

**GENERAL BY-LAWS**

**OF THE**

**TOWN OF MANCHESTER-BY-THE-SEA**

**(Revised through April 4, 2011)**

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ARTICLE I  
GENERAL PROVISIONS

SECTION 1 These by-laws, adopted by vote of the Annual Meeting in 1949, shall be known as the "General By-laws."

SECTION 2 So far as the provisions of the General By-laws are the same as those previously existing by-laws, they shall be construed as a continuation of such by-laws, but subject to said limitation, all by-laws of the Town heretofore in force, excepting Zoning By-laws, are hereby repealed and any portion of any vote of the Town heretofore passed which is contrary to the provisions of these by-laws is hereby repealed; provided that this repeal shall not apply to or affect that portion of any by-law, vote or article heretofore adopted, accepting, adopting or exercising any option under the provisions of any statute of the Commonwealth; and further provided that this repeal and the adoption of these by-laws shall not affect any act done, any right accrued, and any penalty or liability incurred, or any suit, prosecution or proceeding pending at the time of such adoption; nor shall the repeal of any by-law have the effect of reviving any by-law previously repealed or suspended.

SECTION 3

SECTION 4 Enforcement

A. Criminal Complaint

Whoever violates any provision of these by-laws may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense brought in such manner shall be three hundred dollars (\$300.00)

B. Non-criminal Disposition

Whoever violates any provision of these by-laws, the violation of which is subject to a specific penalty, may be penalized by a non-criminal disposition as provided in M.G.L., Chapter 40, Section 21D. The non-criminal method of disposition may also be used for violations of any rule or regulation of any municipal officer, board, or department which is subject to a specific penalty.

Without intending to limit the generality of the foregoing, it is the intention of this provision that the following by-laws and sections of by-laws are to be included within the scope of this subsection, that the specific penalties as listed here shall apply in such cases, and that the municipal personnel listed shall be the enforcing agent. Each day on which any violation exists shall be deemed to be a separate offense.

1. General Wetlands By-law

Fine allowed: \$200

Enforcement agent: Police Officers

Fine schedule: \$25 first offense; \$100 second offense; \$200 third and subsequent offenses

2. Harbormaster Regulations

Fine allowed: \$25

Enforcement agent: Harbormaster; Assistant Harbormasters

Fine schedule: \$25 first and subsequent offenses

3. Water and Sewer Division Regulations

Fine allowed: \$300.00

Enforcement agent: Designated employees of the Water and Sewer Division

Fine schedule: \$300 per violation. Every day constitutes a separate offense

4. Accessible Parking By-law [Added 1997, Amended 2003]

*Illegal Parking:*

Fine allowed: \$300.00

Enforcement agent: Police Officers

Fine schedule: \$100.00 for first offense; \$300.00 for each subsequent offense.

*Failure to establish accessible parking spaces:*

Fine allowed: \$100.00

Enforcement agent: Police Officers

Fine schedule: \$100.00 per violation. Every day constitutes a separate offense.

5. Tobacco Products Regulations

Fine allowed: \$100 for the first violation;  
\$200 for the second violation;  
\$300 for the third and subsequent violations.

Enforcement agents: Designated employees of the Police Department and the Board of Health Agent. [Added 1997]

6. Tobacco Use Regulations

Fine allowed: \$50.00 for the first violation;  
\$100.00 for the second violation;  
\$125.00 for the third violation.

Enforcement agents: Employees of the Police Department designated by the Police Chief and employees of the School Department as designated by the School Superintendent. [Added 1998]

7. Nuisance Regulations

Fine Allowed: \$100 for the first violation  
\$200 for the second violation  
\$500 for the third and subsequent violations  
Enforcement agents: Designated employees of the Police  
Department and the Board of Health Agent. (Added 2002)

8. Printed Matter Vending Machines [added 2005]

Fine Allowed: \$100 for the first violation  
\$200 for the second violation  
\$300 for the third and subsequent violation  
Enforcement agents: Employees of the Police Department designated by the Police Chief

SECTION 5 Except as otherwise provided by law, prosecution for offenses under these by-laws may be made by any police officer of the Town.

ARTICLE II  
TOWN MEETINGS

- SECTION 1 The Annual Town Meeting shall be held on the first Monday in April of each year at 7 o'clock in the evening. [Amended 1991]
- SECTION 2 The meeting for the election of officers and for the balloting upon such matters as may be required by law to be determined by the use of the ballot, shall be held on the third Tuesday in May of each year, the polls to be opened at 7:00 A.M. and to be closed not earlier than 8:00 P.M. [Amended 1993, 2003]
- SECTION 3 The warrant for any Town Meeting shall be directed to any constable of the Town and notice of any Town Meeting shall be given by posting the attested copies of the warrant at the Town Hall, Post Office, Police Station and Engine House, twenty-one (21) days at least before the day appointed of the Annual Town Meeting and fourteen (14) days at least before the day appointed for a Special Town Meeting. At the time of posting, as herein provided, printed copies of the warrant for any Town Meeting shall be made available by the Selectmen at their office for registered voters of the Town. At any Town Meeting, printed copies of the warrant and the recommendations of the Finance Committee shall be made available by the Selectmen for all the voters attending said meeting. An article to be inserted in a warrant for a Town Meeting must be delivered to the Board of Selectmen, and a copy to the Secretary of the Finance Committee, sixty (60) days prior to an Annual Meeting and twenty-eight (28) days prior to a Special Meeting. At least seven (7) days before the Annual Town Meeting, an adequate supply of the warrant, the Annual Town Report and the Report of the Finance Committee shall be caused by the Selectmen to be made available at the Town Hall, Library, Police Station, Fire Station and the Memorial School. At least fourteen (14) days before a Special Town Meeting, a copy of the warrant with the report of the Finance Committee contained therein shall be caused by the Selectmen to be published at least once in a newspaper having a circulation in the Town or to be left at each occupied dwelling house and apartment in the Town. [Amended 1974, 1986, 1993, 1995]
- SECTION 4 When a Town Meeting is adjourned, excepting an adjournment from day to day, the Town Clerk shall cause notices of the time and place of holding such adjourned meeting to be duly posted in the public places referred to in Section 3 of this Article and published in a local newspaper if practicable. These notices shall also state briefly the business to come before such adjourned meeting.
- SECTION 5 One hundred (100) registered voters shall constitute a quorum for the transaction of business at any Town Meeting except such parts of meetings as are conducted under the provisions of Section 2 of this article; provided, however, that a less number may adjourn. [Amended 1974, 2004]

- SECTION 6 The Moderator may appoint tellers who shall permit only registered voters to enter upon the floor of the place where any town meeting is held. The Moderator may, at his discretion, permit persons other than qualified voters to attend said meetings.
- SECTION 7 The articles of the warrant shall be acted upon in the order in which they appear unless otherwise determined by vote of the meeting.
- SECTION 8 The Moderator may require any motion to be presented in writing.
- SECTION 9 The Moderator may require that a motion, if susceptible of division, shall be divided and the question put separately upon each part thereof.
- SECTION 10 When a question is under debate, until it is disposed of, no motion shall be received but to adjourn, for the previous question, to lay on the table, to commit, to recommit, to amend or substitute, to refer, or to postpone to a certain time, which several motions shall have precedence in the order in which they are herein arranged, and the first three such motions shall be decided without debate.
- SECTION 11 In taking a vote on proposed amendments involving sums of money, the larger amount shall be put to the question first, and an affirmative vote thereon shall be a negative vote on any smaller amount.
- SECTION 12 No person, other than the Chairman of the Finance Committee, shall speak on the same subject more than twice, nor more than ten (10) minutes in all without the consent of the meeting.
- SECTION 13 Any person who is employed as an attorney by another interested in any matter under discussion at a town meeting shall disclose the fact of his employment before speaking thereon.
- SECTION 14 A. Except as otherwise provided in this Section 14, a vote on any question shall in the first instance be taken in the manner which the Moderator directs. If a two-thirds vote of a town meeting is required by statute, the count need not be taken, except as provided in the following sentence. If a vote declared by the Moderator but not counted by the tellers is immediately questioned by seven or more voters, the Moderator shall call for another vote by a show of hands or a standing vote, in either case counted by the tellers, or by ballot. [Added 1998, Revised 2006]
- B. Whenever any twenty (20) voters so request, the vote on any question shall be taken by ballot.
- C. The form of the ballot to be used for taking a ballot vote, unless the Moderator shall otherwise direct, shall bear the word "yes" printed on one half, and the word "no" printed on the other half. It shall be the responsibility of the Town Clerk to

have available at every Town Meeting a supply of such ballots. The method of issuing and collecting ballots shall be as determined by the Moderator.

SECTION 15 No vote of the meeting shall be reconsidered except by a two-thirds vote. When a motion for reconsideration is decided, that decision shall not be reconsidered and no question shall be reconsidered more than once.

SECTION 16 All committees shall be appointed by the Moderator unless otherwise directed by the meeting or otherwise provided by law or by these by-laws, and it shall be the immediate duty of the member first named to call the committee together for organization.

SECTION 17 No motion to adjourn a town meeting sine die shall be in order; and no motion to dissolve a town meeting shall be in order until every article in the warrant therefor has been duly considered and acted upon.

SECTION 18 Notwithstanding any other by-law, no appropriation exceeding \$250,000 to be raised by issuing bonds or other evidences of indebtedness maturing in more than a year, except appropriations for a revenue producing department, shall be valid unless the motion calling for the appropriation or action shall be adopted by a vote on a printed ballot, after full opportunity for debate. [Amended 1991]

SECTION 19 Before any Annual Town Meeting, the Moderator may select from the Warrant those articles which in the Moderator's judgment are likely to be adopted without debate and cause such articles and the motions to be made under each one to be published in a Consent Calendar. At least seven (7) days before the Annual meeting, the Moderator shall cause an adequate supply of copies of the Consent Calendar to be made available at the Town Hall, Library, Police Station, Fire Station and the Memorial School, and cause a copy to be published in a newspaper having a circulation in the Town. At an appropriate time in the Annual Meeting, the Moderator may announce consideration of the Consent Calendar. Notwithstanding the provisions of Sections 7 and 10 of this Article, a motion will then be in order to adopt the motions in the Consent Calendar without debate. After the motion is seconded, the Moderator shall recognize any voter for the purpose of holding any article in the Consent Calendar, and shall cause any such article to be deleted from the motion to adopt. When all requests for holds have been received, the Moderator shall put the motion as modified to a vote, without further debate. Adoption of the motion by unanimous vote shall constitute adoption of all the motions contained therein. Thereafter, all articles held, or if the motion to adopt is not voted unanimously, all articles in the Consent Calendar, shall be acted upon in accordance with the other provisions of this Article. A vote to adopt the Consent Calendar shall not be subject to reconsideration, but each motion contained in the Consent Calendar as adopted may be reconsidered individually in accordance with Section 15 of this Article. [Added 1998]

ARTICLE III  
DUTIES OF TOWN OFFICERS

SECTION 1 General Duties

No officer or employee of the Town, nor any agent of any such officer or employee, shall receive any compensation or commission for work done by him for the Town except the salary, wages or fees lawfully appropriated, without the permission of the Selectmen expressed in a vote, taken prior to the performance of such work, which shall appear on their records with the reason therefor.

SECTION 2 Board of Selectmen

A. The Selectmen 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 by these by-laws.

B. Except as otherwise provided by law, the Selectmen shall have the custody of the bonds given by all town officers.

C. The Selectmen shall transmit to the Town Clerk a copy of each instrument of conveyance of land or interest therein executed on behalf of the Town.

D. The Selectmen may, from time to time, make, publish and enforce such rules and regulations as they shall deem advisable regarding the use of all town floats, docks, wharves, and similar installations belonging to the Town, and regarding the use of other public places belonging to the Town over which the Selectmen exercise jurisdiction.

E. Whenever an article is submitted for insertion in the warrant of any town meeting, which proposes any amendment or addition to or repeal of any of these by-laws, the Selectmen shall refer such article to the Town Counsel, who shall advise the Selectmen whether the proposal is legal and in proper form and whether any other by-laws are affected thereby.

F. The Selectmen shall appoint an inspector of wires, who shall perform the duties prescribed by law.

G. The Board of Selectmen, with the approval of the Board of Health, shall provide and maintain some suitable place or method at which inhabitants of the Town shall have the right under suitable regulations made from time to time by the Board of Selectmen, with the approval of the Board of Health, to deposit such solid waste as may be permitted by such regulations. Such rules and regulations shall require the

separation of designated recyclable material or materials from other refuse.  
[Amended 1991]

H. The Selectmen shall have the general direction and management of and shall exercise jurisdiction over Town beaches and landings and the Singing Beach Bathhouse. [Added 1995]

### SECTION 3 Town Clerk

A. The Town Clerk shall immediately after every town meeting notify in writing all members of committees who may be elected or appointed at such meeting, stating the business upon which they are to act and the names of the persons composing the committees, and shall notify all officers, boards and committees of all votes passed at such meeting in any way affecting them.

B. The Town Clerk shall keep in his or her office at least five (5) copies of these by-laws with all amendments thereto, which copies shall be open to inspection during reasonable hours.

C. The Town Clerk shall properly record or cause to be recorded every instrument of conveyance to the Town of any interest in land and shall have custody of all such instruments, except as otherwise provided by law.

D. The Town Clerk shall keep a book containing a true copy of all conveyances executed on behalf of the Town.

E. The Town Clerk shall keep on file a copy of every standing vote of the Town made subsequent to the adoption of these by-laws and shall keep an index thereof including an index of all acts of the Legislature accepted by the Town subsequent to such adoption.

### SECTION 4 Collector of Taxes

A. The Town Treasurer and Collector of Taxes shall have all the powers and duties prescribed by law, and, in addition, he shall, under the title of Town Collector, collect all overdue or delinquent accounts which may be submitted to him by any board, committee, or department.

B. The Town Treasurer and Collector of Taxes shall report to the Selectmen from time to time all uncollected accounts in his hands, and shall advise the Selectmen as to those accounts which, in his opinion, require legal action. This sub-section shall not apply in any case where the duties and obligations of the Town Treasurer and Collector of Taxes are specified by law.

SECTION 5 Town Accountant

The Selectmen shall appoint a Town Accountant, who shall perform the duties prescribed by law.

SECTION 6 Inspector of Gas Piping and Gas Appliances

The Selectmen shall appoint the Chief of the Fire Department as Inspector of Gas Piping and Gas Appliances for a term of three years, who shall perform the duties prescribed by law.

SECTION 7 Harbormaster

The Town Administrator shall appoint, subject to confirmation by the Board of Selectmen, set the annual compensation for, and assign duties to a Harbormaster for a term to run as provided by law. The position of Harbormaster shall be a full-time position between April 1<sup>st</sup> and October 1<sup>st</sup>. The Selectmen shall set the hours of employment for the remaining months. Between April 1<sup>st</sup> and October 1<sup>st</sup>, the Harbormaster shall not hold any other town appointment. In addition to other duties assigned by the Selectmen, the Harbormaster shall post lists of all mooring permits including mooring number, sticker serial number, permit holder, and boat name, all waiting lists, and all mooring assignment transactions to a publicly accessible location in the Town Hall and to the Town's Web site.

ARTICLE IV  
TOWN PROPERTY, FINANCES AND CONTRACTS

SECTION 1 An audit of the accounts of the Town shall be made annually under the supervision of the State Division of Accounts, as provided by law.

SECTION 2 Payments on all accounts due the Town shall be remitted to the Town Treasurer and Collector of Taxes.

SECTION 3 No bill, charge or account against the Town shall be paid without the approval in writing first being obtained by the person, board or committee authorized to contract the same.

