

CHARLEMONT



Town of Charlemont BYLAWS

Chapter I – General Provisions	Page 2
Chapter II – Town Meeting	Page 3
Chapter III – Town Operations	Page 5
Chapter IV – Accounting	Page 7
Chapter V – Town Regulations	Page 9
Chapter VI – Roads and Infrastructure	Page 12
Chapter VII – Boards, Commissions, Committees, and Councils	Page 16
Chapter VIII – Business, Industry, and Work	Page 22
Chapter IX – Public Safety	Page 41

CHAPTER I – GENERAL PROVISIONS

- Section 1.** The following provisions shall constitute the revised by-laws of the Town of Charlemont, which shall be in lieu of all by-laws heretofore in force.
- Section 2.** Any or all of these by-laws may be appealed or amended, or other by-laws may be adopted at any town meeting, an article or articles for that purpose having been inserted by the Select Board in the warrant for such meeting.
- Section 3.** The repeal of a by-law shall not thereby have the effect of reviving any by-law theretofore repealed.
- Section 4.** Words or phrases specifying or naming any officer, board, or committee of the Town shall be construed as including the lawful successor, or the person or persons having the powers and performing the duties of such officer, board, or committee.
- Section 5.** Whoever violates any of the provisions of these by-laws whereby an act or thing is enjoined or prohibited, shall unless other provisions are expressly made, forfeit and pay a fine not exceeding twenty dollars for each offense.

CHAPTER II – TOWN MEETINGS

- Section 1.** The Annual Town Meeting shall be held on the fourth Tuesday in May each year, at a time and place set forth in a warrant issued by the Select Board. The Annual Town Election shall be held on the Tuesday following the Annual Town Meeting, at a time and place set forth in a warrant issued by the Select Board. (Amended 5/23/2023 ✓)
- Section 2.** Notice of every Town Meeting shall be given by posting attested copies of the warrant therefor in at least two public places in the Town, not less than seven days before the day fixed for the annual town meeting and not less than fourteen days before a special town meeting.
- Section 3.** The number of voters necessary to constitute a quorum at any town meeting shall be ten; providing however that a number less than a quorum may adjourn the same. This section shall not apply to such parts of the meetings as are devoted exclusively to the election of town officers.
- Section 4.** Articles of the warrant shall be acted upon in the order in which they appear unless otherwise determined by vote of the meeting.
- Section 5.** All motions shall be presented in writing if so directed by the Moderator, or if so requested by any voter.
- Section 6.** If a motion is susceptible of division, it shall be divided and the question shall be first put separately upon each part thereof if the Moderator so directs or if three voters so request. If such motion relates to sums of money, numbers or time, the question shall be first put upon the largest sum or number, and the longest time, and an affirmative vote thereon shall be a negative vote on any smaller sum, number or length of time.
- Section 7.** When a question is before the meeting, the following motion, namely to adjourn; to lay on the table; for the previous question; to postpone to a time certain; to commit, reconsider or refer; to amend; to postpone indefinitely; shall be received and shall have precedence in the foregoing order and the first three shall be decided without debate.
- Section 8.** Votes on any question shall be recorded by a written ballot if so directed by the Moderator, or so requested by seven or more voters.

- Section 9.** No person shall speak more than once on any question to exclusion of any other person who may desire to speak thereon, nor more than twice without first obtaining permission of the meeting, except in either case, for the brief correction on an error in or misunderstanding of his previous statement.
- Section 10.** No person shall speak more than ten minutes on any question unless his time shall be extended by vote of the meeting.
- Section 11.** No person shall be allowed to move the reconsideration of any vote unless he voted in the majority, or not at when such vote was first taken. No vote of the meeting shall be reconsidered unless notice of intention to ask for reconsideration shall have been given within fifteen minutes after the vote to which notice relates has been passed. When a motion for reconsideration is decided, that decision shall not be reconsidered; and no question shall be reconsidered more than once; nor shall any vote be reconsidered on a motion to adjourn, to lay on the table, or for the previous question.
- Section 12.** No motion the effect of which would be to dissolve the meeting shall be in order until every article in the warrant has been duly considered and acted upon, but th shall not preclude the postponement of consideration of any article to an adjournment of the meeting at a stated time and place.
- Section 13.** A special section shall be required at all town meetings for all non-voters. This section shall be so designated by signs.
- Section 14.** Articles proposed for an Annual Town Meeting warrant, including but not limited to petitioned articles pursuant to G.L. Chap 39, Section 10, shall be submitted to the Select Board 30 or more days prior to the date fixed by by-law for Town Meeting to convene. The Board may, in its discretion, include warrant articles received or proposed after that date. (Adopted 6/2/2008 and 6/9/2008 ✓)
- Section 15.** The Moderator may take all votes requiring a two-thirds majority in the same manner in which he or she conducts the taking of a vote when a majority vote is required. (Adopted 5/3/1999 ✓)

(Currently MGL C39, sec. 15 requires a 2/3 vote to be counted. The acceptance of this article, Chap 448 of the Acts of 1996, allows the Moderator to simply declare a 2/3 vote. If questioned by 7 voters, under Chap 39, sec 15, a count can still be had. Also, the Moderator alone can make the call to count.)

CHAPTER III – TOWN OPERATIONS

- Section 1.** The Select Board shall have the general direction and management of the property and affairs of the Town in all matters not otherwise provided for by law or these by-laws. The Select Board shall be the appointing authority for all Town employees, except as otherwise expressly provided by general or special law. (Amended 6/2/2008 and 6/9/2008 ✓)
- Section 2.** The audit of the accounts of the Town shall be made annually under the supervision of the State Division of Accounts, as provided for by Section 35, Chapter 44 of the General laws.
- Section 3.** The Select Board shall be agents of the Town to institute, prosecute and defend any and all claims, actions and proceedings to which the Town is a party or in which the interest of the Town are or may be involved. The Select Board may also employ legal counsel whenever in their judgment, necessity therefor arises.
- Section 4.** The Select Board may at their discretion, compromise or settle any claim or suit to which the Town is a party, which does not require the payment by the Town of an amount in excess of five hundred dollars. No settlement of a claim or suit obligating the Town in an amount in excess of five hundred dollars shall be made, except as authorized by law, without the consent of the Town Meeting.
- Section 5.** The Select Board in their annual report shall state what actions have been brought against and on behalf of the Town, what cases have been compromised or settle, and the current standing of all suits at law involving the Town or any of its interests.
- Section 6.** Any person holding the office as Select Board, Assessor, Planning Board member, or School Committeeman shall not hold another of these named offices. The Moderator shall not hold the office of Selectman.
- Section 7.** The Select Board, or the procurement officer designated pursuant to MGL c. 30B, is authorized to enter into any contract for the exercise of the Town's corporate powers, consistent with applicable provisions of any general or specific law. (Adopted 06/21/1990 ✓)
- Section 8.** All officers, boards and committees of the Town shall cause records of their doings and accounts to be kept in suitable books. Said books shall unless otherwise provide by law, be open to public inspection at any reasonable time, but shall remain during inspection under

supervision of the officer, board or committee having custody thereof.

- Section 9.** The fiscal year shall end as of the date set by Massachusetts law.
- Section 10.** The annual Town Report shall contain the reports of all officers, boards, or committees of the Town. It shall contain a detailed report of all monies received into and paid out of the Town Treasury in the Financial year next preceding the report of the collector of taxes; of receipts; payment and abatements; statements of all funds belonging to the Town or held for the benefit of its inhabitants; a statement of transfers made to or from any appropriations; abstracts of the records of meetings of the Town held since publication of the last annual report; and such matters as the said report is required by law to contain, or as may be inserted by the Select Board under the direction granted them by law.
- Section 11.** The Town Treasurer, with the approval of the Select Board, shall have authority to borrow money in anticipation of revenue of the fiscal year, and to issue a note or notes therefor payable within one year, and to renew any note or notes which may be given for a period of less than one year, in accordance with Section 17, Chapter 44 of the General Laws.
- Section 12.** The fee for licenses for Recreational Camps, Overnight Camps or Cabins, Motels, Mobile Home Parks shall be set by the Board of Health, to cover the cost to the Town. (Adopted 5/1/1995, Amended 5/26/2009 ✓)

CHAPTER VI – ACCOUNTING

Section 1. A Parks & Recreation Revolving Fund will be created by the Parks & Recreation Commission of which the revenue source will be user and rental fees for the purpose of the maintenance of town parks with a spending limit of \$6,000 voted annually. (Adopted June 12, 2021 ✓)

Section 2. Revolving Funds. (Adopted May 23, 2017 ✓)

A. There are hereby established in the Town of Charlemont pursuant to the provisions of G.L. c.44, §53E½, the following Revolving Funds, from which the specified department head, board, committee, or officer may incur liabilities against and spend monies from without appropriation in accordance with the limitations set forth in this by-law.

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

C. The total amount spent during a fiscal year shall not exceed the amount authorized by Annual Town Meeting or any increase therein as may later be authorized by the Select Board and Finance Committee in accordance with G.L. c.44, §53E½.

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

E. Authorized Revolving Funds

	REVOLVING FUND	AUTHORITY TO SPEND FUND	REVENUE SOURCES	USE OF FUNDS
1	Dog Fund	Town Clerk/Animal Control Officer	Dog license fees and related charges	Offset expenses of administration of licenses and animal control
2	Recycling	Select Board	Receipts from recycling program	Operation of solid waste/recycling programs, membership in waste management district, purchase of recycled content
3	Flags and Banners	Flag Committee	Receipts from sale of flags/banners	Purchase of banners, costs to insure use of utility

				poles
4	Fire Inspection	Select Board	Receipts related to fire inspection program	Expenses of maintaining fire inspection program, services by Fire Inspector

F. Procedures and Reports. Except as provided in General Laws Chapter 44, §53E½ and this by-law, all applicable state and local laws and regulations that govern the receipt, custody, expenditure and payment of town funds shall apply to the use of revolving funds established and authorized by this by-law.

And, further, to establish the following spending limit for such funds for Fiscal Year 2018:

1. Dog Fund = \$2,500.00
2. Recycling = \$6,000.00
3. Flags and Banners = \$1,200.00
4. Fire Inspection = \$1,200.00

Section 3. Voted, pursuant to the provisions of General Laws Chapter 44, §53E1/2, to establish the following Revolving Fund and to amend Section III of the Town Bylaws by adding the following text:
(Adopted June 12, 2021 ✓)

	REVOLVING FUND	AUTHORITY TO SPEND FUND	REVENUE SOURCES	USE OF FUNDS
1	Planning Board Revolving Fund	Planning Board	Permit Fees, Abutter Mailing Fees	Postage, Advertising and Mileage expense

And, further, to establish the following spending limit for such funds for Fiscal Year 2019:

1. Dog Fund = \$2,500.00
2. Recycling = \$6,000.00
3. Flags and Banners = \$1,200.00
4. Fire Inspection = \$1,200.00
5. Planning Board = \$950.00

CHAPTER V – TOWN REGULATIONS

Section 1. No person shall post or affix in any manner a placard, notice or bill, written or printed, upon a sidewalk or tree in a street or public place, or upon a walk fence, bridge or building belonging to the Town, or cause to be painted, written or printed notice, advertisement, or bill in such place or places herein before mentioned, except with permission of the Select Board. When the Select Board give permission for such posting, a time limit should be stated and provision for their removal also made.

