agricultural purposes and does not allow the removal of earth for sale, trade or other considerations.
- [5] Earth removal up to 500 cubic yards for a subdivision which is entirely incidental to the subdivision, site plan or special permitting process in compliance with the specific requirements of an approved, definitive subdivision plan.
- [6] The transfer of material from one part of a lot to another part of the same lot.
- [7] Earth removal conducted in accordance with the provisions found in the Massachusetts Contingency Plan, 310 CMR 40.0000.
- (b) The Board reserves the right to question what the owner/operator considers to be an exempt project, and the owner/operator shall be prepared to document how the exemption applies. Advance notification to the Board of exempt projects is not required but is encouraged in instances where truck traffic may exceed what is customary for any particular operation.
- (2) Activities eligible for exemption. The above earth removal activities are considered incidental to the cited purpose of the exempt activities and do not require a permit, provided that the conditions set forth in Subsection B(3) are not present. For the purposes of this section, "incidental" shall be defined as meeting all of the following:
- (a) Is minor in significance to the primary use.
 - (b) Is commonly established as reasonably associated with the primary use.
 - (c) Is necessary to carry out the primary use.
 - (d) Is minor in its net effect to that of the principal use, based on the amount of material to be removed and the time period over which it is to be removed and/or the amount of money to be derived from the earth removal operation.

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- (3) Board determination of exemption. Notwithstanding the provisions of Subsection B(1) and (2), the Board may prohibit or require an earth removal permit for otherwise exempt operations if:
- (a) The operation constitutes a nuisance or danger to the public, the operation will damage or threaten a private or public water supply, and/or public or private wellheads, or if the operation does not conform to accepted engineering and/or agricultural best management practices.
 - (b) The proposed earth removal operation and/or construction-related activities are pretext for earth removal and sale, or that the proposed earth removal shall cause damage to the public health, safety, private and public water supply or the environment.
 - (c) The operation involves soil stripping or loam stripping or involves topographical changes which shall be considered gross landscape modifications.

§ 145-5. Procedures for permit applications, site plan requirements and hearings.

- A. Permit applications and site plans. Applications for earth removal permits shall be made to the Board by filing an application with the Board on a form to be provided by the Board.
- (1) The required information shall include but not be limited to the following:
 - (a) The location of the proposed excavation.
 - (b) The legal name and address of the owner of the property involved.
 - (c) The legal name and address of the applicant (if different than the owner).
 - (d) A plan and representative profiles of the area, prepared by a registered professional engineer, from which final grades may be established.
 - (e) The anticipated amount (in cubic yards) of earth to be removed.
 - (f) The reason for the project.
 - (g) The location to which the earth will be deposited.
 - (h) Previous earth removal activities on the property.
 - (i) Traffic studies, legal, or hydrogeological studies, or other studies deemed necessary by the Board to conduct an adequate technical and legal review of the permit application.
 - (j) Locations of all private, community, agricultural reservoirs and public water supply wells or reservoirs within 1,000 feet of the site's property line.
 - (2) No application for an earth removal permit shall be considered complete, and shall not be acted upon, unless the Tax Collector of the Town of Plympton has

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certified, pursuant to MGL c. 40, § 57, that no debt is owed to the Town by the applicant and owner.

- (3) Site plans of the removal areas shall be prepared by a registered professional engineer or a registered land surveyor at a scale of 40 feet to the inch.

B. Hearing process.

- (1) Upon receipt of a completed application and payment of applicable fees, the Board shall conduct a public hearing on the application. Notice of said hearing shall be provided by registered or certified mail, at the applicant's expense, to all abutters, owners of land directly opposite on any public or private street or way, and abutters to abutters within 300 feet, and to all Town boards and entities designated by the Board, and by publication in a newspaper of general circulation in the Town once, at least 14 days prior to the hearing.
- (2) In no case shall the Board issue a permit for removing a greater amount of earth than the Board deems necessary for the purpose stated in the permit application.
- (3) The Permit shall not be transferable to a different legal entity or individual or with the sale of the property.

§ 145-6. Operating conditions.

A. Approvals. In approving the issuance of a permit, the Board may impose reasonable conditions, designed to protect public health, safety and welfare, and natural resources, which may include, but not be limited to, the following:

- (1) The placing of topsoil and planting necessary to restore the area to usable condition. Cover of topsoil of not less than four inches in depth shall be replaced or allowed to remain, whereas agricultural-related projects should follow USDA/NRCS restoration guidelines or established industry best management practices.
- (2) The duration of the removal operation.
- (3) The construction of necessary fencing and other protections against nuisances and/or erosion.
- (4) Method of removal.
- (5) Temporary structures.
- (6) Hours of operation.
- (7) Routes of travel or transportation of material.
- (8) Control of temporary or permanent drainage.
- (9) Disposition of boulders and tree stumps.
- (10) Set and maintain permanent monuments at each property corner.
- (11) Slopes shall not be steeper than 4 to 1, except for agricultural projects where USDA/NRCS design standards or established industry best management practices

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necessitate a different final slope. In addition, the Board may specifically authorize a finished grade in excess of 4:1 based on site-specific conditions.

- (12) The lowest excavated point shall be no less than 10 feet above the existing groundwater table, except for relevant agricultural water-dependent projects, such as but not limited to cranberry bogs, ponds/reservoirs, ditches and bypass canals. To ensure this minimum depth, the property owner shall, at his expense, install observation wells in accordance with the requirements of the Board's agent.
 - (13) No area shall be excavated so as to allow the accumulation of freestanding water, except as necessary for specific agricultural projects.
 - (14) Prior to commencing earth removal operations, the applicant shall post with the treasurer of the town of Plympton proper bond in such amount and with such sureties as determined by the Board to be sufficient to guarantee compliance with the terms and conditions of the permit.
 - (15) All earth removal operations shall be conducted in such a manner to prevent the erosion of the land, pollution and siltation of waters or water bodies, disturbing or negative impacts to sensitive areas and sensitive receptors, and prevention and control of dust and other deleterious effects of earth removal operations.
 - (16) All earth removal operations shall include the provision for restoration of the site, in part during operations (phasing) or in whole, once excavation and earth removal activities have ceased in that part of the site.
 - (17) The Board shall require the person holding a permit hereunder to provide to the Board on a quarterly basis documentary evidence of the quantities of material excavated, the date of removal of such material, and the owner of the vehicle used to transport the material.
 - (18) The Board may require bonds for restoration, road repair or other purposes and monitoring fees.
- B. Denials. If the Board finds, based on the facts adduced at the hearing, that the permit may result in a nuisance or that it will otherwise create a risk of harm to public health, safety or welfare or natural resources, the Board may deny the application.

§ 145-7. Permit prohibitions.

Notwithstanding the Board's discretion in granting earth removal permits, no earth removal permit shall be issued in the following circumstances; provided, however, that the Board may grant a variance from the requirements of this section if it finds, after a public hearing as set forth in § 145-5, that a level of protection for public health, safety and welfare, and natural resources at least equivalent to the standard set forth in this bylaw can be achieved without strict application of the provision from which a variance is sought.

- A. There shall be no quarrying.
- B. There shall be no earth removal operations between sunset and sunrise of the next day.
- C. There shall be no use of explosives.