SECTION 4 Any board or officer in charge of a department may, with the approval of the Selectmen, sell any personal property not required by said department if the market value of such property as determined by the Selectmen does not exceed \$50.00, and may sell any such personal property of greater value if the sale is made at public auction or by sealed bid with the joint authorization of the Selectmen and Chairman of the Finance Committee. Sealed bids shall be invited by informing a sufficient number of interested parties to insure fair competition, and by public advertisement by at least one insertion in a newspaper having a circulation in Manchester. Such invitations shall state when and where the items for sale can be viewed, and the time and place at which bids will be opened, and shall reserve to the Town the right to reject any and all bids. All bids shall be opened in public. If personal property of any value instead of being separately sold can be delivered to a vendor as part of the consideration for the duly authorized purchase by the town of other personal property, the Selectmen alone may authorize such a transaction. Notwithstanding the provisions of this section, any specific sale of any personal property may be made on any terms if specifically authorized by a vote of the town. [Amended 1987]

SECTION 5 Contracts  
Except as otherwise provided by law, each elected board or committee is authorized to enter into contracts against appropriations under their control or the exercise of the Town's corporate powers, on such terms and conditions as are deemed appropriate. No contract, other than contracts for personal or professional services, involving an obligation of the Town in excess of \$5,000 shall be binding upon the Town unless it is in writing, is approved by Town Counsel as to form only, and is signed by at least a majority of the board or committee duly authorized or having control of the appropriation against which such obligation is incurred; and such board or committee shall make a record of every such contract. [Amended 1991]

SECTION 6 Bonds  
Except for the collection of garbage and rubbish and except as otherwise provided by law, the performance of every contract, other than contracts for personal or

professional services, or for the purchase of materials or equipment, which is estimated to cost \$10,000 or more, shall be secured by bond in a penal sum not less than the amount of the contract, and the garbage and rubbish collection contracts will require bonds in the penal sum of 33 1/3% of the amount of the contract. The contractor shall provide surety on said bond, either by a satisfactory indemnity or surety company, or by depositing with the Town Treasurer cash or United States government bonds in an amount equal to the penal sum of the bond. This section shall not apply in cases of emergency requiring immediate action for the preservation of life or for the protection of property. Evidence indicating that such an emergency exists shall be furnished to the Selectmen in writing by the officer, board or committee making such contract and shall be kept on file with other records of such transactions. [Amended 1991]

SECTION 7 [Deleted 1990]

SECTION 8 No conveyance or acquisition of any interest in real property shall be made by the Town unless such conveyance or acquisition is authorized by vote of the Town, and no such conveyance or acquisition shall be authorized by the Town unless the matter has been referred to the Planning Board and the Planning Board has submitted its report to the Town. The Planning Board shall report to the Town at least seven (7) days before each Town Meeting, making a written recommendation with respect to any articles in the warrant relating to the Town's conveyance or acquisition of any interest in real property and also with respect to any other matter on which the Planning Board may be required or elects to make a recommendation. Unless the Town votes otherwise pursuant to recommendations by the Board of Selectmen, Planning Board and the Finance Committee, a conveyance of real property owned by the Town shall be by public auction, due notice of which shall be given at least seven (7) days prior to said auction. This section shall not apply to any conveyance of tax titles or any acquisition of land under tax title procedure.

Notwithstanding any other by-law, non-exclusive easements in the public way and non-exclusive easements less than 1,000 square feet on other Town property may be granted by the board of Selectmen provided that any easement involving a water or sewer extension or other action affecting the public health shall require a public hearing and the advice of the Planning Board, Board of Health and Conservation Commission. [Amended 1991]

SECTION 9 [Deleted 1986]

SECTION 10 Term of Contract

The Town shall not award a contract for a term exceeding ten (10) years, including any renewal, extension, or option. The Town shall not enter into a contract unless funds are available for the first fiscal year at the time of contracting. Payment and performance obligations for succeeding fiscal years

shall depend on the availability and appropriation of funds. (Reference MGL Chapter 30B Section 12). [Added 2001]

ARTICLE V  
LEGAL AFFAIRS

- SECTION 1 Except as otherwise provided by law, the Selectmen shall have full authority as agents of the Town to appear and defend suits brought against the Town, to appear before any court, board or commission to protect the interests of the Town, and to institute and prosecute actions at law, proceedings in equity or any other legal proceeding. In all such cases they shall report their action to the Town at the next succeeding town meeting.
- SECTION 2 Except as otherwise provided by law, the Selectmen shall consider all claims, suits or proceedings made by or brought against the Town and may, in their discretion, settle the same.
- SECTION 3 The Selectmen shall include in their annual report a report on all claims and suits pending or disposed of during the year.
- SECTION 4 The Selectmen shall annually on or before the first day of June appoint a member of the bar in good standing to serve as Town Counsel for the term of one year or until his successor is appointed and enters upon the performance of his duties. They shall likewise fill any vacancy in said office for the unexpired term and may employ special counsel to assist the said Town Counsel whenever, in their judgment, necessity therefor arises. The Selectmen shall make suitable arrangements with the Town Counsel for the employment of special counsel whenever, by reasons of adverse interest, the Town Counsel is unable to represent the Town and may reduce the amount to be paid Town Counsel as the circumstances require. [Amended 1974]

ARTICLE VI  
FINANCE COMMITTEE

- SECTION 1 There shall be a Finance Committee consisting of nine legal voters of the Town who shall serve without pay and no member of which shall be an employee or paid officer of the Town. Each member of the Finance Committee shall serve for a term of three (3) years, and each term shall begin on the 1st day of July. Three members of the Finance Committee shall be appointed each year after the annual election of town officers for that year and before June 30th. One member shall be appointed by the Moderator, and two members shall be appointed by the Selectmen. [Amended 1987]
- SECTION 2 The original appointing authority shall promptly fill for the unexpired term any vacancies which may occur in the membership of the Committee. An attested copy of such appointment shall be sent by the Secretary to the Town Clerk.
- SECTION 3 After drawing the warrant for any town meeting, the Selectmen shall immediately transmit a copy thereof to the Finance Committee.
- SECTION 4 In addition to the duties and power prescribed by law, the Finance Committee shall have the following duties and powers:
- A. The Committee shall consider all articles of a financial nature in the warrant for any town meeting and shall hold at least one public meeting for discussion of such article if so requested by three (3) voters of the Town.
  - B. The Committee shall furnish the town meeting with such written recommendations as it deems for the best interests of the Town on all articles contained in the warrant involving or affecting expenditures, appropriations, debt, budgets, estimates, purchases or sales of property, or any other transactions of a financial nature in which the Town is interested.
  - C. The Committee shall, whenever possible, recommend the amounts of money which in its opinion should be expended, appropriated, borrowed or received by the Town.
  - D. The Committee shall have free access to all records, accounts, bills and vouchers having to do with the financial affairs of the Town, and may request any officer, board, committee, or department of the Town to furnish it with information pertaining to the financial affairs of such board, committee or department.
  - E. The Committee may request any officer, board, committee or department to submit to it estimates of needs for maintenance, capital improvements or new equipment for any given period of time.
  - F. The Committee shall make an annual report of all its doings with such recommendations as it deems suitable relative to any financial matters.

ARTICLE VII  
PLANNING BOARD

SECTION 1

SECTION 2 The Board of Appeals established under Section VIII of the Zoning By-laws of the Town shall act as a Board of Appeals under Section 81Z, Chapter 41, of the General Laws.

[Amended in 1983 to reduce the term of the members of the Planning Board to three years, commencing in 1984.]

ARTICLE VIII  
WATER AND SEWER COMMISSIONERS

SECTION 1 The Board of Water and Sewer Commissioners, as established under Chapter 165 of the Special Acts of 1918 and other acts relating thereto, shall adopt such regulations as they deem necessary or proper for the carrying on of the business of the Board and for regulating the use of the town water and sewer systems.

SECTION 2 The Commissioners shall keep all necessary and proper records pertaining to the business of the Board which shall be made available for public inspection in accordance with General Laws Chapter 39.

SECTION 3 Water Bans and Restrictions

Any ban or restriction within the Town duly promulgated by the Board of Water & Sewer Commissioners shall have the full force and effect of a by-law and will be enforced in a like manner. Any violation of such ban or restriction shall be punishable by a fine of not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00). In the case of a continuing violation, each day of violation shall constitute a separate offense. Any such ban or restriction shall be posted as an advertisement for two issues of a newspaper having a general circulation in the Town, when the ban goes into effect and when the ban is lifted.  
[amended 1981]

SECTION 4 Water Use Restrictions

A. Authority

This By-law is adopted by the Town of Manchester-by-the-Sea under its police powers to protect public health and welfare and its powers under M.G.L. c.40, §21 et seq. and implements the Town's authority to regulate water use pursuant to M.G.L. c. 41, §69B. This by-law also implements the Town's authority under M.G.L. c.40, §41A, conditioned upon a declaration of water supply emergency issued by the Massachusetts Department of Environmental Protection (DEP).

B. Purpose

The purpose of this by-law is to protect, preserve and maintain the public health, safety and welfare whenever there is in force a State of Water Supply Conservation or State of Water Supply Emergency by providing for enforcement of any duly imposed restrictions, requirements, provisions or conditions imposed by the Town or by the Massachusetts Department of Environmental Protection.

C. Definitions

"Person" shall mean any individual, corporation, trust, partnership or association, or other entity.

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

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

D. Declaration of a State of Water Supply Conservation

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

E. Restricted Water Uses

A declaration of a State of Water Supply Conservation shall include one or more of the following restrictions, conditions, or requirements limiting the use of water as necessary to protect the water supply. The applicable restriction, conditions or requirements shall be included in the public notice required under Section (f).

- (i) Odd/Even Day Outdoor Watering. Outdoor watering by water users with odd numbered addresses is restricted to odd numbered days. Outdoor watering by water users with even numbered addresses is restricted to even numbered days.
- (ii) Outdoor Watering Ban. Outdoor watering is prohibited.
- (iii) Outdoor Watering Hours. Outdoor watering permitted only during daily periods of low demand, to be specified in the declaration of a State of Water Supply Conservation and public notice thereof.
- (iv) Filling Swimming Pools. Filling of swimming pools is prohibited.
- (v) Automatic Sprinkler Use. The use of automatic sprinkler systems is prohibited.

F. Public Notification of a State of Water Supply Conservation; Notification of DEP Notification of any provision, restriction, requirement or condition imposed by the Town as part of a State of Water Supply Conservation shall be published in a newspaper of general circulation within the Town, or by such other means reasonably calculated to reach and inform all users of water of the State of Water Supply Conservation. Any restriction imposed under Section (e) shall not be effective until such notification is provided. Notification of the State of Water Supply Conservation shall also be simultaneously provided to the Massachusetts Department of Environmental Protection.

G. Termination of a State of Water Supply Conservation; Notice

A State of Water Supply Conservation may be terminated by a majority vote of the Board of Selectmen upon a determination that the water supply shortage no longer exists. Public notification of the termination of a State of Water Supply Conservation shall be given in the same manner required by Section (f).

H. State of Water Supply Emergency; Compliance with DEP Orders

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

I. Penalties

Any person violating this bylaw shall be liable to the Town in the amount of \$100.00 for the first violation and \$300.00 for each subsequent violation which shall inure to the Town for such uses as the Board of Selectmen may direct. Fines shall be recovered by indictment, or on complaint before the District Court, or by non-criminal disposition in accordance with Section 21D of Chapter 40 of the general laws. Each day of the violation shall constitute a separate offense. Enforcing agents for issuing violation notices shall be police officers or water division employees designated by the Board of Selectmen.

J. Severability

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

[Added 1995]

ARTICLE IX  
RECORDS AND REPORTS

- SECTION 1 All officers, boards, committees and departments of the Town shall cause records of their doings and accounts to be kept in suitable books, and shall also keep current inventories of all personal property under their control and current records of all personnel employed by them.
- SECTION 2 Except as otherwise provided by law, all officers, boards, committees and departments of the Town shall annually report in writing to the Town in such a manner as to give the citizens a fair and full understanding of their doings and of such expenditures as they may have made and may refer to the report of the Town Accountant or Town Treasurer and Collector of Taxes for statements in detail of any receipts and payments and may make such recommendations as they deem proper. Such reports shall be submitted to the Selectmen for inclusion in the annual Town report on or before the first (1st) day of March of each year. If no report is made by a committee at the first annual town meeting following its appointment, such committee shall be deemed discharged unless the Town shall have granted an extension of time. [amended 1974]
- SECTION 3 The annual Town Report shall contain, in addition to the reports of officers, boards, committees and departments as hereinbefore provided, a report showing what payments were made as capital outlays for permanent improvements during the prior year; a report of tax abatements made during the prior year; statements of all funds belonging to the Town or held for the benefit of its inhabitants; a statement of the liabilities of the Town on bonds, notes, certificates of indebtedness or otherwise, and of indebtedness authorized but not incurred, and the purposes thereof; a summary of Assets and Liabilities with respect to the Town's future obligations regarding retirement and health care benefits of Town and School employees, which include the assumptions involved in the calculation of these matters, and a description of the plan to deal with any surplus or shortfall of assets relative to liabilities based on data of a timely nature; a statement of transfers made to or from any appropriation; abstracts of the records of the meetings of the Town held since publication of the last annual report; and such other matters as the said report is required by law to contain, or as may be inserted by the Selectmen under the discretion granted them by law.
- SECTION 4 The Selectmen of the Town may cause the by-laws and standing votes of the Town and the rules or regulations adopted by any officer, board, committee or department to be printed either separately or as part of the annual report.

ARTICLE X  
POLICE AND OTHER REGULATIONS

Streets and Sidewalks

SECTION 1 No person shall place or maintain a sign, advertising device, clock, marquee, permanent awning or other like structure projecting into or placed on or over a public way in the Town which projects into or over the way a distance of more than six (6) inches. This by-law shall not apply to the maintenance of existing signs or other structures, nor to poles, wires, conduits, and appurtenances of railroad, railway, telegraph and telephone, water, gas, electric light, heat and power companies.

Printed Matter Vending Machines

- A. Definition. Printed matter vending machine (referred to herein as “machine”) – Any box, container, stand, rack, storage unit or other dispenser or device installed, placed, used, operated or maintained for the display, sale, or distribution of newspapers, periodicals, or other printed matter for public use.
- B. Permit Required. No person, firm, corporation, association, partnership, trust or other type of entity shall place, install, use or maintain any printed matter vending machine on any public way, sidewalk, or other property owned or controlled by the Town without obtaining a written permit therefore from the Board of Selectmen.
- C. Application; fee. The application for the permit shall fully and specifically describe the printed matter vending machine by setting forth its size by height, depth and width or any other relevant dimensions if varying in height, depth and width, the name and address of the applicant, the exact date or dates said machine will be in place or in operation, the exact place where the machine will be located, the manner in which said machine shall be affixed. Further reasonable information which may affect the public safety, health or order in the community may be requested from the applicant. An annual application fee, the amount of which will be determined upon passage of this amendment to the by-law and annually thereafter by the Board of Selectmen, which fee will be reasonably related to the costs of processing said application, shall be paid for each machine licensed. The form of application shall be approved by town counsel.
- D. Insurance and Indemnification. The applicant shall agree to indemnify and save harmless the Town of Manchester-by-the-Sea, its officials, agents, employees, boards, commissions, and committees, from any loss or damage and from all suits, actions and claims of any and every nature for or on account of any injuries or damage received or sustained by any person or company or other entity arising from the installation, use or maintenance of such machines. Prior to the issuance of any permit hereunder, a certificate of insurance for the purpose of providing

such indemnification shall be filed with the Board of Selectmen in a form and amount approved by the Board of Selectmen.

