

**BY-LAW INDEX**

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**BY LAWS  
TOWN OF TYNGSBOROUGH**

Updated through ATM 5/20/14

<b>ARTICLE I</b>	<b>TOWN MEETINGS</b>
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**SECTION 1.** The Annual Town Meeting shall be held on the third Tuesday of each May at 7:00 in the afternoon. The polls shall be open as stated in the Warrant calling said meeting.

**SECTION 2.** The copies of warrants for all Town Meetings shall be posted in accordance with law at the following locations: Town Hall, Community Center, Fire Station #1, Fire Station No. 2 on Lakeview Avenue and Flints Corner Plaza.

**SECTION 3.** The proceedings of Town Meetings shall be governed by the rules of practice contained in Robert's Rules of Order, except as modified by law or by these By-laws.

**SECTION 4.** A motion shall, if required by the moderator, be reduced to writing before being submitted to the meeting.

**SECTION 5.** No vote shall be reconsidered except by a two-thirds vote of those present and voting.

**SECTION 6.** On proposed amendments involving sums of money the smaller or smallest amount shall be put to the question first and an affirmative vote thereon shall be a negative vote on any larger amount.

**SECTION 7.** All committees shall be appointed by the moderator unless otherwise specially directed by the Meeting, and all committees shall be directed to report within a definite time.

**SECTION 8.** Any warrant article or motion thereunder receiving unfavorable action at any Town Meeting shall require a 3/4 vote for adoption at a Special Town Meeting. This restriction shall apply when an article or motion presented at a Special Town Meeting contains the same subject matter or would produce the same effect as one acted upon at a previous meeting. A request for a different sum of money shall not be construed as changing the subject matter of such an article or motion. Said Section 8 shall not apply, however, to amendments to the Town By-laws or Zoning By-laws.

<b>ARTICLE II</b>	<b>FINANCE COMMITTEE</b>
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**SECTION 1.** There shall be a Finance Committee consisting of five (5) citizens of the town, other than town officers, appointed or elected. The moderator shall implement this amendment by not filling vacancies until such time as there is a five (5) person committee, any members of said committee who shall be appointed or elected to town office or a committee or board other than the capital asset management committee shall forthwith upon qualifying for such office, and any member who shall remove from the town shall upon such removal, cease to be a member of said committee. Members absent from one-third of the regular meetings in any calendar year may be removed by a two-thirds vote of the other members present and voting. Said committee shall serve without salary.

**SECTION 2.** The Finance Committee may employ, subject to an appropriation therefor, an executive secretary.

**SECTION 3.** In the event of any vacancy in its membership, the Finance Committee shall notify the moderator in writing and the moderator shall thereupon fill such vacancy.

**SECTION 4.** The Finance Committee shall consider all matters of business included within the articles of any warrant for a Town Meeting, and shall, after due consideration report thereon in print its recommendation as to each article. The Finance Committee shall distribute its report to each of the

town meeting members at least seven (7) days in advance of a Town Meeting. The recommendations shall be those of a majority of the entire committee, but this shall not be construed to prevent recommendations by a minority as such. The report shall state the total amount of the appropriations recommended by them on the entire warrant and the approximate tax rate based on such a statement of the doings of the committee during the year, with such recommendations or suggestions as it may deem advisable on any matter on referenda and other matters on any ballot other than the choices of individuals for offices.

<b>ARTICLE III</b>	<b>TOWN OFFICERS</b>
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**SECTION 1.** The Selectmen shall have full authority in behalf on the town, to file an appearance and answer in any legal or equitable proceeding that may be instituted against the town, but no final disposition of any proceeding involving expenditure of money shall be made except by vote of a Town Meeting

**SECTION 2.** Any conveyance of real estate by the town shall be executed in behalf of the town by the Selectmen or a majority thereof, unless otherwise specified by vote of the town.

<b>ARTICLE IV</b>	<b>PUBLIC WAYS</b>
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**SECTION 1.** No person shall throw stones, snowballs, sticks, or other missiles, or kick football, or play at any game in which a ball is used, or shoot with an air-gun, bow and arrow, sling shot or other similar device, on or across any of the public ways of the town

**SECTION 2.** No person shall in any way willfully or negligently obstruct the free passage of foot travelers on any sidewalk of the town.

**SECTION 3.** No persons shall walk, stand or lounge upon any portion of any street or public grounds of the town devoted to the growing of grass or flowers, nor in any way dig or injure or deface the same.

**SECTION 4.** No persons shall break or dig up any sidewalk, street or highway, or place therein any staging or other temporary structure, or move any building into or along the same without a license in writing from the Board of Selectmen, specifying the terms and conditions upon which such act shall be allowed. Any person to whom such a license is granted shall, before the expiration of the same, restore the sidewalk, street, or highway to its original condition, or to a condition satisfactory to said Board.

**SECTION 5.** No person shall have more than one unregistered car or truck ungaraged on his premises in a residential district at any time unless authorized by the Board of Selectmen. In no event will an unregistered, unsightly car or truck be stored in the front yard.

**SECTION 6. Public Safety, Pedestrians, Traffic Islands**

**6.1 Purpose**

Traffic islands, also known as traffic medians, regulate the safe flow of motor vehicle traffic and are not designed for persons to stand, sit, or place signs on. The use of such traffic islands for demonstrations, political campaigns, solicitation of monies for charities, religious organizations, and youth organizations, the placing of signs, panhandling, and the like presents safety and public welfare concerns for persons standing or sitting or placing signs on such traffic islands or on any adjacent way and for motorists who may be distracted by such use.

Consequently, the intent and purpose of this Bylaw is to regulate such use for the safety and public welfare of all such persons or activities, which activities and the like may more safely be exercised on sidewalks and other public places and not by standing, sitting, or placing signs upon traffic islands or on any adjacent way.

### **6.2 Notice by Police Officer**

No person shall, after given notice and warning by a police officer, persist in walking, standing, or placing any signs on any roadway traffic island or on any adjacent way, including but not limited to the below specified, except for the purpose of crossing the roadway at an intersection or designated crosswalk or for the purpose of entering or exiting a vehicle at the curb or for repairing or maintaining the traffic island. Any police officer observing any person violating this provision shall first request such person to remove himself or herself and/or the signs from the traffic island or on any adjacent way and, if such person declines or refuses to do so, shall next give notice and warning and order such person to remove himself or herself and/or the signs from the traffic island or on any adjacent way.

### **6.3 Traffic Islands**

At Exit 36, (Middlesex Road / entrance to Pheasant Lane Mall),  
At Middlesex Road at entrance to Pheasant Lane Mall & Plaza entrance,  
At Kendall Road & Middlesex Road intersection,  
At Chronopoulos Way & Frost Road,  
At Old Pawtucket Boulevard & Frost Road,  
At Westford Road at Exit 34, North and Southbound,  
At Kendall Road at Exit 35, North and Southbound.

### **6.4 Penalties and/or Fines**

First Offense:	\$ 25.00
Second Offense:	\$ 50.00
Third and Subsequent Offense:	\$100.00

<b><i>ARTICLE V</i></b>	<b><i>PENALTY</i></b>
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**SECTION 1.** Whoever violates any of these provisions, unless otherwise provided in the By-Law itself, shall be punished by a fine of not more than \$20.00 for each offense.

<b><i>ARTICLE VI</i></b>	<b><i>AMENDMENTS</i></b>
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**SECTION 1.** These by-laws may be amended at any Town Meeting by a majority vote. Any proposed amendment shall appear in full in the warrant for such meeting, or take any other action relative thereto.

<b><i>ARTICLE VII</i></b>	<b><i>REPEAL</i></b>
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**SECTION 1.** All by-laws or votes of the town inconsistent with these by-laws are hereby repealed.

<b><i>ARTICLE VIII</i></b>	<b><i>TOWN COLLECTOR</i></b>
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**SECTION 1.** The Tax Collector, as provided in Section 38A of Chapter 41 of the General Laws, tercentenary edition as amended, shall collect under the title of the Town Collector, all accounts due the town excepting money due from state for Old Age Assistance, Aid to Dependent Children, State Public Welfare Cases and Interest on Investments of Sinking or Trust Funds. All such accounts

except as stated, shall be committed to the Tax Collector as Town Collector, and the Collector shall immediately bill all persons owing money to the town as evidenced by such commitments and shall pay over to the Town Treasurer all money collected. In the event of non-payment the Collector is hereby authorized to proceed as provided in Sections 35, 36, and 93 of Chapter 60 of the General Laws aforesaid, to enforce the collections of such accounts. The Collector shall be given the usual remedies granted to collectors providing for the abatement of such accounts should they prove to be uncollectable.

**ARTICLE IX            ACCEPTANCE OF STREETS**

**SECTION 1.** No street shall be laid out, relocated or accepted by the Town except in accordance with M.G.L. c. 82, sections 21 through 24.

**ARTICLE X            MOTORBOATS**

**SECTION 1.** No motorboat may be operated under power within a distance of 200 feet from the shore of Pinehaven Beach (Town Beach), or any other recognized beach, between the hours of 10 A.M. and one hour after sunset.

**SECTION 2.** Any motorboat used for the purpose of towing persons on water-skis or an aquaplane shall be occupied by at least two persons, one, who will give his full attention to the operation of the boat, and the other to direct his full attention to the welfare and safety of the person or persons being towed.

**SECTION 3.** No motorboat shall be operated unless it fully complies with the provisions set forth in Chapter 102, Section 15, of the General Laws as to proper lighting and exhaust muffling devices.

**SECTION 4.** No person shall operate upon the waters of this town any boat propelled by electric or mechanical power recklessly or so that the lives and safety of others might be endangered. No person shall, while under the influence of intoxicating liquor, or any narcotic or habit producing drug, operate any such boat upon any such waters.

**SECTION 5.** These provisions shall not restrict in any way the duly licensed operations of party boats used to convey the public for hire; or to craft operating on the Merrimack River within the town limits.

**SECTION 6.** Penalty -- not more than \$20.00 fine.

**ARTICLE XI            TOWN BEACH**

**SECTION 1.** The use of the Town Beach, located on the northerly shore of Lake Mascuppic in Tyngsborough and consisting of lots 79, 80, and 81 as shown on a plan of Mountain Rock, Tyngsborough, Massachusetts, dated September 1917 and recorded in Middlesex North District Registry of Deeds, Book of Plans 34, Plan 91, shall, from and after the effective date of this By-Law, be limited to inhabitants of the Town of Tyngsborough and their families and guests and no other person or persons shall use the same as a public beach, or trespass upon the same for any purpose whatsoever.

**SECTION 2.** Signs warning all persons of the provisions of this By-Law shall be erected at the westerly and easterly boundaries of said beach at Mascuppic Trail, and no person shall be held liable for violation of this By-Law except when such signs are actually in place.

**SECTION 3.** Any violation of this By-Law shall be punished by a fine of not more than \$20.00 for each offense.

**ARTICLE XII APPOINTMENT OF GAS INSPECTOR**

**SECTION 1.** The Board of Selectmen shall annually appoint an Inspector of gas piping and gas appliances in accordance with Section 3 “0”, Chapter 737, Acts of 1960.

**ARTICLE XIII LICENSING COLLECTORS OR SECOND HAND DEALERS**

**SECTION 1.** The Selectmen are hereby authorized to license suitable persons to be collectors or dealers in/ or keeping of shops for the purchase, sale or barter of junk, old metal or second hand articles, and may make rules and regulations relative to their business, and may provide for the supervision thereof.

**ARTICLE XIV COUNCIL ON AGING**

**SECTION 1.** There is hereby established a Council on Aging for the purpose of coordinating or carrying out programs designed to meet the problems of the aging in coordination with programs of the Commission on Aging established under Section 73 of Chapter 6 of the General laws, as amended, or as the same may be hereafter amended.

**SECTION 2.** The Council on Aging established hereunder shall consist of eleven (11) members to be appointed by the Board of Selectmen and all of said members shall be residents of the town. When said Council is first established, four (4) members shall be appointed for terms of three years each, four (4) for two years and three (3) for one year. A vacancy occurring other than by expiration of term shall be filled in the same manner as an original appointment.

**SECTION 3.** The Council shall submit an annual report to the Town for inclusion in the Annual Town Report and shall send a copy thereof to the State Commission on Aging. The Council may appoint such clerks and other employees as it may require.

**ARTICLE XV SHELTER IN PUBLIC STRUCTURES**

**SECTION 1.** Every officer, board, department, commission or commissioner, of the Town of Tyngsborough charged with the duty of preparing specifications, or awarding or entering into contracts for the design, erection, or construction of buildings or other structures including additions to existing structures, for the town, shall incorporate or cause to be incorporated in such buildings or other structures, fallout protection for at least its normal anticipated population which shall meet or exceed the minimum space and fallout protection criteria recommended by the Office of Civil Defense, United States Department of Defense, unless exempted from such shelter requirement in accordance with sub-section (2) of this by-law.

**SECTION 2.** The Chairman of the Board of Selectmen, or the Civil Defense Director may exempt buildings or structures from this requirement by means of a letter where he finds that such incorporation of fallout shelter will create an additional net cost in the construction of such structures in excess of two percent (2%) of the estimated cost thereof without shelter so incorporated, or that other factors as he may determine make unnecessary or impracticable the incorporation of fallout shelter in such structures.

**SECTION 3.** It shall be the policy of the Town of Tyngsborough, to the fullest extent practicable, to provide protection against radiation for the greatest number of people in the event of nuclear attack.