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- D. There shall be no processing or stone crushing.
- E. There shall be no commercial mining.
- F. The finished leveling and grading shall be indicated on the approved plans as indicated and submitted to the Board, but in no event shall any grade be below the grade of any abutting and established way open to the public or private use, except that if on the authority of a registered civil engineer it is determined by the Board that such a change in grade below the existing grade is advantageous to the proposed change in topography.
- G. No permit for the removal of earth shall be approved by the Board if the work extends within 400 feet of a way open to the public, whether public or private, or within 200 feet of a building or structure or property line, unless the Board is satisfied that such removal will not undermine the way or structure, or prove detrimental to the neighborhood.
- H. The limit of work shall be as described in the permit application and depicted on accompanying plans. Work outside the limit of work is expressly prohibited. Phasing limits shall be clearly depicted on submitted plans.
- I. No permit shall be issued or renewed under this bylaw until the applicant has submitted to the Board current and complete information on the actual and proposed depth of excavation and the maximum groundwater elevation throughout the entire area proposed to be excavated.
- J. The removal of soil, loam, sand, gravel or other earth material from land in any district which falls within the Wetlands Act and local bylaw is prohibited, unless expressly allowed under the agricultural provisions of said Act or bylaw.
- K. No earth removal operation shall be permitted adjacent to any sensitive receptor or area unless mitigation measures approved by the Board, and consistent with any related decisions by the relevant review board, committee or agency, can be implemented.
- L. No permit for earth removal shall be issued if such removal will result in traffic hazards in residential areas or congestion or physical damage to streets, roads or ways.

§ 145-8. Permit renewal.

- A. In its discretion, the Board may annually grant a further permit extension for one additional year, not to exceed five years in total. However, no permit extension shall be issued unless the applicant has conformed to all requirements of the original and each extended permit. Sixty days before the annual renewal date, the applicant must file a written request to the permit granting authority for an extension.
- B. Permit renewal applications shall be accompanied by an operations plan for the permit period being applied for and an updated site plan.
- C. Any application for renewal not submitted within the time required by this bylaw shall be treated as a new application.

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- D. Each renewal application shall include all of the information required by the Board and shall specify the number of cubic yards of material removed during the prior permit term and shall be accompanied by an elevation plan on a 50-foot grid prepared by a registered civil engineer, showing before, after and proposed final elevations.

§ 145-9. Right of entry; fees; consultants; access to records.

- A. The Board or its designated representatives may enter upon the premises involved from time to time to inspect and ensure proper conduct of the work.
- B. The Board may adopt and may from time-to-time revise a schedule of reasonable fees to cover the costs associated with the administration of this bylaw.
- C. The Board may engage engineers, scientists, financial analysts, planners, attorneys or other appropriate professionals, who can assist the Board in analyzing a project or application to ensure compliance with all relevant laws, bylaws, standards and regulations. Such assistance may include, but not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board's decision or regulations, or inspecting a project during construction or implementation. The Board may adopt and from time-to-time revise regulations for the imposition of reasonable fees for the employment of such outside consultants.
- D. The Board or its designated representatives reserve the right to inspect the applicant's records in connection with the project for which a permit has been granted at any time.

§ 145-10. Rules and regulations.

The Board may adopt and amend reasonable rules and regulations to carry out the purpose of this bylaw. Said rule-making authority includes, but is not limited to, regulations for conducting public hearings, defining the scope and applicability of exemptions and establishing information needs and criteria for determining whether an earth removal project is likely to result in a nuisance or if it will otherwise create a risk of harm to public health, safety and welfare, and/or natural resources.

§ 145-11. Enforcement; violations and penalties.

- A. The Board may modify, suspend or revoke any permit issued pursuant to this bylaw for any violation of this bylaw or regulations adopted pursuant thereto or any conditions imposed by the Board, or if it is determined commercial mining is occurring. Such modification, revocation or suspension may take place after a hearing held by the Board, of which the permit holder is given seven days' written notice. Such notice shall be deemed given upon mailing same, certified mail, return receipt requested, to the address listed on the permit application.
- B. This bylaw may be enforced by the Town's Building Inspector or his/her designee. Whoever violates any provision of this bylaw may be penalized by a noncriminal disposition process as provided in MGL c. 40, § 21D and the Town's noncriminal

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disposition bylaw.¹ If noncriminal disposition is elected, then the noncriminal fine for each such violation, if not otherwise specified, shall be \$300 for each day and for each unit of removal on which a violation exists. A "unit of removal" shall be measured according to the method used to remove soil, loam, sand or gravel from the original site, such as a truckload of any size.

- C. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.
- D. Whoever violates any provision of this bylaw may be penalized by indictment or on complaint brought in the District Court. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.
- E. The Board may enforce this bylaw or enjoin violations thereof through any lawful process, and the election of one remedy by the Board shall not preclude enforcement through any other lawful means.

§ 145-12. Severability.

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof.

1. Editor's Note: See Ch. 1, Art. II.

Chapter 155

FARMING

- § 155-1. Authority, purpose and intent. § 155-4. Disclosure notification.
§ 155-2. Definitions. § 155-5. Resolution of disputes.
§ 155-3. Right to farm declaration. § 155-6. Severability.

[HISTORY: Adopted by the Town Meeting of the Town of Plympton. Amendments noted where applicable.]

§ 155-1. Authority, purpose and intent.

- A. The purpose and intent of this bylaw is to state with emphasis the right to farm accorded to all citizens of the commonwealth under Article 97 of the Constitution, and all state statutes and regulations thereunder, including but not limited to MGL c. 40A, § 3, Paragraph 1; MGL c. 90, § 9, MGL c. 111, § 125A and MGL c. 128, § 1A. We the citizens of Plympton 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").
- B. This general bylaw encourages the pursuit of agriculture, promotes agriculture-based economic opportunities, and protects farmlands within the Town of Plympton by allowing agriculture uses and related activities to function with minimal conflict with abutters and Town agencies. This bylaw shall apply to all jurisdictional areas within the Town.

§ 155-2. Definitions.

- A. The word "farm" shall include any parcel or contiguous parcels of land, or water bodies used for the primary purpose of commercial agriculture, or accessory thereto.
- B. The words "farming" or "agriculture" (or their derivatives) shall include, but not be limited to, the following:
- (1) Farming in all its branches and the cultivation and tillage of the soil;
 - (2) Dairying;
 - (3) Production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural, viticultural or horticultural commodities;
 - (4) Growing and harvesting of forest products upon forest land, and any other forestry or lumbering operations;
 - (5) Keeping and raising of livestock, including horses;
 - (6) Keeping of horses as a commercial enterprise; and

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- (7) Keeping and raising of poultry, swine, cattle, ratites (such as emus, ostriches and rheas) and camelids (such as llamas and camels), and other domesticated animals for food and other agricultural purposes, including bees and fur-bearing animals.

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

- (1) Operation and transportation of slow-moving farm equipment over roads within the Town;
- (2) Control of pests, including, but not limited to, insects, weeds, predators and disease organisms of plants and animals;
- (3) Application of manure, fertilizers and pesticides;
- (4) Conducting agriculture-related educational and farm-based recreational activities, including agri-tourism, provided that the activities are related to marketing and agricultural output or services of the farm;
- (5) Processing and packaging of the agricultural output of the farm and the operation of a farmer's market or farm stand, including signage thereto;
- (6) Maintenance, repair, or storage of seasonal equipment, or apparatus owned or leased by the farm owner or manager used expressly for the agricultural products; and
- (7) On-farm relocation of earth and the clearing of ground for farming operations.

This definition shall not include the removal for sale of water.

§ 155-3. Right to farm declaration.