Section 2. No person shall scatter handbills, printed or written advertisements or bills in or on the sidewalks or streets of the Town.

Section 3. In cases where licenses are required to be issued by the Select Board, the Board is hereby authorized, within the provisions of the General Laws, to fix dates and times at which application for such licenses shall be made, and may prescribe penalties for failure to make such application.

Section 4. Unregistered Motor Vehicles

a) The keeping of more than two unregistered motor vehicles assembled or dis-assembled, except by a person licensed under General Laws, Chapter 140, Section 59, on any premises shall not be permitted, unless said motor vehicles are stored within an enclosed building.

b) A special permit to keep more than two unregistered motor vehicles on any premises not within an enclosed building, after a duly called public hearing at which all abutters to the premises have received notice may be granted by the Select Board. If it finds that such keeping; (1) is in harmony with the general purposes and intent of this by-law; (2) will not adversely affect the neighborhood and (3) will not be a nuisance.

c) All such special permits granted shall limit the number of unregistered motor vehicles to be kept on the premises by the permit holder, shall not run with the land, and shall be limited to a reasonable length of time.

d) This by-law shall not apply to motor vehicles which are designed and used for farming purposes or to contractor's equipment nor to landowners or tenants who store motor vehicles out of sight of abutters public ways.

e) Notwithstanding the provisions of Section 5 of Chapter I of these by-laws, whoever violated any provisions of this section shall be liable to a penalty of \$2.00 per day for each day of violation commencing ten days following the date or receipt of written notice of such violation from the Select Board. (Adopted 3/7/1966 ✓)

Section 6. The Select Board may license suitable persons to be collector of, dealers in, or keepers of shops for the purchase, sale or barter of junk and metals, or second-hand articles, and make suitable rules and regulations relative thereto, all in accordance with the provisions of Section 54, of Chapter 140 of the General Laws.

Section 7. This bylaw was repealed and replaced in the June 2 & 9, 2008 ✓ town meeting. See the Dog Bylaw below.

- Section 8.** A. The following regulations shall apply to the Town Fairgrounds and the Town Tennis Courts
1. No person shall be on the fairgrounds or tennis courts during the time between ½ hour after sunset to ½ hour before sunrise, except by written permission of the Park Commission.
 2. No person shall cause or permit any littering on the fairgrounds or tennis courts.
- B. The following regulations shall apply to the Town Fairgrounds.
1. No person shall operate any recreational vehicle of any type on the fairgrounds (amended to add—except by permission of the Park Commissioners).
 2. No person shall smoke in the grandstand building or exhibition hall building on the fairgrounds.
 3. No person shall shoot or discharge any type of firearm on the fairgrounds, except by written permission of the Park Commissioners.
 4. No person shall have in his possession any alcoholic beverage on the fairgrounds, except by written permission of the Park Commissioners.

Any violation of the above offenses shall be subject to a fine of \$100.00. (Adopted 5/5/1986 ✓)

Section 9. No public or private utility and/or construction company shall work on any public way within the Town without first notifying the Police Chief or his/her designee. All road details shall be assigned by the Police Chief or his/her designee. (Adopted 11/22/1994 ✓)

Section 10. In order to implement a program of recycling in conjunction with ordinary waste disposal, residents of every household shall separate waste material into the following categories before depositing same for disposal:

1. Glass and cans
2. Paper
3. Other waste

If no separation takes place, waste material shall not be accepted at the disposal location. Repeat offenders shall suffer a fine of \$50.00.

(Adopted 6/26/1988, Re-Adopted 5/1/1995 ✓)

Section 11. Fine for Obstruction of Town Layouts

No person other than an employee in the service of the Town of Charlemont or any employee in the service of an independent contractor acting for the Town of Charlemont or any such subdivision thereof shall poke, push, blow or plow snow or ice onto a Town layout, including but not limited to a street, roadway, lane, by-way or sidewalk so as to impede the flow of traffic or pedestrians on such. Whoever violates this section shall be punished by a fine of one hundred and fifty dollars. Such provisions are to be enforced by the Charlemont Police Department under the provisions of Massachusetts General Laws Chapter 40, Section 21D. (Adopted 6/29/2004 ✓)

Section 12. Stretch Energy Code

For the purpose of regulating the design and construction of buildings for the effective use of energy, the Town of Charlemont has adopted Stretch Energy Code (Appendix 115.AA, 780 CMR) including future editions, amendments, or modifications thereto, with an effective date of July 1, 2018. (Adopted 05/30/2018 State Statute)

CHAPTER VI – ROADS AND INFRASTRUCTURE

Section 1. Parking Restrictions

- A. No parking on the west side of North River Road for a distance of 800' (eight hundred feet) from the intersection of North River Road and Massachusetts Route 112 (one hundred & twelve).
- B. No parking on either side of Johnson Road.
- C. No parking on the east side of Riddell Road for a distance of five hundred feet (500') from the intersection of Riddell Road and Main Street (Route 2) (This section amended 3/10/1998 ✓)
- D. No parking on either side of School Street for a distance of 90' (ninety feet) from the intersection of School Street and Main Street (Route 2).
- E. No parking on the first 2,000 feet on both sides of South River Road starting at the intersection of Route 8A. (This section added 07/31/2007 ✓)
- F. No parking on both sides of Route 8A South, also known as West Hawley Road, from Route 2 to the Town Line of Hawley. (This section added 07/31/2007 ✓)
- G. No person shall stand or park and no person shall allow, permit or suffer any vehicle registered in his/her name to stand or park in any of the following places:
 - 1. within an intersection
 - 2. upon any crosswalk
 - 3. upon the roadway in a rural or sparsely settled district, obstructing the normal flow of traffic or hindering or obstructing the normal activities of the Town of Charlemont Highway Department in snow and ice control, and seasonal highway maintenance.

(Adopted 5/4/1992 ✓)

Section 2. Curb Cut Regulation (Added 5/1/1995 ✓)

- 1. Definitions** – These definitions are for the purpose of this by-law only.

Public Way: A way accepted and maintained by a public agency.

Driveway: Privately owned access to and from a public way.

Landing: The first twenty (20) feet of a driveway adjoining a public way, measured from the edge of a traveled way.

- 2. Purposes**

- A. To provide better protection of the public safety through the orderly control of traffic entering and exiting a public way.
- B. To provide the necessary grade and drainage to protect the public way from damage.

- 3. Application for Permit**

Any property owner desiring to construct a driveway which accesses a public way shall do so only after securing a permit to do so from the Select Board, in accordance with this by-law.

A curb cut permit is required before construction of the driveway or before submission from any applicable building permit. Exceptions:

- A. Driveways already in existence, where the use remains the same.
- B. Driveways subject to Massachusetts General Laws Chapter 81, Section 21, (State Curb Cut Permit).
- C. Driveways reviewed by municipal boards under existing laws or bylaws to include, but not limited to scenic roads by-law or sub-division by-law.

- 4. Review Procedures**

- A. The property owner seeking a curb cut shall make a written submission to the Select Board, including three (3) copies of the Application for Curb Cut Permit, including a plan showing:

1. Any driveway that is to be created, altered, or closed and the relationship to the accessed public way.
 2. Construction details described under Section 5, Design Standards.
- B. The Select Board shall consult with the Highway Superintendent, Police Chief, Fire Chief and other interested Town Officials to obtain their comments on the plan.
- C. The Select Board shall notify the property owner making application within twenty-one (21) days, in writing, indicating:
1. The curb cut does conform to the town's standards set forth in this by-law or
 2. The curb cut does conform subject to certain modifications, conditions or restrictions.

If the criteria set forth in Section 5, Design Standards, are met, the Select Board shall issue a curb cut permit. If the Select Board takes no action within twenty-one (21) days of completed submission, the Curb Cut Permit is automatically issued in accordance with the plan and the Town Clerk may so certify.

- D. The Town will inspect the project during and after construction. The Select Board shall have the authority to halt construction and/or to prohibit access to said driveway if construction is not in accordance with the approved plan, until objectionable conditions are corrected.
- E. The Highway Superintendent shall “sign-off” on the permit after satisfactory completion of construction.

5. Design Standards - These standards are for the purpose of this by-law only:

- A. Driveways should be located to the best advantage with regard to alignment with the public way and intersect at as close to a right angle as feasible. The angle of the intersection shall be between 60 and 120 degrees. The curb line radius of the landing to the edge of the traveled way shall be a minimum of 10 feet. Unless conditions require it, a landing should not be located within twenty (20) feet of a side property line.

- B. Sight distances: No wall or other obstruction shall be planted, constructed, or maintained at the intersection of the driveway with the public way which causes danger to traffic on the public way or to user of the driveway by unreasonably obscuring a view. NO new driveway should be located where the minimum sight distance at four (4) feet above the traveled road surface in each direction along the way is less than 150 feet.
- C. Culverts and drainage: Existing drainage ditches parallel to the public way shall not be obstructed by driveway construction. Culverts of appropriate size and durable material (such as asphalt-coated galvanized steel) shall be provided by the applicant as determined by the Highway Superintendent. Culverts should be set back a minimum of four (4) feet from the traveled way. Culverts should be a minimum of twenty (20) feet in length.
- D. Gradients: The gradient of a new driveway must conform to the following standards: The first six (6) feet of driveway must have a minimum 0.5% and maximum 9% downgrade from the way. The next fourteen (14) feet of driveway must not exceed a 9% downgrade or upgrade from the way.
- E. All new driveways shall be provided with adequate space for reversing the direction of an automobile so that the vehicle may enter the public way facing forward.
- F. The Select Board may modify these design standards based on sound engineering practice for the site's terrain and driveway usage.

Section 3. Fine For Obstruction of Town Layouts

No person other than an employee in the service of the Town of Charlemont or any employee in the service of an independent contractor acting for the Town of Charlemont or any such subdivision thereof shall poke, push, blow or plow snow or ice onto a Town layout, including but not limited to a street, roadway, lane, by-way or sidewalk so as to impede the flow of traffic or pedestrians on such. Whoever violates this section shall be punished by a fine of one hundred and fifty dollars. Such provisions are to be enforced by the Charlemont Police Department under the provisions of Massachusetts General Laws Chapter 40, Section 21D.