**ARTICLE XVI POSSESSION AND CONSUMPTION OF ALCOHOLIC BEVERAGES**

**SECTION 1.** Definitions. The following definitions shall apply in the interpretation and enforcement of the by-law:

- a. "Public Way" shall mean the entire width between the lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel and shall include the entire width of any sidewalk within the lines of such way. In the case of ways established by prescription or concerning which no official layouts exist, the edges of the surface of the traveled way shall be deemed to be the lines of such public ways.
- b. "Alcoholic Beverages" shall mean any beverage defined as an alcoholic beverage in Section 1 of Chapter 138 of the General Laws.
- c. "Public Property" shall mean and include all town commons, school grounds, municipal parking lots, municipal parks, municipal playgrounds and all real property, buildings, or offices owned by or leased to the town or occupied or used by any board, department, committee, commission or office of the town.
- d. "Private Property" shall mean any real property within the town of Tyngsborough which is not owned by the town.

**SECTION 2.** No person shall consume any alcoholic beverages on any public way or on any way to which the public has a right of access.

**SECTION 3.** No person shall bring any alcoholic beverages onto any public property or private property without the permission of the owner or person lawfully in charge or control of such public or private property.

**SECTION 4.** All alcoholic beverages possessed or consumed in violation of this by-law shall be seized and held until final adjudication of the charge against the person or persons arrested or summoned before the court. After final adjudication all alcoholic beverages seized shall be returned to the person or persons entitled to the lawful possession of them.

**SECTION 5.** Violations of this by-law are punishable of a fine of fifty (50) dollars for each offense.

**SECTION 6.** This by-law shall be enforced on behalf of the town by its Police Department which shall have the right to arrest any and all persons in violation of said by-law.

**SECTION 7.** If any part, section, or provision of this by-law is found to be invalid, the remainder of this by-law shall not be affected thereby.

<b><i>ARTICLE XVII      REGULATION OF DOGS</i></b>
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**STATEMENT OF PURPOSE**

This bylaw is intended to guide those persons owning or keeping dogs in their role as responsible pet owners so as not to adversely affect the residents of the Town of Tyngsborough.

**REFERENCE TO MASSACHUSETTS GENERAL LAWS**

Any reference to a "section" in this bylaw shall mean M. G. L. c. 140, s 136A through 174D inclusive, as may be amended from time to time and except as modified herein, are incorporated into this bylaw relating to the regulation of dogs.

**DEFINITIONS**

Unless otherwise set out in this bylaw, any term defined in M. G. L. c. 140 s. 136A shall have the same meaning in this bylaw, and shall be expressly incorporated herein.

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

**PERSON:** An individual, partnership, association, company or corporation.

**AT LARGE:** On or off the premises of the owner, and not under the control of the owner or authorized person either by leash, cord, chain or other means.

**ANIMAL SHELTER:** Any premises designated for the purpose of impounding and caring for animals held under authority of this bylaw.

**LICENSE PERIOD:** From January 1 of each year to December 31 of the same year.

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

**RESTRAINT:** A dog shall be deemed to be under restraint if it is on the premises of the owner accompanied by a person who shall have the dog under control; or is in a suitably enclosed area; or if outside the premises of the owner, is accompanied by a person who shall have the dog under control by holding it firmly on a leash no greater than six (6) feet in length.

#### **EFFECTIVE IMPLEMENTATION DATE OF THIS BYLAW**

This bylaw shall go into effect on the date of posting the Town Bulletin following the approval of the Attorney General.

#### **DOG CONTROL OFFICER**

The Board of Selectmen shall annually appoint a dog control officer under the provisions of M. G. L. c. 140 s. 151 and s.151A to carry out the provisions of this bylaw, and perform such other duties and responsibilities as the Board may determine. The Board shall determine hours and conditions of work for the dog control officer.

The dog control officer shall seek out and notify all owners of all dogs within the Town that have not been licensed within the required time under the provisions of this bylaw; shall seek out, catch and confine any dogs within the Town that are found on public property, or on private property where said dog is trespassing and the owner or person in control of such property wants the dog removed, if said dog is in violation of any section of this bylaw.

No person shall interfere with, hinder, molest or abuse a dog control officer in the exercise of such responsibilities. The provisions of M. G. L. c. 140 s. 151 and s. 151A regarding killing and/or transfer of any dogs shall apply and are expressly incorporated in this bylaw.

No dog control officer shall be a licensed animal dealer registered with the United States Department of Agriculture, and no dog control officer, either privately or in the course of carrying out official assignments as an agent for this Town, or shall any other agent of the Town, give, sell, or turn over any animal which may come into custody to any business or institution licensed or registered as a research facility or animal dealer with the United States Department of Agriculture. Whoever violates the provisions of this paragraph shall be punished as provided in M. G. L. c. 140 s. 151. It shall be the duty of the dog control officer to keep, or cause to be kept, accurate and detailed records of the impoundment and disposition of all dogs held in custody; a monthly telephone log of all calls regarding dogs; all bite cases reported and the investigation of same, and to submit monthly reports to the Board of Selectmen.

#### **HEARING OFFICER**

The Board of Selectmen shall act as hearing officer on all matters pertaining to the enforcement of this bylaw and the settling of any disputes between dog owner, the Town and its residents.

#### **VACCINATION REQUIREMENT**

Whoever is the owner of a dog six months of age or older shall cause such dog to be vaccinated against rabies by a licensed veterinarian using a vaccine approved by the Department of Public Health. Such owner shall produce a veterinarian's certificate that such dog has been so vaccinated setting forth the date of such vaccination and the duration of immunity; a metal rabies tag bearing an

expiration date indicating that such certification is still in effect; or a notarized letter from a veterinarian that a certification was issued.

Unvaccinated dogs acquired or brought into the Town shall be vaccinated within thirty days after acquisition or entry into the Town or upon reaching the age of six months, whichever comes later.

Unvaccinated dogs shall be re-vaccinated in accordance with rules and regulations adopted and promulgated by the Department of Public Health.

#### REGISTRATION, LICENSES AND FEES

Any owner of a dog which is six (6) months of age or older and is located in the Town of Tyngsborough shall obtain a license for that dog commencing on January 1 of each year, as required by M. G. L. c. 140.

The fee for every license shall be:

Neutered male dogs and spayed female dogs	\$ 7.00
Unneutered male dogs and unspayed female dogs	\$11.00

The registering, numbering, describing and licensing of a dog shall be done by the Town Clerk on a form prescribed and supplied by the Town Clerk, and shall be subjected to the condition expressed therein that the dog which is the subject of the license shall be controlled and restrained from killing, chasing or harassing livestock, fowls or wildlife.

The owner of a licensed dog shall cause it to wear around its neck or body a harness of leather or other suitable material, to which shall be securely attached a tag on a form prescribed by and issued by the Town Clerk when a license is issued. Such tag shall state the following information: (a) Town of Tyngsborough; (b) year of issue and (c) tag number. The Town Clerk shall maintain a record of the identifying numbers.

If any such tag shall be lost, the owner of such dog shall forthwith secure a substitute tag from the Town Clerk. The fee for the duplicate tag shall be: Duplicate Tag: \$1.00

The Town Clerk shall not grant such license for any dog unless the owner thereof provides the Town Clerk with either a veterinarian's certification that such dog has been vaccinated in accordance with the provisions of M. G. L. s.145B or has been certified exempt from such provision as outlined in M. G. L. c. 140 s.137 or s.137A, or a kennel license has been issued in accordance with Kennel Registration, Licenses and Fees.

All fees collected for licenses and fines under this bylaw shall be paid into the dog pound fund and be under the supervision of the Board of Selectmen.

#### KENNEL REGISTRATION, LICENSES, AND FEES

Any person maintaining a kennel shall have a kennel license. The fee for kennel licenses shall be:

Four (4) dogs	\$ 25.00
Five (5) to ten (10) dogs	50.00
Eleven (11) dogs or more	100.00

Any person who meets all requirements of the Town of Tyngsborough Zoning Bylaw and M. G. L. c. 140 s. 137A, may apply for a kennel license from the Town Clerk on a form prescribed and supplied by the Town Clerk and for a fee as set out in this bylaw.

The provisions of M. G. L. c. 140 s.138 and s138A shall be expressly incorporated herewith and shall henceforth apply under this bylaw.

The dog control officer may at any time inspect or cause to be inspected any kennel and if, in her or his judgment the same is not being maintained in a sanitary and humane manner, or if records are not properly kept as required by law, shall file with the Board of Selectmen a petition setting forth the facts, and the Board shall upon this petition, or upon a petition of twenty-five citizens, setting forth that they are aggrieved, or annoyed to an unreasonable extent, by one or more dogs at a kennel maintained in Town, because of excessive barking or vicious disposition of said dog or other conditions connected with such kennel constituting a public nuisance, said Board, within seven days after the filing of such petition, shall give notice to all parties in interest of a public hearing to be held within fourteen days after the date of such notice. Within ten days after such public hearing said Board shall make an order either revoking or suspending such kennel license or otherwise regulating

said kennel, or dismissing said petition. Within ten days after such order the holder of such license may bring a petition in the district court as outlined in M. G. L. c. 140 s.137C. Any person maintaining a kennel after the license therefore has been so revoked, or while such license is so suspended, shall be punished as set forth in the penalty provision of this bylaw. The Board may in the case of any suspension, reinstate such license.

#### KENNEL REGULATIONS

The Town Clerk shall issue no kennel permit pursuant to the provisions of M. G. L. c. 140 s.137A, unless:

He or she has received a written report from the dog control officer certifying as follows:

That the premises where the applicant's kennel is located has been inspected.

That the premises proposed are appropriate for use as a kennel in compliance with the zoning bylaws of the Town of Tyngsborough.

That such use will have no significant adverse effect on the peace and quiet of the neighborhood or on the sanitary conditions there.

#### FAILURE TO LICENSE

In addition to the requirement that a dog shall be duly licensed as required by law, upon the complaint of the dog control officer, the penalty for the owner of a dog not licensed on or before March 1 in any year shall be:

Failure to license dog (in addition to license fee): \$25.00

All fees collected under this section shall be paid into the dog pound fund under the supervision of the Board of Selectmen.

#### LEASH LAW

No owner or keeper of any dog shall permit such dog to run at large at any time between the hours of 7:00 A.M. and 9:00 P.M. licensed or unlicensed. The provisions of this section shall not be intended to apply to dogs participating in any dog show, or to "seeing-eye" dogs properly trained to assist blind persons for the purpose of aiding them in going from place to place, nor to any dogs properly trained and under the control of and aiding the deaf, nor to any dogs, being trained or actually being used for hunting purposes. Nothing contained in the foregoing paragraph shall prevent the Board of Selectmen from passing any orders authorized by M. G. L. c. 140 s. 137 at such times as they shall deem necessary to safeguard the public.

#### NUISANCE ABATEMENT

The keeping or harboring of any dog, whether licensed or not, which by habitual, consistent and persistent howling, yelping, barking, or other noise disturbs or annoys any persons residing in the neighborhood is unlawful and is hereby declared to be a public nuisance and each day shall constitute a separate offense. Dogs shall be kept in such a manner that no nuisance is produced regarding sanitary conditions, housing, food, shelter, water, or other factors which may cause a nuisance. Upon determination by the dog control officer, based on evidence, that a dog is causing a nuisance, the owner of such dog shall be punished as set forth in the penalty section of this bylaw.

Every female dog in heat shall be confined in a building or secured enclosure in such a manner that such female dog cannot come into contact with another animal except for planned breeding. The owner of any unspayed and unleashed female dog found by the dog control officer roaming in season (heat) off the premises of the owner shall be punished in the penalty section of this bylaw.

When the owner of a male dog is notified by the dog control officer that his or her dog is a nuisance to residents while attracted to the residence of a female dog in heat, the owner of the male dog shall be requested to keep the male dog restrained.

The definition of nuisance dogs includes but is not limited to dogs whose owners repeatedly allow them to:

Bark Excessively

Roam free or unrestrained during the hours of 7 A.M. to 9 P.M.

Damage property

Molest passersby

Chase persons walking, jogging, or riding bicycles

Chase vehicles; and/or

Disturb the peace in any way at any time.

It shall be deemed a public nuisance if any dog should trespass upon public or private property and deposit feces thereon, unless the feces is immediately removed by the owner or keeper of said dog.

#### QUARANTINE OF DOG THAT BITES

The dog owner shall immediately, and within twenty-four (24) hours, notify the dog control officer and agent for the Board of Health, if the dog bites a person. For biting a person, the dog must be quarantined subject to Massachusetts General Laws c.129, s.21. Any and all violations of a quarantine order will be subject to general penalties under Massachusetts General Laws c.129, s. 30.

#### VICIOUS DOGS

Vicious dogs are defined as dogs who unprovoked have attacked or bitten a human being or animal, or has a known propensity, tendency or disposition to attack unprovoked, to cause injury or to endanger the safety of human beings or animals.

No dog shall be declared vicious if injury or damage sustained by a person who was willfully trespassing or committing or attempting to commit a crime or committing other tort upon the premises occupied by the owner of a dog. Also exempted are dogs who were teased, tormented, abused or assaulted by the injured person or animal prior to attacking or biting. No dog shall be declared vicious if the dog was protecting or defending a human being in its immediate vicinity from attack or assault.

Potentially vicious dogs are defined as dogs who, when unprovoked, in a vicious or terrorizing manner approach any person or animal in an apparent attitude of attack in any public place within the Town.

Dogs who have violated any of the above conditions can be declared to be a nuisance, vicious or potentially vicious by the Board of Selectmen upon written complaint of a citizen, the dog control officer, Police Department or other public safety agent.