The right to farm is hereby recognized to exist within the Town of Plympton. The above-described agricultural activities may occur on holidays, weekdays, and weekends by night or day and shall include the attendant incidental noise, odors, dust, and fumes associated with normally accepted agricultural practices. It is hereby determined that whatever impact may be caused to others through the normal practice of agriculture is more than offset by the benefits of farming to the neighborhood, community, and society in general. The benefits and protections of this bylaw are intended to apply exclusively to those commercial agricultural and farming operations and activities conducted in accordance with generally accepted agricultural practices. Moreover, nothing in the right to farm bylaw 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.

§ 155-4. Disclosure notification.

A. Within 30 days after this bylaw becomes effective, the Select Board shall prominently post in the Town House and make available for distribution the following disclosure:

"It is the policy of this community to conserve, protect and encourage agricultural activities, including the maintenance and improvement of agricultural land for the production of food, and other agricultural products, and also for its natural and

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ecological value. This disclosure notification is to inform buyers or occupants that the property they are about to acquire or occupy lies within a Town where farming activities occur. Such farming activities may include, but are not limited to, activities that cause noise, dust and odors. Buyers or occupants are also informed that the location of property within the Town may be impacted by commercial agricultural operations."

- B. In addition to the above, a copy of this disclosure notification shall be available in a public area at the Town House.

§ 155-5. Resolution of disputes.

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

§ 155-6. Severability.

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

Chapter 160

FEES AND CHARGES

ARTICLE I	§ 160-2. Administration.
Ambulance and Emergency Medical Service Fees	§ 160-3. Waiver.

§ 160-1. Establishment.

[HISTORY: Adopted by the Town Meeting of the Town of Plympton as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Ambulance and Emergency Medical Service Fees

§ 160-1. Establishment.

A committee comprised of the Board of Selectmen with the Chief of the Fire Department ("the committee") may establish a schedule of fees to be charged for transportation in the Fire Department ambulance(s). The fee schedule shall reflect the cost to the Town of operating the ambulance and emergency medical services, and said fees may be periodically amended to reflect changing costs.

§ 160-2. Administration.

The committee shall be authorized to collect such fees and to enter into contracts to facilitate the payments of such fees and charges by users, insurance companies and government agencies.

§ 160-3. Waiver.

The committee shall have the right to waive fees and charges in the case of users without insurance or other coverage or for any other reason deemed adequate to the committee.

Chapter 165

FIRE PREVENTION

ARTICLE I
Fire Watch Patrol

§ 165-2. Rules and regulations.

§ 165-3. Lien for unreimbursed costs.

§ 165-1. Authority to require; purpose.

[HISTORY: Adopted by the Town Meeting of the Town of Plympton as indicated in article histories. Amendments noted where applicable.]

ARTICLE I
Fire Watch Patrol

§ 165-1. Authority to require; purpose.

In order to avoid relocating persons from, or evacuation of, any building, structure, place of business, place of habitation or vacant or abandoned building or structure which in the judgment of the head of Fire Department or Fire Marshal is imminently dangerous or presents the existence of conditions likely to cause fire or explosion, the head of the Fire Department or Fire Marshal may order the owner, agent, or manager of such building, structure, business or place of habitation to provide a temporary fire watch patrol if the head of the Fire Department or Fire Marshal determines a reasonable level of fire or life safety may be obtained.

§ 165-2. Rules and regulations.

- A. The temporary fire watch personnel shall be specially trained in fire prevention and in the use of fire extinguishers and occupant hose lines, in sounding building fire alarms, in understanding the particular fire safety situation for public education purposes, be able to instantly communicate with the fire alarm office by radio, and remain alert and undistracted during their assigned hours.
- B. The owner of any building, structure, place of business, place of habitation or vacant or abandoned building or structure shall be responsible for any and all costs associated with the temporary fire watch patrol.

§ 165-3. Lien for unreimbursed costs.

If such costs are not reimbursed to the Town, it shall constitute a lien upon the property upon which the temporary fire watch patrol was provided.

Chapter 175

HISTORIC DISTRICTS

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| § 175-1. Purpose. | § 175-8. Review considerations. |
| § 175-2. Historic District Commission. | § 175-9. Time frame for certain determinations. |
| § 175-3. Historic District. | § 175-10. Appeals; allocation of costs. |
| § 175-4. Commission powers and duties. | § 175-11. Superior court jurisdiction. |
| § 175-5. Rules and regulations; staff; appropriations. | § 175-12. Violations and penalties. |
| § 175-6. Limitations on construction and alteration; certificates of appropriateness. | § 175-13. Severability. |
| § 175-7. Exceptions. | |

[HISTORY: Adopted by the Town Meeting of the Town of Plympton. Amendments noted where applicable.]

§ 175-1. Purpose.

The purpose of this bylaw is to provide a means by which the historic, cultural or architectural significance of an area in the Town of Plympton may be protected and preserved.

§ 175-2. Historic District Commission.

There is hereby established an Historic District Commission under the provisions of the Historic District Act, MGL c. 40C, consisting of five members and two alternate members appointed by the Selectmen, in accordance with the provisions of MGL c. 40C, § 4.

- A. When the Commission is first established, one member shall be appointed for a term of one year, two shall be appointed for a term of two years, two shall be appointed in like manner for a period of three years, and their successors shall be appointed in like manner for terms of three years.
- B. When the Commission is first established, one alternate member shall be appointed for a term of one year and one alternate member shall be appointed for a term of two years, and their successors shall be appointed in like manner for terms of three years.
- C. At any one meeting three shall constitute a quorum.

§ 175-3. Historic District.

There is hereby established an Historic District under the provisions of the Historic District Act, MGL c. 40C, bounded and described as shown on plan of the Harrub's Corner Historic

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District of the Town of Plympton, October 30, 1969, scale one inch equals 40 feet, Alan C. Vautrinot Jr., land surveyor, said plan being on record with the Town Clerk as follows:

Begin at a point on the center line of County Road, about 540 feet easterly from Barrows Brook and opposite the southeast corner of land of Frederick Adams;

Thence northerly about 25 feet to the southeast corner of said Adams Land;

Thence easterly about 50 feet to the end of a wall;

Thence northerly by said wall about 150 feet to a corner of the wall, the last three courses by the property line of said Adams and Edna Holmes;

Thence northwesterly by said wall, along the property line of said Adams and Holmes, and then along the property line of said Holmes and Richard Reynolds, a total distance of about 575 feet to Barrows Brook;

Thence downstream by said brook 100 feet;

Thence westerly 430 feet more or less through land of Clifton Day to the center line of Lake Street at a point which lies 200 feet northerly from a wall which marks the southerly line of said Day;

Thence southerly by the center line of Lake Street about 50 feet to a point opposite a wall;

Thence westerly 20 feet to the end of said wall and then same course by said wall, which marks the property line between James Dennett and Phillip Rouvales 283 feet more or less to a cross wall;

Thence southerly by said cross wall 350 feet more or less through land of said Dennett to County Road;

Thence easterly 90 feet more or less by the center line of County Road to a point opposite the property line between Boyer and Webb;

Thence southerly about 25 feet to the northwest corner of Mrs. Samuel A. Boyer;

Thence same course by the property line of said Webb and Boyer 270 feet;

Thence easterly through land of said Boyer and land of Raymond Matthews, across Barrows Brook, about 830 feet;

Then N 27° 51' 38" E 272.00' to the southerly side line of County Road at a point which lies S 67° 26' 30" E 150' from a county highway bound;

Then N 27° 51' 38" E about 25 feet to the center line of County Road;

Thence easterly by the center line of County Road about 70 feet to the point of beginning.