(Adopted June 29, 2004 ✓)

CHAPTER VII - BOARDS, COMMISSIONS, COMMITTEES, AND COUNCILS

Agricultural/Forestry Commission

Voted to establish an Agricultural/Forestry Commission to represent the Charlemont farming/forestry community. Said Commission shall serve as facilitators for encouraging the pursuit of agriculture and forestry in the Town both as a business and a resource, the preservation of farm and forested land, the promotion of natural resource based farm and forestry economic opportunities, and the expression of planning needs and the visibility of farming and forestry in Charlemont. The Commission shall consist of five members appointed by the Select Board. They shall serve staggered terms of three years each. Up to three voting alternates may also be appointed by the Board, each for a one-year term. Vacancies shall be filled by the Board. (Adopted 05/16/2005 State Statute)

Board of Health

Section 1. Notwithstanding sections 1 and 2 of Chapter 41 of the General Laws or any other general or special law to the contrary, there shall be 3 members of the Board of Health in the Town of Charlemont.

Section 2. In order to provide for the reduction in the number of members from 5 to 3, there shall appear on the ballot at the first annual election occurring at least 64 days following the effective date of this act, the office of the Board of Health, with the instruction to vote for 3 candidates and such other information as will aid voters. The candidate receiving the highest number of votes at the election shall serve a term of 3 years, the candidate receiving the second highest number of votes shall serve a term of 2 years and the candidate receiving the third highest number of votes shall serve a term of 1 year. Next to the name of any incumbent Board of Health member appearing on the ballot as a candidate for election to said office shall appear the words, "candidate for re-election." No other term of office for a Board of Health member shall appear on the ballot at such election. Upon the election of 3 Board of Health members, the terms of the incumbent members of the 5 member Board shall be terminate and the Board of Health shall be immediately reconstituted as a 3 member board. Thereafter, all members of the Board of Health shall be elected to terms of 3 years.

Section 3. This act shall take effect upon its passage. (Adopted May 26, 2015 ✓)

Board of Public Welfare

The Select Board shall act as the Board of Public Welfare.

Board of Trustees of the East Charlemont School

There shall be a committee to be known as the Board of Trustees of the East Charlemont School consisting of seven members, at least three of which shall be residents of East Charlemont. The duties of this Board shall be to preserve the East Charlemont Brick Schoolhouse as an historical landmark for future generations. Immediately after the effective date of the By-Law the Moderator shall appoint three persons to this Board, one to serve for four years, one to serve for three years, and one to serve for two years, with the four members now on the board this will make a total of seven members. Thereafter, the Moderator shall appoint one member next year and every fourth year thereafter and two members for each of the following three years. Each member to serve for a term of four years. (Added 2/2/1953, Amended 5/6/1996 and 5/7/1996 ✓)

Capital Planning

1. In accordance with Massachusetts General Laws Chapter 41, §106B, there is hereby established a Capital Planning Committee ("Committee") comprised of three(3) members: one (1) to be appointed by the Town Moderator; one (1) by the Select Board; and one (1) by the Finance Committee. The initial appointments to the Committee shall be as follows: one member will be appointed by the Select Board for a 3 year term, one member will be appointed by the Moderator for a 2 year term, and one member will be appointed by the Finance Committee for a 1 year term. All subsequent appointments shall be for a three-year term, such terms to commence on July 1. In the case of a mid-term vacancy, the appointing authority for the respective seat shall select a new member for the remainder of the unexpired term. The Moderator shall notify the Town Clerk of all Committee appointments and re-appointments in a timely fashion. No Committee member may simultaneously serve as a member of the Select Board or the Board of Assessors.

2. A capital expenditure is any proposed purchase of goods or services with a cost greater than \$5,000 and an estimated useful life greater than three (3) years. With the exception of a capital expenditure article originating through the citizen petition process, town meeting shall not consider or approve any capital appropriation unless it has been formally presented to and reviewed by the Committee.

3. The Committee shall annually issue a notification letter soliciting capital expenditure requests to all town departments, boards, committees and commissions. The notification letter shall be issued and capital expenditure requests shall be returned to the Committee on dates concurrent with the annual operating budget process. All departments, boards, committees and commissions shall submit capital expenditure requests on forms provided by the Committee indicating requests for the next fiscal year and for four years thereafter. Each

proposed expenditure must meet both criteria that define a capital expenditure, which may not be waived. The Committee may, in its sole discretion, accept a capital expenditure request for the next fiscal year after the established submission deadline.

4. The Committee shall review, evaluate and prioritize all capital expenditure requests for the next fiscal year. The Committee may meet with any town officer, department manager, or board, committee and commission representative and may request additional information it determines is needed in order to evaluate and prioritize submitted items. The Committee shall establish criteria for evaluating the relative need and timing for a proposed expenditure which shall address, but need not be limited to, the following:

- Emergency circumstances
- Protection of public health and safety
- Court ordered
- Requirement of state or federal law or regulation
- Risk of losing grants or matching funds
- Operating budget impact (positive or negative)
- Preservation of asset at risk
- Continuation of previously funded projects
- Status of projects previously funded
- Deferrals from prior years

5. The Committee shall report its capital expenditure recommendations for the next fiscal year simultaneously to the Select Board and Finance Committee no later than (8) eight weeks before Annual Town Meeting. The report shall include capital expenditures recommended for funding and proposed expenditures not recommended. If so requested, the Committee shall meet with the Select Board or Finance Committee, who shall complete their review within 30 days of receiving the report with a vote to accept or reject the Committee's recommendation in its entirety. If the Select Board or Finance Committee objects to a Committee decision, it may elect to resolve the issue with the Committee. Otherwise, amendments to the Committee's recommendation may only occur at Town Meeting.

6. The Committee shall prepare and submit a capital expenditure article or articles for the Town Meeting warrant to the Select Board within the customary deadline. Subject to town counsel review, the Committee shall determine the format of an article, provided however that each individual expenditure must at least specify the amount to be expended, the purpose of the expenditure and its financing source. The Committee shall present a report either orally to Town Meeting or in writing in advance explaining its process and decisions. In either event, Committee members shall be prepared to respond to comments and

questions at Town Meeting concerning its capital expenditure recommendations and omissions.

7. The Committee shall develop a five-year capital plan based on information submitted by town departments, boards, committees and commissions referenced herein above. In a chart format determined by the Committee, the plan which is intended as a guide shall display anticipated capital expenditures with estimated costs in four subsequent years. The Committee shall revisit and update the plan annually to account for new information provided and resulting changes in priorities and/or in estimated costs. The five-year plan shall be included as supplemental information in the annual Town Meeting warrant and, as such, it is not subject to a Town Meeting vote. (Adopted 05/24/2016 ✓)

Conservation Commission

There shall be a Conservation Commission consisting of 5 members, appointed by the Select Board, with all duties and authority stated in the Wetlands Protection Act and related regulations. Said Conservation Commission shall be comprised of five residents of the Town with the initial appointments beginning July 1, 2016. One appointment shall be for one year, two appointments shall be for two years, and two appointments for three years, with all subsequent appointments to be for three year terms. (Adopted 05/02/1977 and 05/26/2015 ✓)

Council on Aging

Adopted Section 8B of Chapter 40 of the General Laws establishing a Council on Aging to coordinate and carry out programs designed to meet the problems of the aging. (Adopted 5/7/1984)

Finance Committee

(Voted at a Special Town Meeting, September 14, 1949 to amend the Town By-laws by striking out Section 7 of Chapter 3 and inserting in place thereof the following section.)

Paragraph 1. There shall be a Finance Committee consisting of five registered voters of the Town who shall be appointed by the Moderator as hereinafter provided. No elected town officer shall be eligible to serve on said committee. (Amended 5/1/2000 ✓)

Paragraph 2. The Moderator of the Town Meeting when this by-law is adopted shall, within thirty days after such by-law becomes effective, appoint said committee by appointing two members to serve until the annual town meeting in 2003 and one member to serve until the annual town meeting in 2002. The members serving in unexpired terms at the time this by-law becomes effective

shall complete their appointed terms. Commencing with the annual town meeting in 2001, all persons appointed to the Finance Committee shall be appointed for three-year terms. The terms of office of said members shall commence immediately upon qualification and expire at the close of final adjournment of the annual town meeting at which their successors are appointed. Said committee shall choose its own officers and shall serve without pay, and it shall cause to be kept a true record of its proceedings. (Amended 5/1/2000 ✓)

Paragraph 3. In the event of a vacancy upon said committee the vacancy shall be filled by said committee and the Select Board, sitting in joint session. Such interim appointment shall expire at the final adjournment of the next annual Town Meeting, and the Moderator of that meeting shall appoint a successor to fill the unexpired term of the member in whose office the vacancy originally occurred.

Paragraph 4. The Finance Committee shall consider all municipal questions relating to appropriations and may consider any municipal questions. It shall hear members of the town departments and citizens of the town relative to any matter before the Committee, and shall make such recommendations as the committee deems advisable upon all subjects considered by it. It shall submit its recommendations and report to each Town Meeting, regular or special and shall make an annual report of its doings and recommendations which shall be contained in the annual Town Report. It shall prepare a budget for the annual Town Meeting in accordance with Chapter 39, Section 16 of the General Laws.

Paragraph 5. All articles in any warrant for a Town Meeting shall be referred to the committee for its consideration. The Select Board, after drawing any such warrant, shall transfer immediately a copy thereof to each member of the Committee. All officers, boards and committees of the town shall, upon request, furnish the committee with facts, figures, books of records, accounts, bills and vouchers, or any other information pertaining to their several activities.

Historical Commission

Voted, under the provisions of General Laws, Chapter 40, Section 8D, an Historical Commission of the Town of Charlemont, for the purposes and with the rights and duties provided by law, to be composed of three members, appointed by the Select Board for a term of three years except that the initial appointment shall be one member for one year, one member for two years, and one member for three years. (Adopted 08/13/1974 ✓)

Parks and Recreation Commission

Established the “Park Commission” of 3 members on February 5, 1940.