#### DISPOSITION OF DOGS

Any dog confined by the dog control officer, unless picked up by the owner, shall be kept for at least ten (10) days.

A storage fee for the boarding of impounded dogs shall be levied at a rate of \$5.00 per day.

Any dog confined by the dog control officer shall not be released to the owner until the owner produces evidence of a current dog license and pays all fines and storage fees.

#### LIABILITY FOR DOGS

The owner of a dog which has done damage to livestock or fowls shall be liable in tort to the Town for all damages so done in which the Town has been requested to pay as provided by Massachusetts General Laws, chapter 140 or by this bylaw. Such action may be brought by the Board of Selectmen or by the dog control officer.

#### VIOLATIONS

A violation of any section of this bylaw shall be punishable by a warning for the first offense. Any person authorized to enforce provisions of this bylaw shall issue a citation to the owner of any dog violating the provisions of this bylaw. Any such citation shall include, in addition to the violation charge, the name and address of the owner of the dog, the date and time and location of the alleged offense, and, if not a warning, the amount of the penalty due. Said citation shall be on a form prescribed by and furnished by the dog control officer.

#### PENALTIES AND/OR FINES

The following penalties, except where otherwise indicated herein, shall be in effect for violations of this bylaw after a warning has been issued.

- |  |          |
|--|----------|
| (A) First offense in calendar year         | \$ 25.00 |
| Second offense in calendar year            | \$ 50.00 |
| Third and each subsequent in calendar year | \$100.00 |

**SEVERABILITY CLAUSE**

If any part, section or provision of the bylaw is found to be invalid, the remainder of this bylaw shall not be affected thereby. No provision or interpretation of a provision of this bylaw is intended to be either in conflict with or an attempt to change any statutory provision in Massachusetts General Laws, Chapter 140, pertaining to dogs.

**ARTICLE XVIII PUBLIC MEETING - ALCOHOLIC BEVERAGES**

**SECTION 1.** No gathering, meeting, dance or event to which the public is invited, at which alcoholic beverages will be sold, and at which attendance exceeds one hundred (100) persons shall be held in the Town of Tyngsborough, unless the sponsor of such gathering, meeting, dance or event requests the Chief of Police to assign one (1) Tyngsborough Police Officer in uniform for every one hundred (100) persons in attendance.

**SECTION 2.** Said sponsor shall base each such request upon the previous year’s attendance and, if none, upon advance ticket sales and reservations.

**SECTION 3.** Such Police Officers assigned shall be paid by said sponsor at the prevailing extra duty rate.

**ARTICLE XIX NUDE BATHING**

**SECTION 1.** No person over five (5) years of age shall swim or bathe in any public or exposed place in a nude condition.

**ARTICLE XX CLOSING OF PUBLIC WAYS - REPAIRS**

**SECTION 1.** No person shall ride, drive or cause to be driven any horse or vehicle over that part of the street which is being mended, repaired or paved, if a watchman or signs prohibiting passage are placed.

**ARTICLE XXI DEMOLITION OF BUILDINGS OR STRUCTURES**

**SECTION 1: Intent and Purpose**

This By-law is adopted for the purpose of protecting the historic and aesthetic qualities of the Town by encouraging owners to preserve, rehabilitate or restore whenever possible, buildings or structures which constitute or reflect distinctive features of the architectural or historic resources of the Town. Such preservation will thereby promote the public welfare and preserve the cultural heritage, economic heritage and the social history of the Town.

**SECTION 2: Definitions**

For the purposes of this section the following words and phrases have the following meanings:

- 1) Commission – the Tyngsborough Historical Commission.
- 2) Commissioner – the Tyngsborough Building Commissioner
- 3) Demolition Permit – the permit issued by the Commissioner as required by the state building code for the demolition, partial demolition or removal of a building or structure.
- 4) Building or Structure – any combination of materials capable of being used for shelter of persons, animals, or property.
- 5) Historically Significant Building or Structure – any building or structure that is:
  - a) importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the Town, the Commonwealth of Massachusetts or the United States of America.

- b) historically or architecturally important by reason of period, style, method of building construction, or association with a particular architect or builder, whether by itself or in the context of a group of buildings or structures.

### **SECTION 3: Regulated buildings and structures**

The provisions of this Article shall apply only to the following buildings or structures:

- 1) a building or structure listed on the National Register of Historic Places or the State Register of Historic Places, or the subject of a pending application for listings on either of said Registers; or
- 2) a building or structure located within 200 feet of the boundary line of any federal, state or local historic district; or
- 3) a building or structure included in the Inventory of the Historic and Prehistoric Assets of the Commonwealth, or designated by the Commission for inclusion in said inventory; or
- 4) a building or structure included in the Town of Tyngsborough Comprehensive Inventory of Historic Places.

### **SECTION 4: Procedure**

A. The Building Commissioner shall forward a copy of each demolition permit application for a building or structure identified in Section III to the Commission within five (5) days after the filing of such application. No demolition permit shall be issued at that time. For the purposes of this bylaw, receipt by the Commission shall mean date stamping of the application as “received by the Historical Commission” by the Board of Selectmen’s administrative assistant who shall immediately notify in writing with a copy of the application the Chair and Vice Chair of the Commission.

B. Within twenty (20) days after its receipt of such application, the Commission shall determine whether the building or structure is historically significant. The applicant for the permit shall be entitled to make a presentation to the Commission if he or she makes a timely request in writing to the Commission.

C. If the Commission determines that the building or structure is not historically significant, it shall so notify the Building Commissioner and the applicant in writing and the Commissioner may issue a demolition permit. If the Commission determines the building or structure is historically significant, it shall notify the Building Commissioner and the applicant in writing that a demolition plan review must be made prior to the issuance of a demolition permit. If the Commission fails to notify the Commissioner and the applicant of the Commission’s determination within thirty (30) days after the Commissioner’s receipt of the application, then the building or structure shall be deemed not historically significant and the commissioner may issue a demolition permit.

D. Within sixty (60) days after the applicant is notified that the Commission has determined that a building or structure is historically significant, the applicant for the permit shall submit to the Commission ten (10) copies of a demolition plan that shall include the following:

- 1) a map showing the location of the building or structure to be demolished with reference to lot lines and to neighboring buildings and structures;
- 2) photographs of all street façade elevations;
- 3) a description of the building or structure, or part thereof, to be demolished;
- 4) the reason for the proposed demolition and data supporting said reason, including where applicable data sufficient to establish any economic justification for demolition; and
- 5) a brief description of the proposed reuse of the parcel on which the building or structure to be demolished is located.

E. The Commission shall hold a public hearing with respect to the application for a demolition permit, and shall give public notice of the time, place and purposes thereof at least fourteen (14) days before said hearing in such manner as it may determine. The Commission shall submit such notification to the Town Clerk for posting in the Town Hall. As part of such notification the applicant shall pay for the legal advertisement in a newspaper of general circulation. The Commission shall require the applicant to send certified mail postage prepaid a copy of said notice to the owners of all abutting property, other property within 300 feet of said property, and other property

deemed by the Commission to be materially affected thereby as they appear on the most recent real estate tax list of the Board of Assessors, to the Planning Board, to any person filing written request for notice of hearings, such request to be renewed yearly in December, and to other persons as the Commission shall deem entitled to notice. The applicant shall submit proof of such notification prior to the hearing.

F. Within sixty (60) days after its receipt of the demolition plan, the Commission shall file a written report with the Building Commissioner on the demolition plan which shall include the following:

- 1) a description of the age, architectural style, historic association and importance of the building or structure to be demolished;
- 2) a determination as to whether or not the building or structure should be preferably preserved. The Commission shall determine that a building or structure should preferably be preserved only if it finds that the building or structure is a historically significant building or structure. This finding shall be based on the importance made by such building or structure to the Town's historical and/or architectural resources, and that it is in the public interest to preserve, rehabilitate or restore.

G. If following the demolition plan review, the Commission does not determine that the building or structure should preferably be preserved, the Building Commissioner may issue a demolition permit. If the Commission fails to file a report with the Building Commissioner within the time limit set out in subparagraph F above, then the Commissioner may issue a demolition permit.

H. If following the demolition plan review, the Commission determines that the building or structure should preferably be preserved, the Building Commissioner shall not issue a demolition permit for a period of six (6) months from the date of the filing of the Commission's report. The Commissioner may issue a demolition permit prior to the expiration of such six (6) month period if the Commission informs the Commissioner in writing that it is satisfied that the applicant for the demolition permit has made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure, or has agreed to accept a demolition permit on specified conditions approved by the Commission.

#### **SECTION 5: Emergency Demolition**

If the condition of a building or structure poses a serious and imminent threat to the public health or safety due to its deteriorated conditions, the owner of such building or structure may request the issuance of an emergency demolition permit from the Building Commissioner. As soon as practicable after the receipt of such a request, the Commissioner shall have the property inspected by a team including the Commissioner, the Chairman of the Commission, the Board of Health, and the Chief of the Fire Department or their respective designees. After the inspection of the building or structure and consulting with the other members of the inspection team, the Commissioner shall determine whether the condition of the building or structure represents a serious and imminent threat to public health or safety. The Commissioner shall also determine whether there is any reasonable alternative to the immediate demolition of the building or structure that would protect the public health and safety. If the Commissioner finds that the condition of the building or structure poses a serious and imminent threat to public health and safety, and there is no reasonable alternative to the immediate demolition thereof, he or she may issue an emergency demolition permit to the owner of the building or structure. Whenever the Commissioner issues an emergency demolition permit, he or she shall submit a written report describing the condition of the building or structure and the basis for his or her decision to issue an emergency demolition permit to the Commission. Nothing in this section shall be inconsistent with the procedures for the demolition and/or securing of buildings and structures established by Chapter 143 Section 6-10 of the Massachusetts General Laws.

#### **SECTION 6: Non-compliance**

Anyone who demolishes a building or structure identified in Section III of this article without first obtaining, and complying fully with the provisions of a demolition permit, shall be subject to a fine of not less than one hundred (100) dollars nor more than three hundred (300) dollars. In addition, unless a demolition permit was obtained for such demolition and unless such permit was

fully complied with, the Commissioner shall not issue a building permit pertaining to any parcel on which a building or structure identified in Section III of this article has been demolished for a period of three (3) years after the date of demolition. Upon determination by the Commission that a building is a preferably-preserved significant building, the owner shall be responsible for properly securing the building, if vacant, to the satisfaction of the Building Commissioner. Should the owner fail to secure the building, the loss of such building through fire or other cause shall be considered voluntary demolition.

**SECTION 7: Appeals to Superior Court**

Any person aggrieved by a determination of the Commission may, within twenty (20) days after the filing of the notice of such determination, appeal to the superior court for Middlesex County. The court shall hear all pertinent evidence and shall annul the determination of the Commission if it finds the decision of the Commission to be unsupported by the evidence or to exceed the authority of the Commission. The Court may also remand the case for further action by the Commission or make such other decree, as justice and equity shall require.

**SECTION 8: Severability**

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

**ARTICLE XXII SELF-SERVICE GAS STATIONS**

**SECTION 1.** Self-service gas stations shall mean that type of gas station wherein motor fuel is dispensed by anyone other than an employee of the gas station.

**SECTION 2.** Self-service and/or split island service station shall be permitted in the Town of Tyngsborough subject to complying with the safety requirements, as determined by the local Fire Department and the Massachusetts State Fire Marshall, and to further comply with the Zoning By-Laws.

**ARTICLE XXIII TOWN CLERK**

**SECTION 1.** The Town Clerk shall pay into the Town Treasury all fees received by virtue of the Office of Town Clerk.

**ARTICLE XXIV WASTE STORAGE**

**SECTION 1.** Any accessory receptacle or structure with holding capacity of at least 100 cubic feet for temporary storage or solid or liquid waste materials, including garbage, rubbish, junk, discarded bulk items, and similar waste items, shall be located not less than ten feet from any structure and shall be screened from all adjacent premises and streets from which it would otherwise be visible. Screening materials will not be attached to any structure.

**SECTION 2.** Any violation of the Article shall be punished by a fine of not more than \$50.00 for each offense.

**ARTICLE XXV CONSTRUCTION OF PUBLIC WAYS**

**SECTION 1.** All new public-ways and roads shall be constructed in accordance with the design standards and specifications of Sections IV and V of the Planning Board Rules and Regulations governing the subdivision of land.

**ARTICLE XXVI CONTROL AND MANAGEMENT OF HAZARDOUS MATERIAL**

**SECTION 1. PURPOSE** - There is hereby adopted the following measures to provide adequate safeguards from hazardous materials which pose substantial present or potential hazards to public health, welfare, safety, and to the environment, and to establish a program to provide for safe management of all such hazardous materials.

**SECTION 2. DEFINITIONS** - In this By-Law the following terms shall have the following meaning:

A.) By-Law: Town of Tyngsborough By-Law entitled “Control and Management of Hazardous Materials.”

B.) Disposal: The unlawful discharge, deposit, injection, dumping, spilling, leaking, incineration or placing of hazardous materials into or on any land or water so that such hazardous materials or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

C.) Hazardous Materials: A substance, or combination of substances, which because of its quantity, concentration, or physical, chemical or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness or pose a substantial present or potential hazard to human health, safety or welfare or to the environment when improperly treated, stored, transported, used or disposed of, or otherwise managed, however not to include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act of 1967 as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Acts of 1954. Those substances considered to be hazardous materials shall include but shall not be limited to substances considered to be toxic or hazardous by the Division of Hazardous Waste of the Commonwealth of Massachusetts under the provisions of Massachusetts General Laws Chapter 21 (c).