§ 175-4. Commission powers and duties.

The Historic District Commission shall have all the powers and duties of historic district commissions as provided by the Historic Districts Act, MGL c. 40C, and of subsequent amendments thereto.

§ 175-5. Rules and regulations; staff; appropriations.

The Historic District Commission shall adopt rules and regulations for the conduct of its business not inconsistent with the provisions of the Historic Districts Act, MGL c. 40C, and may, subject to appropriation, employ clerical and technical assistants or consultants and may accept money gifts and expend same for such purposes.

§ 175-6. Limitations on construction and alteration; certificates of appropriateness.

No building, structure, or part thereof, including stone walls, fences, steps and paving, shall be erected, reconstructed, altered, restored, moved or demolished within the district, and no sign, light, fence, wall or other appurtenant fixtures, hereafter called "appurtenant fixtures," shall be erected or displayed on any lot, building or structure located within said district except as provided under § 175-7, unless an application for a certificate of appropriateness shall have been approved by the Historic District Commission, and no building or other permit shall be granted for any such purpose in an historic district except in cases excluded by § 175-7 until such certificate of appropriateness has been issued.

§ 175-7. Exceptions.

- A. Nothing in this bylaw shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in the historic district which does not involve a change in design, material, color or the outward appearance thereof; nor to prevent the construction, reconstruction, alteration or demolition of any such feature which the Building Inspector or similar agent shall certify is required by the public safety because of an unsafe or dangerous condition; nor to prevent the construction, reconstruction, alteration, or demolition of any such feature under a permit issued by the Building Inspector or similar agent prior to the effective date of establishment of said district.
- B. No approval is required under § 175-6 of the Historic District Act for the following:
 - (1) Temporary structures or signs for use in connection with any official celebration or parade or any charitable function in the Town of Plympton, provided that any such structure or sign shall be removed within three days following the termination of the celebration, parade or charitable drive for which said structures or signs shall have been erected or displayed. Any other temporary structures or signs which the Commission shall determine do not substantially derogate from the intent and purposes of this bylaw may from time to time be excluded from the provisions of § 175-6.
 - (2) Real estate signs of not more than three square feet in area advertising the sale or rental of the premises on which they are erected or displayed.

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- (3) Occupational or other signs of not more than one square foot in area and not more than one such sign, irrespective of size, bearing the name, occupation or address of the occupant of the premises on which such sign is erected or displayed.
- (4) The exterior color of any building or structure within the district may be changed to white without the filing of an application for, or the issuance of, a certificate of appropriateness, or to any color or any combination of colors which the Commission shall determine from time to time may be used without substantial derogation from the intent and purposes of this bylaw.
- (5) Storm sash and storm doors; window screens and screen doors.
 - (a) Installing, repairing, replacing these items, provided there is no ornamentation.
 - (b) Storm sash and screens shall be painted the same color as the house sash. Aluminum items may be left natural.
 - (c) Storm doors and screen doors shall be painted the same color as the house door. Aluminum items may be left natural.
- (6) Repairs.
 - (a) Re-siding, in whole or in part, with six-inch clapboards or with white cedar shingles, provided the same type of siding is used as before and with the same exposure to the weather.
 - (b) Shingling roofs with wood shingles or with fire-resistant shingles, with rectangular design of uniform color, but limited in color to black or dark gray.
 - (c) Repairing or replacing window frames, sash, glass, door frames, doors, exterior trim, leaders, gutters, porches, railing, steps, fences, gates, roof walks, skylights and roof scuttles, provided no architectural change in appearance is made, and that the same type and goodness of material is used in making such repairs or replacement.
 - (d) Repairing, repointing, and waterproofing brick chimneys, walls and foundations, provided the same type of masonry is used, and provided that, if plaster covering is used, it shall be cement parget, wood trowelled or with a cement grout brushed on.

§ 175-8. Review considerations.

- A. The Historic District Commission, in considering applications for certificates of appropriateness for any of the purposes specified in § 175-6, shall consider the appropriateness of proposed exterior features of buildings, structures, and appurtenant fixtures, location on the lot, and the removal or demolition of any building or structure in said district, wherever such exterior features, buildings, structures and appurtenant fixtures are subject to public view from a public street or way. All plans, elevations and other information deemed necessary by the Commission to determine the

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appropriateness of the exterior features or buildings in question shall be made available to it by the applicant.

- B. The Historic District Commission, in considering the appropriateness of exterior features, shall keep in mind the purposes of MGL c. 40C, § 2, and shall consider among other things the historical and architectural value and significance, architectural style, the general design, arrangement, texture, material and color of the building or structure and appurtenant fixtures in question, the relation of such features to similar features of buildings in the immediate surroundings, and the position of such building or structure in relation to the street or public way and to other buildings and structures. The Commission shall not make any recommendations or requirements except for the purpose of preventing developments obviously incongruous to the historic aspects of the surroundings and the historic district.

§ 175-9. Time frame for certain determinations.

When taking action under the provisions of the second paragraph of MGL c. 40C, § 7 of the Historic Districts Act, the Historic District Commission shall make a determination as soon as convenient after the public hearing but, in all events, within 60 days after the filing of the application for a certificate of appropriateness, or such further time as the applicant may in writing allow.

§ 175-10. Appeals; allocation of costs.

- A. Any applicant aggrieved by a determination of the Commission may, within 20 days after the making of such decision, appeal to a superior court sitting in equity for the county. The court shall hear all pertinent evidence and shall annul the determination of the Commission if it finds the reasons given for such determination to be unsupported by the evidence or to be insufficient in law and may make such other decree as justice and equity may require. The remedy provided by this section shall be exclusive; but the parties shall have all rights of appeal and exception as in other equity cases.
- B. Costs.
- (1) Costs shall not be allowed against the Historic District Commission unless it appears to the court that the Commission acted with gross negligence, in bad faith or with malice.
 - (2) Costs shall not be allowed against the party appealing from the decision of the Historic District Commission unless it appears to the court that said appellant acted in bad faith or with malice in making the appeal to the court.

§ 175-11. Superior court jurisdiction.

The superior court shall have jurisdiction in equity to enforce the provisions of this bylaw and the rulings issued thereunder and may restrain by injunction violations thereof.

§ 175-12. Violations and penalties.

Any person who violates any of the provisions of this bylaw shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than \$10 nor more than \$500. Each day that a violation continues to exist shall constitute a separate offense.

§ 175-13. Severability.

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

Chapter 200

LICENSES AND PERMITS

ARTICLE I Rules and Regulations

§ 200-1. Authority to enact.

§ 200-2. Subject matter.

§ 200-3. Filing of copies.

ARTICLE II Denial or Revocation for Failure to Pay Fees or Taxes

§ 200-4. List of delinquent taxpayers.

§ 200-5. Authority to deny, revoke or suspend.

§ 200-6. Payment agreements.

§ 200-7. Waivers.

§ 200-8. Applicability.

ARTICLE III Fingerprint-Based Background Checks

§ 200-9. Authority.

§ 200-10. Permits and licenses subject to background checks.

§ 200-11. Fees.

[HISTORY: Adopted by the Town Meeting of the Town of Plympton as indicated in article histories. Amendments noted where applicable.]

ARTICLE I Rules and Regulations

§ 200-1. Authority to enact.