Voted to change the Park Commission to “Parks and Recreation Commission” and to increase the number from 3 to 5 members. At May 2, 2005 Annual Election, one position for one year, one position for two years, one position for three years, one position for four years and one position for five years. (05/03/2004 ✓)

Planning Board

There shall be a Planning Board of five members under the provisions of Sections 81A to 81GG of Chapter 41, General Laws with all the powers and duties thereof and to provide that the Select Board shall serve as the Planning Board until the next annual town election and to provide that at the next annual town election five members shall be elected by official ballot: one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, and thereafter in accordance with the provisions of statute. (Adopted 05/02/1977 ✓)

The Select Board

There shall be a Select Board of three members elected for three-year overlapping terms. Such Select Board shall have all the powers and duties of a Board of Selectmen for the purposes of any and all federal, state, and local laws referring to Board of Selectmen or Selectmen, including, but not limited to the Massachusetts General Laws, Code of Massachusetts Regulations, and any bylaws and special acts applicable to the Town of Charlemont. (Adopted 5/30/2018 ✓)

CHAPTER VIII – BUSINESS, INDUSTRY, AND WORK

Section 1. Right to Forest and Farm Activities

1. Legislative Purpose, Intent, and Findings

- A. The purpose and intent of the By-law is to state with emphasis the RIGHT TO MANAGE AND HARVEST FOREST AND FARM PRODUCTS accorded to all citizens of the Commonwealth under Article 97, of the Constitution (The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose), and all state statutes and regulations thereunder including but not limited to Massachusetts General Law Chapter 40A, Section 3, Paragraph 1; Chapter 90, Section 9, Chapter 111, Section 125A, Chapter 128, Section 1A, Chapter 132, Section 47. We the citizens of Charlemont restate and republish these rights pursuant to the Town's authority conferred by Article 89 of the Articles of Amendment of the Massachusetts Constitution, ("Home Rule Amendment").
- B. This General By-law encourages the pursuit of judicious land management for forest and agricultural products, promotes forest and agriculture-based economic opportunities, and protects forest and farmlands within the Town of Charlemont by allowing forestry and agricultural uses and related activities to function with minimal conflict with abutters and Town agencies. It is recognized that proper and reasonable management and harvest of forest and farm products protects environmental quality and public safety by being in compliance with existing appropriate state and federal regulations. This By-law shall apply to all jurisdictional areas within Charlemont.
- C. Forests and agricultural open space in Charlemont dominate the landscape and provide residents with numerous benefits, contributing to the overall rural character and quality of life of the community. As new homes are built and new people come to live in Charlemont, it is important that the ability to manage and harvest forest and agricultural products is maintained, to protect the public benefits that come from forest and farm land, as well as the rural character and nature that existing resident's value.

2. Definitions

- A. The words “forestry” and “practice of forestry” (defined by Massachusetts General Laws Chapter 132, Section 47) or their derivatives shall include by not be limited to the following:
1. Forestry means the science, the art, and the practice of conserving and managing the natural resources, including trees, other plants, animals, soil and water, that occur on, and in association with, forest lands.
 2. Practice of forestry means any professional services requiring the application of forestry principles and techniques, including but not limited to: forest inventory, forest management planning, timber appraisal, the responsibility for the direction and supervision of silvicultural activities, use and protection of forested areas, and the evaluation of the economic and biological consequences of forest management activities.
- B. The words “production of wood or non-timber forest products” shall include but not be limited to the following:
1. Operation of log trucks on or off Town roads;
 2. Stacking or storage of processed or unprocessed wood products;
 3. Operation of timber harvest machinery, including chain saw, skidder, forwarder, processor, bull dozer, or other equipment used to fell, process, and transport wood products;
 4. Cultivation, harvest, processing, storage, and transportation of non-timber forest products such as mushrooms, medicinal plants, ornamental plants;
 5. Cultivation, harvest, processing, storage, and transportation of Christmas trees;
 6. Cultivation of sugar maple trees with the purpose of harvest, processing, and storage of sap for the production of syrup;
- C. The terms “manage and harvest forest products: shall include the production of wood or non-timber forest products.
- D. 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.

- E. The words “farming” or “agriculture” or their derivatives shall include, but not be limited to the following:
1. Farming in all its branches and the cultivation and tillage of the soil;
 2. Dairying;
 3. Production, cultivation, growing, and harvesting of any agricultural, aqua cultural, floricultural, viticulture, horticultural commodities;
 4. Growing and harvesting of forest products upon forest land, the practice of forestry, and any other forestry or harvesting operations;
 5. Raising of livestock including horses;
 6. Keeping of horses as a commercial enterprise; and
 7. Keeping and raising of poultry, swine, cattle, ratites (such as emus, ostriches and rheas) and camelids (such as llamas and camels), and other domesticated animals for food and other agricultural purposes, including bees and fur-bearing animals.
- F. “Farming” shall encompass activities including, but not limited to, the following:
1. Operation and transportation of slow-moving farm equipment over roads within the Town;
 2. Control of pests, including, but not limited to, insects, weeds, predators and disease organism of plants and animals; application of manure, fertilizers and pesticides in accordance with all state regulations intended to protect environmental quality and public health and safety;
 3. 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;
 4. Processing and packaging of the agricultural output of the farm and the operation of a farmer’s market or farm stand including signage thereto;

5. 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
6. On-farm relocation of earth and the clearing of ground for farming operations.

3. Right to Manage and Harvest Forest and Farm Products Declaration

- A. The right to Manage and Harvest Forest and Farm Products is hereby recognized to exist within the Town of Charlemont. The above-described activities may include the attendant incidental noise, odors, dust, and fumes associated with normally accepted harvesting and management practices. It is hereby determined that whatever impact may be caused to others through the normal practice of agriculture and forestry is more than offset by the benefits of forests, forestry, and farming to the neighborhood, community, and society in general. The benefits and protections of this By-law are intended to apply exclusively to those reasonable forestry, agricultural, and farming operations and activities conducted in accordance with generally accepted forestry and agricultural practices that are not injurious to environmental quality and public health and safety. Moreover, nothing in this Right Forest and Farm Activity By-law shall be deemed as acquiring any interest in land, or as imposing any land use regulation, which is properly the subject of state statute, regulation or local zoning law.

4. Disclosure Notification

- A. 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 Charlemont, the landowner shall present the buyer or occupant with a disclosure notification that states the following:
 1. “It is the policy of Charlemont to conserve, protect and encourage the maintenance and improvement of forest and agricultural land for the production of wood, food, and other non-timber and 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 forestry and farming activities occur. Such forestry and farming activities may include, but are not limited to, the production of wood or non-timber forest products, and activities that cause noise, modification of woody vegetation, dust, and odors. Buyers or occupants are also informed that property within Charlemont may be impacted by forest management and the production of wood or non-timber forest products, the ability to access forestland through lawful and deeded right-of-way for harvest purposes, and agricultural operations including the ability to access water services for such property under certain circumstances.”

- B. 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 must be filed with the Select Board or its designee prior to the sale, purchase, exchange or occupancy of such real property. In addition to the above, a copy of this disclosure notification shall be provided by the Town to residents and landowners each fiscal year by mail.
- C. A violation of Section 4 shall be subject to a fine of \$300 and shall be enforced by the Select Board or its designee. The Town is authorized to enforce Section 4 under the non-criminal disposition provision of G.L.c.40, s21D.

5. Resolution of Disputes.

- A. Any person who seeks to complain about forest or farm activities may, notwithstanding pursuing any other available remedy, file a grievance with the Selectboard, the Zoning Enforcement Officer, or the Board of Health, depending on the nature of the grievance. The Selectboard, the Zoning Enforcement Officer, or the Board of Health shall review and facilitate the resolution of the grievance within an agreed upon time frame. The filing of the grievance does not suspend the time within which to pursue any other available remedies that the aggrieved may have.

6. Limitations Placed on the Management and Harvest of Forest and Farm Products.

- A. The Right to manage and Harvest Forest and Farm Products is hereby recognized to exist within the Town of Charlemont. As a result, there activities shall not be unreasonably limited by the use of municipal planning, zoning powers, general bylaws, or by unreasonable

interpretation of such powers. Any proposed local zoning or other bylaw that may limit the management and harvest of forest and farm products must demonstrate a compelling and sufficient need beyond those protections of public interest in land and other resources provided for by existing state laws and regulations.

- B. For purposes of Section 6, “unreasonable interpretation” includes the failure of local and use authorities to recognize that forestry and agriculture, when practiced in accordance with existing applicable state laws and regulations (e.g. MGL Chapter 132 Forest Cutting Practices Act, MGL Chapter 131 Section 40A Wetlands Protection Act; MGL Chapter 131A Massachusetts Endangered Species Act; Chapter 40 Section 16A Massachusetts Slash Law) are traditional, fundamental, and accessory uses of land throughout Massachusetts, and that a prohibition upon these uses cannot necessarily be inferred from the failure of an ordinance or regulation to address them.

7. Severability Clause

- A. 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 Charlemont hereby declares the provisions of this By-law.

(Adopted 5/16/2005, Approved by the Attorney General 11/24/2008 ✓)

Section 2. Earth Removal

ARTICLE I – PURPOSE

The purpose of this bylaw, adopted under GL Ch. 40, §21(17) is to promote the health, safety, and general welfare of the residents of the Town of Charlemont, by ensuring that permanent changes in the surface contours of land resulting from the removal and re-grading of earth materials will leave the land in a safe and convenient condition for appropriate reuse without requiring excessive or unreasonable maintenance. Such earth removal activities shall not create any danger of damage to public or private property, and shall be conducted in a safe manner and with minimal detrimental effect upon the district in which the activities are located. This bylaw pertains to all commercial mining, agricultural excavation and excavation due to construction that is not exempt pursuant to Section 4.2 of this bylaw.

ARTICLE II - DEFINITIONS

Agricultural Excavation—The process of removing earth materials as necessary and incidental to prepare a site for specific agricultural use.

Commercial Mining—The business of extracting earth materials from the ground for sale or profit unless conditionally exempted under Section 4.2.

Earth Materials—All naturally occurring solids, liquids, and gases that make up or are found on, in or beneath the soil, including but not limited to clay, gravel, hard pan, loam, peat, rock, minerals, sand, and metals.

Earth Removal—The excavation, processing, and/or removal of earth materials or any action that causes the alteration of land not covered under another permit, within the legal limits of the Town of Charlemont.

Earth Removal Operations or Earth Removal Operations Area—Includes all land impacted by the operation (e.g.: pits, fill or storage piles, parking areas, access ways and/or structures).

Erosion—The process by which the ground surface is worn and carried away by natural forces such as wind, water, ice, gravity, or by artificial means.

Restoration—After an earth removal activity, the process of returning the land contours to safe and usable condition by grading and re-vegetation with suitable stabilizing plantings, or taking other measures pursuant to Section 5.11 of this bylaw.

Seasonal High Water Table—The highest underground level at which the soil and gravel are completely saturated with water, taking into account seasonal changes due to rain or drought. The water table level represents the point at which atmospheric and water pressure are equal over a period of time. The level is dependent upon site-specific factors like precipitation rates, soil permeability, geological formations, drainage patterns and proximity to nearby surface water bodies.

Sediment—Earth Materials or other organic material transported or deposited into any body of water, by the movement of wind, water, ice, gravity, or by artificial means.

Slope—An area that is more or less steep, as measured by vertical rise over a horizontal distance, expressed as a percentage or ratio.