D.) Storage: The actual or intended containment of hazardous materials in a safe manner so as to prevent unlawful disposal.

**SECTION 3. PROHIBITIONS** - The disposal of hazardous materials within the Town of Tyngsborough is hereby prohibited except at a hazardous waste disposal facility established and maintained in accordance with the applicable law. Occupancy of any existing or new premises, other than residential dwellings, is hereby prohibited except in conformance with the provisions of this By-Law.

**SECTION 4. CONTROL STANDARDS**

A.) All hazardous materials shall be properly stored within a building in product tight containers protected from corrosion accidental damage or vandalism, and shall be used and handled in a manner which does not constitute disposal. An inventory of such hazardous materials stored or handled in quantities that could pose a present or potential hazard shall be maintained and reconciled with purchase, use, sales, and disposal record at sufficient intervals to detect product loss. Subsurface fuel and chemical storage facilities in compliance with the applicable Massachusetts Fire Prevention regulations shall be deemed to be a compliance with this standard.

B.) No hazardous materials shall be present in materials disposed on the site. Waste materials composed in part or entirely of hazardous materials shall be retained in product tight containers for removal and disposal by a hazardous waste licensee, or as directed by the Board of Health or an enforcement officer.

**SECTION 5. ADMINISTRATION** - The provisions of this by-law shall be enforced by the Board of Health or by the designated Enforcement Officer appointed annually by the Board of Health.

A.) Certificate of Compliance

1.) New Premises. Owners or occupants of new premises, other than residential dwelling, for which a building permit is issued after the effective date of this by-law shall obtain a Certificate of Compliance prior to occupying premises.

2.) Existing premises. Owners or occupants of existing premises, other than residential dwellings, shall obtain a Certificate of Compliance before January 1, 1983 or upon any change in use or occupancy requiring a Certificate of Use and Occupancy under Section 119.0 of the Massachusetts Building Code whichever occurs first.

3.) Requirements. The Certificate of compliance shall be issued by the Board of Health or its Enforcement Officer upon demonstration by the owner or occupant that the use and occupancy of the premises are in conformance with the requirements of this by-law; or, in the case of existing premises not in compliance, shall specify a compliance schedule which is reasonable with regard to the public health threat involved and the difficulty of compliance.

B.) Compliance Review

Application for an original Certificate of Compliance shall be forwarded by the Board of Health or its Enforcement Officer to the Building Inspector, Conservation Commission, Fire Department and Planning Board for determination that the proposed use meets all control standards. All information necessary to determine compliance must be submitted, including, but not limited to, the following:

1.) A complete list of all chemicals, pesticides, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities that could pose a present or potential hazard accompanied by a description of measures to protect from corrosion, accidental damage, or vandalism, leakage or any disposal together with provision to control any accidental disposals; and

2.) A description of hazardous materials to be generated, indicating the method of storage and the method and place of disposal.

Any information, record, or particular part thereof, obtained by the Board of Health or its Enforcement Officer pursuant to the provisions of this By-Law, shall, upon request, be kept confidential and not considered to be public record when it is deemed by the Board of Health that such information, record, or report relates to secret process methods of manufacture, or production or that such information, record, or report if made public would divulge a trade secret. This section shall not prevent disclosure of any information necessary for an enforcement action.

The Board of Health or its Enforcement Officer shall act upon an application within thirty (30) days of a filing. Upon failure of the Board of Health or its Enforcement Officer to act within said thirty (30) days, the Certificate of Compliance shall be deemed to be granted.

C.) Renewal Application. Application shall be made for renewal of the Certificate of Compliance upon change in use or occupancy requiring a Certificate of Use and Occupancy under the Massachusetts Building Code or upon significant change in materials used or stored on the premises from those described in the original application.

D.) Report of spills and leaks. Any person having knowledge of a spill, leak or any other disposal of hazardous materials or violation of this By-Law shall report the same to the Board of Health or its Enforcement Officer within two (2) hours of detection.

E.) Enforcement. The Board of Health or its Enforcement Officer may, according to law, enter upon any premises at any reasonable time to inspect for compliance with the provisions of this By-Law. Upon demand by the owner or person in control of the premises, however, the Board of Health or its Enforcement Officer shall obtain a warrant authorizing such entry and inspection. Information necessary to demonstrate compliance shall be submitted by the occupant of the premises at the request of the Board of Health or its Enforcement Officer. If requested, samples of hazardous materials shall be provided to the Board of Health or its Enforcement Officer for testing. All records pertaining to hazardous materials, disposal and removal shall be retained for no less than five years, and shall be made available within 48 hours of a request.

F.) Violation. Upon determination by the Board of Health of a violation of this By-Law, the Board may issue such order as it deems appropriate to remedy the violation. The order may include a compliance schedule for those activities which the Board of Health deems reasonably necessary to abate the violation.

G.) Penalty. Violation of this By-Law shall be punishable by a fine of \$200.00 for each offense. Each day that such violation continues shall constitute a separate offense.

**SECTION 6. SEVERABILITY** - It is hereby declared that the provisions of this By-Law are severable, and if any provisions of this By-Law shall be declared unlawful by a valid judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining provision of this By-Law.

## ***ARTICLE XXVII STREETS AND SIDEWALKS***

### **STREETS AND SIDEWALKS**

#### **SECTION 1: AUTHORITY**

1.1) The Board of Selectmen (Board) of the Town of Tyngsborough (Town) is charged with the promulgation and implementation of this By-Law and any regulation adopted.

#### **SECTION 2: PERMIT**

2.2) The Board shall be authorized to grant to a person or individual, corporation or other type of entity a permit to open a trench in, or disturb the surface of any existing street or way for any of the following, but not limited to, purposes, of installing, repairing, and/or maintaining any duct, conduit, sleeve, pipe or other structure to be used for the distribution or transmission of wastewater or sewage, surface or storm water, potable water, brook or water course, gas, oil or any of its by-products in any form, electrical power or service, telephone or telegraph service. This By-Law does not apply to the placing or replacing of poles.

#### **SECTION 3. WORK DAYS AND HOURS**

3.1) All work to be performed shall be done between the hours of 7:30 a.m. and 3:30 p.m., provided, however, that different work hours for the performance of such work may be agreed upon or required for good cause by the Highway

Superintendent; and such requirement shall be stated in writing at the time of issuance of the permit.

3.2) No Saturday, Sunday, or legal holiday work will be allowed unless an emergency or accommodation situation arises and permission is given by the Highway Superintendent. Such permission may be granted orally; however, a written confirmation that such permission has been granted shall be made by the Highway Superintendent as soon as practicable.

3.3) In regard to Saturday, Sunday, or legal holiday work, the Highway Superintendent shall determine whether an emergency or accommodation situation exists. Emergency is an unforeseen event which calls for immediate action, a pressing necessity.

3.4) No excavation, trenching, or the like shall be allowed in any street or way, accepted or unaccepted, between November 15 and April 1, except in the case of an emergency, which shall be determined by the Highway Superintendent.

#### **SECTION 4. PRIVATE PROPERTY**

4.1) Liability for damage to private property abutting the construction and caused by the permittee, its agents or servants, shall be borne solely by the permittee.

#### **SECTION 5. ENFORCEMENT PROVISIONS: ORDERS**

5.1) If an examination of the work reveals that it does not comply with or violates the provisions of this By-Law, the Highway Superintendent shall notify and order, in writing, the permittee or its authorized supervisor at the work site, who shall take appropriate measures as necessary to assure compliance with the provisions of the By-Law.

5.2) If a further examination of the work performed not less than 48 continuous hours after the issuance of orders reveals that no positive action and/or appropriate measures are or were being taken by the permittee or its authorized supervisor at the work site to assure compliance with the provisions of this By-Law, the Highway Superintendent may rescind, suspend or modify the permit through the imposition of conditions.

5.3) Every order issued to enforce the provisions of this By-Law shall be in writing and shall be served on the permittee or its authorized supervisor at the work site and/or to any other persons responsible for the violation of this By-Law.

5.4) Every order issued to enforce this By-Law shall include a statement of the violation, shall allot a reasonable time for any action necessary to effect compliance, and may suggest action which, if taken, will effect compliance with this By-Law.

#### **SECTION 6. HEARINGS**

6.1) Any permittee to whom any order to comply with the provisions of this By-Law is issued or any person who objects to the issuance of a variance may request a hearing before the Board by filing a written application with the Board within 10 days of the receipt of the order or within 10 days of the filing of notice of the granting of the variance.

6.2) Upon receipt of a written application, the Board shall establish a time and place for such hearing and inform the applicant in writing of such hearing. The

hearing shall be commenced no later than 30 days after the day on which the application was filed.

6.3) At the hearing, the applicant shall be given an opportunity to be heard and to show why the order or variance should be modified or withdrawn.

6.4) After the hearing, the Board shall sustain, modify, or withdraw the order or variance, and may rescind, suspend or modify the permit through the imposition of conditions and shall inform the applicant in writing of its decision.

6.5) Every notice, order, and other record prepared by the Board in connection with the hearing shall be entered as a matter of public record in the office of the Highway Superintendent.

**SECTION 7. PENALTY**

7.1) Any permittee who violates or refuses to comply with any provision of this By-Law or orders shall forfeit and pay to the Town a sum of \$100 for each violation.

7.2) Each day, or portion of a day, that any violation continues shall constitute a separate violation of this By-Law.

**SECTION 8. SEVERABILITY**

8.1) Each of these sections shall be construed as separate to the end that if any section, paragraph, sentence clause, or phrase shall be held invalid for any reason, the remainder of that section and all other sections of this By-Law shall continue in full force.

**SECTION 9. MUNICIPAL DEPARTMENT**

9.1) The Board may exclude municipal departments of the Town from the provisions of this By-Law.

**SECTION 10. INCONSISTENCIES**

10.1) All provisions of the Town By-Laws, as amended, which are not inconsistent with this By-Law, shall continue in effect; but all provisions of such By-Laws inconsistent with this By-Law are repealed

***ARTICLE XXVIII DISCHARGE OF FIREARMS***

**SECTION 1.** No person shall fire or discharge any firearms of any kind within the limits of any highway, park or other public property except with the written permission of the Chief of Police; or any private of another, except with the written consent of the owner or legal occupant thereof provided, however, that this By-Law shall not apply to the lawful defense of life or property nor to any law enforcement officer acting in the discharge of his duties. Any person violating this By-Law shall be punished by a fine of not more than \$100.00. This By-Law may be enforced under non-criminal disposition of provisions Massachusetts General Laws, Chapter 40, Section 21D.

***ARTICLE XXIX CAMPGROUNDS***

**SECTION 1.** No campground shall be open for business between the first of November to the first day of May, and no individual may reside, nor may any camping vehicle be parked in a campground for more than six (6) months in a calendar year.

**ARTICLE XXX FIRE LANES**

**SECTION 1.** It shall be unlawful to leave any motor vehicle unattended within the limits of any private way furnishing means of access for fire apparatus to any building.

**SECTION 2.** It shall be unlawful to obstruct or park a motor vehicle in any fire lane, such Fire Lane to be designated by the Chief of the Fire Department and shall be posted as such. Said Fire Lane to be eighteen (18) feet wide for all buildings in any shopping center, bowling alley, theater, nursing home, office building, or other public building. The establishment of Fire Lanes as set forth above shall be at the sole discretion of the Chief of the Fire Department and shall run from the wall of the building or any overhang of the building or any sidewalk adjacent thereto.

**SECTION 3.** The record owner of each building, upon notification of the designation of a Fire Lane by the Chief of the Fire Department shall provide and install signs posting the area as such as provided in Paragraph 2.

**SECTION 4.** The Police Department and all members thereof assigned to traffic duty, and hereby authorized to remove and tow away or have removed and towed away by commercial towing service, at the sole expense of the owner of said motor vehicle, any motor vehicle left unattended or parked in any designated Fire Lane or within the limits of any private way furnishing means of access for fire apparatus to any building. Motor vehicles so towed away shall be stored in a safe place and restored to the owner or operator thereof upon payment by the owner or operator of the expenses incurred in said removal and storage.

**SECTION 5.** Violations of this By-Law shall be punishable by a fine of not less than \$10.00 for the first offense and any subsequent offenses the fine will be determined by the Judge, but not to exceed \$100.00.

**ARTICLE XXXI RIGHT OF REFUSAL TO ISSUE PERMITS, ETC.**

**SECTION 1.** The Town in accordance with the provisions of Massachusetts General Laws, Chapter 40, Section 57 may deny any application for, revoke or suspend any local license or permit including renewals and transfers issued by any Board, Officer, Department, for any person, corporation or business enterprise who has neglected or refused to pay any local taxes, fees, assessments, betterments, or any municipal charges; the procedure and limitations will be those specified in Chapter 40, Section 57.

**ARTICLE XXXII TYNGSBOROUGH WETLANDS PROTECTION BY-LAW.**

**SECTION 1. PURPOSE**

The purpose of this By-Law is to protect the wetlands of the Town of Tyngsborough by controlling activities deemed to have a significant effect upon wetland values, including, but not limited to, the following: public or private water supply, groundwater, flood control, erosion control, storm damage prevention, water pollution, fisheries, shellfish, wildlife, recreation and aesthetics (collectively, the “interests protected by this By-Law”).