In accordance with MGL c. 140, § 59, as amended, the Board of Selectmen shall adopt, and may from time to time amend, reasonable rules and regulations relative to individual licenses granted under MGL c. 140, § 58, as amended, not inconsistent with any provisions of state law or of any valid bylaw of the Town of Plympton.

§ 200-2. Subject matter.

Such rules and regulations may prescribe the location of the premises to be occupied by the licensee for the purpose of carrying on the licensed business, the positioning of the vehicles, parts, tires or other materials connected with the business of the licensees, the situation of the premises of the licensee with Class 3, as defined in MGL c. 140, § 58, the positioning of all vehicles, parts, tires, or other materials connected with the business of the licensee under Class 3, the fencing of property of the licensee for the purpose of alleviating unsightly views or nuisances to the surrounding areas and residents, the number of vehicles allowed in any one area.

§ 200-3. Filing of copies.

A true copy of the rules and regulations, with their most recent amendments, shall be kept on file, available for inspection, in the office of the Board of Selectmen and in the office of the Town Clerk.

ARTICLE II

Denial or Revocation for Failure to Pay Fees or Taxes**§ 200-4. List of delinquent taxpayers.**

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

§ 200-5. Authority to deny, revoke or suspend.

The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers, of any party whose name appears on said list furnished to the licensing authority from the Tax Collector 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 Tax Collector; provided, however, that written notice is given to the party and the Tax Collector, as required by applicable provisions of law, and the party is given a hearing, to be held not earlier than 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 Tax Collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any finding 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 of any appeal from such license denial, revocation or suspension. Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the license authority receives a certificate issued by the Tax Collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges payable to the municipality as the date of issuance of said certificate.

§ 200-6. Payment agreements.

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 conditional upon satisfactory compliance with said

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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 is given notice and a hearing as required by applicable provisions of law.

§ 200-7. Waivers.

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 in MGL c. 268A, § 1, in the business or activity conducted in or on said property.

§ 200-8. Applicability.

This bylaw shall not apply to the following licenses and permits:

- A. Open burning, MGL c. 48, § 13;
- B. Sales of articles for charitable purposes, MGL c. 101, § 33;
- C. Children work permits, MGL c. 149, § 69;
- D. Clubs, associations dispensing food or beverage licenses, MGL c. 140, § 21E;
- E. Dog licenses, MGL c. 140, § 137;
- F. Fishing, hunting, trapping licenses, MGL c. 131, § 12;
- G. Marriage licenses, MGL c. 207, § 28; and
- H. Theatrical events, public exhibition permits, MGL c. 140, § 81.

ARTICLE III

Fingerprint-Based Background Checks**§ 200-9. Authority.**

This bylaw is promulgated in accordance with MGL c. 6, § 172B 1/2.

§ 200-10. Permits and licenses subject to background checks.

The following permits and licenses are subject to the fingerprint-based background check requirements of MGL c. 6, § 172B 1/2:

- A. Permit to engage in ice cream truck vending, as that activity is defined and regulated by MGL c. 270, § 25, and 520 CMR 15.00.
- B. Licenses to solicit and canvass, as those activities are defined and regulated by MGL c. 305.
- C. Licenses for transient merchants as provided in Chapter 260 of the Town Bylaws.

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§ 200-11. Fees.

Every applicant for a permit or license that is listed in § 200-10 must submit a fingerprint background check fee of \$50. A separate fee shall be required for initial applications and each renewal application.

Chapter 220

PEACE AND GOOD ORDER

§ 220-1. Prohibited acts.

§ 220-2. Violations and penalties.

[HISTORY: Adopted by the Town Meeting of the Town of Plympton. Amendments noted where applicable.]

§ 220-1. Prohibited acts.

A person shall be guilty of violation of the orderly conduct bylaw if he or she willfully does any of the following acts in a public place. For the purpose of this bylaw, "public place" shall be defined as any place, structure or building to which the general public has access to resort to for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It shall also include all public ways and public buildings, public grounds and public parks.

- A. Commits an act in a violent and tumultuous manner toward another whereby that other is placed in danger or fear of personal injury.
- B. Commits an act in a violent and tumultuous manner toward another whereby the property of any person is placed in danger of being destroyed or damaged.
- C. Causes, provokes or engages in any fight, brawl or riotous conduct so as to endanger the health and/or property of another.
- D. Obstructs, either singly or together with other persons, the flow of vehicular or pedestrian traffic and refuses to clear such public way or public place when ordered to do so by the police.
- E. Possesses or knowingly transports alcoholic beverages on any way before he or she has reached the age determined by the General Court of the Commonwealth as being the lawful age for the consumption of alcohol.
- F. Drinks or consumes any alcoholic beverages or possesses any open container thereof in the immediate place where he or she is located in any vehicle upon a public way or while on any public area or in any public places not duly licensed for such purposes by the Town of Plympton.
- G. Maliciously or without good cause interrupts, harasses or molests the speaker or speakers at any lawful assembly, meeting or gathering, or impairs the lawful rights of others to participate in such assembly, meeting or gathering when such conduct is calculated or likely to provoke disorderly conduct and procedure of the same or cause turmoil or disturbance at same, after being warned to refrain from such conduct by a person in charge of the assembly, meeting or gathering.
- H. Prowls or wanders in or upon private property of another, or without good reason or visible or lawful business with the owner or occupant thereof peeks, peeps, or peers in any door or window of any building or structure thereon.

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- I. Smokes, consumes or ingests marijuana or tetrahydrocannabinol in any vehicle upon a public way or while present in any public place to which the public has the right of access as invitees or licensees, or while on any public grounds, parks or buildings. Whoever is found in violation of this Subsection I shall, when requested by a police officer, immediately state his/her true full name, address and date of birth.

§ 220-2. Violations and penalties.

Any person who violates any prohibited acts in § 220-1A through H, inclusive, shall be fined \$175 and may be arrested without a warrant by a police officer if the violation is committed in the officer's presence. Any person who violates prohibited acts in § 220-1I shall be subject to a fine of \$250 for a first offense and \$300 for each subsequent offense. A police officer is not authorized to arrest a person found solely in violation of § 220-1I.

Chapter 240
SOLID WASTE

§ 240-1. Prohibited deposits on private property or public or private ways.

§ 240-2. Deposits on public places prohibited.

[HISTORY: Adopted by the Town Meeting of the Town of Plympton. Amendments noted where applicable.]

§ 240-1. Prohibited deposits on private property or public or private ways.

It shall be unlawful for any person, directly or indirectly, to dump, place, throw, deposit or discharge any refuse, rubbish, garbage, household goods, appliances or furniture, construction debris, landscaping debris, scrap, trash, tires or other material of any kind on the property of another or on any way, public or private, that appears on the Assessor's map of the Town of Plympton, or within 20 yards thereof, or any land owned or controlled by the Town.

§ 240-2. Deposits on public places prohibited.

It shall be unlawful for any person to cast, throw, sweep, sift or deposit in any manner in or upon any public way or other public place in the Town or any river, canal, culvert, drain or receiving basin within the jurisdiction of the Town any kind of dirt, rubbish, waste, article, thing or substance whatsoever.

Chapter 245

STREETS AND SIDEWALKS

§ 245-1. Water discharges prohibited. **§ 245-2. Street openings and curb cuts.**

[HISTORY: Adopted by the Town Meeting of the Town of Plympton. Amendments noted where applicable.]

§ 245-1. Water discharges prohibited.

No person shall pipe or otherwise deposit in or upon any public place any water or other substance that may freeze and thereby create a hazardous condition.

§ 245-2. Street openings and curb cuts.