- E. Grant or denial; hearing. Within twenty days of receipt of a completed application, including application fee, the Board of Selectmen shall grant a permit or shall order that a hearing be held within an additional ten days, giving at least five days written notice to the applicant.

Within ten days next following the close of the hearing, the Board of Selectmen shall grant such permit or shall deny such application if it does not comply with the provisions of this by-law, or upon a finding that issuance of the permit would create a nuisance or would endanger the public health, safety, or order by:

- (1) Unreasonably increasing pedestrian traffic in the areas which the machine is to be located; or
- (2) Endangering the public safety by reason of the machine's projection onto, into, or over any part of the roadway of any public street; by reason of its being affixed to a site or location used for public utility purposes, public transportation purposes or governmental use; by reason of its being located in such manner as to interfere unreasonably with or impede the flow of pedestrian or vehicular traffic, sidewalk or street cleaning and/or snow removal, or the ingress or egress from any residence, place of business or any legally parked or stopped vehicle; or by reason of harm and defacement caused by its being affixed to poles, posts, traffic signs or signals, hydrants, mailboxes or other objects at or near such location.

Notice of the denial of an application for a permit shall be in writing and accompanied by a statement of the reasons therefore. The Board of Selectmen may impose conditions upon the permit which relate to compliance with the permit, applicable laws or by-laws, or to public safety, health or order, or to guard against the creation of a nuisance, or to ensure adequate safety and security for the public. No applicant having been denied a permit shall submit the same or similar application within one year of the denial without including in the new application facts showing that the circumstances upon which the original denial was based have substantially changed.

- F. Location. No machine shall be chained, bolted or otherwise attached to property owned or maintained by the Town of Manchester-by-the-Sea, and no machine shall be placed, installed, used or maintained on Town property, without the permission of the Board of Selectmen. No machine shall be located within three feet of any crosswalk; within fifteen feet of any fire hydrant; within five feet of any fire or police call box or other emergency facility; within five feet of any driveway, public or private; within three feet ahead or fifteen feet to the rear of any designated bus stop, taxi stand or place whereby the clear space for the

passage of pedestrians is reduced to less than four feet; or within three feet of any display window of any building abutting the sidewalk or other public place in such a manner as to impede or interfere with the reasonable use of such window for display purposes.

- G. Use for Advertising Prohibited. No machine shall be used for advertising signs or publicity purposes, other than that which identifies the printed matter offered therein.
- H. Maintenance. Each machine shall be maintained in a clean and neat condition and in good repair at all times. No reflecting paint, fluorescent or reflective materials may be used on any machine. Any litter created by the contents of the machine shall be disposed of within forty-eight hours.
- I. Identification. The person who places or maintains such machine shall have his/her name or his/her Massachusetts agent's name, address and telephone number affixed thereto in a place where such information may be easily seen.
- J. Time limit for compliance. All persons who have placed or intend to place machines in the Town of Manchester-by-the-Sea shall have thirty days from the effective date of this by-law to comply with its provisions. The Board of Selectmen may grant an extension of this time limit in its discretion for good cause.
- K. Violation. Violation of the terms and conditions of this by-law or of any permit granted hereunder shall be punishable by a fine of one hundred dollars (\$100) for the first violation, two hundred dollars (\$200) for the second violation, and three hundred dollars (\$300) for the third and subsequent violations, and said violation(s) shall be cause for cancellation, suspension, revocation, modification, or non-renewal of the permit, after hearing, upon five days written notice sent by registered or certified mail to the name and address set forth in the annual application.
- L. Abandonment. Any machine that is not used for the distribution of printed material for a period of sixty calendar days or more shall be deemed abandoned, and the applicant shall remove it within forty-eight hours of being notified in writing by the Board of Selectmen to do so.
- M. Severability. If any section, clause, or provision of this by-law shall be found by a court of competent jurisdiction to be invalid, the remainder of this by-law shall continue in full force and effect. [Amended 2005]

- SECTION 2 No person without permission of the Superintendent of Streets or the Chief of Police shall in any manner obstruct traffic or endanger travel in or over any sidewalk, street or way open to public use nor shall any person without such permission place or throw on any such sidewalk, street or way any substance which will obstruct traffic or endanger travel.
- SECTION 3 No person shall place or leave in or upon any sidewalk, street or way open to public use any garbage, rubbish or any substance or material which is or may become offensive or cause a nuisance.
- SECTION 3A No person shall throw, deposit, discharge, place or cause to be thrown, deposited, discharged, or placed, any trash, refuse, rubbish, garbage or debris on any way, street, beach, park, sidewalk, recreation area or place to which the public has a right of access, or in or upon coastal or inland waters, within twenty (20) yards of any of the foregoing, or on property of another without permission of the owner thereof. No person shall deposit or cause to be deposited refuse or garbage from his household or place of business into any trash barrel placed for the convenience of the public on any way, street, beach, park sidewalk, recreation area, or place to which the public has a right of access within the Town. Any person who violates the provisions of this Section shall be punished by a fine of not less than \$50.00 nor more than \$200.00 for each offense. [Amended 1980]
- SECTION 4 There shall be no dumping in the Town except in areas designated by the Board of Public Works, with the approval of the Board of Health. [Amended 1981]
- SECTION 5 No person shall suffer any horse or grazing beasts or swine to run at large in the Town or feed within the limits of any sidewalk, street or way open to public use either with or without a keeper.
- SECTION 6 No person shall throw stones, snowballs, sticks or other missiles or kick footballs or play at any game in which a ball is used, or fly kites or balloons, or shoot with or use an air gun, bow and arrow, slingshot or other similar devices in or across any sidewalk, street or way open to public use or in any public place or common except as permitted by the Selectmen or by vote of the Town.
- SECTION 7 A. No person shall stand in a roadway for the purpose of soliciting a ride, employment or business from the operator or occupant of any vehicle without the written permission from the Board or Officer having control of such roadway or highway. [Amended 1973]
- B. No person shall leave any vehicle unattended within the limits or private ways so as to prevent access of fire apparatus, ambulances or other emergency vehicles. [Amended 1973]

- SECTION 8 A. No resident of the Town shall operate a bicycle within the limits of the Town, no renting agency shall rent bicycles and no person shall conduct a business of buying or selling new or second hand bicycles without first complying with Chapter 85, Section 11A, as most recently amended of the Massachusetts General Laws Annotated, which requires the registration of bicycles and reports of sales of same. [Amended 1973]
- B. Operators of bicycles shall conform to the traffic rules and regulations set out in Chapter 85, Section 11B of the Massachusetts General Laws Annotated, as most recently amended. [Amended 1973]
- SECTION 9 No person shall coast upon or across any sidewalk, street or way open to public use except at such times and in such places as may from time to time be designated by the Selectmen.
- SECTION 10 No person shall knowingly suffer or permit any water or other liquid substance to run or be discharged from any building owned by him or under his control onto or across any sidewalk, street or way open to public use except that any person may wash windows or other parts of a building, provided the public safety is not endangered.
- SECTION 11 No person shall fire or discharge any gun, pistol or other firearm in or across any sidewalk, street or way open to public use or public place in the Town, but this section shall not prevent the use of such weapons in the lawful defense of one's person, family or property nor in the performance of any duty required or authorized by law.
- SECTION 12 No person shall suffer a platform, grate or opening in any sidewalk, street or way open to public use to rise above the surface of the same, and every such opening shall be at all times covered by a suitable grate or covering.
- SECTION 13 No owner or person having the care of any building abutting upon any sidewalk, the roof of which building slants towards the sidewalk, shall permit the building to be without a barrier, snow guard or other device to prevent the falling of snow or ice from such roof to the sidewalk.
- SECTION 14 No person shall ride, drive or cause to be driven any horse or vehicle over that part of any street or way open to public use which is being mended, repaired or paved if a sign is posted prohibiting the same.
- SECTION 15 No person, except one authorized by law, shall break or dig up any part of any sidewalk, street or way open to public use, remove any gravel or similar substance therefrom for any purpose whatever, except by permission of the Selectmen under

such conditions and restrictions as they may deem proper, and after posting a surety bond on terms satisfactory to the Selectmen.

[Section 15A as amended in 1987 was deleted in 2000]

SECTION 16 Whoever shall, by virtue of such permission, break or dig up any part of a sidewalk, street or way open to public use shall cause the same to be repaired and made safe to the satisfaction of the Selectmen. In case of neglect to repair and make safe as aforesaid, the Superintendent of Streets shall cause the same to be repaired and made safe at the expense of the person to whom permission was so granted.

SECTION 17 Whenever construction is to be performed on any street or way open to public use, the Selectmen shall give notice to all town departments and public utility companies concerned in order that necessary replacements may be made by such departments or utility companies during such construction.

SECTION 18 No vehicle shall be driven or moved nor shall any owner of any vehicle knowingly permit such vehicle to be driven or moved on any street or way open to public use unless such vehicle is so constructed or so loaded as to prevent its contents from escaping therefrom.

SECTION 19 The Superintendent of Streets or other officer having charge of ways for the purpose of removing or plowing snow, or removing ice, from any way, may remove or cause to be removed to some convenient place, including in such term a public garage, any vehicle interfering with such work; and the owner of such vehicle shall be liable for the reasonable cost of such removal and storage charges.

#### Licenses

SECTION 20A In order to preserve public safety, any person, as provided for in Section 20(b), who engages in soliciting funds or who attempts to sell or solicit the sale of goods, wares, or merchandise for present or future delivery from door-to-door must register his or her true name and the name of the business or other organization for which the solicitation is authorized and the intended location of activity and times of activity with the Chief of Police. Such registration shall be effective for fourteen (14) days, unless sooner revoked, and may be initially refused or subsequently revoked upon the failure of the applicant to supply reasonable proof of his or her identity and that of the organization, if any, which he or she represents or upon the discovery of any attempt by the applicant to falsify or obscure either such identity. Upon such registration a certificate in such form as may be approved by the Board of Selectmen and Chief of Police shall be issued to the registrant. In all cases, the Chief of Police shall act on a request for registration within two (2) working days. [amended 1987]

#### SECTION 20B. Transient Vendor; Hawker/Peddler

All transient vendors, as defined by MGL Ch. 101, §1 shall obtain a license from the Board of Selectmen or its designee and all hawkers and peddlers as defined by MGL

Ch. 101, §13 shall register with the Board of Selectmen or its designee before conducting business in the Town. The Board of Selectmen shall establish such rules and regulations in order to secure the safety, comfort and convenience of the public.

The applicant shall provide such information as the Board determines to be necessary including, but not limited to, a copy of the applicant's state license.

A fixed fee for this license shall be set by the Board of Selectmen. Any person failing to obtain such a license shall be subject to the fines provided for in this by-law. [Added 1997]

SECTION 21 Rules and orders for the regulation of carriages and vehicles in accordance with applicable provisions of law and of these by-laws shall be made by the Selectmen, and the Selectmen may issue licenses for the operation of hackneys and other vehicles for the conveyance of persons for hire, and such licenses may be revoked at the pleasure of the Selectmen.

#### Hydrants and Pipes

SECTION 22 No person shall open a hydrant or lift or remove the cover thereof or make any opening or connection with any pipe or reservoir or turn on or turn off the water from any pipe, fountain, reservoir or hydrant under the control of the Board of Water and Sewer Commissioners except by authority of said Commissioners or their agents.

#### Prohibition of Billboards

SECTION 23 No person shall erect or maintain a non-accessory sign within the Town of Manchester, except as may be permitted by Section 32 of Chapter 93 of the General Laws or the Zoning By-laws of the Town. A non-accessory sign shall mean any sign other than a sign that advertises, or indicates the person occupying the premises on which the sign is erected or maintained, or the business transacted thereon, or advertises the property itself or any part thereof as for sale or rent, and which contains no other matter. [Amended 1974]

#### Invasion of Privacy

SECTION 24 No person shall for commercial use play or use any portable recording device, amplifier, speaker or other instrument for the channeling of music, language or sound to, or on a public street or private way or place of outside assembly without a permit therefor issued by the Selectmen.

No person shall behave in a rude, indecent or disorderly manner, or use profane, indecent or insulting language, or shout, scream and/or utter loud outcries without reasonable cause, in any public place or near any dwelling house in the Town to the annoyance or disturbance of any person there being or passing, or loiter on any

sidewalk or street or about doorways or places of business to the annoyance of any person.

No person shall willfully or negligently obstruct the free passage of any travelers in any accepted street or public way in this town. The unnecessary sounding of car horns on public or private ways creating a loud noise or disturbance is prohibited.

SECTION 25 No person shall camp at or on, or utilize for sleeping purposes any property owned, controlled and/or maintained by the Town unless first obtaining permission from the Board of Selectmen. [Amended 1974]

SECTION 26 No person shall saunter or loiter in a street, public place or upon any sidewalk to the inconvenience of foot travelers, nor shall three or more persons obstruct or unreasonably persist in remaining upon any sidewalk or in a street or public place after having been requested by a police officer to move on. No person shall remain upon any sidewalk, or public walk, fence, steps or porch to the annoyance of other people. [Amended 1968]

The tenant or occupant, and in case there shall be no tenant or occupant, the owner, or any person having the care of any building or lot of land bordering on any street, lane, court, square or public place, within the Town, where there is a sidewalk, shall cause all garbage, rubbish or any substance or material which is or may become offensive or cause a nuisance to be removed therefrom within six (6) hours after the object is placed thereon and if he neglects to do so, he shall be liable to a penalty not less than two dollars nor more than ten dollars for each offense.

Any person violating the provisions of any section of these by-laws where no specific penalty is stated shall, upon conviction, be fined not less than one nor more than twenty dollars for each offense.

SECTION 27 Unless granted a special permit by the Board of Selectmen, no person shall, in or on any public way, public alley, public parking area, public landing, park or playground or any way to which the public has a right of access, or any way or property to which members of the public have access as licensees or invitees, whether in or upon a vehicle, drink any alcoholic beverages, as defined in Massachusetts General Laws, Annotated, Chapter 138, Section 1. The penalty for violating this by-law shall be a fine of up to \$50.00. [Amended 1979]

SECTION 28 Animal Control

A. Purpose

The purpose of this by-law is control of animals to prevent injury to the health, welfare and property of the residents of the Town and to prevent inhumane treatment of animals.

## B. Administration

1. Animal Control Board. The Board of Selectmen shall appoint annually an Animal Control Board made up of three residents of the Town. The responsibilities of the Animal Control Board shall be to assure that animals do not become nuisances, that animals are treated humanely, and that the Town by-laws concerning animals are enforced.
2. Animal Control Officer. The Animal Control Officer is a person or persons appointed by the Animal Control Board with the approval of the Board of Selectmen to carry out the provisions of the Town by-laws concerning animals.