**SECTION 2. JURISDICTION**

Except as permitted by the Conservation Commission or as provided within this By-Law, no person shall remove, fill, dredge, alter or build upon or within one hundred (100) feet of any bank, fresh water wetland, flat marsh, meadow, bog, swamp, or upon or within one hundred (100) feet of lands of any estuary, creek, river, stream, pond or lake, or upon or within one hundred (100) feet of any land subject to flooding or inundation, or within one hundred (100) feet of the 100 year storm line without filing written application for a permit to remove, fill, dredge, alter or build upon, including such plans as may be necessary to describe such proposed activity and its effect on the environment, and receiving and complying with a permit issued pursuant to this By-Law.

### **SECTION 3. EXCEPTIONS**

The permit and application required by this By-Law shall not be required for the maintenance, repairs, or replacement of an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, sanitary sewer, storm drainage, public roadway, telephone, telegraph, or any other telecommunication services, provided that the structure or facility is not substantially changed or enlarged, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications within regulation adopted by the Commission.

The permit and application required by this By-Law shall not apply to emergency projects necessary for the protection of the health or 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 notice, oral or written, has been given to the Commission either prior to the commencement of the work or within 24 hours after completion, provided that the Conservation Commission certifies the work as an emergency project, and provided that the work is performed only for the time and place certified by the Conservation Commission for the limited purposes necessary to abate the emergency.

The permit and application required by this By-Law shall not apply to work performed for normal maintenance or improvement of land in agricultural use.

No other exceptions, other than those specifically stated within this section, shall apply.

### **SECTION 4. APPLICATION FOR PERMITS**

The written permit and application(s) filed with the Town of Tyngsborough Conservation Commission (Commission) under the provisions of this By-Law may be identical in form to a Notice of Intent filed pursuant to Massachusetts General Laws, Chapter 131, Section 40 and regulations adopted by the Commission in appropriate cases.

The application shall include such plans as are deemed necessary by the Commission to describe proposed activities and their effect on the environment. If the applicant is anyone other than the owner of the property, the applicant shall furnish written permission for the application signed by the owner. No work shall commence without receiving and complying with a permit issued pursuant to this By-Law.

The application and plans shall contain data as required by this By-Law and regulations adopted by the Commission.

At the time of application, the applicant shall pay a filing fee specified within the regulations of the Commission. In addition, the applicant shall agree in writing to pay the costs and expenses of any consultant deemed necessary by the Commission to review the applications.

Any person desiring to know whether or not proposed work on an area is subject to this By-Law may, in writing, request a determination from the Commission. Such a request for determination shall contain data and plans specified by the regulations of the Commission.

## **SECTION 5. NOTICE AND HEARINGS**

Any person filing an application or a request for a determination with the Commission at the same time shall give written notice thereof, by certified mail or hand delivery, to all abutters according to the most recent records of the assessors, including those across a traveled way, or railroad bed. The notice shall state where copies may be examined by abutters. When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request. Such notice shall be sent not less than five business days prior to the meeting.

The Commission shall conduct a public hearing on the application within twenty-one (21) days of its receipt. Notice of the time and place of the hearing shall be given by the Commission at the expense of the applicant, not less than five (5) days prior to the hearing, by publication in a newspaper of general circulation within the Town of Tyngsborough and by mailing a notice to the applicant, the Board of Health, Board of Selectmen, Planning Board and to such other persons as the Commission may by regulation determine. The Commission, its agents, officers, and employees may enter upon privately owned land for the purpose of performing their duties under this By-Law.

### **SECTION 5.1 PERMIT AND CONDITIONS**

If, after the public hearing, the Commission determines that the area which is the subject of the application is significant to the interests protected by this By-Law, the Commission shall, within twenty-one (21) days of the close of such hearings, issue its permit or take other action regarding the work requested. If the Commission issues a permit after making such determination, the Commission shall impose such conditions as it determines are necessary or desirable for protection of those interests, and all work shall be done in accordance with those conditions. If the Commission determines that the area which is the subject of the application is not significant to the interests protected by this By-Law, or that the proposed activity does not require the imposition of conditions, it shall issue a permit without conditions within twenty-one (21) days of the close of the public hearing. Permits shall expire three (3) years from the date of issuance, unless renewed prior to expiration, and all work shall be completed prior to the expiration date.

The Commission shall have the authority to continue or postpone the hearing to a date for reasons (i.e. receipt of additional information offered by the applicant or others; information required of the applicant by the Commission) specified by the Commission at the hearing. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

Any permit may be renewed once for up to an additional three (3) year period, provided that a request for an extension is received in writing by the Commission prior to expiration of the original permit.

A permit issued under this By-Law may be revoked or modified by the Commission for good cause, provided, however, that no such revocation or modification shall occur until the Commission has conducted a public hearing on the matter.

The Commission in an appropriate case may combine the permit and other action on an application issued under this By-Law with the Order of Conditions issued under the Wetlands Protection Act.

## **SECTION 6. REGULATIONS**

After due notice and public hearing, the Commission may promulgate rules and regulations, including a filing fee schedule, to effectuate the purpose of this ordinance. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a Court of Law shall not act to suspend or invalidate the effect of the By-Law.

At a minimum, these regulations shall define key terms in this By-Law not inconsistent with this By-Law.

#### **SECTION 7. BURDEN OF PROOF**

The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not harm the interests protected by this By-Law. Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will not harm the interests protected by this By-Law shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions, or, in the Commission's discretion, to continue the hearing to another date to enable the applicant or others to present additional supporting evidence.

#### **SECTION 8. PRE-ACQUISITION VIOLATION**

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this By-Law, or in violation of any permit issued pursuant to this By-Law, shall forthwith comply with any such order or restore such land to its condition prior to any such violation provided, however, that no action, civil or criminal, shall be brought against such person unless commenced within three (3) years following the date of acquisition of the real estate by such person.

#### **SECTION 9. DEFINITIONS**

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

##### **SECTION 9.1**

The term "person" shall include any individual, group or individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town By-Law, administrative agencies, public or quasi-public corporations or bodies, the Town of Tyngsborough, and any other legal entity, its legal representatives, agents or assigns.

##### **SECTION 9.2**

The term "alter" shall include, without limitations, the following actions when undertaken in areas subject to this By-Law:

- (a) Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind;
- (b) Changing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, and flood retention characteristics;
- (c) Drainage or other disturbance of water level or water table;
- (d) Dumping, discharging or filling with any material which may degrade water quality;
- (e) Driving of piles, erection of buildings or structures of any kind;
- (f) Placing of obstructions whether or not they interfere with the flow of water;
- (g) Destruction of plant life, including cutting of trees;

- (h) Changing of water temperature, biochemical oxygen demand or other physical or chemical characteristics of the water.

### **SECTION 9.3**

The term “banks” shall mean that part of land adjoining any body of water which confines the water.

### **SECTION 9.4            AGRICULTURAL PRACTICES**

- (a) The term “land in agricultural use” shall mean any qualifying wetland within a farm which is qualified or eligible to be qualified under the Farmland Assessment Act, Mass. General Laws Chapter 61A, Subsection 1-5.
- (b) The term “qualifying wetland” shall mean only inland fresh water areas which are seasonally flooded basins or flats or inland fresh meadows.
- (c) The term “normal maintenance of improvement” of land in agricultural use shall mean only:
  - 1. Tilling practices customarily employed in the raising of crops;
  - 2. Pasturing of animals, including such fences and protective structures as may be required;
  - 3. Use of fertilizers, pesticides, herbicides and similar materials subject to state and federal regulations covering their use;
  - 4. Construction, grading or restoring of field ditches, subsurface drains, grass waterways, culverts, access roads, and similar practices to improve drainage, prevent erosion, provide more effective use of rainfall, improve equipment operation and efficiency in order to improve conditions for the growing of crops.
- (d) “Improvement” of land in agricultural use may also include more extensive practices such as the building of ponds, dams, structures for water control, water and sedimentation basins, and related activities, but only where a plan for such activity approved by the Conservation District of the Soil Conservation Service is furnished to the Conservation Commission prior to the commencement of work. All such activity shall subsequently be carried out in accordance with said plan. In the event that the work is not carried out in accordance with the required plan, the Conservation Commission may place a stop work order on said work and have recourse to such measures as if the plan were an Order of Conditions.

### **SECTION 9.5. ADDITIONAL DEFINITIONS**

The Commission may adopt additional definitions not inconsistent with Section 9 in its regulations promulgated pursuant to Section 6 of this By-Law.

### **SECTION 10.            SECURITY**

The Commission may require, as a permit condition, that the performance and observance of other conditions be secured by one or both of the following methods:

- (a) By a bond or deposit of money or negotiable securities in an amount determined by the Commission to be sufficient and payable to the Town of Tyngsborough.

- (b) By 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 the Town and members of the public, whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

**SECTION 11. ENFORCEMENT**

The Commission, its agents, officers, consultants, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this By-Law and may cause to be made such examinations, surveys, or sampling as the Commission deems necessary.

The Commission shall have authority to enforce this By-Law, its regulations, and the permits issued there under by violation notices, administrative orders, and civil and criminal court actions.

Upon the request of the Commission, the Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.

In the alternative to criminal prosecution, the Commission may elect to utilize the non-criminal disposition procedure set forth in M.G.L.'s Chapter 40, Section 21D.

Any Town police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violates any provision of the By-Law, the regulations there under, or permits issued there under, shall be punished by a fine of not more than \$250.00 each calendar day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the By-Law, regulation or permit violated shall constitute a separate offense.

**SECTION 12. SEVERABILITY**

The invalidity of any section or provision of the By-Law shall not invalidate any other section or provision thereof, not shall it invalidate any order of conditions which previously had been issued.

**SECTION 13. RELATION TO THE WETLANDS PROTECTION ACT**

This By-Law is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Statutes, independent of the Wetlands Protection Act, M.G.L.'s Chapter 131, Section 40 and the regulations there under.

***ARTICLE XXXIII SOIL, VEGETATION, ROCK AND GRAVEL REMOVAL***

**SECTION 1. PURPOSE**

The purpose of the section is to prevent the degradation of the town's natural resources including its soil, surface and groundwater and naturally occurring vegetation due to the improper or uncontrolled removal or redistribution of soils vegetation and earth materials.

**A. GENERAL PROVISIONS**

- 1. Excavation, removal, stripping, or mining of any earth material, soil and vegetation except as hereinafter permitted on any parcel of land, public or private, in Tyngsborough is prohibited.

2. Exclusive jurisdiction to issue Earth Removal Permits shall be with the Board of Selectmen, except where earth removal is incidental to building or roadway construction, in which case the Special Permit Granting Authority, for the uses as defined in 2.11.30 of the Zoning By-Laws is authorized to issue the gravel permit.
3. The Building Inspector shall have the authority to enforce all conditions of any Permit issued under this Section of the By-Law.
4. All earth removal operations in existence in Tyngsborough on the effective date of this section shall be subject to the requirements stated herein.
5. An annual fee shall be required for Earth Removal Permits as established by the Board of Selectmen.
6. Violation of this Section of the Town By-Law imposes a penalty of \$300.00 for the first offense, \$300.00 for the second and each subsequent offense. Each day of operation in violation of this section will be considered a separate offense.

**SECTION 2. APPLICATION FOR SOIL, VEGETATION, ROCK AND GRAVEL REMOVAL**

A. All applicants for a Soil, Vegetation, Rock and Gravel Removal Permit must, at a minimum, submit the following materials to the Board of Selectmen.

1. A plan or plans to scale, (1" = 40') prepared and stamped by a Registered Engineer, and subdivided into five acre lots showing the property lines of the parcel of land under consideration along with all abutters to the property, existing and final contours in two foot (2') elevation increments, existing and proposed final drainage of the site, including all culverts, streams, ponds, swamps, and siltation basins, and all wetlands pursuant to Massachusetts General Laws, Chapter 131, Section 40, means of entrance and egress from the property, locus map, and any other pertinent data deemed necessary by the Board of Selectmen.
2. A plan, study, or report showing the proposed ultimate use of the land conforming with the existing Zoning By-Law. Proper planning for future land use shall be a prime consideration affecting the issuance of a Soil, Vegetation, Rock and Gravel Removal Permit.
3. A complete list of the names and addresses of current abutters of the property where such removal is proposed.
4. An operating schedule showing the active area (not to exceed five (5) acres) where the removal will begin and also how the total parcel will be developed in progressive five (5) acre increments.
5. A log of soil borings taken to the depth of refusal of 8' below the proposed excavation with a minimum of five borings per five acre section. Additional borings may be requested by the Board of Selectmen if necessary.
6. A plan showing all refuse and debris burial sites on or off the property. (May be shown on plan as required in (1) above.)
7. The full legal name and address of the owner of record, the operator of the removal operation and of the applicant.

8. A plan showing the spring high water table and ground water contours at two foot intervals.

### **SECTION 3. PERMIT FOR SOIL, VEGETATION, ROCK AND GRAVEL REMOVAL**

A. General. The Board of Selectmen may issue Soil, Vegetation, Rock and Gravel Removal Permits for I-1 and I-2 districts as established by the Zoning By-Laws, complete with conditions imposed, for areas not to exceed twenty acres. All permits shall conform to the minimum restoration and operating standards contained herein and such other conditions as the Board of Selectmen may deem necessary. Said permit shall allow the working of only five (5) acres at any one time. Upon completion of the earth removal operation of a five (5) acre parcel, or a part thereof, and substantial restoration of said parcel as determined by the Board of Selectmen, according to the restoration standards and the permit conditions, application may then be made to the Board of Selectmen for a permit renewal. Such permit renewal shall allow the removal of earth on another five (5) acre section, as shown by the operating schedule submitted with the permit application. This procedure shall be followed until the operation is completed.