ARTICLE III - EARTH REMOVAL COMMITTEE

3.1: Earth Removal Committee. There is hereby established a five (5) member Earth Removal Committee (ERC) for the Town of Charlemont, comprised of one representative from each of the following Town boards and departments, as appointed by the members of that board or department:

2. Select Board (1 plus one member appointed by BoS)
3. Board of Health (1)
4. Planning Board (1)
5. Conservation Commission (1)

When the ERC is first formed, one member shall be appointed for one year (BoS appointee), two members for two years (BOH and Con Comm), and two members for a three year term (Planning Board and BoS) , and their successors shall be appointed for terms of three years. Should a designated member vacate the position prior to the end of the ERC term, that board or department shall appoint another representative for the remainder of the ERC term.

3.2: Quorum. No committee action shall be taken without a quorum of three (3) members (except to continue a hearing in the absence of a quorum), and no decision shall be made without the vote of a majority of the members present. A vote on a permit for a new Earth Removal Operation requires a positive vote of a majority of the ERC (3).

3.3: Meeting Schedule. The committee shall meet, at a minimum, once a year at a place and time to be determined by the committee, and at such further times as are necessary to conduct business, such as scheduling annual site visits, reviewing regulations.

3.4: Rules of Procedure. The Select Board will initiate the appointment of ERC members within 4 weeks after the effective date of this bylaw. The ERC shall convene no later than three months after the effective date. The ERC will adopt Rules of Procedure within two months after its first meeting. The regulations adopted shall include, but are not limited to: the method of application, number of copies to be submitted, filing fees, required exhibits, site plans, site plan review fees, monitoring fees, bond requirements, and the means of compliance, inspection and administration. The provisions of this Bylaw shall be effective notwithstanding the absence or invalidity of rules adopted by the ERC.

ARTICLE IV - EARTH REMOVAL PERMIT REQUIREMENTS

4.1: Earth Removal Permit Required. Except as provided otherwise in this Bylaw (see Section 4.2), no earth materials shall be excavated, deposited upon and/or removed from any lot in the Town of Charlemont without the issuance of an Earth Removal Permit from the ERC.

4.2: Exemptions. An Earth Removal Permit shall not be required for the following activities, provided that the operation does not constitute a nuisance or danger to the public, and conforms to accepted engineering and/or agricultural practices:

2. Removal of less than 500 cubic yards of earth *not for sale* in an eighteen-month period;
3. Disturbance of less than one acre of land in any twelve-month period;
4. Removal of earth incidental to the construction of a building or structure under an existing building permit or special permit;
5. Excavation for Title 5 (septic system) compliance;
6. Excavation incidental to or in connection with the construction of sidewalks, driveways, roads and/or the installation of utilities approved under the Town of Charlemont Subdivision Control Regulations;
7. Excavation in the course of normal and customary agricultural use of land (i.e. land remains in agriculture after completion of earth removal)
8. The transfer of less than 500 cubic yards of earth from one part of the premises to another part of the same premises; or
9. The removal of earth in connection with any town, state, and/or federal project.

4.3: Existing Earth Removal Operations. All existing earth removal operations shall be brought into compliance with this Bylaw no later than eighteen months after the effective date and no further earth removal shall take place after that date without a permit hereunder. Such applications shall be submitted no later than 14 months after the effective date so that the Earth Removal Committee can hear and decide all applications from existing earth removal operations before the expiration of eighteen months. A site visit may be conducted before the close of the public hearing.

4.4: Application Requirements. Before a permit for an earth removal operation can be issued, written application accompanied by a site plan shall be submitted on such forms or in such manner as the ERC may specify in its rules and

regulations. The submission shall include the name, address, and telephone number of each owner of the property to which the permit will apply, and must be signed by all such owners indicating that they have reviewed and approved of such submission.

4.5: Site Plan. A site plan shall be submitted to the Town Clerk. Such plan shall be distributed by the Town Clerk to the members of the ERC and the Agricultural Commission, Fire Department, Police Department, Highway Department, and Board of Assessors. The plan shall be prepared by a registered land surveyor or registered professional engineer and shall include the following information.

A. In relation to the premises (parcel) as a whole:

1. Locus map including legend and north arrow.
2. Plans of appropriate scale including:
 - (a) Location of proposed operation area in relation to parcel boundaries.
 - (b) Names and locations of abutters and abutters to abutters on all sides within 300 feet, including the location of any buildings and structures.
 - (c) Existing streets, roads and ways, public and private within 300 feet from parcel boundaries.
 - (d) Main topographical features of the parcel and surrounding area.
 - (e) Prime farmland soils located on the subject property.
 - (f) Protected open space located on the subject property and on abutting properties.
 - (g) Wetland areas, including perennial and intermittent streams, rivers, swamps, vernal pools, ponds, as well as residential wells and primary re-charge areas to any public water supply on the parcel as well as within 300 feet of the parcel boundaries.
 - (h) Where relevant: Delineation of the floodplain, as shown in the Charlemont Floodplain Overlay District.

B. For the Earth Removal Operation Area, showing existing conditions:

1. Delineation of total land area (footprint) to be disturbed with reference to the final GPS coordinates of monuments to be located on site.

2. Contours showing existing elevations at two foot intervals.
3. General vegetation characteristics within 300 feet of the proposed work area.
4. Seasonal high water table.

C. Plans showing proposed work. The plans shall include:

1. Buildings, vehicular access ways, parking areas, and storage areas for topsoil, hazardous materials, etc..
2. Easements and/or rights of way and proposed truck routes utilizing public ways in the vicinity.)
3. Identification of types and quantities of hazardous materials or wastes to be used or stored on the property, including storage areas and provisions for preventing their release into the environment.
4. Temporary erosion and sediment control measures, including drainage systems.
5. Temporary seeding and other vegetative controls.
6. Estimates of the total amounts and types of earth to be removed and the projected life expectancy of the proposed earth removal operation.

D. Plans showing Site Restoration The plans shall include:

1. Final Contours showing finished elevations at two-foot intervals.
2. Disposition of buildings, equipment or other fixtures and access ways.
3. Erosion and sediment control measures, including drainage systems.
4. Seeding and other vegetative controls.

4.6: Procedural Requirements.

1. All meetings of the ERC must comply with the requirements of the Open Meeting Law. The ERC shall, within 65 days after the filing of an application for an Earth Removal Permit, hold a public hearing on said application. No permit shall be issued or denied until the public hearing has been held. Notification of the public hearing shall be advertised for two consecutive weeks in a newspaper generally circulated in Town beginning at least 14 days before such hearing, and by posting a written notice in Town Hall. Notices should be sent to the Board of Health, Select Board, Board of

Assessors, Agricultural Commission, Conservation Commission, Planning Board, Police, Fire Department, and Department of Public Works. The secretary to the ERC shall notify all abutters within 300 feet and other parties in interest of the hearing no later than two weeks before the hearing. Advertising, notice, and related expenses shall be borne by the applicant, in addition to filing fees. Any continuation of the hearing beyond the date and time noticed in the advertised hearing notice shall be announced at the hearing for a date, time, and place certain.

2. Applications for Earth Removal Permits may be granted, denied, or granted in part with conditions and denied in part. The ERC shall render a written decision within thirty (30) days after the last session of the public hearing closes. The conditions of the permit, including the expiration date, shall be clearly set forth on the permit. The ERC shall file its decision with the Town Clerk and notify the applicant and abutters in writing of its decision within seven (7) days of that filing.
3. No Earth Removal Permit shall be issued for a period in excess of five (5) years. However, permits may be extended annually for up to another five (5) years if the ERC is satisfied that the work is being carried out in accordance with the permit and the extension will not allow for earth removal from a larger land area than allowed in the original permit. A request for an extension must be submitted three (3) months prior to the expiration of the existing permit, including sufficient documentation demonstrating that the conditions of that permit are and will continue to be complied with as noted above. No project may be extended beyond a ten (10) year period from the initial date without a new application and full public hearing. Noncompliance with any portion of the expiring permit, or of any other permits granted by the Town of Charlemont, Town Bylaws or regulations, or any state or federal laws shall be grounds for denying any further permits or extensions thereof.
4. All earth removal operations shall be subject to an annual monitoring visit to be conducted by the ERC in conjunction with the property owner and/or engineer, as appropriate. Failure to comply with the required annual monitoring visit shall constitute a violation of the Earth Removal Permit and shall be subject to the provisions of Article VI, herein, governing violations and enforcement.
5. Earth Removal Permits shall be issued for a specific location. A permit shall not be transferrable to another location unless a new Earth Removal Permit has been approved by the ERC. Any earth removal operation on a lot that is being sold to a new land owner must abide by the permit conditions granted under this bylaw.

6. The decisions or orders of the Earth Removal Committee shall be final. Further relief shall be to a court of competent jurisdiction.

ARTICLE V - EARTH REMOVAL PERMIT CONDITIONS

5.1: Buffers. No earth removal operation shall be closer than 200 feet to any public road, street or way, or residential water supply nor any closer than 100 feet to the nearest property line before, during or after excavation. This buffer shall be left in its natural, undisturbed state, including maintaining the existing grade and vegetative cover, except for a reasonable access way and unless a more advantageous grading has been agreed upon in writing with an abutter. No excavation shall take place within 100 feet of a stream, water body, wetland or floodplain. Any proposed excavation within wetland resource areas or buffer zones shall require submission of plans to the Conservation Commission according to provisions of MGL Ch.131, Sec.40, The Wetlands Protection Act. All earth removal operations, including but not limited to pits, temporary buildings and equipment storage areas, shall be screened from public view to the extent practicable with fencing and/or vegetation, as appropriate.

5.2: Access Ways. Access ways shall be constructed in such a way as to not disrupt drainage or cause environmental damage, and shall be screened from public view to the greatest extent practicable. Access ways shall include a gate or other secure mechanism to restrict public access to the site. Access roads leading to public ways shall be treated with oil, stone, or other suitable material to reduce dust and mud for a distance of 200 feet back from said public way. Any spillage on public ways shall be cleaned up by the operator. Before granting a permit, the ERC shall give due consideration to the general safety of the ways in the vicinity and all truck routes may be subject to the approval of the Chief of Police and/or Highway Superintendent. If direct access is to a State Highway, State Regulations apply.

5.3: Limits of Excavation. No earth removal operation, including storage and/or processing, shall be larger than five (5) acres at one time. No excavation shall be conducted less than five (5) feet above the high water table as determined by a certified engineer or hydrologist utilizing a monitoring well, adjacent wells, test bores, test pit, or other suitable means and related to a permanent monument(s) on the property and shown on the plan. A monitoring well must be installed that provides an adequate representation of the water table during the operation of the pit. This latter requirement may be waived by the ERC only for gravel operations existing at the time this bylaw goes into effect after a review of their present water table monitoring procedures has satisfied the ERC that groundwater quality will be protected. This exemption shall not be carried over into extensions of the 5 year permit limit. The full extent of the permitted excavation area shall be established with reference to GPS coordinates and identified with monuments on the site to remain in place for the duration of the operation. Restoration shall be undertaken

during and after the completion of all earth removal operations in accordance with Section 5.9(c) herein.