In the interest of public safety, no person shall make an entrance or curb cut onto an existing public way without first obtaining written approval of the Highway Surveyor.

Chapter 255

TAXATION

ARTICLE I

Publication of List of Delinquent Taxpayers

§ 255-1. Information to be posted.

[HISTORY: Adopted by the Town Meeting of the Town of Plympton as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Publication of List of Delinquent Taxpayers

§ 255-1. Information to be posted.

The Tax Collector or other municipal official responsible for maintaining records of real estate payment shall annually, on or before May 1, either post at the public bulletin board at the Plympton Town House and/or publish in any newspaper in general circulation in the Town of Plympton the name, parcel and delinquent amount of any person or entity who or which has failed to pay any real estate tax which was due on the May 1 of the prior year, unless such delinquent taxpayer has entered into a written payment commitment approved by the Tax Collector on or before April 1 of the current year.

Chapter 260

TRANSIENT MERCHANTS

§ 260-1. License required.

§ 260-4. Exceptions.

§ 260-2. Issuance of license; fee; term.

§ 260-5. Time limits.

§ 260-3. Display of license.

[HISTORY: Adopted by the Town Meeting of the Town of Plympton. Amendments noted where applicable.]

§ 260-1. License required.

Every person who engages in a temporary or transient business selling goods, wares, periodicals or merchandise or who goes door-to-door for any commercial selling purposes, either as principal or agent, shall, before commencing business in the Town of Plympton, make written application, under oath, for a license to the Chief of Police, stating his or her name and address, the name and address of the owner or parties in whose interest said business is to be conducted, their business address, and a brief description of the business he wishes to conduct in Plympton. He shall submit a photograph to the Police Department and allow them to take his fingerprints for the purpose of identification.¹

§ 260-2. Issuance of license; fee; term.

No later than two weeks after filing of such application, the Police Chief shall issue him a license, authorizing him to do the business described in his application, subject to the bylaws of the Town of Plympton and the laws of the Commonwealth of Massachusetts. The fee for such a license shall be set from time to time by the Board of Selectmen, and said license shall expire within 30 days, or on the day of its surrender or the filing of an affidavit for its loss if it is earlier surrendered or if such affidavit is earlier filed.

§ 260-3. Display of license.

Such license shall be affixed in a prominent place to the outer garment of each licensee whenever he or she shall be engaged in such business so that it may readily be seen by all prospective customers. Failure to display the license shall be punishable by revocation thereof and a fine not to exceed \$100.

§ 260-4. Exceptions.

- A. The provisions of this bylaw shall not apply to any person who engages in a temporary or transient business at a Town function upon written invitation of a Town committee

1. Editor's Note: See also Ch. 200, Art. III, Fingerprint-Based Background Checks.

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or official, nor shall it apply to any person who engages in a temporary or transient business on private property with the permission of the owner.

- B. The provisions of this bylaw shall not apply to any person conducting a garage sale, nor to any person who goes door-to-door to sell goods, wares, periodicals or merchandise on behalf of any group organized for any of the purposes described in MGL c. 180, § 4. For purposes of this Subsection B, a "garage sale" is any outdoor or garage retail sale or offering for sale, conducted by a resident of the premises, involving 10 or more items of personal property, such as antiques, furniture, handicrafts, household goods or clothing, on no more than two occasions in any calendar year, each occasion lasting no more than 36 hours.

§ 260-5. Time limits.

No activities described in this bylaw, nor door-to-door approaches for charitable purposes, shall be allowed in the Town of Plympton before 9:00 a.m. or later than the earlier of 7:00 p.m. or one-half hour prior to sunset. Violations of this section shall be punished by a fine not to exceed \$50.

Chapter 275

VEHICLES AND TRAFFIC

ARTICLE I

Authority to Establish Regulations

§ 275-1. Authority to direct traffic.

[HISTORY: Adopted by the Town Meeting of the Town of Plympton as indicated in article histories. Amendments noted where applicable.]

ARTICLE II

Vehicle Operation

§ 275-2. Prohibited acts.

§ 275-3. Enforcement; violations and penalties.

ARTICLE I

Authority to Establish Regulations

§ 275-1. Authority to direct traffic.

Constables or specially appointed police may direct or divert either vehicles or pedestrians when necessary for public safety or convenience, and no persons having charge of a vehicle shall refuse or neglect to act as directed by a constable or specially appointed police officer.

ARTICLE II

Vehicle Operation

§ 275-2. Prohibited acts.

A person shall be guilty of a bylaw traffic safety violation when they have operated a vehicle in one of the below-listed prohibited manners:

- A. Operates a motor vehicle on any public way recklessly in a manner which endangers the public or which is likely to cause destruction or damage to the personal property of another.
- B. Trespasses on the private property of another or on public grounds where prohibited while operating a vehicle, motor vehicle, or recreational vehicle or anyone who abandons a vehicle, motor vehicle or recreational vehicle.

§ 275-3. Enforcement; violations and penalties.

Section 275-2 may be enforced by any Town police officer. Whoever violates any provision of § 275-2 may be penalized by a noncriminal disposition process as provided in MGL c. 40, § 21D and the Town's noncriminal disposition bylaw, General Bylaw Chapter 1, § 1-3. If noncriminal disposition is elected, then the noncriminal fine for each such violation shall be \$200 for a first offense and \$300 for a second or subsequent offense. Each day or portion

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thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

Chapter 280

VEHICLES, UNREGISTERED

§ 280-1. Open storage prohibited.

§ 280-3. Violations and penalties.

§ 280-2. Exclusions.

[HISTORY: Adopted by the Town Meeting of the Town of Plympton. Amendments noted where applicable.]

§ 280-1. Open storage prohibited.

No individual or entity shall allow or permit two or more unregistered motor vehicles which are unfit for vehicular use on a public way to be placed or set, open to public view, on premises within the Town of Plympton, unless said premises are licensed under and in compliance with MGL c. 140, §§ 54 and 57. A motor vehicle shall be deemed to be unfit for vehicular use on a public way if it is either inoperable or if it does not meet the standards of automobile inspections as promulgated by the Massachusetts Registry of Motor Vehicles.

§ 280-2. Exclusions.

This bylaw shall not apply to:

- A. Motor vehicles in use for agricultural, horticultural or forestry purposes;
- B. Motor vehicles set or placed on premises of gasoline service stations waiting for repairs;
- C. Up to three unregistered, unfit motor vehicles on premises of an automobile repair business;
- D. Up to three unregistered, unfit antique motor vehicles being restored on the premises; and
- E. Vehicles registered for seasonal work.

§ 280-3. Violations and penalties.

Penalty or breach hereof shall be subject to fines in an amount not in excess of \$20 for each offense. Each day that such violation continues shall constitute a separate offense, which may be recovered by indictment or on complaint before a District Court.

Chapter 290

WETLANDS PROTECTION

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| § 290-1. Purpose; resource area values. | § 290-9. Security. |
| § 290-2. Jurisdiction. | § 290-10. Enforcement; violations and penalties. |
| § 290-3. Exemptions and exceptions. | § 290-11. Burden of proof. |
| § 290-4. Applications and fees. | § 290-12. Appeals. |
| § 290-5. Notice and hearings. | § 290-13. Relation to Wetlands Protection Act. |
| § 290-6. Conditions and permits. | § 290-14. Severability. |
| § 290-7. Regulations. | |
| § 290-8. Definitions. | |

[HISTORY: Adopted by the Town Meeting of the Town of Plympton. Amendments noted where applicable.]