No soil being removed may take place within 300 feet of a street or way, nor within 100 feet of the high water mark of any natural water course, nor within 100 feet of a lot line. Soil may be disturbed within these established boundaries if it is considered part of the site restoration work and has received prior approval by the Board of Selectmen.

Removal of soil shall not take place below a level that would be considered an undesirable grade for the future development of the area, or to an elevation within eight (8) feet of the springtime high water table unless such elevation has been approved by the Board of Selectmen as a desirable improvement that will enhance the future development of the area.

B. Accuracy of Information. The permit shall be considered a non-transferable revocable permit to remove earth materials. If it is found that incorrect information was submitted in the application, or that conditions of the permit are being violated, or that the governing regulations are not being followed, the permit shall be suspended until all provisions have been met and promises made to conform. Failure of the permit holder to comply within the time specified by the Board of Selectmen for correction of violations shall cause the permit to be revoked, forfeiture of the security to the town, and the imposition of all fines as set forth in Paragraph A.6.

C. Compliance Review. The Board of Selectmen shall discuss and review the permit periodically, and at a minimum, annually. Written progress reports showing conformance with regulations and permit conditions shall be submitted to the Board of Selectmen by the Building Inspector or his designated agent every three (3) months.

D. Effective Date. A Soil, Vegetation, Rock and Gravel Removal Permit shall not be in effect until the applicant has filed the proper security as required in Section VII, paid the required fees as determined by the Board of Selectmen, and recorded the permit at the Middlesex North District Registry of Deeds.

Mechanical crushing and screening may be permitted by the Board of Selectmen after a public hearing with due notice given.

### **SECTION 4. REMOVAL INCIDENTAL TO DEVELOPMENT, CONSTRUCTION OR IMPROVEMENT**

This regulation shall be deemed not to prohibit the removal of such sod, loam, soil, clay, sand, gravel, or stone as may be required to be excavated for the purpose of constructing ways in

accordance with lines and grades approved by the Planning Board, or for the purpose of constructing underground utilities.

Where soil is to be removed in connection with the preparation of a specific site for building, removal may take place only after the issuance of a building permit by the Building Inspector. Removal will be allowed only from the area for the building, driveways, parking areas, and from areas where removal is specifically required by the Board of Health in connection with disposal systems.

## **SECTION 5. PUBLIC HEARING**

The Board of Selectmen shall hold a public hearing prior to the issuance of a permit.

## **SECTION 6. OPERATIONAL STANDARDS FOR REMOVAL AND RESTORATION**

All soil, vegetation, rock and gravel removal activities controlled by this section shall be subject to the following standards:

### **A. Time of Operation.**

1. Excavation and site maintenance may be carried on from 7:30 a.m. until 6:00 p.m., Monday through Friday, excluding State and Federal holidays.
2. Trucking from the site may be carried on from 7:30 a.m. through 6:00 p.m., Monday through Friday, excluding State and Federal holidays.

### **B. Site Preparation**

1. Only the active area described in the permit application may be made ready for earth removal.
2. No standing trees are to be bulldozed over, or slashed and bulldozed into piles. All trees must be cut down. All wood and brush must be piled for removal or chipping. Wood chips may remain on the site. No trees are to be buried on the site.
3. Stumps shall be buried in predesignated areas as shown on application plans.
4. Any change in stump burial must be submitted to the Board of Selectmen for approval.
5. All topsoil removed from the active removal area shall be piled and adequately protected from erosion for future site restoration.
6. No topsoil shall be removed from the site until all areas have been restored and permission has been granted by the Board of Selectmen.
7. Prior to any excavation, adequate siltation basins shall be constructed to prevent the run-off of silted water from the site.
8. All excavation shall be done so as to create contours to channel run-off waters into the siltation basins.
9. No siltation basin shall exceed seven (7) feet in depth.
10. Siltation basins must be cleaned when sediment deposits are within eighteen (18) inches of the outfall invert.

C. Site Maintenance

1. No open face excavation shall exceed twenty-five (25) feet in height.
2. No excavation shall be closer than one hundred (100) feet to a property line unless approved by the Board of Selectmen.
3. No slope shall exceed a two(2) foot horizontal to a one (1) foot vertical (2.1) grade.
4. No earth removal operation shall create excessive amounts of dust or allow roads leading into or from a site to become excessively dust producing.
5. Proper dust control methods shall be employed and approved by the Board of Selectmen.

D. Screening and Access

1. An immediate program of site screening shall start when site preparation begins.
2. All entrances shall be screened with existing vegetation, evergreens, or other suitable natural methods, so as to prevent a direct view into the earth removal area.
3. All areas within fifty (50) feet of a traveled way or abutting property lines shall be reforested immediately upon completion of the earth removal operation of that area. Said reforestation shall be done in accordance with the standards as stated below in Section G, paragraphs 2 through 7 inclusive.
4. A minimum of one hundred-fifty (150) trees per acre shall be used for this reforestation.
5. All access roads shall be level with intersecting streets for a distance of sixty(60) feet.
6. A STOP sign shall be installed so as to warn any vehicle entering onto a town street or public way.
7. All access roads shall be equipped with a suitable locking gate to prevent unauthorized entry.

E. Temporary Buildings

1. All temporary structures shall be specified in the special permit application and shown on the plan.
2. Any structure erected on the premises for use by personnel or storage of equipment shall be located at least forty (40) feet from any existing roadway and at least thirty (30) feet from any lot line.
3. Any temporary structure will be removed no later than ninety (90) days after the expiration date of the permit.

F. Mechanical Crushing and Screening

No permit shall authorize the crushing or processing of rock, or commercial blasting for quarrying operations.

G. Restoration Standards

1. All restoration must be completed within sixty (60) days after the termination of a Soil, Vegetation, Rock and Gravel Removal Permit or by the first of June if the permit terminates between December first through March thirty-first.
2. No slope shall be left with a grade steeper than a two (2) foot horizontal to a one (1) foot vertical (2:1).

3. All siltation basins shall be filled with earth, and a natural drainage pattern must be re-established. No area upon the site which will collect water shall remain unless approval is granted by the Board of Selectmen or unless the area was shown on the original application plans.
4. All topsoil which was on the site prior to earth removal operation shall be replaced to a minimum depth of six (6) inches on all disturbed areas. Sites that had less than six (6) inches of topsoil shall be restored with a minimum of four (4) inches over the entire area.
5. Seeding - The entire area shall be seeded with grass or legume which contains at least sixty percent (60%) perennials. The planted area shall be protected from erosion during the establishment period using good conservation practices. Areas which wash out are to be repaired immediately.
6. Reforestation - All areas which are disturbed in the earth removal operation shall be reforested with fifty percent (50%) coniferous and fifty percent (50%) deciduous trees planted at the rate of one hundred fifty (150) trees per acre. All trees used are to be a minimum of two (2) year transplants. Areas which are to be used for agricultural purposes after earth removal operations are completed may be reforested in the following manner:
  - (a) Trees shall be planted twenty-five (25) feet deep from a public road or property line.
  - (b) The remaining area shall immediately be planted with grass or other suitable agricultural planting material.
7. Within ninety (90) days of completion of operations, all equipment, accessory buildings, structures, and unsightly evidence of operation shall be removed from the premises.

**SECTION 7. SECURITY REQUIREMENTS**

There must be filed with the Town Treasurer, a continuous bond or deposit of money in the minimum amount of Five Thousand Dollars (\$5,000.00) per acre to be excavated, and shall be of a sufficient amount to cover ten (10) acres, or the total parcel, whichever is smaller as determined by and satisfactory to the Board of Selectmen. After completion of the total project, and the applicant's written request, the Board of Selectmen may grant a partial release of any security posted by the applicant. One (1) year after such a partial release is granted and if in the opinion of the Board of Selectmen no damage or deterioration to the finished project has developed, the Board of Selectmen will issue a final release of the security. If, during the year following the date of a partial release, slumping, gullyng, erosion, or any other unsatisfactory condition appears, the applicant shall be responsible for, and shall make any necessary repairs, before final release of security is granted.

The bonding agent shall be required to give the Board of Selectmen, by Registered or Certified mail, a sixty (60) day notice prior to any termination or cancellation of the bond.

<b>ARTICLE XXXIV SWIMMING POOL ENCLOSURES</b>
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**SECTION 1.** All outdoor in-ground swimming pools shall be enclosed by a fence, four (4) feet in height and firmly secured at ground level. Such enclosures including gates, therein shall not be less than four (4) feet above ground and any gate shall be self latching with latches, placed (4) feet above the ground, or otherwise made inaccessible from the outside by children. All fencing otherwise designed, constructed and maintained to be non-climbable by small children up to five (5) years of age. Such enclosure shall be constructed of such material and maintained so as not to permit any

opening in said enclosure, other than a gate, wider than three (3) inches at any point along the enclosure. Any such pool shall be equipped with at least on (1) life ring and a rescue hook.

All outdoor above-ground pools having sides above the ground a minimum of four (4) feet shall not require an enclosure provided that it is equipped with a ladder that can be made inaccessible when the swimming pool is not in actual use. If there is a deck with stairs, the stairs shall be enclosed on the sides and at the bottom, so as to be inaccessible to children up to five (5) years of age

**ARTICLE XXXV TEMPORARY HANDICAPPED PARKING STICKER**

**SECTION 1.** Temporary Handicapped Parking Sticker. Any motor vehicle bearing a Handicapped parking placard or motor vehicle registration plate designating the vehicle as one used by a handicapped person shall be authorized to park in a designated handicapped parking space. The Chief of Police, or his/her designee, or the Parking Clerk may issue a temporary handicapped parking placard to any person upon application, with a supporting medical affidavit signed by a licensed physician, designating the applicant as physically handicapped. Said temporary placard shall be issued with an expiration date not to exceed sixty (60) days, from the date of issue. The placard shall be displayed so as to be visible through the left portion of the windshield of a private passenger motor vehicle. Use of the temporary placard shall be for the exclusive use of the bearer while being transported in such vehicle. \*Violations of the use of the "Temporary Placard" granted under Town By-Law shall be covered by the provisions of Article V, Section 1 of the Town of Tyngsborough General By-Laws. The placard must include a picture of the person to whom it is issued.

**ARTICLE XXXVI SNOW REMOVAL**

**SECTION 1.** No person, other than an employee acting for or in behalf of the Town, shall, by himself or herself or through his/her agents, servants or employees, in any manner place or deposit or cause to be placed or deposited any snow, other than incidental amounts thereof on any public sidewalk, street, or way which has been previously cleared of snow by the Town. Violations of this section may be enforced by the Highway Superintendent, the Building Inspector or the Police Department, by Non-Criminal Disposition as provided in the Massachusetts General Laws, Chapter 40, Section 21D as the same now is or may hereinafter be amended. Penalties for such violations shall be \$50.00 for the first offense and \$100.00 for each subsequent offense.

**ARTICLE XXXVII REMOVAL OF APPOINTEE**

**SECTION 1.** Any member appointed to a seat on any Board, Committee, Commission, or Study Group who is absent from one-third of the regular meetings in a Fiscal year may be removed by a two-thirds vote of the appointing authority present and voting at a public hearing called for the purpose. No vote shall be made to remove delinquent members until the member has been notified in writing at least fourteen days in advance. No member shall be removed from any Board, Committee, Commission, or Study Group forty-five days prior to a Town Election.

**ARTICLE XXXVIII COMMUNITY PRESERVATION COMMITTEE**

**SECTION 1.** With the acceptance of the Community Preservation Act Sections 3 to 7, inclusive, there shall be a Community Preservation Committee consisting of nine (9) citizens of the town. The Community Preservation Committee shall include the following: one member of the Conservation Commission, one member of the Planning Board, one member of the Historical Commission, one member of the Tyngsborough Housing Authority, one member of the Recreation Committee, and one member of the Finance Committee. These boards, commissions and the Housing Authority shall recommend members to the Board of Selectmen for appointment to the Committee. The remaining three (3) members shall be at large citizens appointed by the Board of Selectmen. These appointments shall be for a term of three (3) years staggered such that the members of Tyngsborough

Housing Authority, Recreation Committee, and one (1) at large member shall serve an initial one (1) year appointment. The Planning Board, Historical Commission and one (1) at large member shall serve an initial two (2) year appointment. All remaining members shall have initial three (3) year appointments. All subsequent appointments shall be for three (3) years.

**SECTION 2.** The Community Preservation Committee shall study the needs, possibilities and resources of the town regarding community preservation. The Committee shall consult with existing municipal boards, including the Conservation Commission, the Historical Commission, the Planning Board, the Recreation Committee and the Housing Authority, or persons acting in those capacities or performing those duties, in conducting such studies. As part of its study, the committee shall hold at least one public hearing on the needs, possibilities and resources of the town regarding community preservation possibilities and resources. Notice of such public hearings shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the town. Such notice shall also be sent to the following: Board of Selectmen, Planning Board, Conservation Commission, Housing Authority, Historical Commission, Recreation Committee.

**SECTION 3.** The Community Preservation Committee shall make recommendations to Town Meeting as the town's legislative body, for the acquisition, creation and preservation of open space, for the acquisition and preservation of historic resources, for the acquisition, creation and preservation of land for recreational use, for the creation, preservation and support of community housing and for rehabilitation or restoration of such open space, historic resources, land for recreational use and community housing that is acquired or created as provided in this section. With respect to community housing, the Committee shall recommend wherever possible the reuse of existing buildings or construction of new buildings on previously developed sites.