5.4: Topsoil Removal. Topsoil and subsoil shall be removed and transported to a designated stockpiling area(s), seeded with an erosion control mixture, and saved for reconstruction of the site. Topsoil and/or loam must remain on site.

5.5: Drainage. Temporary and permanent erosion control including drainage systems must be maintained. Drainage shall not flow directly into streams or ponds and there shall be no accumulation of standing ground water.

5.6: Hours of Operation. The ERC shall determine hours of operation based on location, neighborhood characteristics, and the nature of the operations to be conducted and the materials to be removed. Hours of operation shall not exceed 7 a.m. to 6 p.m. Monday through Friday and 8 a.m. to 1p.m. on Saturday, except that no blasting, drilling, or crushing operations shall be allowed on Saturdays.

5.7: Disturbances. No earth removal operation shall cause vibration, odor or flashing (except for warning devices, temporary construction or maintenance work) perceptible without instruments more than 200 feet from the boundaries of the originating premises. Sound or noise levels shall not exceed 50 dBA, measured at the boundary of a property, except in the case of a duly permitted and adequately noticed use of explosives. Lighting shall not produce illumination beyond the boundaries of the premises. All loaded vehicles shall be suitably covered to prevent dust and contents from spilling and blowing from the load.

5.8: Explosives (Blasting). The use of explosives must be explicitly allowed under an Earth Removal Permit in order to proceed and shall not be permitted without at least 14 days' notice. A notice of intent shall be publicly posted on site and abutters and the ERC shall be notified by certified mail at least 14 days prior to proposed use. Said use shall be done in accordance with regulations for storage or handling of explosives as published by the Commonwealth of Massachusetts (MGL Ch. 148, sec. 9).

5.9: Hazardous Materials. Storage of hazardous materials including oil, gasoline and other petroleum products shall be protected from weather conditions and placed on a diked impermeable surface.

5.10: Importation of Materials. Plans to import extraneous materials back into the earth removal operation for re-processing need to be specified in the application and reported in writing before the annual visits. Only earth materials shall be imported for use on-site or for re-processing and re-sale.

5.11: Restoration Standards. As soon as possible after closure but within no more than five months, the site shall be restored according to the following criteria:

2.1 No slope shall be left with a slope steeper than 3:1 (33%) unless a different slope has been approved by the ERC.

2.2 All debris, stumps, etc., shall be removed from the site and disposed of in an approved location or, in the case of inorganic material, buried and covered with a minimum of two feet of soil.

2.3 Ground levels and grades shall be established as shown on the site plan showing final grades. Restoration of areas no longer under excavation shall be required while excavation is occurring on other areas of the site.

Retained subsoil and topsoil shall be re-spread over the disturbed area to a minimum depth of four inches and seeded with a grass or legume mixture. Trees or shrubs of native species will be planted in order to provide screening and natural beauty and to reduce erosion unless the restored site will be used for agriculture or development. The newly planted area shall be protected from erosion during the establishment period using good conservation practices.

e) Upon completion of the operation, the land shall be left so that stormwater drains from the property at the original natural storm drainage points and so that the area of drainage to any one point is not increased.

f) Within six months after termination of gravel operations, all equipment, buildings, structures and unsightly evidence of operations shall be removed from the premises. The ERC shall have the ability to request independent testing to determine whether or not the site is contaminated as a result of any aspect of the earth removal operation.

g) Upon completion of the operation and when final grading has been accomplished, the applicant shall supply the ERC with a plan of the finished site prepared by a registered engineer or surveyor showing contours at two (2) foot intervals. A final site visit by the ERC will conclude the operation (see section 6.7)

ARTICLE VI - GENERAL PROVISIONS

6.1: Enforcement Officer. The Enforcement Officer for the provisions of this Bylaw shall be the ERC or their designee acting as an agent of the Town of Charlemont. The ERC shall have the ability to designate an outside consultant to fulfill the role of Enforcement Officer.

6.2: Violation. If the ERC believes that there is a violation of approved plans, specifications and conditions of an Earth Removal Permit, or believes that the actual conditions or operations on the premises constitute a nuisance or public

danger, the ERC shall order the operator to immediately cease and desist specific activities or their entire operation, pending a review at a posted public meeting after at least 48 hours' notice thereof to the operator, which meeting shall be held within seven (7) days following the initial ERC order. If the violation is immediately brought into compliance, as determined by the ERC and/or their agent, then no public hearing will be necessary. However, the applicant shall have the right to request a public hearing at any time during the review of any purported violation of approved plans. If, after review, the ERC is satisfied that the alleged violation, nuisance, or public danger was corrected or unfounded, it shall revoke or revise its cease and desist order as appropriate. If, after such review, the ERC finds that the permit conditions may be inadequate to protect the public interest and to carry out the purpose of this Bylaw, or that a conditionally exempt earth removal activity may require the imposition of conditions to protect the public interest, it shall schedule a public hearing upon the same notice and hearing requirements as for an original permit. No sooner than seven (7) days after the operator receives certified mail notice of the public hearing, the ERC may revise, revoke, or continue an existing permit, or may impose permit conditions on a previously exempt operation.

6.3: Criminal Penalty. Any person who violates any provision of this bylaw, regulation, order or permit issued there under, shall be punished by a fine of not more than \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

6.4: 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. Ch. 40 §21D and the Town of Charlemont Bylaws (12/14/2010), in which case the Enforcement Officer shall be the individual designated under 6.1. The penalty for the 1st violation shall be \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

6.5: Civil Enforcement. The ERC may seek injunctive relief to restrain violations or to compel abatement or remediation of violations of this bylaw.

6.6: Restoration Order. If any earth materials are removed without obtaining an Earth Removal Permit or otherwise in violation of this section, the ERC may order the restoration of the property involved in accordance with the provisions of this section. Such an order of restoration will not constitute a waiver of any other fines or penalties for such violations. Anyone aggrieved by such order may, within seven days of the receipt thereof, request a hearing before the ERC to be held within 30 days. At such hearing the Board may modify, rescind, or uphold its order. The Board's order, if not appealed within seven days of receipt, or as modified, rescinded, or upheld after hearing, shall be deemed final action by the ERC.

6.7: Abandonment. An earth removal operation shall be considered abandoned when no significant activity has taken place on the site for more than one (1) year without the written consent of the ERC for the suspension or delay of operations. If the owner or operator of the earth removal operation fails to restore a site in accordance with the conditions of the permit and/or the requirements of this section, the Town may seek a court order to enter the property and physically restore the site utilizing the performance bond provided by the applicant.

6.8: Performance Bond. The ERC may require, as a condition to granting a permit, that the applicant furnish a performance bond or other acceptable security in an amount sufficient to guarantee satisfactory compliance with the requirements of this bylaw and any other conditions imposed in the permit in the event the Town must restore the landscape. The amount of the bond shall not exceed 125 percent of the anticipated cost of restoration, as established in a fully inclusive estimate of the costs associated with restoration, provided by the applicant and prepared by a qualified engineer. Costs shall reflect prevailing wages and include the costs of repairing any damage to roads in the vicinity as a result of the earth removal operation, as well as a mechanism for calculating increased restoration costs due to inflation. The security shall not be released in whole or in part until a registered professional engineer or a registered land surveyor has certified that the restoration has been completed in compliance with this bylaw, the permit and the plan specifications.

6.9: Severability. The provisions of this Bylaw are severable; and if any provision or application of such provision to any person or circumstance is held invalid or unconstitutional, this shall not affect the remaining provisions.

(Adopted 5/27/2014 ✓)

Section 3. Licensing Restriction

Voted to amend the By-Laws of the Town of Charlemont by adopting the following by-law pursuant to M.G.L. Chapter 40, Section 57.

1. Furnishing of list of delinquent taxpayers by Tax collector.

The Tax Collector shall annually furnish to each department, board, commission or division, hereinafter referred to as the licensing authority, that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes, fee, assessments, betterments or other municipal charges for not less than a twelve month period, and that such party has not filed in good faith a pending application

for an abatement of such tax or a pending petition before the appellate tax board.

2. Denial, revocation, or suspension of licenses and permits.

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

3. Payment agreements; limitations on license or permit.

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

4. Waivers.

The Select Board may waive such denial, suspension, or revocation if it finds there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as

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

5. Non applicability.

This bylaw shall not apply to licenses of permits for open burning (G.L. c.48, §13); bicycles (G.L. c.85, §11A); sales of articles for charitable purposes (G.L. C.101, §33); children work permits (G.L. c.149, §69); clubs or associations dispensing food or beverage licenses (G.L. c.140, §21E); dog licenses (G.L. c.140, §137); fishing, hunting, trapping licenses (G.L. c.131, §12); marriage licenses (G.L. c. 207, §28); theatrical events and public exhibition permits (G.L. c. 140, §181); and any other local license or permit which the Town chooses to exclude from this bylaw by further amendment to the bylaw.

(Adopted May 1, 1995 ✓ , Readopted May 26, 2009)

CHAPTER IX – PUBLIC SAFETY

OPEN CONTAINER BYLAW

- Section 1.** Unless by permit from the Select Board, no person shall, within the Town, possess any opened container of an Alcoholic beverage (as defined in Chapter 13B, Section 1 of the Massachusetts General Laws) or drink or consume any alcoholic beverage from such a container, on any public street, sidewalk, parkway, alley court, public or semipublic parking lot, park common, cemetery, or on any way as defined by Chapter 90, Section 1 of the Massachusetts General Laws, whether that way be Town Highway, County Highway, or other private way open to the public use, or in or upon any other place where the public has a right of access as invitees or licensees without the owner's permission. This section shall also be construed so as to prohibit the consumption of alcoholic beverages as hereinabove defined by any person standing, sitting, walking, running, or otherwise present within such place as hereinabove defined, or within any vehicle, whether parked or moving, which is within the limits of such places as hereinabove defined.
- Section 2.** Any Police Officer, upon view or information of any violation of Section 1 may, without a warrant, arrest the offender and make complaint in the District Court against such offender. The Police may keep the offender in custody for not more than twenty-four (24) hours – Sundays and Holidays excepted, until he/she can be taken before a court, trial justice, or clerk/magistrate having jurisdiction of such offense.
- Section 3.** Any person convicted of a violation of any of the provisions of Section 1 shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300).