## C. Control of Animals

1. No person owning, harboring, or having custody and/or control of a dog shall permit such dog to trespass on Public School property in the Town.
2. No person owning, harboring, or having custody and/or control of a dog shall permit such dog to trespass on the Town playgrounds and parks.
3. No person owning, harboring, or having custody and/or control of a dog shall permit such dog to trespass on any Town beaches from April 1 through October 31.
4. No person owning, harboring, or having custody and/or control of a dog shall permit such a dog to trespass on Town cemeteries or the Town Hall or Public Library grounds.
5. No person owning, harboring, or having custody and/or control of a domesticated animal shall allow such animal to become a public nuisance. Making excessive noise, molesting people, chasing vehicles, attacking people or other animals, and trespassing upon designated public and all private property in such manner as to damage property, shall be deemed a nuisance.
6. No household may maintain more than a total of four (4) animals over the age of three (3) months without a permit from the Board of Health. Any household with more than four (4) dogs over three (3) months of age requires a small kennel license, available at the Town Clerk's office.
7. Female Dogs in Heat - If the Animal Control Officer determines that a female animal in heat, even when confined, is attracting other animals thus causing a disturbance or damage to neighboring property or public area, he/she may require the owner or keeper to keep said animal, while in heat, in a kennel, or to remove it from the area so that the nuisance is abated.
8. No person owning, harboring or having custody and/or control of a dog shall permit such dog to run at large in the Town of Manchester-by-the-Sea. A dog shall be deemed running at large when it is both off the premises of the owner or such person in custody or control of, and is not on a leash or under direct voice command of a person able to control the dog.
9. The person owning, harboring or having custody of a dog shall remove and dispose of any feces left by such dog on any beach, sidewalk or street, in

any park or other public place or on any private property neither owned nor occupied by said person. Disposal shall be accomplished by transporting feces to the property of the owner of the dog, or to an appropriate waste receptacle. Disposal in Town storm drains is prohibited. The provisions of this subsection 9 shall not apply to a guide dog accompanying any handicapped person. [Section 9 added 1998]

#### D. Licensing Procedures and Identification Tags

1. Individuals licensing dogs in accordance with the General Laws must present to the Town Clerk, at the time of such licensing, a current certificate or certificates signed and dated by a licensed veterinarian describing the animal and stating that it has been vaccinated against rabies under the requirements of the General Laws. This provision will apply to dogs over the age of six (6) months.

2. A dog for which an identification tag is issued as a portion of licensing procedures required by the General Laws of the Commonwealth, must wear the tag at all times when the animal is off the premises of the owner.

#### E. Abuse of animals

No person shall abuse or intentionally injure any animal.

#### F. Use of Animals as Prizes

No person shall give away any live animal as a prize for or as an inducement to enter any contest, game or other competition, or as an inducement to enter any place of amusement or business, or offer such animal as an incentive to enter into any business agreement whereby the offer was for the purpose of attracting trade.

#### G. Enforcement of By-laws

1. Notice of Violation and Assessment of Fine. The Animal Control Officer shall issue a notice of violation of this by-law for violation of Sections (c), (d), (e), and (f), thereby assessing the appropriate fine.

2. Taking of Animals - The Animal Control Officer may take and impound in an animal shelter approved by the Animal Control Board any animal not properly licensed and of undetermined ownership, or any animal which by reason of vicious disposition constitutes an immediate danger to the health, safety and public welfare of the people of the Town. The owner of such animal shall be responsible for the costs of care and confinement and must pay such costs as a condition of release of the animal.

3. If the Animal Control Officer determines that a dog's or cat's behavior endangers the health and safety of any citizen or citizens or other animals, he/she may order the dog or cat restrained pending a hearing, as established by the Board of Selectmen. [Amended 1998]

#### H. Disposal of Animals

Impounded animals shall be kept for the minimum number of days required by State law unless reclaimed by their owners. Animals not claimed by their owners within fourteen days or placed in suitable new homes, may be humanely euthanized only after consultation with and by a licensed veterinarian.

#### I. Transportation of Injured Animals

The Animal Control Officer shall transport and deliver to a licensed veterinarian any animal which is seriously injured, of unknown ownership, and unattended.

#### J. Fines

Any person violating any provisions of this by-law shall be deemed guilty of a misdemeanor and shall be punished by a fine in accordance with the following schedule:

First offense: \$10.00; Second offense: \$25.00; Third and Subsequent offenses: \$50.00. In the case of offenses regarding dogs, offending persons may avail themselves of the provisions of Chapter 140, Section 174, as amended, of the General laws of the Commonwealth.

If a dog is picked up for being unlicensed or in violation of any section of these by-laws, the owner must pay, in addition to appropriate fines, a pick-up fee of \$10.00, and, where applicable, a boarding fee.

#### K) Severability

If any part of this by-law shall be invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this by-law. No provision or interpretation of a provision of this by-law is intended to be either in conflict with, or an attempt to change, any statutory provision of the General Laws of the Commonwealth. [Amended 1987, 1994, 1998]

### SECTION 29 Private Ways, Repairs, Liability and Assessments

The Town may make repairs on private ways which have been opened to public use for six (6) years or more. Temporary repairs may include the installation and construction of drainage, if necessary, and the filling of holes in the surface of such ways and repairs to the surface materials thereof. Materials for such repairs shall, where practicable, be the same as or similar to those used for the existing surfaces of such ways, but may include surfacing the ways with bituminous materials including but not limited to bituminous concrete. Such repairs shall not be undertaken until Annual Town Meeting declares that the repairs are required by public necessity and convenience and a majority of the abutters petitions for such repairs to be made.

The Town, acting through the Board of Selectmen, is hereby authorized to assess betterments upon the owners of property which derive particular benefit or advantage from making of such repairs on any such private way a sum equal in the aggregate to one-half of the cost thereof, in proportion to the frontage thereof on such way. Such sum shall be deposited with the Town prior to beginning any work. The Town shall not be liable on account of any damage caused by temporary or general repairs. [Amended 1978]

SECTION 30 The Board of Selectmen are authorized to designate certain time restricted parking areas and prohibited parking areas as "Tow Away Zones". [adopted 1987]

SECTION 31 Underwater Activities

There shall be no skin-diving, scuba diving or any other underwater activities from Singing Beach at any time, and from Black Beach and White Beach, other than from the extreme ends of these beaches, from Memorial Day to the day following Labor Day. [adopted 1982]

SECTION 32 Swimming Pools

A fence of at least four (4) feet shall enclose all privately owned swimming pools. [adopted 1986]

SECTION 33 House Numbers

All houses, businesses, and other buildings within the Town of Manchester shall conspicuously display street identification numbers to assist emergency vehicles, postal and delivery vehicles to locate specific properties in the Town.

1. It shall be the duty of each owner or occupant to provide for the display of such number in such a manner that it is visible from the street.
2. Said number shall be a minimum of three inches in height and contrasting in color.
3. In the event that the house, building or business is not visible from the street, the number shall be displayed on a post or mailbox which is visible from the street.
4. A committee consisting of the Fire Chief, one member from the Assessor's department, one member from the Town Clerk's department, and one member from the Police department shall have the authority to assign numbers and street names to any property in Town. A person aggrieved by a decision of the committee make appeal to the Board of Selectmen by giving the Board and the committee written notice of appeal within 20 days after the committee gave notice of its decision. Within 30 days after receipt of the notice of appeal the Board shall hold a hearing and shall approve, modify or remand the committee's decision or take such other action as it considers appropriate. Failure of the Board to act within the 30-day period shall be deemed a remand of the committee's decision. [adopted 1988; amended 1998, 2000]

5. Enforcement action may be taken by any duly authorized Town official. Violation of this By-law shall have a non-criminal disposition and be punishable by a fine of twenty-five dollars (\$25.00). [Added 2009]

SECTION 34 Accessible Parking Spaces

A. No person shall park a motor vehicle, motorcycle, or like means of transportation in a designated parking space that is reserved for vehicles owned and operated by disabled veterans or by handicapped persons unless said vehicle bears the distinctive license plate, placard, or for vehicles transporting a handicapped person, displays the special identification plate authorized by Section 2 of Chapter 90 of the Massachusetts General Laws, or for any vehicle bearing the official identification of a handicapped person issued by any other state.

B. REQUIREMENT FOR PROPERTY OWNERS TO RESERVE SPACES

1. Any person or body that has lawful control of a public or private way or of improved or enclosed property used as off-street parking for businesses, shopping malls, theaters, auditoriums, sporting or recreational facilities, cultural centers, multi-family residential dwellings or for any other place where the public has a right of access as invitees or licensees, shall be required to reserve parking spaces in said off-street parking areas for any vehicle bearing a handicapped plate or placard authorized by the state of Massachusetts or any other state or any Canadian Province or for any vehicle transporting a handicapped person and displaying the special identification plate authorized by section two of Chapter 90 according to the following formula:

<u>Total Parking in Lot</u>	<u>Required Minimum Number of Accessible Spaces</u>
15 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6

One in every 8 accessible spaces, but not less than one, shall be van accessible. At medical facilities providing medical care for persons with mobility impairments, 10% of the total number of parking spaces shall be accessible.

2. Each parking space identified as reserved under the provisions of the previous section shall be identified by a permanently installed above-ground sign located at a height of not less than five (5) feet and not more than eight (8) feet to the top of the sign with white characters against a blue background and shall bear the words "Handicapped Parking, Special Plate or Placard Required. Unauthorized Parking Subject to Fine and Towing at the Owner's Expense," and must also contain the international symbol of accessibility which is a person in a wheelchair. Such parking spaces shall be as near as possible to a

building entrance or walkway and adjacent to curb ramps or other unobstructed methods which permit sidewalk access for a handicapped person. Spaces shall meet the following specifications:

- a) Each space shall be thirteen (13) feet wide; an eight foot wide parking space and a 5 foot access aisle marked with diagonal stripes.
- b) Two accessible parking spaces may share a common access aisle.
- c) Van accessible spaces shall be sixteen (16) feet wide; an eight (8) foot wide parking space and an eight (8) foot wide access aisle marked with diagonal stripes.

All accessible spaces shall contain the international symbol of accessibility on their surface, shall be level, and space for vans shall have signs designating them van accessible. On unpaved lots, parking spaces shall be designated only by the sign as defined in this section. Where the designated space cannot be located within two hundred (200) feet of an entrance accessible to the physically handicapped, a drop-off area accessible to the physically handicapped shall be provided within one hundred (100) feet of the entrance.

#### C. OBSTRUCTION OF ACCESS

No person shall leave any unauthorized vehicles, or allow to remain standing whether attended or unattended or allow to remain live parked within spaces designated for use by disabled veterans or handicapped people as authorized by MGL 40, Section 21, Clause (23) or such manner as to obstruct a curb ramp or any other access designed as a means of egress to a street or public way as provided for in MGL C. 40, Section 21, Clause (24).

#### D. APPLICABILITY

This by-law shall apply to any existing or future parking area to which the public has a right of access as invitees or licensees and which contains fifteen (15) or more parking spaces.

#### E. PENALTY

The penalty for parking in violation of this by-law shall be as follows:

1. Parking Fines- \$100.00 for first offense and \$300.00 for subsequent offenses.
2. Failure to establish and/or maintain the parking spaces and signs required by Section of this bylaw shall be a fine of \$100.00 for each day failure continues.

#### F. ENFORCEMENT

The Police Department will be charged with the enforcement of all sections of this by-law.

#### G. EFFECTIVE DATE:

Establishment of Accessible Parking Spaces and erecting of Handicapped Parking signs will be completed within sixty (60) days of the effective date of this by-law. [Adopted 1997]

### SECTION 35 Railroad Regulations

1. All persons traversing railroad crossings in the Town shall reduce the speed of the vehicle to a reasonable and proper rate before proceeding over the crossing, and shall proceed over the crossing at a rate of speed and with such care as is reasonable and proper under the circumstances; and specifically shall obey all crossing signals, coming to a complete stop upon the presence of flashing lights or crossing gates, and not traversing the tracks until the lights have ceased flashing and crossing gates have fully returned to their upright position.
2. No person shall interfere with the operation of trains through the Town nor tamper or interfere in any manner with crossing signals, gates or other equipment related to trains traveling through the Town.
3. Whereas the Massachusetts Department of Public Utilities has permitted an exemption to the requirement that whistles or horns be blown at all railroad crossings by trains traveling through the Town of Manchester-by-the-Sea; and whereas the Federal Swift Rail Development Act, as amended, contemplates the granting of exemptions to the requirement that whistles or horns be blown at all railroad crossings, which exemption is based in part on a community's restrictions that horns and whistles not be blown, historical pattern, safety record, local by-laws, and other remedial steps taken by the community, no horn or whistle shall be sounded by any train traveling through the Town, except if the operator observes an emergency situation which in the discretion of the operator requires the blowing of such horn or whistle.
4. The Superintendent of Schools and the Chief of Police shall be requested to develop and conduct regular safety education programs in the public schools and for the citizenry at large, which programs shall inform children and adults of the dangers posed by trains traveling through the Town, and precautions to take when approaching or traversing train crossings. [Adopted and amended 1997]

### SECTION 36 Tobacco Products Regulations

All tobacco products sold within the Town at any location shall require a permit issued by the Board of Health. [Adopted 1997]

### SECTION 37 Tobacco Use Regulations

No person may use tobacco products in school, on school grounds, or on school property, such as buses, whether before, during, or after the school day. [Adopted 1998]

### SECTION 38 Hunting

A. All persons hunting in the Town of Manchester-by-the-Sea shall carry with them written permission from the owner, or custodial authority, of the land on which they wish to hunt. Said permission shall be dated and signed, and must be valid for a fixed period of time. All hunters must register annually with the Town Clerk before hunting, excepting those hunting waterfowl in coastal areas.

B. The authorities or person(s) having control of public land shall designate on a map available at the Town Clerk's office those public areas that are open to hunting.  
(Adopted, 1999)

ARTICLE XI  
CIVIL DEFENSE

SECTION 1 Department of Civil Defense

There is hereby established a department of civil defense (hereinafter called the "department"). It shall be the function of the department to have charge of civil defense as defined in Section 1, Chapter 639, Acts of 1950, and to perform civil defense functions as authorized or directed by said chapter or by any and all executive orders or general regulations promulgated thereunder, and to exercise any authority delegated to it by the governor under said Chapter 639.

SECTION 2 Director of Civil Defense

The Department shall be under the direction of a director of civil defense (hereinafter called the "director") who shall be appointed as prescribed by law. The director shall have direct responsibility for the organization, administration and operation of the department, subject to the direction and control of the appointing authority, and shall receive such salary as may be fixed from time to time by the appointing authority. The director may, within the limits of the amounts appropriated therefor, appoint such experts, clerks, and other assistants as the work of the department may require and may remove them, and make such expenditures as may be necessary to execute effectively the purposes of Chapter 639, Acts of 1950.

The director shall have the authority to appoint district coordinators and may accept and may receive, on behalf of the town, services, equipment, supplies, materials or funds by way of gift, grant or loan, for purposes of civil defense, offered by the Federal government or any agency or officer thereof or any person, firm or corporation, subject to the terms of the offer and the rules and regulations if any, of the agency making the offer. The director shall cause appropriate records to be kept of all matters relating to such gifts, grants or loans.

SECTION 3 Civil Defense Advisory Council

There is hereby established a civil defense advisory council (hereinafter called the "council"). Said council shall serve without pay and shall consist of the director of civil defense, such other department heads and such other persons as the authority appointing said director may deem necessary. Such member of said council, as said appointing authority shall designate, shall serve as chairman of said council. Said council shall serve subject to the direction and control of the appointing authority and the director of matters pertaining to civil defense.

SECTION 4 Police Aid to Other Cities and Towns in Event of Riots or Other Violence Therein

The police department is hereby authorized to go to aid another city or town at the

request of said city or town in the suppression of riots or other forms of violence therein.

SECTION 5 Termination of By-law

This by-law shall remain in force during the effective period of Chapter 639, Acts of 1950, and any act in amendment or continuation thereof or substitution therefor.

SECTION 6 Definition

All references to Chapter 639, Acts of 1950, as now in force, shall be applicable to any act or acts in amendment or continuation of or substitution for said Chapter 639.

ARTICLE XII  
EARTH REMOVAL

SECTION 1 Definitions

- A. For the purposes of this by-law, "earth" shall include soil, sod, loam, peat, humus, clay, sand, gravel and rock.
- B. For the purposes of this by-law, "Board" shall mean the Planning Board.