**SECTION 4.** The Community Preservation Committee may include in its recommendation to Town Meeting a recommendation to set aside for later spending, funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.

**SECTION 5.** The Community Preservation Committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the Committee shall constitute a quorum. The Committee shall approve its actions by majority vote. Recommendations to Town Meeting shall include their anticipated costs.

**SECTION 6.** Town Meeting as the town's legislative body, shall then take such action on the recommendations and expenditures from the Community Preservation Fund as set forth in accordance with Massachusetts General Law c.44B section 6.

## ***ARTICLE XXXIX MUNICIPAL SERVICES FOR CONDOMINIUMS***

The Town of Tyngsborough shall provide the following services to residential condominiums organized under M.G.L.c. 183A, whether owner occupied or rental, and regardless of the number of units in the building, or buildings, comprising the Condominium in the same fashion as the Town of Tyngsborough provides to single family residences:

1. Collection of recyclable materials and garbage.

## ***ARTICLE XL CAPITAL ASSET MANAGEMENT COMMITTEE***

Section 1. Purpose and Authority: (Footnote 1.)

To provide a policy and systematic approach for creating and maintaining a capital asset and improvement program and to establish criteria for establishing priority and scheduling of significant costly projects, improvements, or equipment included in the program.

## Section 2.

The Capital asset management committee (the “Committee”) shall be composed of five members, consisting of one member of the Board of Selectmen, one member of the Finance Committee, one member of the School Committee, the Town Treasurer, and the Town Accountant. The members representing the Board of Selectmen, the Finance Committee, and the School Committee shall be selected by their respective Committees. The Committee shall choose its own officers.

## Section 3.

A. The Committee shall study proposed capital projects and improvements involving major, non-recurring tangible assets and projects which:

1. Are purchased or undertaken at intervals of not less than five years;
2. Have a useful life of at least five years, and
3. Cost over \$50,000.

B. All officers, boards, committees, commissioners, or other Town governmental bodies, including the Board of Selectmen and the School Committee, shall submit, by December first of each year on forms prepared by the Committee, information concerning all Committee requests requiring Town Meeting action during the ensuing five years.

C. All private citizen requests shall use the same forms as such Town governmental bodies and shall submit such forms to the Committee by December first of each year.

D. The Committee shall consider the relative need, impact, timing, public health and safety, and cost of these expenditures and the effect each will have on the financial position of the Town. The Committee shall establish a ranking procedure concerning the priority of all capital requests.

E. No appropriation shall be voted for by Town Meeting for a capital improvement item requested by a governmental unit or private citizen petition unless the proposed capital improvement item: a) has been considered in the Committee’s report, or the Committee shall first have submitted a report to the Board of Selectmen explaining the omission, and b) has been approved by the Board of Selectmen.

## Section 4.

The Committee shall, after consultation with the Finance Committee, prepare an annual report recommending a capital improvement budget for the next fiscal year, and a capital improvement program, including recommended capital improvements for the following five fiscal years. The final report, after consultation with the Finance Committee, shall be submitted to the Board of Selectmen for its consideration and approval. The Selectmen shall submit its recommended capital improvement items at any town Meeting for action by the Town.

## Section 5.

Such capital improvement program, after its adoption, shall permit the expenditure on projects therein of sums from departmental budgets for surveys, architectural or engineering advice, options or appraisals; but no such expenditure shall be incurred on projects which have not been so approved by the Town through the appropriation of sums in the current year or in prior years, or for preliminary planning for projects to be undertaken more than five years in the future.

## Section 6.

The Committee’s report and the Selectmen’s recommended capital improvement budget shall be published and made available at the annual Town elections held in May. The Committee shall file its original report with the Town Clerk.

The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision thereof, nor shall it invalidate any action which previously had been taken, or to take any other action relative thereto.

1. Footnote – This By-Law is adopted from a form presented in the Massachusetts Finance Committee Handbook, Stuart DeBard, Association of Town Finance Committees, with revisions. The intent of the By-law is to plan development as recommended by the Massachusetts Department of Revenue, Division of Social Services, Manual for Massachusetts Communities Developing a Capital Improvement Program, March 1997.

**ARTICLE XLI BOARD OF HEALTH**

The Board of Health shall be elected by popular vote during the spring annual elections. The Board shall consist of five persons serving three-year terms, with two persons elected one year, two persons elected the second year, and one person elected the third year. For the purpose of implementation, the three seated members shall serve out their individual terms, with the two open seats being filled at the next general election, one seat for three years, the second for two years.

**ARTICLE XLII MANDATORY RECYCLING BY-LAW**

**ARTICLE XLII - MANDATORY RECYCLING BYLAW**

**Section 1. AUTHORITY:**

1.1) In accordance with Massachusetts General Law Chapter 40 Section 8H, the Board of Health (Board) of the Town of Tyngsborough (Town) shall be charged with the promulgation and implementation of this By-Law and any regulation adopted under this By-Law.

**Section 2. PURPOSE:**

2.1) In order to protect the environment, promote recycling, and in compliance with Massachusetts mandated waste bans; the Town hereby establishes mandatory separation of recyclable and compostable yard waste from the solid waste stream.

**Section 3. APPLICABILITY**

3.1) This applies to all owners, tenants, occupants, and property managers of residential, multifamily, commercial, industrial, municipal, and institutional structures and properties in the Town and to any and all waste haulers duly licensed by the Board.

**Section 4. WASTE HAULERS**

- 4.1) Every waste hauler must be duly licensed by the Board on an annual basis to operate within the Town.
- 4.2) Every waste hauler shall provide an integrated waste management service whereby collection of recyclables is provided to all trash collection customers.
- 4.3) Every non-municipal waste hauler shall, upon request, provide the Board with an updated customer list, which includes the names and addresses of customers within the Town, the degree of service, and pick-up schedule. Upon request by the Board, every waste hauler shall also provide educational material to customers.

4.4.) Waste haulers may not accept a load of refuse with greater than 5%, by volume, recyclables or compostable yard waste. In addition, every waste hauler shall report, in writing, violations of this provision to the Board or its agent(s).

4.5) Waste haulers may not accept compostable yard waste, except on designated dates established by the Board.

4.6) Waste haulers shall allow for unannounced inspections of collected refuse or recyclables by the Board or its designated agent(s) where the Waste Hauler is required to demonstrate satisfactory collection procedures.

#### Section 5: OWNERSHIP OF RECYCLABLES

5.1) Once recyclable materials or compostable yard waste are placed at the curbside or designated collection area these materials shall become property of the Town. No person, business, or other legal entity other than licensed waste hauler and/or authorized agent(s) of the Town, acting in the course of their employment, may collect or pick up any recyclable materials so placed.

#### Section 6: SEVERABILITY

6.1) If any section of this By-Law is declared invalid or unenforceable for any reason, said decision shall not affect any other section of this By-Law, which shall remain in full force and effect.

### ***ARTICLE XLIII STORMWATER MANAGEMENT BY-LAW***

#### **BY-LAW FOR THE MANAGEMENT OF STORMWATER AND ILLICIT CONNECTIONS, OBSTRUCTIONS AND ILLEGAL DISCHARGES TO THE STORM SEWER SYSTEM**

##### **1.0. BACKGROUND**

1.1. Land uses, developments and conversions in the Town of Tyngsborough (the "Town") affect its streams, ponds, lakes, and drinking water supplies. These land use changes can also alter the hydrological response of local watersheds and increase stormwater runoff rates and volumes which in turn increase flooding, erosion, sediment transport and deposition, nonpoint source pollution and ground water recharge. This in turn affects public safety, public and private property, surface water, drinking water supplies, groundwater resources, aquatic life, and property values.

1.2. These adverse affects can be controlled and minimized through the regulation of stormwater runoff quantity and quality from construction, site alteration, new development, and redevelopment and by the use of both structural and nonstructural best management practices (BMP's).

1.3. Municipalities in the Commonwealth of Massachusetts ("Commonwealth") are required to comply with a number of state and federal laws, regulations and permits which require the municipality to address the impacts of illegal discharges and illicit connections and post development stormwater runoff quality, quantity and nonpoint source pollution.

1.4. Therefore, the Town has determined that it is in the public interest to regulate construction site alteration and post development/redevelopment stormwater and illegal discharges in order to control and minimize increases in stormwater discharge rates and volumes, soil erosion and sedimentation, nonpoint source pollution, illicit connections and illegal discharges into the storm sewer system by the adoption of a By-law for the management of stormwater and illicit connections, obstructions and illegal discharges to the storm sewer system (the "By-law").

## **2.0. PURPOSE AND AUTHORITY**

### **2.1. Purpose**

2.1.1. The purpose of this By-law is to regulate stormwater runoff, non-point source pollution, illicit connections, illegal discharges and obstructions to the storm sewer system, as this is necessary for the protection of the Town's water bodies and groundwater, for safeguarding the public health, safety, welfare and the environment, including drinking water supplies, aquatic life and habitats, property values, and for decreasing the risk of flooding, erosion and pollution.

2.1.2. This By-law shall apply to all development and redevelopment, to obstructions to flows and to flows entering the storm sewer system on public or private ways within the Town and to any direct discharge into the surface and ground waters and watercourses within the Town.

### **2.2. The objectives of this By-law are:**

2.2.1. To prevent pollutants from entering the Town's municipal separate storm sewer system (MS4);

2.2.2. To prohibit illicit connections and illegal discharges to the MS4;

2.2.3. To require the removal of all such illicit connections;

2.2.4. To comply with state and federal statutes and regulations relating to stormwater illegal discharges;

2.2.5. To establish the legal authority to ensure compliance with the provisions of this By-law through inspection, monitoring and enforcement.

2.2.6. To prevent contamination of drinking water supplies.

2.2.7. To establish the minimum requirements and procedures to control the adverse effects of increased post development stormwater runoff and nonpoint source pollution associated with new development and redevelopment.

2.2.8. To establish minimum post development stormwater management standards and design criteria for the regulation and control of stormwater runoff quality and quantity.

2.2.9. To require that new development and redevelopment maintain the predevelopment hydrologic characteristics in their post development state as nearly as practicable to insure that the purposes outlined above are met.

### **2.3. Authority**

2.3.1. This By-law is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution, and pursuant to the regulations of the Federal Clean Water Act and as authorized by the citizens of the Town at the Special Town Meeting of October 9, 2007.

2.3.2. The Conservation Commission (the "Commission") shall administer, implement and enforce this By-law. Any powers granted to or duties imposed upon the Commission may be delegated to employees or agents of the Commission.

2.3.3. Nothing in this By-law, or regulations adopted pursuant to, is intended to replace the requirements of any other By-law, regulation or code (e.g. building,

plumbing, sewer) that may have been or may be adopted by the Town or the Commonwealth.

### **3.0. DEFINITIONS**

For the purposes of this By-law, the following definitions shall apply:

Alter: refers to any activity which will change the ability of a ground surface area to absorb water or will change the surface drainage patterns.

Authorized Enforcement Agency: The Conservation Commission, its employees or agents designated to enforce this By-law.

Best Management Practice (BMP): An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improved the quality of stormwater runoff.

Clean Water Act: The Federal Water Pollution Control Act (33 U.S.C. § 1241 et seq.) as hereafter amended.

Commission: the Tyngsborough Conservation Commission.

Development: The modification of land to accommodate a new use, expansion of an existing use and usually involving construction and/or land disturbance.

Discharge Of Pollutants: The addition from any source of any pollutant or combination of pollutants into storm sewer systems or into the surface and ground waters and watercourses within the Town from any source.

Groundwater: All water beneath the surface of the ground.

Illegal Discharge: Any direct or indirect non-stormwater discharge to storm sewer systems, and any direct discharge into the surface and ground waters and watercourses within the Town, except as specifically exempted in Section Six. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or resulting from the activities exempted pursuant to Section Six of this By-law.

Illicit Connection: Any surface or subsurface drain or conveyance, which allows an illegal discharge into storm sewer systems. Illicit connections include conveyances which allow a non-stormwater discharge to storm sewer systems including sewage, process wastewater or wash water and any connections from indoor drains sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this By-law.

Impervious Surface: Any material or structure on or above the ground that prevents water from infiltrating the underlying soil.

Municipal separate storm sewer system (MS4) or municipal storm sewer system: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm sewer, pumping facility, retention or detention basin, natural or manmade or altered drainage channel, reservoir, and other drainage structure that together comprise the storm sewerage system owned or operated by the Town.

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: A permit issued by United States Environmental Protection Agency or jointly with the State that authorized the discharge of pollutants to waters of the United States.

Non-Stormwater Discharge: Any discharge to the storm sewer systems not composed entirely of stormwater.

Obstruction: Anything that impedes or hinders the free flow of stormwater and is not part of the storm sewer system.

Person: Any individual, partnership, association, firm, company, trust, corporation, and, any agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted By-law, and any officer, employee, or agent of such person.

Permitting Authority: The Conservation Commission of the Town.

Pollutant: Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any storm sewer system, sewage treatment works or the surface and ground waters and watercourses within the Town. Pollutants shall include, but are not limited to:

- (1) paints, varnishes, and solvents;
- (2) oil and other automotive fluids;
- (3) non-hazardous liquid and solid wastes and yard wastes;
- (4) refuse, rubbish, garbage, litter, or other discarded or abandoned objects, accumulations and floatables;
- (5) pesticides, herbicides, and fertilizers;
- (6) hazardous materials and wastes; sewage, fecal coliform and pathogens;
- (7) dissolved and particulate metals;
- (8) animal wastes;
- (9) rock; sand; salt; soils;
- (10) construction wastes and residues;
- (11) noxious or offensive matter of any kind.