(Adopted 07/31/2007 ✓)

NOISE DISTURBANCE BYLAW

- Section 1. Unlawful noise prohibited.** It shall be unlawful for any person or persons to create, assist in creating, or to continue any excessive, unnecessary, or unusually loud noise which either annoys, disturbs, injures or endangers the reasonable quiet, comfort, repose or health

and safety of others within the Town of Charlemont. Excessive, unnecessary or unusually loud noise shall include any noise that may be clearly heard at a distance of seventy-five (75) yards from its source. The following acts are declared to be loud, disturbing, injurious, unnecessary and unlawful noises in violation of this section, but this enumeration shall not be exclusive, namely:

- a) Radio, phonograph, musical instruments and television. The playing of any radio, phonograph, television set, amplified or musical instruments, loudspeakers, tape recorders, or other electronic sound producing devices, in such a manner or with volume at any time or place so as to annoy or disturb the reasonable quiet, comfort or repose of any persons in the vicinity.
- b) Shouting or whistling. Yelling, shouting, hooting, whistling, singing or the making of any loud noises in the Town between the hours of 11 PM and 7 AM, or the making of any such noise at any time or place so as to annoy or disturb the reasonable quiet, comfort or repose of any persons in the vicinity.
- c) Animal noises. The keeping of any animal which by frequent or long continued noise, shall disturb the reasonable comfort or repose of any persons.

Section 2. Exemptions. None of the terms or prohibitions of the previous section shall apply or be enforced against:

- a) Emergency vehicles.
- b) Highway and utility maintenance and construction vehicles.
- c) Noise caused by agricultural, farm related, or forestry related activities as defined by M.G.L. Chapter 128, section 1A, as amended from time to time, including but not limited to the operation of farm equipment, harvesting equipment, noises from farm animals, and other noise associated with typical agricultural, farming or forestry activities.
- d) Sounds (including but not limited to music or other amplified entertainment) generated by restaurants, bars or other business that are operating under a license or permit issued by the Town of Charlemont during normal business hours, provided all terms and conditions of any license or permit are otherwise complied with.

Section 3. Penalties. The first violation of this by-law shall result in a warning. The second violation of this by-law within 12 months after the first violation shall result in a fine of two hundred dollars (\$200.00). Further violations within 12 months after the last violation shall be punished by a fine of three hundred dollars (\$300.00). Each such act which either continues or is repeated more than one-half hour after issuance of a written notice of violation of this by-law shall be a separate offense. If the violation occurs on the premises of rental property which is a non-resident owner, the owner must also be notified in writing that the violation has occurred.

Section 4. Other remedies.

- a) If the person or persons responsible for an activity which violates Section 1 cannot be determined, the person in lawful custody and/or control of the premises, including but not limited to the owner, lessee or occupant of the property on which the activity is located, shall be deemed responsible for the violation.
- b) If the person or persons responsible for the activity which violates Section 1 can be determined, any person or persons who violate Section 1 of this by-law may be arrested without a warrant, provided that the violation occurs in the presence or view of any officer authorized to serve criminal process.

(Adopted 6/2/2008 and 6/9/2008 ✓)

DOG BYLAW

Voted to establish the following bylaw pursuant to M.G.L. Chapter 140, Section 147A, relative to the licensing of dogs:

Section 1: Validity

- 6.1 This by-law is not intended to derogate or limit any powers, rights, or obligations set forth in M.G.L. 140, but is in addition to.

Section 2: Licensing

- 2.4 All dog licensing will be done through the Town Clerk's office. Dog licenses are issued for a one year period. Said licensing period is from April 1 to March 31. All dogs six months of age or older shall be licensed

and have a current rabies inoculation as required under M.G.L. C140 s137 and 145B as amended.

Should any owner fail to license a dog before April 1, the owner or keeper shall pay a late fine of ten dollars (\$10.) before obtaining said license.

Should any owner fail to license a dog before May 15th, a complaint will be taken out in Greenfield District Court and the owner or keeper shall pay a late fine of \$25.00 before obtaining said license all in accord with the M.G.L. Chapter 140, section 141.

2.5 Fees – Every dog must be licensed individually or under a kennel license.

The annual fee for individual licenses shall be set for the following categories:

- a. Neutered male or spayed female dogs
- b. Neither spayed or neutered dogs

The annual kennel license fee shall be set for the following categories:

- a. 4 dogs or less
- b. 5 to 10 dogs inclusive
- c. More than 10 dogs

All fees are set by the Select Board annually and are subject to change.

No fee shall be charged for a license for a dog specifically trained in the hearing dog business to serve a deaf person; provided that the Massachusetts Commission for the Deaf and Hard of Hearing certifies that such dog is so trained and actually in the service of the deaf person, in accord with chapter 140, section 139.

No license fee or part thereof shall be refunded because of a subsequent death, loss, spaying, neutering, removal from the Town or any other disposal of the dog.

2.6 Kennel Licensing.

Definition of a Kennel in accord with M.G.L. C. 140, Sec. 136A is “one pack or collection of dogs on a single premises, whether maintained for breeding, boarding, sale, training, hunting or other purposes and including any shop

where dogs are on sale, and also including every pack or collection of more than three dogs three months old or over, owned or kept by a person on a single premise irrespective of the purpose for which they are maintained.”

Any person maintaining a kennel in the Town of Charlemont who fails to license as prescribed by this section and the laws of the Commonwealth shall pay a late fine of twenty-five dollars (\$25) beginning April 1st.

Should any owner fail to license a dog before May 15th, a complaint will be taken out in Greenfield District Court.

The provisions of M.G.L. Chapter 140, Sections 136A, 137A, 137B, 137C and 147A regarding kennel licensing shall be complied with.

2.7 All monies collected for licenses, fees or fines related to the licensing and care of dogs will be retained by the Town.

Section 3. Dogs Running At Large

3.1 No person owning or keeping a dog in the Town shall allow such dog to roam at large upon the land of another, except if it be on the premises of another person with the knowledge and permission of such other person, nor allow such dog to roam at large on any portion of any public highway.

3.1.1 Exceptions: Animals which are classified as hunting or sporting dogs, as well as working dogs, while used in such capacity.

3.1.2 This by-law shall remain in force year round.

3.2 Fines for unrestrained dogs who are found to be running at large shall be set by vote of the Select Board, and shall be enforced in accordance with Massachusetts General Law Chapter 140, Section 173A. Dogs found to be running at large will be held for ten (10) days. Before any dog will be released, the dog must be licensed and all fines and fees are paid in full to the Town of Charlemont. These fines and fees imposed are issued in accordance with M.G.L. Chapter 140, Section 173.

Section 4. Compliance with M.G.L. c 140, S 136A-175

Notwithstanding anything contained herein dog owners are required to comply with all other Massachusetts General Laws regarding the keeping of dogs.

In the event that any provisions or sections of the by-law are deemed invalid or unenforceable, all other provisions shall remain in force and in effect.

(Adopted 6/2/2008 and 6/9/2008, replacing the previous dog bylaw which was repealed ✓)

MINOR CURFEW BYLAW

- A. It shall be unlawful for any person under the age of sixteen(16) to be, or remain, upon any street, alley or other public place in the town after 10:00 P.M. unless such person is accompanied by a parent or legal guardian or other person having custody of such minor(s), or unless traveling to or from home while involved in an activity known to and sanctioned by such parent or guardian or other person having custody, or unless such person is in lawful employment making it necessary to be in such place after 10:00 P.M.
- B. Every member of the police force while on duty is hereby authorized to detain any such minor willfully violating the provisions of the (above) section until the parent or guardian of the child shall take him/her into custody; but such officer shall immediately, upon taking custody of the child, attempt to communicate with the parent(s) or guardian(s).

(Adopted 5/3/2004 ✓)

SEX OFFENDER BYLAW

REGISTERED SEX OFFENDER RESTRICTIONS

Section 1. Determinations and Intent

A. It is the intent of this bylaw to protect the Town's compelling interest to promote and protect the public health, safety and welfare of the Inhabitants of the Town of Charlemont by creating areas around locales where children, the elderly and mentally retarded regularly congregate and wherein certain sex offenders are prohibited from loitering and establishing temporary or permanent residence.

B. It is determined that this bylaw is the most narrowly crafted means of restricting to the fullest extent possible the opportunity for registered sex offenders to approach or interact with children, the elderly and the mentally retarded where such persons routinely and naturally congregate and that the

protections of the health and safety of our children, elderly, and mentally retarded is a compelling public and governmental interest.

C. This bylaw is intended to create a civil non punitive regulatory scheme in order to protect children, the elderly, and the mentally retarded to the greatest extent possible under the circumstances of public welfare protections and not as a punitive measure of any kind.

D. Registered sex offenders pose a clear threat to the children, the elderly, and the mentally retarded as vulnerable groups residing in or visiting the Town, because registered sex offenders are more likely than any other type of offender to re-offend for another sexual offense, the Town desires to impose safety precautions in furthering the public purpose of protecting the children, elderly and mentally retarded. The purpose of this Bylaw is to mitigate the potential risk of harm to children, the elderly and the mentally retarded of the Charlemont Community by deterring the ability for registered sex offenders to be in contact with unsuspecting children, the elderly, and mentally retarded in locations that are primary utilized by such children, the elderly or mentally retarded, that is the grounds of public and private schools for children centers or facilities that provide day care or children's services, parks, other recreational facilities, elderly housing facilities or facilities for the mentally retarded. The Town desires to add location restrictions to such offenders where state law is silent.

Section 2. Definitions

The following words, terms, and phrases when utilized in this Chapter shall have the meanings ascribed to them in this section, except where the context clearly described a different meaning:

1. "Registered Sex Offender" for the purposes of this Chapter shall mean: (a) any person who is designated as a sexually violent predator pursuant to Chapter 6, §178C of the Massachusetts General Laws and who is required to register as a sex offender pursuant to the guidelines of the Sex Offender Registry Board; (b) any person who is required to register as a Sex Offender pursuant to Chapter 6, §178C of the Massachusetts General Laws and who is finally classified as a Level 3 offender pursuant to the guidelines of the Sex Offender Registry; and (c) any person who is required to register as a Sex Offender pursuant to Chapter 6, §178C of the Massachusetts General Laws, who is finally classified as a Level 2 offender pursuant to the guidelines of the Sex Offender Registry and who has committed a Sex Offense against a Child, an Elder, and/or a Mentally Retarded Person.
2. "Sex Offender" and "Sex offense" shall have the same meaning as provided for in M.G.L. Chapter 6, § 178C.
3. "Child" or "Children" shall mean persons under eighteen (18) years of age.
4. "Elder" or "Elderly" shall mean persons over sixty (60) years of age.
5. "Mentally Retarded person" shall mean, pursuant to M.G.L. Chapter 123B, § 1, a

person who, as a result of inadequately developed or impaired intelligence, as determined by clinical authorities as described in the regulations of the Department of Mental Retardation, is substantially limited in his or her ability to learn or adapt, as judged by established standards available for the evaluation of a person's ability to function in the community.

6. "Park" any public land designated for active or passive recreational or athletic use by the Town of Charlemont, the Commonwealth of Massachusetts or other governmental subdivision, and located within the Town of Charlemont.

7. "School" any public or private educational facility that provides services to children in grades kindergarten-12.

8. "School Bus Stop" Any area designated by the public school district or by a private or parochial school within the Town of Charlemont as a school bus stop.