SECTION 2 Exemptions

- A. Notwithstanding the provisions hereof, no permit shall be required for the removal of earth from:
  - 1. any parcel in connection with the lawful construction of a residential building or structure thereon or the lawful construction of a driveway, sidewalk, path, septic system or swimming pool incidental to any such building or structure, provided that (i) the quantity of material removed does not exceed that actually displaced by the portion of building, structure, driveway, sidewalk or path below finished grade, and (ii) such construction does not excavate deeper than fifteen (15) feet from the preconstruction grade; [Amended 2007]
  - 2. any parcel of land in use by the Town of Manchester or by a higher governmental agency.
- B. The Board, without a public hearing, may issue permits for the removal from the site of earth for the following purposes:
  - 1. where necessary as part of farm, garden, or nursery activities;
  - 2. as part of cemetery operations.

SECTION 3 Earth Removal Procedure

- A. Permit Required - The removal of more than 250 cubic yards of earth from any parcel of land within the Town of Manchester, not in public use, shall, except as hereinafter provided, be allowed only in accordance with a written permit therefor issued by the Planning Board. The Board may grant a permit for such removal and for temporary structures accessory thereto in accordance with the procedure hereinafter set forth for permits. Any permit granted hereunder shall lapse within one (1) year if substantial use has not sooner commenced, except for good cause shown to the Planning Board. No permit for removal shall be granted unless the Board finds that such removal (subject to the conditions imposed by the permit) will not be contrary to the best interests of the Town; and no removal operations subsequently conducted under such permit shall continue if contrary to such interests. For this purpose, removal of earth material shall be considered contrary to the best interest of the Town which:
  - 1. will be injurious or dangerous to the public health or safety;
  - 2. will produce noise, dust or other effects observable at the lot lines in amounts seriously objectionable or detrimental to the normal use of adjacent property;

3. will have a material adverse effect on the health or safety of persons living in the neighborhood, or the use of amenities of adjacent land; or
4. will have an adverse effect on natural resources, including but not limited to the recharge of the water table or condition of the surface water.

B. Application for Permit - Any person wishing to remove more than 250 cubic yards of earth from a property in the town shall file a formal application with the Planning Board, which application shall include the following specific information and supporting documentation:

1. the location of the proposed excavation;
2. the legal name and address of the owner of the property involved;
3. the legal name and address of the petitioner, which address shall be used by the Board for all correspondence hereunder;
4. property lines, names and addresses of all abutting property owners, including those across any streets;
5. a detailed plan of the land involved, prepared by a Registered Civil Engineer, or a registered surveyor, and acceptable to the Board, at a scale of 1":20', or as determined appropriate, showing the entire parcel of land based on a perimeter survey and showing existing topography by five (5) foot contours within one hundred (100) feet of, and including, the site of the proposed excavation or to the property line. This contour plan shall show locations of a sufficient number of test borings made to determine the average depth of topsoil before excavation.
6. a detailed plan of the land involved, prepared by a Registered Civil Engineer, or a registered surveyor, and acceptable to the Board, showing five (5) foot contours of a site as of the completion of the excavation project, all drawn to a scale acceptable to the Board. The plan shall further show the maximum depth that the applicant intends to excavate, the type of material the applicant intends to extract from the land, the manner and depth in which he shall replace the top soil, and the type of reseeded and planting he proposes to use;
7. natural features such as wetlands, the 100-year flood plain, ground cover and surface and ground water. Water-table elevation shall be determined by test pits and soil borings. A log of soil borings shall be included, taken to the depth of the proposed excavation, congruent with the size and geological makeup of the site;
8. a topographical map showing drainage facilities, final grades, and proposed vegetation and trees;
9. erosion and sediment-control plan;
10. the amount and cost of proposed restoration materials;
11. the location of monitoring wells which have been used to establish the high water table. The highest elevation of the water table shall be determined by observation wells monitored during the months of April and May. The observation wells' location shall be determined by the Conservation Commission or its designated agent. The information

concerning height of water table shall be gathered before application for a permit is made to the Planning Board;

12. the proposed form of performance security to be used; and

13. copies of the information outlined in the above articles one (1) through twelve (12) shall be filed with the Town Clerk and the Planning Board.

#### SECTION 4 General Limitations

A. In granting a permit hereunder, the Planning Board shall impose reasonable conditions especially designated to safeguard the neighborhood and the Town. These conditions shall be written upon and shall constitute part of the written permit, including, but not limited to:

1. method of removal;

2. type and location of temporary structures;

3. fencing;

4. hours of operation;

5. routes for transporting the material through the Town;

6. the duration of the removal operations;

7. the area and depth of excavation'

8. the reestablishment of ground levels and grades;

9. the steepness of slopes excavated;

10. provisions for temporary and permanent drainage;

11. disposition of boulders and tree stumps;

12. grading of slopes and replacement of loam over the area of removal;

13. planting of the area to suitable cover, including trees, necessary to restore the area to usable condition; and

14. distance from excavation to street and lot lines.

B. No permit for the removal of earth shall be approved by the Board if the work extends within two hundred (200) feet, measured horizontally, of a way open to public use, whether public or private, or on an adjacent property line, or within one hundred fifty (150) feet of a building or structure unless the Board is satisfied that such removal will not undermine the way or structure.

C. No excavation not intended for approved building purposes nor other activity or building shall be within 100 feet, measured horizontally, of a stream, pond, wetland as defined under G.L., Chapter 131, or Section 40, or the 100-year flood elevation of any waterbody, except where another town board or committee has specifically ordered such excavation as a part of a compensatory-storage plan.

D. No area shall be excavated so as to cause accumulation of freestanding water unless the Planning Board shall permit creation of a pond in an area not used for drinking water. Permanent drainage shall be provided in accordance with good conservation practices. Drainage shall not lead directly into streams or ponds.

E. No earth or gravel shall be removed closer to the maximum high water table than ten (10') feet. However, upon receipt of a permit from the Planning Board, this depth to a maximum high water table may be decreased to seven (7') feet provided that the Planning Board determines that based upon soils, ground water flows,

materials to be removed and any requirements that they may impose, such decrease in depth removal shall not be deemed to adversely affect the intent or purpose of this or other sections of the Manchester By-laws. In determining the effect upon the Town of Manchester of increased earth or gravel removal, the Planning Board may require the applicant to submit a complete hydrological report, prepared by an individual or company selected by the applicant and approved by the Planning Board. All costs incurred shall be borne by the applicant. Said hydrological report shall present in detail findings relative to soils by type, ground-water direction and velocity, geologic logs describing any lines of fine material and water table depth of the subject property. The Planning Board may restrict the use of lands excavated to seven (7') feet of the high water table and set conditions on the further and future use of said land. All restrictions and conditions established by the Planning Board shall be noted as part of the permit. Specific land-use restrictions and/or conditions may be amended from time to time by the Planning Board should future circumstances warrant such amendment.

F. All topsoil and subsoil stripped from operation areas shall be stockpiled and used in restoring the area.

G. Any shelters or buildings erected on the premises for use by personnel or storage of equipment shall be screened from public view and shall be removed from the premises within 60 days after the permit has expired or been revoked.

H. Operation hours shall be only between 7:00 A.M. and 4:30 P.M. on weekdays. No weekend or holiday hours are permitted. However, the Planning Board may further limit hours of operation if, after weighing factors, including impact on traffic flow and safety, it determines the public good will be served. Trucks may enter and leave the premises only within such hours. All loaded vehicles shall be suitably covered to prevent dust and contents from spilling and blowing from the load.

I. Trucking routes and methods shall be subject to approval of the Chief of Police insofar as he may regulate industrial trucking.

J. All access roads leading to public ways shall be treated with suitable material to reduce dust and mud for a distance of 200 feet back from the way. The operator shall clean up any spillage on public ways.

K. Access roads shall intersect a public way at right angles for a distance of no less than fifty (50') feet and shall be constructed at an angle to the public way or with a curve so as to help screen the operation from public view. All access roads shall have at least 250 feet visibility in each travel lane entering a state-numbered or maintained highway and at least 150 feet visibility on all other streets. Access roads shall not drain directly onto public ways.

L. Permits for the removal of earth material shall be issued for a period of not more than three (3) years, although such a permit may be renewed by the Board, without a hearing, if the Board finds all conditions have been complied with and that the work has been carried on continuously and in good faith.

M. Any permit issued hereunder shall automatically expire upon the completion of the earth removal project for which it was issued, or at such other time as may be

specified in such permit. A permit issued hereunder is not transferable and no work under any such permit shall be performed except by the holder thereof.

N. Where the duration of the permit exceeds one (1) month, the Board shall require a bond or other security of not less than seventy-five hundred dollars (\$7,500.00) per acre to ensure compliance with its conditions or authorization under this by-law, unless, in a particular case, it specifically finds that such security is not warranted and so states in its decision, giving the reasons for its finding. Where the duration of the permit is one (1) month or less, the Board may require such security as it deems necessary or desirable. No performance bond or other security shall be released in full or in part unless and until the Planning Board is satisfied that all conditions of the permit have been met.

O. No permit issued hereunder shall authorize any activity which is in violation of any Zoning By-laws of the Town.

## SECTION 5 Specific Limitations

No permit for removal of earth shall be approved by the Board except upon the following conditions:

A. A cover of topsoil of not less than six (6) inches in depth shall be replaced or allowed to remain, except that it shall be no greater than the depth of topsoil, if any, shown on submitted plans, and except where due to the construction of roads, buildings or other permanent physical features, such provision is, in the judgment of the Board, impractical.

B. Retained subsoil and topsoil shall be spread over the disturbed area and treated with appropriate fertilizer or other suitable material and seeded with an appropriate mixture of grass or legume mixture as prescribed by the Conservation District, Soil Conservation Service, United States Department of Agriculture and as determined appropriate by the Planning Board, after consultation with the above noted agencies. Trees or shrubs of prescribed species will be planted to provide screening and reduce erosion during the establishment period.

C. Restoration shall be carried on simultaneously with excavation, so that when any five (5) acres has been cleared and stumped and five (5) acres is in active mining operation, at least (5) acres shall be restored before work commences (including building haul roads) on the next contiguous five (5) acres. Final restoration work shall be completed within 120 days after expiration or withdrawal of a permit or upon cessation of operations.

D. (1) Retaining walls (the location, dimensions, materials, design and specifications of which shall have been deemed satisfactory and approved by the Planning Board) and fencing shall be constructed as the Planning Board may require. Rock cliffs, faces or outcroppings within or bordering the excavated area shall be stabilized in a manner and with such slope as shall be deemed satisfactory and approved by the Planning Board. The owner shall maintain such retaining walls and fencing, and such rock cliffs, faces and outcroppings so stabilized, furnishing annual reports of their condition to the Building Inspector, as the Planning Board may require. [Added 2006]

D. 2. Except as permitted by (d)(1) above, no slope shall be steeper than 1:2 (ratio of one foot vertical to two feet horizontal). 1:4 (ratio of one foot vertical to four feet horizontal) is preferred for erosion control and shall be required in sensitive areas. [Amended 2006]

E. Unless the permit conditions expressly require alteration of drainage patterns, the land shall be left so that natural storm drainage shall leave the property at the original natural drainage points; and so that the total discharge at peak flow and the area of drainage at any one point, is not increased.

F. Natural vegetation shall be left and maintained on undisturbed land for screening, noise reduction and erosion control purposes.

#### SECTION 6 Existing Operations

Earth removal activities in lawful operation at the time this by-law is adopted may continue under the terms of existing permits until the expiration thereof, and thereafter application shall be made under the terms of this by-law.

#### SECTION 7 Permits for Proposed Subdivisions

It is the intention of this by-law that the removal from any parcel of land for which a preliminary or definitive subdivision plan has been prepared shall be allowed only in the same manner as removal from other parcels of land in the Town. Consequently, tentative or final approval of a subdivision plan by the Planning Board shall not be construed as authorizing the removal of earth materials from the premises, except that which is to be removed in compliance with the requirements of a subdivision plan approved by the Planning Board.

#### SECTION 8 Notice and Hearing

No permit for the removal of earth material shall be issued by the Board, except as provided in Sections 2B and 4L, above, until a public hearing is held thereon, by the Planning Board, due notice of which shall be given by them, at the expense of the applicant, at least fourteen (14) days in advance, in a paper commonly used for such notices in the community, the posting of copies thereof on municipal bulletin boards, and the mailing of copies thereof to abutting property owners, including those across any streets.

#### SECTION 9 General Administration

A. The Planning Board shall exercise the powers and duties hereunder, the Inspector of Buildings shall be the enforcement officer.

B. The Board or the Inspector of Buildings may enter upon the premises involved from time to time to inspect and ensure proper conduct of the work.

C. Upon the petition of the owner, permit holder, abutters, or upon its own initiative, the Board may hold a new hearing and reissue or modify the permit, subject to any conditions not in conflict with the by-law.

D. The Board may order revocation of or suspension of the permit if the conditions established hereunder are not complied with, and the permit holder in such situation shall not be relieved of his obligations thereunder.

SECTION 10 Fees

The Board shall establish such fees for the issuance of permits as it shall find necessary for the administration of this by-law, taking into consideration the costs of clerical, civil engineering consultants, legal, and inspection expenses.

SECTION 11 Violations

A. The Inspector of Buildings, if he concludes that there has been a violation of this by-law or of the conditions of any permit issued hereunder, shall send to the permit holder or other offender, by registered mail to the address stated on the initial application if an application has been filed, or shall post on the premises if no address can reasonably be ascertained, a notice ordering a cessation of the improper activities.

B. If a permit holder, or other offender, persists in such violation, the Inspector of Buildings shall seek the imposition of penalties authorized by clause (17) of Section 21 of Chapter 40 of the General Laws, through appropriate legal action; and the penalty for removing earth in violation of this by-law shall be a fine \$300 for each offense.

C. In the event that permit holder persists in such violations, the Board may notify the permit holder by mail or posting as above, of a hearing to be held not less than four (4) days thereafter to show cause why said permit should not be revoked, and following said hearing, may in its discretion, revoke or amend the permit.

SECTION 12 Validity

The validity of any section or provision of this by-law shall not invalidate any other section or provision thereof.

SECTION 13 Effective Date

The by-law shall take effect upon compliance with the provisions of Section 32 of Chapter 40 of the General Laws.

[Amended 1987]

[Amended 2001]

ARTICLE XIII  
PERSONNEL BY-LAW

SECTION 1 Purpose and Intent

The purpose of the personnel by-law is to establish a system of personnel administration, classification and compensation based on principles that ensure a uniform, fair and efficient application of personnel policies. The intent of this by-law is to provide a method of recruitment, selection, and development of a work force that is skilled and effective in accomplishing the service delivery missions of the Town. Personnel actions are to be made without regard to sex, race, religion, color, age as defined by law, handicap, sexual orientation, political affiliation or other non-job related factors.

The personnel by-law is adopted pursuant to the authority granted by Article LXXXIX of the Constitution of the Commonwealth and General Law, Chapter 41, Sections 108A and 108C. Nothing in this by-law shall be construed to conflict with Chapter 31 of the General Laws of the Commonwealth of Massachusetts (Civil Service).

SECTION 2 Application

All Town departments and positions shall be subject to the provisions of this by-law and any regulations adopted pursuant to this by-law, excluding elected officers of the Town. [Amended 2002]

To the extent that any collective bargaining agreement conflicts with any provision of this by-law with respect to employees covered under such labor agreements, the provisions of the collective bargaining agreement shall prevail.

This personnel by-law and the regulations adopted pursuant to its provisions are intended to supersede any other previously adopted personnel by-law or other regulations or policies.