Process wastewater: means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

Recharge: The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

Redevelopment: Development, rehabilitation, expansion, demolition or phase projects that disturb the ground surface or increase the impervious area.

Regulations: Unless otherwise stated, those rules and regulations promulgated by the Conservation Commission under Section Four of the By-law.

Stormwater: Stormwater runoff, surface water runoff and drainage, and snow and ice melt.

Storm Sewer System: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm sewer, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm sewer system on public or private ways within the Town.

Terms Not Defined: Should any term be used and not defined, the definition found in the Town Zoning By-law shall apply.

Toxic or Hazardous Material or Waste: Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either

separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous Under M.G.L. c.21C and c.21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.000.

Uncontaminated: Water containing no pollutants.

Watercourse: A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.

Waters of the Commonwealth: All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

Wastewater: Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

#### **4.0 REGULATIONS**

4.1. The Commission shall promulgate rules, regulations, a permitting process, application forms and a fee structure to effectuate the purposes of this By-law. Failure by the Commission to promulgate such rules and regulations shall not have the effect of suspending or invalidating this By-law.

4.1.1. Said rules, regulations and process shall be adopted after a public hearing on the regulations, rules and process and said hearing shall comply with all aspects of the Massachusetts Open Meeting Law.

4.1.2. Said rules, regulations and process will, at a minimum, follow and utilize the specifications and standards of the latest edition of the Massachusetts Stormwater Management Policy as amended and issued by Massachusetts Department of Environmental Protection.

4.1.3. The adopted rules, regulations and process, shall be periodically reviewed and updated as necessary by the Commission.

#### **5.0. PROHIBITED ACTIVITIES**

5.1. Illegal discharges: No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into storm sewer systems or the surface and ground waters and watercourses within the Town.

5.2. Illicit Connections: No person shall construct, use, allow, maintain or continue any illicit connection to storm sewer systems, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

5.3. Obstruction - Storm Sewer Systems: No person shall obstruct or interfere with the normal flow of stormwater in or out of storm sewer systems without prior approval from the Commission or its designated agent.

#### **6.0. EXEMPTIONS**

6.1. The following land disturbing activities may be performed without a permit.

6.1.1. Normal maintenance and improvement of land in agricultural use as defined in the Massachusetts Wetlands Protection Act regulations 310 CMR 10.04.

6.1.2. Maintenance of existing landscaping, stone walls, retaining walls, gardens or lawns associated with a single family residence.

6.1.3. Construction of utilities other than drainage systems that will not alter terrain, ground cover or drainage patterns.

6.1.4. Emergency repairs to any stormwater management facility or practice that poses a threat to public health, safety, welfare or the environment.

6.1.5. Any work or projects for which all necessary local approvals and permits have been issued prior to the effective date of this By-law.

6.1.6. Any land disturbance that results in a cumulative land disturbance of less than 5,000 s.f. providing appropriate erosion and sedimentation controls are in place and properly maintained.

6.1.7. Illegal discharges or flows resulting from fire fighting activities.

6.2. The following non-stormwater discharges or flows are exempt from regulation provided that the source is not a significant contributor of a pollutant to storm sewer systems or watercourses or waters of the United States, the Commonwealth, or the Town.

6.2.1. Municipal waterline flushing;

6.2.2. Illegal discharges from landscape irrigation or lawn watering;

6.2.3. Water from individual residential car washing and temporary fund-raising car wash events;

6.2.4. Illegal discharges from dechlorinated swimming pool water provided it is allowed to stand for one week prior to draining, or tested for chlorine levels with a pool test kit prior to draining (less than one part per million chlorine), and the pool is drained in such a way as not to cause a nuisance;

6.2.5. Illegal discharges from street sweepers of minor amounts of water during operations;

6.2.6. Non-stormwater illegal discharges permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations;

6.2.7. Flows from potable water sources;

6.2.8. Diverted stream flows;

6.2.9. Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;

6.2.10. Uncontaminated groundwater discharge from a sump pump;

6.2.11. Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems, such as dewatering excavations for foundation or pipelines), crawl space pumps, or air conditioning condensation;

6.2.12. Dye testing, provided verbal notification is given to the Commission prior to the time of the test.

6.3. When there is any question as to whether an activity is exempt from the By-law and the regulations promulgated under Section Four above, the Commission shall make a definitive ruling as to the applicability of the By-law and regulations to the activity in question.

## **7.0. SUSPENSION OF STORM SEWER SYSTEM ACCESS**

7.1. The Commission may suspend storm sewer system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened illegal discharge, illicit connection or obstruction that presents or may present imminent risk of harm to the public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the authorized enforcement agent may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

7.2. Any storm sewer system within the Town in violation of this By-law may have its storm sewer system access terminated if such termination would abate or reduce an illegal discharge. The Commission will notify, in writing, a violator of the proposed termination of storm sewer system access. The violator may petition, in writing, the Commission for reconsideration and a hearing. A person commits a separate offense if the section, without prior written approval from the Commission.

## **8.0. NOTIFICATION OF SPILLS**

8.1. Notwithstanding any other requirements of local, state, or federal law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials at that facility operation which is resulting or may result in illegal discharge of pollutants that person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the municipal Fire and Police Departments, Highway Department, Commission and Board of Health. This notification shall be followed by written notification to said departments within twenty four hours. In the event of a release of non-hazardous material, said person shall notify the Commission no later than the next business day. Written confirmation of all telephone, facsimile or in person notifications shall be provided to the authorized enforcement agent within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

## **9.0. ENFORCEMENT**

9.1. The Commission or its authorized agent shall enforce this By-law, and the regulations promulgated thereunder, as well as the terms and conditions of all permits, notices, and orders, and may pursue all civil and criminal remedies for such violations.

9.2. Civil Relief: If anyone violates the provisions of this By-law, regulations, permit, notice, or order issued thereunder, the Commission may seek injunctive relief in a court of competent jurisdiction to restrain the person from activities which would create further violations or compel the person to abate or remediate the violation.

9.3. Orders:

9.3.1. The Commission may issue a written order to enforce the provisions of this By-law or the regulations thereunder, which may include but is not limited to: (a) elimination of illicit connections or illegal discharges to the storm sewerage system; (b) termination of access to the storm sewerage system; (c) performance of monitoring, analyses, and reporting; (d) a cease and desist order to the violator or property owner.

9.3.2. Within thirty days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Commission within thirty days following the receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty days following a decision of the Commission affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in M.G.L. c.59, § 57 after the thirty-first day at which the costs first become due.

9.4. Criminal and Civil Penalties: Any person who violates any provision of this By-law, valid regulation, or the terms or conditions in any permit or order prescribed or issued thereunder, shall be subject to a fine of three hundred dollars for each day such violation occurs or continues or subject to a civil penalty, which may be assessed in an action brought on behalf of the Town in any court of competent jurisdiction.

9.5. Non-Criminal Disposition: As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in M.G.L. c.40, § 21D. The Commission shall be the enforcing entity. The penalty for the first violation shall be one hundred dollars. The penalty for the second violation shall be two hundred dollars. The penalty for the third and subsequent violations shall be three hundred dollars. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

9.6. Entry to Perform Duties under this By-law: To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Commission, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this By-law and regulations and may make or cause to be made such examinations, surveys or sampling as the Commission deems reasonably necessary.

9.7. Appeals: The decisions or orders of the Commission shall be final. Further relief shall be to a court of competent jurisdiction.

9.8. Remedies Not Exclusive: The remedies listed in this By-law are not exclusive of any other remedies available under any applicable federal, state or local law.

## **10.0. VARIANCES**

10.1. A variance from the provisions of this By-law may be granted by the Commission, if the variance will not adversely affect public health, safety, welfare, the environment, public and private property, drinking water supplies, recreation, aquatic habitats and life, property values and other uses of land and waters.

10.2. No variance shall be granted unless the applicant demonstrates that the enforcement of this By-law would be manifestly unjust and the applicant has established that a level of protection for public health, safety, welfare or the environment at least equivalent to that provided under this By-law can be achieved without strict application of the By-law or subsequent regulations.

## **11.0. SEVERABILITY**

11.1. If any provision, paragraph, sentence, or clause, of this By-law shall be held invalid for any reason, all other provisions shall continue in full force and effect.

## 12.0. TRANSITIONAL PROVISIONS

12.1. Property owners shall comply with this By-law on a schedule set forth in the Commission order, but such property owners shall in no case have more than six months from the effective date of the By-law to comply with its provisions, unless good cause is shown for the failure to comply with the By-law during that period.

<b><i>ARTICLE XLIV not used</i></b>
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<b><i>ARTICLE XLV AGRICULTURAL COMMISSION</i></b>
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A Tyngsborough Agricultural Commission is hereby established. The Commission shall encourage the pursuit of agriculture in the Town of Tyngsborough, promote agriculture-based economic opportunities, facilitate the preservation of agricultural land, and act as facilitators, advocates, educators, and negotiators on agriculture-related issues. The Commission will consist of five members appointed by the Board of Selectmen for three year terms, with two initial appointments to be for three years, two initial appointments to be for two years, and one initial appointment to be for one year in order to have staggered terms. The Board of Selectmen may also appoint up to five alternate members, and shall appoint persons to fill vacancies.

<b><i>ARTICLE XLVI RIGHT TO FARM BYLAW</i></b>
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### **Section 1: Legislative Purpose and Intent**

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

2. This General By-law encourages the pursuit of agriculture, promotes agriculture-based economic opportunities, and protects farmlands within the Town of Tyngsborough by allowing reasonable and beneficial agricultural uses and related activities to function with minimal conflict with abutters and Town agencies.

### **Section 2: Definitions**

1. 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.

2. The words "farming" or "agriculture" or their derivatives shall include, but not be limited to the following:

- a. dairying;
- b. farming in all its branches and the cultivation and tillage of the soil beneficial to the Town;
- c. production, cultivation, growing, and harvesting of any agricultural, apicultural, aquacultural, floricultural, viticultural, or horticultural commodities;
- d. growing and harvesting of forest products upon forest land, and any other forestry or lumbering operations;

- e. raising of livestock including horses;
  - f. keeping of horses as a commercial enterprise; and
  - g. keeping and raising of poultry, 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 but excluding swine.
3. “Farming” shall encompass activities including, but not limited to, the following:
- a. operation and transportation of slow-moving farm equipment over roads within the Town;
  - b. control of pests;
  - c. application of manure except for swine manure, fertilizers except those containing swine waste, and pesticides non-damaging to the environment;
  - d. conducting agriculture-related educational and farm-based recreational activities, including agri-tourism, provided that the activities are related to marketing the agricultural output or services of the farm;
  - e. processing and packaging of the agricultural output of the farm excluding abattoirs (slaughter houses) and animal rendering plants, the operation of a farmer's market or farm stand including signage thereto, but;
  - f. maintenance, repair, or storage of seasonal equipment, or apparatus owned or leased by the farm owner or manager used expressly for the purpose of propagation, processing, management, or sale of the agricultural products; and on-farm relocation of earth and the clearing of ground for farming operations.

### **Section 3: Right To Farm Declaration**

1. The Right to Farm is hereby recognized to exist within the Town of Tyngsborough. 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 best agricultural best practices. Whatever impact may be caused to others through these practices is more than offset by the benefits of farming to the neighborhood, community, and society in general. The benefits and protections of this By-law are intended to apply exclusively to those commercial agricultural and farming operations and activities conducted in accordance with best agricultural practices. Moreover, nothing in this Right To Farm By-law shall be deemed as acquiring any interest in land, or as imposing any land use regulation, which is properly the subject of state statute, regulation, or local zoning bylaw.

### **Section 4: Disclosure Notification**

1. Not later than 21 days after the purchase and sale contract is entered into, or prior to the sale or exchange of real property if no purchase and sale agreement exists, for the purchase or exchange of real property, or prior to the acquisition of a leasehold interest or other possessory interest in real property, located in the Town of Tyngsborough, the landowner shall present the buyer or occupant with a disclosure notification which states the following:

“The policy of the Town of Tyngsborough is to conserve, protect and encourage the maintenance and improvement of agricultural land for the production of food, and other agricultural products, and also for its natural and ecological value. This disclosure notification is to inform buyers or occupants that the property they are about to acquire or occupy lies within a town where farming activities occur. Such farming activities may

include, but are not limited to, activities that cause noise, dust, fumes, and odors. Buyers or occupants are also informed that the location of property within the Town may be impacted by commercial agricultural operations including the ability to access water services for such property under certain circumstances.”

2. A copy of the disclosure notification shall be given on a form prepared by the Town and shall be signed by the landowner prior to the sale, purchase, exchange or occupancy of such real property. A copy of the disclosure notification shall be filed with the Board of Selectmen or its designee prior to the sale, purchase, exchange or occupancy of such real property. A copy of this disclosure notification shall be provided by the Town to landowners each fiscal year.

3. A violation of Section 4 shall be subject to a fine of \$300 and shall be enforced by the Board of Selectmen or its designee. The Town is authorized to enforce Section 4 under the non-criminal disposition provision of G.L. c. 40, § 21D.

#### **Section 5: Resolution of Disputes**

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

2. The Board of Health, except in cases of imminent danger or public health risk, may forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance, and report its recommendations to the Board of Health within an agreed upon time frame.

#### **Section 6: Severability Clause**

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