§ 290-1. Purpose; resource area values.

- A. The purpose of this bylaw is to protect the wetlands, water resources, flood-prone areas, and adjoining upland areas in the Town of Plympton. The bylaw will control activities determined by the Commission likely to have a significant or cumulative effect on resource area values. These include but are not limited to the following (collectively known as the "resource area values protected by this bylaw"):
- (1) Public or private water supplies.
 - (2) Groundwater supply.
 - (3) Flood control.
 - (4) Erosion and sedimentation control.
 - (5) Storm damage prevention.
 - (6) Water quality.
 - (7) Prevention and control of pollution.
 - (8) Fisheries, wildlife habitat, rare species habitat and rare plant and animal species.
 - (9) Agriculture and aquaculture values that are important to the community.
- B. This bylaw is intended to utilize the Home Rule authority of the Town of Plympton so as to protect the resource areas under the Massachusetts Wetlands Protection Act (MGL c. 131, § 40) to a greater degree, and to protect all resource areas for additional values beyond those recognized in the Wetlands Protection Act. It provides local regulations and permits additional standards and procedures stricter than those of the Wetlands Protection Act and regulations thereunder (310 CMR 10.00).

§ 290-2. Jurisdiction.

- A. Except as permitted by the Commission or as otherwise prohibited in this bylaw, no person will commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise make any alteration in or within 100 feet (the "buffer zone") of the following resource areas (collectively the "resource areas protected by this bylaw"):
- (1) Freshwater wetlands.
 - (2) Marshes.
 - (3) Wet meadows.
 - (4) Bogs.
 - (5) Swamps.
 - (6) Vernal pools.
 - (7) Banks.
 - (8) Lakes.
 - (9) Ponds.
 - (10) Lands under water bodies.
 - (11) Intermittent brooks, creeks and streams.
 - (12) Lands subject to flooding or inundation by groundwater or surface water.
- B. Except as permitted by the Commission or as otherwise prohibited in this bylaw, no person will commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise make any alteration in or within 200 feet horizontally from the mean annual high water boundary on each side the following resource areas ("riverfront area"):
- (1) Perennial rivers, streams, brooks and creeks.
- C. These resource areas shall be protected whether or not they border surface waters.
- D. "No touch zone."
- (1) Except as authorized by the Commission as otherwise prohibited in this bylaw, no activity or alteration shall be permitted within a twenty-five-foot "no touch zone" between any wetland resource area protected by this bylaw and any proposed site disturbance. Nothing herein shall preclude the maintenance of an existing structure located within the "no touch zone."
 - (2) The Commission may allow activities upon an express determination that the applicant has made a clear and convincing showing that the proposed work in the "no touch zone" will not adversely affect the resource area protected by this bylaw.
- E. The jurisdiction of this bylaw does not extend to uses and structures of agriculture that enjoy the rights and privileges of laws and regulations of the commonwealth governing agriculture. This includes work performed for normal maintenance or improvement of

land in agricultural or aquacultural uses as defined by the Wetlands Protection Act regulations (310 CMR 10.04).

§ 290-3. Exemptions and exceptions.

- A. The applications and permits required by this bylaw will not be required for work performed for normal maintenance or improvement of land in agricultural and aquacultural use as defined by the Wetlands Protection Act regulations (310 CMR 10.04).
- B. The applications and permits required by this bylaw will not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this bylaw.
- C. The applications and permits required by this bylaw will not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, or work ordered to be performed by a state or federal agency, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.
- D. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.
- E. Other than stated in this bylaw, the exceptions provided in the Wetlands Protection Act (MGL c. 131, § 40) and regulations (310 CMR 10.00) shall not apply under this bylaw.

§ 290-4. Applications and fees.

- A. Applications.
 - (1) Written permit applications shall be filed with the Commission to perform activities affecting resource areas protected by this bylaw. The application shall include such information and plans as are required by the Commission to describe proposed activities and their effects on the resource areas protected by this bylaw. The applicant shall commence no activities until receiving and complying with a permit issued pursuant to this bylaw.

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- (2) The Commission in an appropriate case may accept as the application and plans under this bylaw any application and plans filed under the Wetlands Protection Act (MGL c. 131, § 40) and regulations (310 CMR 10.00), but the Commission is not obliged to do so.
- (3) Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may in writing request a determination from the Commission. Such a request for determination of applicability (RDA) or abbreviated notice of resource area delineation (ANRAD) filed under the Act will include information and plans as are deemed necessary by the Commission.

B. Fee schedule.

- (1) Application fees. At the time of application, the applicant will pay a filing fee specified in regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act and regulations.
- (2) Consultant fees.
 - (a) Pursuant to MGL c. 44, § 53G and regulations promulgated by the Commission, the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants, including engineers, wetlands scientists, wildlife biologists or other experts, in order to aid in the review of proposed projects. Such funds will be deposited with the Town Treasurer, who will create an account specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.
 - (b) Only costs relating to consultant work done in connection with a project for which a consultant fee has been collected will be paid from this account, and expenditures may be made at the sole discretion of the Commission. Any consultant hired under this provision will be selected by, and report exclusively to, the Commission. The Commission will provide applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. Notice will be deemed to have been given on the date mailed by certified mail or hand-delivered. The applicant may withdraw the application or request within five business days of the date notice is given without incurring any costs or expenses.
 - (c) The entire fee must be received before the initiation of consulting services. Failure by the applicant to pay the requested consultant fee within 10 business days of the request for payment shall be reason for the Commission to declare the application administratively incomplete and deny the permit without prejudice, except in the case of an appeal. The Commission shall inform the applicant and Department of Environmental Protection (DEP) of such a decision in writing.
 - (d) The applicant may appeal the selection of an outside consultant to the Select Board, which may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The

minimum qualifications will consist of either an educational degree or three or more years of practice in the field at issue, or a related field. The applicant will make such an appeal in writing, which must be received within 10 business days of the date that request for consultant fees was made by the Commission. Such appeal will extend the applicable time limits for action upon the application.

§ 290-5. Notice and hearings.

- A. Any person filing a permit application, RDA, ANRAD or other request with the Commission will at the same time give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the Assessors. This includes owners of land directly opposite on any public or private street or way, and abutters to the abutters within 200 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice shall state a brief description of the project or other proposal and the date of any Commission hearing or meeting date, if known. The notice to abutters shall also state where copies of the application, RDA, ANRAD or other request may be examined and obtained by abutters. An affidavit from the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself will be sent by the Commission to the owner as well as to the person making the request.
- B. The Commission will conduct a public hearing on any permit application, RDA, or ANRAD with written notice given at the expense of the applicant, at least five business days prior to the hearing, in a newspaper of general circulation in the municipality. The Commission will commence the public hearing within 21 days from receipt of a completed permit application, RDA, or ANRAD unless an extension is authorized in writing by the applicant. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others as deemed necessary by the Commission in its discretion.
- C. The Commission will issue a permit, other order or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant. The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act (MGL c. 131, § 40) and regulations (310 CMR 10.00).
- D. Coordination with other boards. Any person filing a permit application or RDA with the Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested) or hand delivery, to the Board of Selectmen, Planning Board, Board of Appeals, Board of Health, Director of Public Works, and Building Inspector. A copy shall be provided in the same manner to the Conservation Commission of the adjoining municipality, if the application or RDA pertains to property within 200 feet of that municipality. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The Commission shall not take final action until the boards and officials have had 14 days from receipt of notice to file

written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

§ 290-6. Conditions and permits.