SECTION 3 Town Administrator

The Town Administrator shall be responsible for the establishment and maintenance of a personnel system based on principles referred to in this by-law and shall adopt personnel rules and regulations in accordance with Section 5 of this by-law. [Amended 2002]

SECTION 4 Establishment of a Personnel System

A personnel system shall be established by the adoption of rules and regulations pursuant to Section 5. The personnel system may include but not be limited to the following elements: a method of administration; a method of recruiting and selecting employees; a classification and compensation plan; a centralized record keeping system; personnel rules and regulations which indicate rights and obligations of employees; disciplinary procedures; and other elements that are deemed necessary.

SECTION 5 Adoption of Personnel Rules and Regulations

Personnel rules and regulations defining the rights, benefits and obligations of employees subject to this by-law shall be adopted or amended as follows:

A. Preparation of Rules and Regulations

The Town Administrator shall prepare proposed personnel rules and regulations. Any member of the Board of Selectmen, the Town Administrator, any appointing authority, or any two employees may suggest rules and regulations for consideration by the Town Administrator. The Town Administrator need not consider any proposal already considered by the Town Administrator in the preceding six months. Any person suggesting a new or amended rule or regulation shall provide the substance and reason for the rule or regulation change in writing.

B. Public Hearing

The Town Administrator shall hold a public hearing on suggested rules and regulations. A summary of any suggested rules and regulations or amendments to rules and regulations shall be advertised in a newspaper circulated in the Town of Manchester-by-the-Sea and the full text shall be posted on the Town Hall bulletin board at least five business days prior to the public hearing at which such suggestions are to be considered. The Town Administrator shall submit a copy of any suggested rule or regulation to the Board of Selectmen.

C. Town Administrator Action on Suggested Rules and Regulations

Within a reasonable period of time after the public hearing on any suggested rule or regulation, the Town Administrator shall determine if the suggested rule or regulation shall be recommended for adoption by the Board of Selectmen.

D. Action by the Board of Selectmen

The Town Administrator shall transmit any recommendations for the adoption of personnel rules and regulations or amendments, including the text, in writing to the Board of Selectmen. The Board of Selectmen shall consider the recommendations of the Town Administrator and may adopt or reject the recommendations provided, however, if the Board of Selectmen fails to act, recommended rules and regulations shall be deemed adopted upon the expiration of forty-five days from the date of transmittal of the recommendations to the Board of Selectmen.

E. Posting of Rules and Regulations

The Board of Selectmen shall cause the posting of the text of adopted rules and regulations in prominent work locations.

F. Official Record

The Town Clerk shall maintain a compilation of all personnel rules and regulations adopted by the Board of Selectmen. [Amended 2002]

SECTION 6 Severability

The provisions of this by-law and any regulations adopted pursuant to this by-law are severable. If any by-law provision or regulation is held invalid, the remaining provisions of the by-law or regulations shall not be affected thereby.

SECTION 7 Effective Date/Implementation

This amendment of the Personnel By-law shall take effect on July 1, 2002. Personnel rules and regulations then in effect shall remain in effect until amended in accordance with Section 5. The terms of Personnel Board members in office on July 1, 2002 shall expire at that time. [Amended 1991, 2002]

ARTICLE XIV  
RESIDENT PARKING

SECTION A1 Resident Parking, Permission to Park Passenger Vehicles on Certain Streets

Where parking or standing of a passenger vehicle is not otherwise prohibited by the Traffic Rules and Regulations of the Town of Manchester, adopted by the Board of Selectmen on May 10, 1949, as amended, parking on certain streets designated in Schedule A of this by-law shall be limited only to passenger vehicles registered under Chapter 90 of the Massachusetts General Laws, as principally garaged in the Town of Manchester, bearing a sticker as provided for in Section A2 hereof.

However, vehicles without sticker may park in legal parking spaces on Allen Avenue, Arbella Street, Brook Street, Lincoln Street, Norwood Avenue, Pleasant Street Extension, Rosedale Avenue, and Vine Street from within one hour before to one hour after all scheduled events at both the Schools and the Brook Street playground and athletic field.

SECTION A2 Resident Parking, Resident Parking Sticker, Application Procedure, Visitors' Permit, Fees

The owner of a passenger vehicle having a capacity of less than one (1) ton and so garaged, who intends to park on a street designated in Schedule A of this by-law, may file with the Clerk of the Board of Selectmen of the Town of Manchester, notice of his or her intention to park in said area. Evidence of this rendering of such notice shall be in the form of a sticker to be displayed on the left rear window of the vehicle. Such sticker shall be valid for one year and shall expire on May 31st of each year. Application for the sticker provided for herein shall be made in writing on forms prescribed by the Board of Selectmen and shall include but not be limited to the following information:

- (a) Name of the owner of the vehicle to be registered for resident parking;
- (b) Residential address;
- (c) Vehicle make, color and year;
- (d) State registration number.

Upon application for a sticker, the vehicle owner shall be required to present his or her vehicle registration certificate in verification of the information requested on the parking sticker application.

Each resident parking sticker shall entitle the bearer to park his or her vehicle on any street in the Town of Manchester, provided there is space available and provided parking is permitted in said area. Said sticker does not permit parking in an area otherwise restricted by the Traffic Rules and Regulations of the Town of Manchester.

The resident parking sticker may be obtained at the office of the Town Clerk of the Town of Manchester-by-the-Sea. Said parking sticker shall be valid for one (1) year and shall expire on May 31st of each year.

Each residence located on a street designated in Schedule A shall be eligible for the issuance of two (2) portable Visitor Parking permits which shall be used by the visitors of said residence. Said portable Visitor Parking permit shall bear the address of the residence and may be used only in the immediate vicinity of the residence. Said portable Visitor Parking permits shall be issued at the office of the Town Clerk of the Town of Manchester, shall be valid for one year, and shall expire on May 31st of each year.

This by-law shall take effect on June 30th, 1983. [Amended 1994]

SCHEDULE A Resident Parking Streets, Town of Manchester-by-the-Sea Motor Vehicle and Traffic By-laws

	<u>Location</u>	<u>Side</u>	<u>From and To</u>	
1.	School Street	West	Entire length	
2.	North Street	North	Entire length	*
3.	Desmond Avenue	North	Entire length	*
4.	Brook Street	South	Entire length	*
5.	Putnam Court	Both	Entire length	*
6.	Vine Street	South	Norwood to Lincoln	*
		North	Norwood to School	*
7.	Rosedale Avenue	South	Entire length	*
8.	Arbella Street	East	Entire length	*
9.	Lincoln Avenue	Both	Entire length	*
10.	Lincoln Street	North	Entire length	*
11.	Burnham Lane	South	Entire length	*
12.	Sumac Lane	Both	Entire length	*
13.	Friend Street	Both	Entire length	*
14.	Pleasant Street Ext.	Both	Entire length	*
15.	Pleasant Street	North	Entire length	*
16.	Willmonton Avenue	Both	Entire length	*
17.	Windemere Park Ext.	Both	Entire length	*
18.	Knight Road	Both	Entire length	*
19.	Pulaski Drive	West	Entire length	*
20.	Crafts Court	Both	Entire length	*
21.	Alpine Road	Both	Entire length	*
22.	Tanglewood Road	Both	Entire length	*
23.	Woodholm Road	Both	Entire length	*
24.	Deer Hill Road	Both	Entire length	*

25.	Pine Street	Both	except for area 1600 feet on west side of Parkhurst's Garage north
26.	Norwood Avenue	West	Entire length *
27.	Allen Avenue	West	Entire length *
28.	Washington Street	South	Entire length *
29.	Bennett Street	South	Entire length *
30.	Church Street	None	Entire length *
31.	Morse Court	None	Entire length *
32.	Elm Street		east from corner to Paul Lorenze Driveway
33.	Brook Street		Parking Lot - under jurisdiction of the School Department
34.	Bridge Street	Both	From Pine to Ashland *
35.			
36.	Brook Street	North	Summer to Norwood Avenue
37.	Norwood Avenue	East	Brook Street to Lincoln Street
38.	School Street	Baptist Church	two-hour visitor parking
39.	Brook Street	Wetterlow	two-hour visitor parking
40.	Vine Street	Magnuson	two hour visitor parking
41.	Harold Street		
	Mark Street		
	Country Club Drive		
	Skytop Drive		
42.	Forest Street		from Summer Street to Ledgewood Road
43.	Ledgewood Road		
	Ledgewood Circle		
	Birch Lane		
	Ancient County Way		
44.	Bennett Street		northerly side to Bridge Street
45.	Walker Road		
46.	Greenbriar Road		

\*restrictions apply from May 1 to October 1

[Adopted 1983; Amended 1984, 1986, 1993, 2010]

ARTICLE XV  
FEES

Except as otherwise provided by law, all fees collected by any officer of the Town on behalf of the Town shall be paid into the Town Treasurer and a true return thereof shall be made to the Town Accountant stating the accounts upon which amounts were received. The aggregate annual compensation of the Town Clerk and the Collector of Taxes, respectively, shall be limited to the amount of the appropriation therefor.

ARTICLE XVI  
HISTORIC DISTRICT BY-LAW

SECTION 1 This by-law shall be known and may be cited as the Manchester Historic District by-law and is adopted pursuant to Chapter 40C of the General Laws of the Commonwealth of Massachusetts, as amended.

SECTION 2 The purpose of this by-law is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings and places significant in the history of the Town of Manchester or their architecture, and through the maintenance and improvement of settings for such buildings and places and the encouragement of design compatible therewith.

SECTION 3 There is hereby established under the provision of Chapter 40C of the General Laws an historic district to be known as the Manchester Historic District, which district is bounded and described as follows:

Beginning at the northerly boundary of the B&M Railroad at the southwesterly corner of Lot 14; and thence running northerly along the westerly boundaries of Lots 14, 66, 65 and 64 to the northwesterly corner of Lot 64; thence turning and running northeasterly to the southwesterly corner of Lot 7; thence turning and running northerly along the westerly boundary of Lot 7 to the northerly boundary of Lot 7; thence turning and running northeasterly along the northwesterly boundaries of Lots 7, 8, 9, 10, 11 and 12 to the northeasterly corner of Lot 12; thence turning and running northeasterly to the northwesterly corner of Lot 13; thence turning and running easterly along the northerly boundaries of Lots 13, 15, 16, 17, 18, 19, 20 and 21 to the northeasterly corner of Lot 21; thence turning and running southeasterly to the northwesterly corner of Lot 22; thence turning and running easterly along the northerly boundaries of Lots 22, 23, 24, 25 and 26 to the northeasterly corner of Lot 26; thence turning and running southeasterly to the northerly corner of Lot 27; and thence running southeasterly along the northeasterly boundaries of Lots 27, 26, 30 and 34 to the middle of the northwesterly boundary of Lot 35; thence turning and running northeasterly along the northwesterly boundaries of Lots 35, 36, 37 and 37a; to the northeasterly corner of Lot 37A; thence turning and running southeasterly to the northwesterly corner of Lot 38; thence turning and running southeasterly along the northeasterly boundary of Lot 38 to Lot 39; thence turning and running northeasterly along the northwesterly boundary of Lot 39 to the northwesterly corner of Lot 39; thence turning and running southeasterly along the northeasterly boundary of Lot 39; thence turning and running southwesterly along the southeasterly boundary of Lot 39 to the northeasterly boundary of Lot 41; thence turning and running southeasterly along the northeasterly boundaries of Lots 41 and 42 to Lot 43; thence turning and running northeasterly along the northwesterly boundary of Lot 43 to Lot 45; thence turning and running southeasterly on the northeasterly

boundary of Lot 43 and 44 to Summer Street; thence turning and running southwesterly along Summer Street and northwesterly along Washington Street to the southwesterly corner of Lot 44; thence turning and running southeasterly to the northeasterly corner of Lot 114; thence turning and running southwesterly to the southerly corner of said Lot 114; thence turning and running southwesterly to the corner of Lots 112 and 113; thence turning and running southwesterly to the southerly corner of Lot 112; thence turning and running northwesterly along the southwesterly boundaries of Lots 112, 111, 110, 109, 108, 107, 106 to Lot 105; thence turning and running southwesterly along the southeasterly boundaries of Lots 104 and 103 to the southerly corner of Lot 103; thence turning and running northwesterly along the southwesterly boundaries of Lots 103 and 102 to Beach Street; thence turning and running southwesterly to the southerly corner of Lot 101a; thence turning and running northwesterly along the southwesterly boundaries of Lots 101a, 100 and 99 to Lot 98; thence turning and running southwesterly along the southeasterly boundaries of Lots 98 and 97 to the southerly corner of Lot 97; thence turning and running northwesterly along the southwesterly boundaries of Lot 97 to Church Street; thence turning and running northwesterly to the southerly corner of Lot 88; thence turning and running westerly along the southerly boundary of Lot 87 to the southwesterly corner of Lot 87; thence turning and running northerly along the westerly boundaries of Lots 87 and 86 to Lot 84; thence turning and running westerly along the southerly boundaries of Lots 83, 82, 81 and 80 to Lot 79; thence turning and running southwesterly along the southeasterly boundaries of Lots 79, 78, 77, 76, 75, 74 to Lot 73; thence turning and running southerly along the easterly boundary of Lot 73 to Lot 71; thence turning and running southeasterly and southerly along the northeasterly and easterly boundaries of Lots 71, 70, 69, 68 and 67 to land of the Boston and Maine Railroad; thence turning and running westerly along the northerly boundary of the B & M Railroad to the southwesterly corner of Lot 14 and point of beginning, meaning and intending to describe all lots facing Ashland Avenue, all lots on Bridge Street beginning with Lot 64, but excluding Lot 6, all lots facing on Central Street, all lots facing on Church Street, all lots facing on Union Street, all lots facing on Washington Street, and including Lot 44 on Summer Street as shown on plan entitled, "Proposed Manchester Historic District", dated March 24, 1975 by Stanley Magnuson. See Map, page 83.)

SECTION 4 There is hereby established under Chapter 40C of the General Laws, with all of the powers and duties of an historic district commission under such statute, a Manchester Historic District Commission consisting of seven members to be appointed in accordance with the provisions of such statute except, in addition to nominees set forth therein, four members shall be appointed from not less than six nominees submitted by the property owners in the district. The initial appointments to membership in the Commission shall be as follows: two members appointed for a term of one year; two members appointed for a term of two years; and three members appointed for a term of three years. Successors shall each be appointed for

a term of three years. Vacancies shall be filled in the same manner as the original appointment for the unexpired term.

SECTION 5 The Commission shall meet at least once a month, and shall act on all applications for certificates filed with them in accordance with Section 11 of 40C, except that when a public hearing is required, the commission shall make a determination within thirty-three days of the filing of the application, and upon failure to make a determination within such time, the commission shall thereupon issue a certificate of hardship.

SECTION 6 Any applicant aggrieved by a determination of the commission may, within twenty days after the filing of notice of such determination, with the Town Clerk, file a written request with the commission for a review by a person or persons of competence and experience in such matters designated by the Regional Planning Agency of which the town is a member. The finding of the person or persons making such review shall be filed with the Town Clerk within twenty days after the request, and shall be binding on the applicant and the Commission, unless a further appeal is sought in the Superior Court, as set forth in Chapter 40C, Sec. 12A of the General Laws.

SECTION 7 Notwithstanding anything contained in this by-law to the contrary, the authority of the Commission shall not extend to the review of the following categories or buildings or structures or exterior architectural features in the Manchester Historic District:

- (a) Terraces, walks, driveways, sidewalks and similar structures, or any one or more of them, provided that any such structure is substantially at grade level.
- (b) Storm doors and windows, screens, window air conditioners, lightning fixtures, antennae and similar appurtenances, or any one or more of them.
- (c) The color of paint.
- (d) The color of materials used on roofs.
- (e) The reconstruction substantially similar in exterior design of a building, structure or exterior architectural feature damaged or destroyed by fire, storm or other disaster provided such reconstruction is begun within one year thereafter and carried forward with due diligence.