9. "Recreational facility" includes, but is not limited to, a playground, a forest preserve, conservation area, jogging trail or running track, hiking trail, beach, wading pool, soccer field, baseball field, football field, basketball court or hockey rink, dance or gymnastic studio, or whether publicly or privately owned, to which the public has a right of access as an invitee and which is located within the Town of Charlemont.

10. "Day Care Center" any establishment, whether public or private which provides care for children and is registered with and licensed pursuant to the applicable laws of the Commonwealth of Massachusetts by the Office of Child Care Services.

11. "Elderly housing facility" a building or buildings on the same lot containing four or more dwelling units restricted to occupancy by households having one or more members fifty-five years of age or older.

12. "Permanent Residence" A place where a person lives, abides, lodges, or resides for 14 or more consecutive days.

13. "Temporary Residence" A place where a person lives, abides, lodges, or resides for a period of less than 14 consecutive days or 14 days in the aggregate during any calendar year, which is not the person's permanent address or place where the person routinely lives, abides, lodges, or resides and which is not the person's Permanent Residence; but "Temporary Residence" shall not include residence at a hospital or other healthcare or medical facility for less than 14 consecutive days or 14 days in the aggregate during any calendar year.

14. "Establishing a Residence"-To set up or bring into being a dwelling place or an abode where a person sleeps, which may include more than one location, and may be mobile or transitory, or by means of purchasing real property or entering into a lease or rental agreement for real property (including a renewal or extension of a prior agreement whether through written execution or automatic renewal).

Section 3. Sexual Offender Residence Prohibition, Restrictions, Penalties.

Prohibition. A Registered Sex Offender is prohibited from establishing a Permanent Residence or Temporary Residence within one thousand (1,000) feet of any School, Day Care Center, Park, other Recreational Facility, or Elderly Housing

Facility.

It is unlawful for any Sex Offender who is finally classified as a level 2 or 3 offender pursuant to the guidelines of the Sex Offender Registry Board, to establish a permanent residence within one thousand (1,000) feet of any School, Day Care Center, Park, or Elderly Housing Facility.

Evidentiary matters measurements. For purposes of determining the minimum distance separation under this section, the distance shall be measured by following a straight line from the outer property line of the Permanent or Temporary Residence to the nearest outer property line of any School, Day Care Center, Park, Recreational Facility, Elderly Housing Facility.

Exceptions. A Registered Sex Offender residing within one thousand (1,000) feet of any School, Day Care Center, Park, Recreational Facility, or Elderly Housing Facility does not commit a violation of this section if any of the following apply:

1. The Registered Sex Offender established the Permanent Residence prior to the effective date of this Bylaw, and
 - a. Permanent Residence was established by purchasing the real property where the residence is established, as long as the Registered Sex Offender continues to reside in, and does not move to another restricted location in Charlemont different from, the Permanent Residence established prior to the effective date of this Bylaw, or
 - b. Permanent Residence was established through a valid arm's length, fixed-term, written lease or rental agreement, executed prior to the effective date of this ordinance, as long as the Registered Sex Offender continues to reside within, and does not move to another restricted location in Southborough different from, the Permanent Residence established prior to the effective date of this Bylaw, or
 - c. Permanent Residence was established through a verbal lease or rental agreement at the will of the landlord, as long as the Registered Sex Offender continues to reside within, and does not move to another restricted location in Southborough different from, the Permanent Residence established prior to the effective date of this Bylaw.
2. The Registered Sex Offender is a minor living with his or her parent(s) or legal guardian(s), which parent(s) or legal guardian(s) has (have) established a Permanent Residence pursuant to § 3.
3. The School, Day Care Center, Park, Recreational Facility, or Elderly Housing Facility within one thousand (1,000) feet of the Registered Sex Offender's

Permanent Residence was opened after the Registered Sex Offender established the Permanent Residence.

Forfeiture of exception. If, either after the effective date of this Bylaw or after a new School, Day Care Center, Park, Recreational Facility, or Elderly Housing Facility opens, a complaint or an indictment is issued by a court against a Registered Sex Offender otherwise enjoying an exception under subsection D and Judgment enters, that such Sex Offender has committed another Sex Offense, he/she will immediately forfeit that exception and be required to comply with this section.

Notice to move. A Registered Sex Offender who resides on a permanent or temporary basis one thousand (1,000) feet or any School, Day Care Center, Park, Recreational Facility, or Elderly Housing Facility shall be in violation of this section and shall, within thirty (30) days of receipt of written notice of the Registered Sex Offender's noncompliance with the chapter, move from said location to a new location, but said location may not be within one thousand (1,000) feet of any School, Day Care Center, Park, Recreational Facility, or Elderly Housing Facility. It shall constitute a separate violation for each day beyond the thirty (30) days the Registered Sex Offender continues to reside within one thousand (1,000) feet of any School, Day Care Center, Park, Recreational Facility, or Elderly Housing Facility. Furthermore, it shall be a violation each day that a Registered Sex Offender shall move from one location in the Town to another that is within one thousand (1,000) feet of any School, Day Care Center, Park, Recreational Facility, and Elderly Housing Facility.

Penalties. Any violation of this section shall be enforced by non-criminal disposition pursuant to M.G.L. c.40 § 21D as follows:

1. First Offense by Registered Sex Offender: Non-criminal fine of \$150.00 and notification to offender that he/she has thirty (30) days to move.
2. Subsequent Offense by Registered Sex Offender: Non-criminal fine of \$300.00 and notification to offender's parole officer and/or probation officer and the Commonwealth's Sex Offender Registry Board, that the Sex Offender has violated Town's Bylaw.

For purposes of this section, notice shall be deemed to be sufficient and proper if the person service by registered mail, return receipt requested, or receives in hand service or service by a Constable, Sheriff or other person authorized to serve civil process within the Commonwealth of Massachusetts or other service as a court of competent jurisdiction may allow.

Section 4. Additional Exceptions

A person residing within 1,000 feet of any School, Day Care Center, Park, Elderly Housing Facility or recreational facility does not commit a violation of this section if any of the following apply:

The person established the permanent residence and reported and registered the residence prior to May 24th, 2011.

The person was a minor when he/she committed the offense and was not convicted as an adult.

The School, Day Care Center, Park, or Elderly Housing Facility within 1,000 feet of the permanent residence was established after the person established the permanent residence and reported and registered the residence pursuant to the Sex Offender Registry Law.

The person is incarcerated in any facility owned, maintained and/or operated by the Town of Charlemont.

The person is admitted to and or subject to an order of commitment at a public or private facility for the care and treatment of mentally retarded persons pursuant to G.L. c. 123B.

The person is a mentally retarded person subject to guardianship pursuant to G.L. c.201 §6 or a mentally retarded person subject to guardianship pursuant to G.L. c.201 §6A, residing with his or her guardian or residing within a group residence that is professionally staffed and supervised 24 hours a day.

Section 5. Safety Zones

A. Prohibitions.

1. A Registered Sex Offender is prohibited from entering upon the premises of a School or Day Care Center unless previously authorized specifically in writing by the School administration or Day Care Center owner.
2. A Registered Sex Offender is prohibited from entering upon the premises of an Elderly Housing Facility unless previously authorized in writing by the on-site manager of the Elderly Housing Facility.
3. A Registered Sex Offender is prohibited from entering upon the premises of a Park or any Recreational Facility.
4. A Registered Sex Offender is prohibited, after having received notice from the Charlemont Police Department that he/she is loitering within five hundred (500) feet of a School, a Day Care Center, a Park, any Recreational Facility, or Elderly Housing Facility, from continuing to so loiter or from returning thereto. For purposes of determining the minimum distance separation under this section, the distance shall be measured by following a straight line from the Registered Sex Offender to the outer property line of the School, a Day Care Center, a Park, any Recreational Facility, Elderly

Housing Facility or Facility for the Mentally Retarded.

5. A Registered Sex Offender is prohibited, after having received notice from the Charlemont Police Department that he/she is loitering within five hundred (500) feet of a School Bus Stop, from continuing to so loiter or from returning thereto, provided, however, that this prohibition shall not apply on days when the schools within the Town of Charlemont are not in session.

B. Exceptions.

1. The prohibitions defined shall not be construed or enforced so as to prohibit a Registered Sex Offender from exercising his or her right to vote in any federal, state or municipal election, or from attending any religious service.
2. The prohibitions defined do not apply to a Registered Sex Offender's place of residence when such residence is excepted under § 118-3D and § 118-4.

C. Penalties

Any violation of this section may be enforced by non-criminal disposition pursuant to M.G.L. c.40, § 21D, resulting in: (1) a non-criminal fine of \$150.00 for a first violation; and (2) a non-criminal fine of \$300.00 for each additional violation of this section. In lieu of non-criminal disposition, Registered Sex Offenders who commit an additional violation under this section, except for those who are not yet seventeen (17) years of age when they commit any such additional violation, may be subject to immediate arrest under state law. A Registered Sex Offender commits a separate offense for each and every violation of this section.

Section 6. Enforcement

The Charlemont Police Department shall be charged and empowered with the enforcement of this chapter.

A written list describing the prohibited areas defined in this Bylaw inclusive of School Bus Stops, as well as a map depicting the residency restriction areas and a map depicting the safety zones exclusive of School Bus Stops, shall be created by the Town and maintained by the Charlemont Department of Public Works. As to School Bus Stops, the list, and not the map depicting the safety zones, shall govern. The Town shall review both the list and the maps no less than annually for changes. The list, the maps and a copy of this Bylaw will be available to the public at the Charlemont Police Department and Charlemont Clerk's Office, and on the Town of Charlemont website.

Section 7. Severability

If any clause, sentence, paragraph, subdivision, section or other part of this Bylaw shall for any reason be adjudged by any court of competent jurisdiction to be unconstitutional or otherwise invalidated, such judgment shall not affect, impair or invalidate the remainder of this by-law, and it shall be construed to have been the legislative intent to enact this by-law without such unconstitutional or invalid parts therein.

(Adopted 5/22/2012 ✓)

Non-Criminal disposition

Any bylaw of the Town of Charlemont, or rule or regulation of its officers, boards or departments, the violation of which is subject to a specific penalty, may in the discretion of the Town Official who is the appropriate enforcing person, be enforced in the method provided in Section 21D of Chapter 40 of the Massachusetts General Laws. The non-criminal fine for each such violation, if not otherwise specified, shall be \$50.00.

“Enforcing person” as used in this bylaw, shall mean the Building Inspector, members of the Conservation Commission, members of the Board of Health, the Animal Control Officer, and any Town Police Officer of the Town of Charlemont with respect to any offence or violation of the bylaws and rules and regulations within their respective jurisdictions. (Amended from ““Enforcing person” as used in this bylaw and rules and regulations within their respective jurisdictions.” on June 12, 2021 ✓).