- A. Issuance of permits. If the Commission, after public hearing, determines that the activities which are subject to the permit application, or the land and water uses which will result therefrom, are likely to have a significant individual or cumulative effect on the resource area values protected by this bylaw, the Commission, within 21 days of the close of the hearing, will issue or deny a permit for the activities requested. The Commission may also take into account the extent to which the applicant has avoided, minimized and mitigated any such effect. The Commission may also take into account any loss, degradation, isolation, and replacement or replication of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities. The Commission may impose conditions which the Commission deems necessary or desirable to protect the resource area values, and all activities will be conducted in accordance with those conditions.
- B. Denial of permits. Where no conditions are adequate to protect said resource area values, the Commission is empowered to deny a permit for failure to meet the requirements of this bylaw. The Commission may also deny a permit for failure to submit necessary information and plans requested by the Commission; for failure to comply with the procedures, design specifications, performance standards, and other requirements in regulations of the Commission; or for failure to avoid, minimize or mitigate unacceptable significant or cumulative effects upon the resource area values protected by this bylaw.
- C. Revocation of permits. For good cause, the Commission may revoke any permit, or any other order, determination or other decision issued under this bylaw after notice to the holder, the public, abutters, and Town boards, pursuant to § 290-5 and § 290-6, and after a public hearing.
- D. Presumed importance of the buffer zone. In reviewing activities within the buffer zone, the Commission will presume the buffer zone is important to the protection of other resource areas because activities undertaken in close proximity have a high likelihood of adverse impact, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat.
- E. Presumed importance of riverfront area/practicable alternatives. In reviewing activities within the riverfront area, the Commission will presume the riverfront area is important to all the resource area values unless demonstrated otherwise, and no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this bylaw, has proved by a preponderance of the evidence that 1) there is no practicable alternative to the proposed project with fewer adverse effects, and that 2) such activities, including proposed mitigation measures, will

have no significant adverse impact on the areas or values protected by this bylaw. The Commission will regard as practicable an alternative which is reasonably available and capable of being carried out after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.

- F. Limited waiver of performance standards. The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, provided that: the Commission finds in writing after a public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.
- G. Avoidance of wetlands loss or alteration.
- (1) The Commission may establish, in its regulations, design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, and other work limits for protection of such lands, including without limitation strips of continuous, undisturbed vegetative cover, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the bylaw.
 - (2) To prevent resource area loss, the Commission will require applicants to avoid alteration wherever feasible; to minimize alteration; and, where alteration is unavoidable and has been minimized, to provide full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, because of the high likelihood of failure of replication.
- H. Wildlife habitat study. The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless of the type of resource area or the amount or type of alteration proposed. The decision will be based upon the Commission's estimation of the importance of the habitat area, considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife "corridors" in the area, or actual or possible presence of rare plant or animal species in the area. The work will be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60).
- I. Vernal pools. The Commission will presume that all areas meeting the definition of "vernal pools" under § 290-8 of this bylaw, including the adjacent area, perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression does not provide essential habitat functions. Any formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Wetlands Protection Act regulations.

J. Expiration.

- (1) A permit, determination of applicability (DOA), or order of resource area delineation (ORAD) will expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed for an additional three-year period, provided that a request for a renewal is received in writing by the Commission 30 days prior to expiration. Notwithstanding the above, a permit may identify requirements which will be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and will apply to all present and future owners of the land.
- (2) Amendments to permits, DOAs, or ORADs will be handled in the manner set out in the Wetlands Protection Act regulations and policies thereunder.

K. Coordination with other permits. The Commission in an appropriate case may combine the decision issued under this bylaw with the permit, DOA, ORAD, or certificate of compliance (COC) issued under the Wetlands Protection Act and regulations.

L. Recording. No work proposed in any application will be undertaken until the permit or ORAD issued by the Commission with respect to such work has been recorded in the Registry of Deeds or, if the land affected is registered land, in the Registry Section of the Land Court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the document has been recorded. If the applicant fails to perform such recording, the Commission may record the documents itself and require the applicant to furnish the recording fee therefor, either at the time of recording or as a condition precedent to the issuance of a COC.

§ 290-7. Regulations.

After public notice and public hearing, the Commission may promulgate rules and regulations to effectuate the purposes of this bylaw, effective when voted and filed with the Town Clerk. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law will not act to suspend or invalidate the effect of this bylaw. At a minimum, these regulations shall reiterate the terms defined in this bylaw, define additional terms not inconsistent with the bylaw, and impose filing and consultant fees.

§ 290-8. Definitions.

- A. Except as otherwise provided in this bylaw or in associated regulations of the Commission, the definitions of terms and the procedures in this bylaw shall be as set forth in the Wetlands Protection Act (MGL c. 131, § 40) and regulations (310 CMR 10.00).
- B. The following definitions shall apply in the interpretation and implementation of this bylaw:

AGRICULTURE — Shall refer to the definition as provided by MGL c. 128, § 1A.

ALTER — Includes, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

- (1) Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind.
- (2) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, 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 which 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.
- (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 any waters.
- (10) Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater.
- (11) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.

BANK — Includes the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

PERSON — Includes any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof to the extent subject to Town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

PLANS — Such data, maps, engineering drawings, calculations, specifications, schedules and other materials, if any, deemed necessary by the Commission to describe the site and the activity, to determine the applicability of the bylaw or to determine the impact of the proposal upon the interests identified in the bylaw. It is the responsibility of the applicant to ensure that the plans accurately depict all wetland resource areas.

POND — Shall follow the definition of 310 CMR 10.04, except that the size threshold of 5,000 square feet will apply.

RARE SPECIES — Includes, without limitation, all vertebrate and invertebrate animals and all plant species listed as endangered, threatened, or of special concern by the

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

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

§ 290-9. Security.

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

- A. By a proper bond, deposit of money or negotiable securities under a written third-party escrow arrangement, 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 COC 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 will be performed and observed before any lot may be conveyed other than by mortgage deed. This method will be used only with the consent of the applicant.

§ 290-10. Enforcement; violations and penalties.

- A. No person will remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.
- B. With approval of the owner, the Commission, its agents, officers, and employees will have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the Constitutions and laws of the United States and the commonwealth.
- C. The Commission will have authority to enforce this bylaw, its regulations, and permits issued thereunder by letters, phone calls, electronic communication and other informal

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methods, violation notices, and civil and criminal court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

- D. Upon request of the Commission, the Select Board and Town Counsel will take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police will take legal action for enforcement under criminal law.
- E. Municipal boards and officers, including any police officer or other officer having police powers, will have authority to assist the Commission in enforcement.
- F. Any person who violates any provision of this bylaw, or regulations, permits, or administrative orders issued thereunder, will be punished by a fine levied by the Commission. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, will constitute a separate offense, and each provision of the bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.
- G. Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this bylaw or in violation of any permit issued pursuant to this bylaw will 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, will be brought against such person unless commenced within three years following date of acquisition of the real estate by such person.

§ 290-11. Burden of proof.

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

§ 290-12. Appeals.

A decision of the Commission shall be reviewable in the Superior Court in accordance with MGL c. 249, § 4.

§ 290-13. Relation to Wetlands Protection Act.

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (MGL c. 131, § 40) and regulations (310 CMR 10.00) thereunder. It is the intention of this bylaw that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements will be interpreted and administered as stricter than those under the Wetlands Protection Act and regulations.

§ 290-14. Severability.

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