SECTION 8 In case any section, paragraph or part of this by-law be for any reason declared invalid or unconstitutional by any court of competent jurisdiction, every other section, paragraph or part shall continue in full force and effect.

[Adopted 1975]

ARTICLE XVII  
GENERAL WETLANDS BY-LAW

SECTION I. Purpose

1.1 The purpose of this By-Law is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas in the Town of Manchester-by-the-Sea (“Town”) by controlling initiatives and activities deemed by the Town Conservation Commission (“ConCom”) likely to have a significant effect, immediate or cumulative, on the: protection of public or private water supply; protection of groundwater supply; flood control; erosion and sedimentation control; storm damage prevention, including coastal storm flowage; water quality; avoidance of water pollution; protection of fisheries; protection of land containing shellfish; protection of wildlife habitat and rare species habitat; agriculture; aquaculture; and other resource area values deemed important to the Town.

1.2 Subject to the rights and benefits accorded to agricultural uses and agricultural structures of all kinds under the laws of the Commonwealth of Massachusetts (“Commonwealth”) and other relevant By-Laws of the Town, this By-Law is intended to utilize the Home Rule authority of the Town to:

- 1.2.1 protect salt marshes, freshwater wetlands, streams, and coastal banks to a greater degree than under the Wetlands Protection Act, M.G.L. Ch.131 §40, *et. seq.* (“Act”);
- 1.2.2 protect vernal pools as an additional resource area recognized by the Town as significant, but not included in the Act;
- 1.2.3 protect all resource areas for their additional values beyond those recognized in the Act; and
- 1.2.4 impose, through local regulations and permits, additional standards and procedures stricter than those of the Act and its implementing regulations, 310 C.M.R. 10.00, *et.seq.* (“Regulations”).

SECTION 2. Definitions

2. 1 Except as otherwise provided in this By-Law or in the regulations promulgated hereunder, the definitions of terms and the procedures in this By-Law shall be as set forth in the Act and Regulations. The following definitions shall apply in the interpretation and implementation of this By-Law.

2.1 “Agriculture” shall include the activities defined and described in 310 C.M.R. 10.04.

2.2 “Alter” shall mean, without limitation, the following activities when undertaken in, to, upon, within or affecting resource areas protected by this By-Law:

- 2.2.1 Grading, removal, excavation, filling or dredging of soil, sand, gravel, or aggregate materials of any kind;
- 2.2.2 Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- 2.2.3 Drainage, to or from, or other disturbance of, water level or water table;
- 2.2.4 Dumping, depositing or discharging of, or filling with, any solid or liquid;
- 2.2.5 Placing of fill, or removal of material, which would change elevation;
- 2.2.6 Construction, erection, demolition, expansion or repair of buildings or structures of any kind;
- 2.2.7 Fabrication, pouring or installation of building or structural foundations;
- 2.2.8 Driving or removal of piles;
- 2.2.9 Placing of obstructions or objects in water;
- 2.2.10 Destruction of plant life including cutting or trimming of trees and shrubs;
- 2.2.11 Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
- 2.2.12 Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater; and
- 2.2.13 Any incremental activities, changes or work which have, or may have, a cumulative adverse impact on the Resource Areas protected by this By-Law.

2.3 “Bank” shall include the land area which normally abuts and confines a water body, the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

2.4 “By-Law” shall mean the General Wetlands By-Law of the Town.

2.5 “Person” shall mean any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, the Town, and any other legal entity, its legal representatives, agents, or assigns.

2.6 “Pond” shall mean the definition as provided by 310 CMR 10.04, except that the size threshold shall be 5,000 square feet.

2.7 “Practicable Alternative” shall mean that which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.

2.8 “Stream” means a body of running water, including brooks and creeks, whether naturally occurring, artificially created or artificially modified, which moves in a definite channel in the ground due to a hydraulic gradient, and which flows within, into, or out of, a Resource Area. A

portion of a stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year (*i.e.* which is intermittent) is a stream except for that portion upgradient of all bogs, swamps, wet meadows and marshes.

2.9 “Vernal Pool” shall mean, in addition to scientific definitions found in the Regulations, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which:

- 2.9.1 in most years holds water for a minimum of two continuous months during the spring and/or summer;
- 2.9.2 contains at least 200 cubic feet of water at some time during most years;
- 2.9.3 is free of adult predatory fish populations; and
- 2.9.4 provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife.
- 2.9.5 The boundary of the Resource Area for vernal pools shall be the 100 feet perpendicular to the mean annual high-water line defining the depression.

### SECTION 3. Regulations

3.1 After public notice and public hearing, the ConCom may promulgate rules and regulations to effectuate the purposes of this By-Law, effective when voted and filed with the Town Clerk.

3.2 The ConCom may establish in its rules and regulations design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, maintenance of strips of continuous undisturbed vegetative cover, landscaping and other features, and other work limits for protection of Resource Area Buffer Zones [as hereinafter defined].

3.3 Failure by the ConCom to promulgate rules or regulations, or a legal declaration by a court of law of the invalidity of such rules or regulations, shall not act to suspend or invalidate the effect of this By-Law.

### SECTION 4. Jurisdiction and Presumption

4.1 Except as permitted by the ConCom pursuant to this By-Law or as otherwise allowed by this By-Law, no person shall commence to alter the following areas (“Resource Areas”):

- 4.1.1 any freshwater or coastal wetland; salt marsh; wet meadow; bog; swamp; vernal pool; spring; bank; reservoir; lake; pond; river or stream; beach; dune; estuary; coastal bank; lands under any water body; land subject to flooding or inundation by groundwater or surface water; land subject to tidal action; coastal storm flowage or flooding; and

4.1.2 lands within 200 feet of any river or perennial stream, brook or creek (“Riverfront Area”).

4.2 Except as permitted by the ConCom pursuant to this By-Law or as otherwise allowed by this By-Law, no person shall commence to alter lands within 100 feet of any: freshwater or coastal wetland; salt marsh; wet meadow; bog; swamp; vernal pool; spring; bank; reservoir; lake; pond; stream; beach; dune; estuary; coastal bank; lands under any water body; or land subject to tidal action (“Resource Area Buffer Zone(s)”).

4.3 A Resource Area, where isolated and of a size of 5,000 square feet or greater, shall be protected whether or not it borders surface waters.

4.4 Unless the applicant demonstrates by clear and convincing evidence that a significant adverse effect will not occur, it shall be presumed that significant adverse effects will result from any alteration within:

4.4.1 a Resource Area, other than land subject to flooding or inundation by groundwater, or surface water or coastal storm flowage or flooding;

4.4.2 30 feet of the edge of any salt marsh, freshwater wetland or vernal pool; or

4.4.3 30 feet of the top of coastal bank, or the top of the bank of any stream.

4.5 The jurisdiction of this By-Law shall not extend to uses and structures of agriculture, including work performed for normal maintenance or improvement of land in agricultural or aquacultural uses.

## SECTION 5. Exemptions and Exceptions

5.1 A Notice of Intent (“NOI”) or permit not is required to be issued prior to commencing an emergency project necessary for the protection of the health and safety of the public, provided that:

5.1.1 the work is to be performed by, or has been ordered to be performed by, an agency of the Commonwealth, a political subdivision thereof, or the Town;

5.1.2 advance notice, oral or written, has been given to the ConCom prior to commencement of work or within 24 hours after commencement;

5.1.3 the ConCom or its agent certifies the work as an emergency project;

5.1.4 the work is performed only for the time and place certified by the ConCom for the limited purposes necessary to abate the emergency; and

5.1.5 within twenty one (21) calendar days of commencement of an emergency project, a NOI shall be filed with the ConCom for review as provided by this By-Law.

5.1.6 Upon failure to meet these and other requirements of the ConCom, the ConCom may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

5.2 A NOI or permit is not required for maintaining, repairing, or replacing, but not significantly changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, or other telecommunication services, provided that:

5.2.1 written notice has been given to the ConCom prior to commencement of work; and

5.2.2 the work conforms to any performance standards and design specifications in regulations adopted by the ConCom.

5.3 A NOI or permit shall not be required for work performed for normal maintenance or improvement of land in agricultural and aquacultural use as defined by this By-Law or the rules and regulations promulgated hereunder.

5.4 Other than as stated in this Section 5, all work that is exempted from regulation under the Act or the Regulations is subject to this By-Law. A NOI and a permit may be required by this By-Law whether or not an Order of Conditions (“OOC”) is also required under the Act.

#### SECTION 6. Applications and Fees

6.1 Except as provided in Section 5 hereof, a written NOI application shall be filed with the ConCom to prior to performing any activity affecting a Resource Area. The NOI shall include such information and plans as are deemed necessary by the ConCom to describe proposed activities and their effects on the Resource Area or Resource Area Buffer Zone. No activities shall commence without receiving and complying with a permit issued pursuant to this By-Law.

6.2 The ConCom may, in its discretion, accept as the application and plans under this By-Law, the application and plans filed under the Act or Regulations, but the Commission is not obliged to do so.

6.3 Any person desiring to know whether or not a proposed activity or an area is subject to this By-Law may request, in writing, a determination from the ConCom through a Request for Determination of Applicability (“RDA”) or Abbreviated Notice of Resource Area Delineation (“ANRAD”) as authorized under the Regulations, and shall include information and plans as are deemed necessary by the ConCom.

6.4 At the time of a NOI, the applicant shall pay a filing fee specified in the rules and regulations of the ConCom. The fee is in addition to that required by the Act and Regulations. The Fee is not refundable.

6.5 Pursuant to M.G.L. Ch. 44 §53G, and any rules and regulations promulgated by the ConCom hereunder, the ConCom may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists or other

experts in order to aid in the review of proposed projects (“Consultant Fee(s)”). Any consultant hired under this provision shall be selected by, and report exclusively to, the ConCom.

6.6 The Consultant Fee shall be deposited with the Town Treasurer, who shall create an account specifically for this purpose. Additional Consultant Fees may be requested where the requisite review is more expensive than originally anticipated, or where new information requires additional consultant services.

6.7 Only costs relating to consultant work done in connection with a project for which a consultant fee has been collected shall be paid from this account, and expenditures may be made at the sole discretion of the ConCom.

6.8 The ConCom shall provide applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. Notice shall be deemed to have been given on the date it is mailed or delivered and the applicant may withdraw the application or request within five (5) business days of the date notice is given without incurring any costs or expenses.

6.9 The entire Consultant Fee must be received before the initiation of consulting services. Failure by the applicant to pay the requested Consultant Fee within five (5) business days of the request for payment shall be cause for the ConCom to declare the NOI administratively incomplete and deny the permit without prejudice, except in the case of an appeal. The ConCom shall inform the applicant and Department of Environmental Protection (DEP) of such a decision in writing.

6.10 The applicant may appeal the selection of an outside consultant to the Town Board of Selectmen, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue, or a related field. The applicant shall make such an appeal in writing, and must be received within five (5) business days of the date that request for Consultant Fees was made by the ConCom. Such appeal shall extend the applicable time limits for action upon the NOI.

## SECTION 7. Notice and Hearings

7.1 Any person filing a NOI, RDA, ANRAD or other request with the ConCom shall, at the same time, give written notice thereof, by certified mail (return receipt requested), certificate of mailing, certification of delivery, or by hand delivery to:

- 7.1.1 all abutters at their mailing addresses as shown on the most recent applicable tax list of the assessors;
- 7.1.2 owners of land directly opposite the applicant’s property on any public or private street or way; and

- 7.1.3 abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water.
- 7.2 The notice required in Section 7.1 shall:
- 7.2.1 state a brief description of the project or other proposal;
  - 7.2.2 the date of any ConCom hearing or meeting date, if known;
  - 7.2.3 include a copy of the NOI or request, with plans, or shall state that a copy of the NOI or request, with plans, may be examined at the ConCom offices during regularly scheduled business hours.
- 7.3 An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the ConCom. When the person requesting a determination is not the owner, the request, the notice of the hearing and the determination itself shall be sent by the applicant to the owner.
- 7.4 The ConCom shall conduct a public hearing on any NOI, RDA, or ANRAD, with written notice given at the expense of the applicant, at least five (5) business days prior to the hearing, in a newspaper of general circulation in the Town.
- 7.5 The ConCom shall commence the public hearing within twenty one (21) calendar days from receipt of a completed NOI, RDA, or ANRAD, unless an extension is authorized in writing by the applicant. The ConCom shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, including, but not limited to:
- 7.5.1 the need for additional information from the applicant, or others, as deemed necessary by the ConCom in its discretion;
  - 7.5.2 failure of the applicant to timely supply information deemed necessary by the ConCom;
  - 7.5.3 based on comments and recommendations of the boards and officials listed in Section 8 hereof; or
  - 7.5.4 at the request of the applicant.
- 7.6 The ConCom, in its discretion, may combine its hearing under this By-Law with the hearing conducted under the Act and Regulations.
- 7.7 The ConCom shall issue a permit, other order or determination in writing, within twenty one (21) calendar days of the close of the public hearing thereon, unless an extension is authorized in writing by the applicant.

#### SECTION 8. Coordination with Other Boards

- 8.1 Any person filing a NOI, RDA, or ANRAD with the ConCom, or any amendment thereto, shall provide a copy thereof, together with any accompanying plans, within five (5) calendar days after filing with the ConCom, by certified mail (return receipt requested),

certificate of mailing, certification of delivery, or hand delivery, to the Town Planning Board, Board of Health and Building Inspector and such other Town Boards and officials as the ConCom or its Administrator may request.

8.2 If the NOI, RDA or ANRAD pertains to property within three hundred (300) feet of an adjoining city or town, a copy shall be provided in the same manner to the Conservation Commission of the adjoining municipality or town.

8.3 An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the ConCom. The ConCom shall not take final action until the boards and officials of Section 8.1 have had fourteen (14) calendar days from receipt of notice to file written comments and recommendations with the ConCom, which the ConCom shall consider, but which shall not be binding on the ConCom. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the ConCom, prior to final action.

## SECTION 9. Permits and Conditions

9.1 If the ConCom, after a public hearing, determines that the activities which are the subject(s) of a NOI, or the land and water uses which will result therefrom, are likely to have an adverse effect, immediate or cumulative, upon a Resource Area, the ConCom shall, within twenty one (21) calendar days of the close of the hearing, issue or deny a permit for the activities requested.

9.2 When making its decision as to the issuance or denial of a permit, the ConCom shall consider the:

9.2.1 extent to which the applicant has avoided, minimized and mitigated any such immediate or cumulative effect; and

9.2.2 cumulative adverse effects of loss, degradation, isolation, replacement or replication of Resource Areas in the Town and the watershed, resulting from past activities, permitted and exempt, the proposed activities, and foreseeable future activities.

9.3 Where the ConCom determines that the activities which are the subject of a NOI may have an adverse effect, immediate or cumulative, within fifty (50) feet of a Resource Area, the ConCom shall not permit such activity unless the applicant demonstrates, by a preponderance of credible evidence, that there is no practicable alternative to the proposed activity which would have a materially less adverse effect on the Resource Area.

9.4 If the ConCom issues a permit, it may impose conditions which it deems necessary or appropriate to protect the Resource Area(s), and all activities authorized by a permit issued by the ConCom shall be conducted in accordance with the conditions of such permit.

9.5 Where no conditions are adequate to protect said Resource Area(s), the ConCom is empowered to deny a permit for failure to meet the requirements of this By-Law. The ConCom may also deny a permit for failure to:

- 9.5.1 submit necessary information and plans requested by the ConCom;
- 9.5.2 comply with the procedures, design specifications, performance standards, and other requirements in the rules and regulations promulgated hereunder; or
- 9.5.3 avoid, minimize or mitigate unacceptable significant or cumulative effects upon the Resource Areas.

9.6 Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing. The ConCom may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in this By-Law or the rules and regulations promulgated hereunder, provided that:

- 9.6.1 the ConCom finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations;
- 9.6.2 avoidance, minimization and mitigation have been employed to the maximum extent feasible; or
- 9.6.3 the waiver is necessary to accommodate the public interest, or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

9.7 In reviewing activities within a Resource Area Buffer Zone, the ConCom shall presume a Resource Area Buffer Zone is important to the protection of the Resource Area(s) because activities undertaken in the Resource Area Buffer Zone have a high likelihood of adverse impact upon the Resource Area(s), either immediately, as a consequence of the activities, or over time, as a consequence of daily operation or existence of the activities. Adverse impacts from such activities and use can include, without limitation, erosion, accretion, siltation, loss of groundwater recharge, degradation of water quality, excess nitrogen and phosphorous loading and loss of wildlife habitat.

9.8 In reviewing activities within the Riverfront Area, the ConCom shall presume the Riverfront Area is important to all the Resource Areas unless demonstrated otherwise, and no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this By-Law, has proved by a preponderance of credible evidence that:

- 9.8.1 there is no practicable alternative to the proposed project with less adverse effects; and
- 9.8.2 such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this By-Law.

9.9 The ConCom may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and

professional monitoring and reporting to assure success, because of the high likelihood of failure of replication.

9.10 The ConCom may require a wildlife habitat study of a project area, to be paid for by the applicant, whenever it deems appropriate, regardless the type of Resource Area or the amount or type of alteration proposed. The decision shall be based upon the ConCom's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife corridors in the area, or actual or possible presence of rare plant or animal species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Regulations.

9.11 The ConCom shall presume that vernal pools, including the adjacent area, perform essential habitat functions. This presumption may be overcome by the applicant only by a demonstration to the ConCom, by a preponderance of credible evidence, that the basin or depression does not provide essential habitat functions. Any formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Regulations.

9.12 A permit, Determination of Applicability ("DOA"), or Order of Resource Area Delineation ("ORAD") shall expire three (3) years from the date of issuance. The ConCom may, however, in its discretion:

- 9.12.1 issue a permit expiring five (5) years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the ConCom;
- 9.12.2 allow the renewal of a permit once, for an additional one (1) year period, provided that a request for a renewal is received in writing by the ConCom not less than thirty (30) calendar days prior to expiration;
- 9.12.3 identify permit requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all present and future owners of the land.

9.13 The ConCom may, for good cause, revoke any permit, DOA, or ORAD or any other order, determination or other decision issued under this By-Law after notice to the holder, the public, abutters and town boards, pursuant to Sections 7 and 8 hereof, and after a public hearing.

9.14 Amendments to permits, DOAs, or ORADs shall be handled in the manner set out in the Regulations and policies thereunder.

9.15 The ConCom in an appropriate case may combine the decision issued under this By-Law with the permit, DOA, ORAD, or COC issued under the Act and Regulations.

9.16 No work proposed in any NOI shall be undertaken until the permit, or ORAD issued by the ConCom with respect to such work, has been recorded in the Southern Essex District Registry of Deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the ConCom that the document has been recorded. If the applicant fails to perform such recording, the ConCom may record the documents and require the Applicant to pay or reimburse the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of a COC.

## SECTION 10. Security

10.1 As part of a permit issued under this By-Law, and in addition to any security required by any other municipal or state board, agency or official, the ConCom may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured in whole, or in part, by one or both of, the:

- 10.1.1 posting of a proper bond, deposit of money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility sufficient in the opinion of the ConCom, to be released in whole or in part upon issuance of a COC for work performed pursuant to the permit; and/or
- 10.1.2 imposition and acceptance of a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town, whereby the permit conditions shall be performed and observed before any parcel may be conveyed, other than by mortgage deed.

10.2 The use of a conservation restriction, easement or other covenant described in Subsection 10.1.2 above shall only be used with the consent of the applicant.

## SECTION 11. Enforcement

11.1 No person shall alter a Resource Area, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this By-Law.

11.2 The ConCom, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this By-Law and may make or cause to be made such examinations, surveys, or sampling as the ConCom deems necessary, subject to the constitutions and laws of the United States of America and the Commonwealth .

11.3 The ConCom shall have authority to enforce this By-Law, its rules and regulations, and permits issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, non-criminal citations under M.G.L. Ch. 40 §21D, and civil and

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

11.4 Upon request of the ConCom, the Board of Selectmen and Town counsel may take legal action for enforcement under civil law. Upon request of the ConCom, the Chief of Police may take legal action for enforcement under criminal law.

11.5 Town boards and officers, including any police officer or other officer having police powers, shall have authority to assist the ConCom in enforcement.

11.6 Any person who violates any provision of this By-law or any rules and regulations promulgated hereunder, permits, or administrative orders issued thereunder, shall be punished by a fine of not more than three hundred dollars (\$300). Each day or portion thereof during which a violation continues, or unauthorized activity or other alteration remains in place, shall constitute a separate offense, and each provision of the bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

11.7 As an alternative to criminal prosecution in a specific case, the ConCom may request the issuance of citations with specific penalties pursuant to the non-criminal disposition procedure set forth in M.G.L. Ch. 40 §21D, which has been adopted by the Town in Article I, Section 4 of the General By-Laws.

#### SECTION 12. Burden of Proof

12.1 Except where a higher burden of proof is specified in this By-Law or any rules and regulations promulgated hereunder, the applicant shall have the burden of proving by a preponderance of credible evidence that the work proposed in the NOI will not have adverse effects, immediate or cumulative, upon the Resource Area.

12.2 Failure by the applicant to meet and satisfy the applicable burden of proof shall be sufficient cause for the ConCom to deny a NOI, permit or to impose conditions sufficient to prevent any adverse effects on the Resource Area.

#### SECTION 13. Appeals

A decision of the ConCom shall be reviewable in a court of competent jurisdiction in accordance with M.G.L. Ch. 249 §4.

#### SECTION 14. Relation to the Wetlands Protection Act

This By-Law is adopted under the Home Rule Amendment of the Constitution of the Commonwealth and the Home Rule statutes, independent of the Act and Regulations. It is the

intention of this By-Law that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the Act and Regulations.

SECTION 15. Severability

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

[Adopted 1987; Amended 1999, Amended (replaced in its entirety) 2010]

ARTICLE XVIII  
UNDERGROUND FUEL STORAGE

SECTION 1 Authority

This By-Law is adopted by the Town of Manchester under its home rule powers, its police powers to protect the public health and welfare, and its authorization under Massachusetts General Laws, Chapter 40, Section 21.

SECTION 2 Purpose

The purpose of this By-Law is to control the installation and maintenance of underground gasoline or fuel storage tanks over 1000 gallons, and to protect groundwater and surface water from contamination due to leakage. The provisions of this By-Law are applicable only to underground tanks.

SECTION 3 Definitions

3.1 Underground tank shall mean any fuel storage containment system for gasoline, fuel or lubricating oil with a capacity in excess of 1000 gallons, the top of which is located below the ground.

3.2 Fire Chief shall mean the chief of the fire department for the municipality in which a tank is located.

3.3 Noncorrosive soil is soil that, when tested by a qualified professional, is shown to have a resistivity greater than 10,000 ohm-cm, and that does not exhibit corrosive characteristics in a soil chemistry analysis.

3.4 100-year floodplain shall mean those areas as shown in the Flood Insurance Rate Maps for Town of Manchester under the Federal Emergency Management Agency's National Flood Insurance Program.

SECTION 4 Registration of Existing Tanks

4.1 Tank Registration. Every operator of an underground tank must file with the Town Clerk the size, type, age, contents, and location of their underground tanks within 90 days of the enactment of this By-Law.

4.2 Notification of Fire Department. The Town/City Clerk must forthwith, give the Fire Chief a copy of the information filed for each tank that is registered according to Section 4.1. The Fire Chief or his designee must check this information against fire department records. He may require evidence of the date of purchase and installation if there is any question concerning the age of the tank.

4.3 Tank Testing. Operators that are known to have underground fuel storage tanks that did not report their tank(s) as required by Section 4.1 of this By-

Law/Ordinance must have such tanks tested in accordance with Section 6.6 of this By-Law/Ordinance.

SECTION 5 Standards Applicable to the Installation of New Tanks

5.1 A. Unless proven otherwise by soil tests performed by qualified professionals, the soils in Massachusetts shall be assumed to be corrosive. Metallic tanks (except stainless steel) without cathodic protection or an underground secondary-containment system will be prohibited. Also prohibited is schedule 40 steel pipe, galvanized or black iron, or approved nonmetallic (except fiberglass-reinforced plastic pipe). If a qualified professional demonstrates that the soils in which the tank is to be placed are non-corrosive as described in Section 3.3 of the definitions, a steel tank with interior coating and other approved piping may be installed.

B. In corrosive soils, underground tanks must be constructed of: non-corrodible materials, such as fiberglass-reinforced plastic (FRP) or its equivalent; steel with external bonded non-corrodible material (i.e., FRP); a steel system cathodically protected by an impressed current cathodic system, sacrificial anodes, or equivalent protection; or, double-walled tank. These requirements are in accordance with the Massachusetts Board of Fire Prevention regulations codified in 527 CMR 906 (18).

C. In corrosive soils, piping shall be constructed of non-corrodible materials such as FRP or its equivalent, a steel system with cathodic protection, or some other type of equivalent protection, in accordance with 527 CMR 9.06 (18).

D. Cathodic protection systems shall be maintained and checked in accordance with 527 CMR 9.06 (20) (g).

E. Commercial tanks must be equipped with striker plates below openings used for product measurement or filling.

5.2. Tank Installation

A. The Fire Chief or his designee must inspect and approve underground tanks prior to their burial, in accordance with 527 CMR 9.06 (10).

B. Tanks must be installed in accordance with the manufacturer's installation techniques. Damage to protective coatings or to the FRP tank or surface must be repaired prior to covering the tank.

C. New underground tanks shall be tested for tightness, hydrostatically or with air pressure at not less than 3 pounds per square inch and not more than

5 pounds per square inch, after installation, but before being covered or placed in use in accordance with 527 CMR 9.06 (20) (b).

D. Piping should be tested in accordance with 527 CMR 9.06 (20) (a) before being covered, enclosed, or placed in use.

E. Backfill material, used to cover all new tank installations and repairs, must be of the type and quality specified by the tank manufacturer's installation procedures, and by the pertinent regulations governing storage tank installation.

F. Underground tanks that are to be located in areas subject to flooding or below the maximum water table elevation must be anchored according to manufacturer's instructions.

### 5.3 Tank Location.

A. Underground tanks may not be installed within the 100-year floodplain.

B. Underground tanks that are to be installed within the watershed of a drinking-water reservoir, or within the cone of depression of a public well (or lacking a defined cone of depression, within 1000 feet of a public water supply well), must submit, for review by the Fire Chief, the Board of Health or its agent, and the local Water Commissioners or their agent, a plan outlining the procedures or devices, such as product sensors and/or area monitoring devices, to be used to prevent water supply contamination. The plan must be endorsed by representatives of the three departments noted above prior to tank installation.

## SECTION 6 Leak Detection for Existing and New Tanks

### 6.1 Inventory Verification

A. All underground tanks, except fuel-oil tanks and tanks connected with burning equipment, must be monitored for the prevention and detection of leakage of flammable and combustible liquids in accordance with the provisions of 527 CMR 5.05 (3).

B. The daily-inventory records must be shown to the Fire Chief, or his designee, prior to issuance of a permit or license renewal.

C. The owner and operator must participate in a program of regularly scheduled inventory verification, at least once every two years, in accordance with 527 CMR 5.05 (3) (g). The operator of tanks 10 years of age or older shall submit to the Fire Chief annually a report certifying that the inventory verification has been performed, stating the calculated gain/loss over the verification periods.

D. The Fire Chief shall require the operator of an underground tank storage system to test the system for tightness, at the operator's expense, when accurate daily inventory records have not been maintained as specified in 6.1.

E. If daily inventory records indicate a loss of product in excess of 0.5 percent of the volume of product used or sold, or an abnormal increase in the amount of water contained in the tank, steps must be taken immediately in accordance with 527 CMR 5.05 (3) (e) to detect and stop the leak. The discrepancy must be reported to the Fire Chief.

6.2 Tank Testing.

A. Unless the tank operator demonstrates to the Fire Chief and the Board of Health that his tank(s) are constructed of a material that will not corrode, has product sensors, or has been repaired or tested within the last year, underground tanks shall be required, at the expense of the owner, to undergo one of the following tests at five-year intervals from the date of installation, up to the twentieth year, and annually thereafter: A Kent-Moore (Heath Petrotite) test; or a Sun-Mark leak-locator test; or the equivalent as determined by the Fire Chief. The Fire Chief shall be given at least 48 hours notice of time, date, and place of testing. Test results must be submitted to the local Fire Chief.

B. The waiver from 6.2 (a) may not be granted for a tank that is located within any of the areas specified in Section 5.3 (b).

C. If flammable fluids or their vapors have been detected in neighboring structures, sewers, or wells on or off the property locations, the Fire Chief may require that any nearby tank, including underground residential tanks less than 1000 gallons, be tested at the expense of each tank's owner.

SECTION 7 Procedure in Case of Spill or Leak

7.1 Leak Reporting

Any person who is aware of a spill or abnormal loss of flammable fluids must report such spill or loss immediately to the Fire Chief. The Fire Chief must be responsible for other notification, including the Board of Health.

7.2 Equipment Replacement/Removal

A. After a leak is confirmed, underground tanks (or piping) must be emptied immediately, and removed or repaired forthwith, under the direction of the Fire Chief.

B. A leaking tank that is twenty years old or older that does not comply with the design standards in Section 5.1 (b) must be removed and may not be repaired. A permit for its removal must be obtained in accordance with M.G.L. Chapter 48, Section 38A.

C. A leaking tank that is less than twenty years old must be repaired or removed. If the tank operator can show to the satisfaction of the Fire Chief that (in the case of steel tanks) the leak was from internal corrosion, and that the tank can be repaired so as not to pose a continuing threat to the soils and waters of the Commonwealth, considering at a minimum the corrosivity of the soil: tank age and external condition; techniques to be used for the repair; and the location of the tank, then the tank may be repaired. Operators of leaking FRP tanks must demonstrate to the Fire Chief that the tank can be repaired according to manufacturer's instructions. Operators who do not meet these requirements must remove the tank.

D. If it is necessary to replace an underground steel tank that has developed a corrosion-induced leak, all other steel tanks at the facility of the same age or older, whether they are leaking or not, shall be repaired or replaced with tanks that meet the requirements of Section 5.1 of this By-Law.

## SECTION 8 Administration.

- 8.1 The provisions of this By-Law shall be administered by the Fire Chief.
- 8.2 Variances from the specific requirements of this By-Law/Ordinance may be authorized by the chief licensing authority after notice and a public hearing.
- 8.3 Licenses issued in accordance with M.G.L. Chapter 148 Section 13 for underground tanks must be renewed at five-year intervals from the date of installation, up to the twentieth year, and annually thereafter. Tank owners must submit to the Fire Chief and the licensing authority a statement certifying satisfactory leak-detection results over the period of the permit (in accordance with Section 6.2 of this By-Law), and inventory verification, at least 30 days before the issuance of a permit renewal for the time periods specified herein. Test results must accompany the permit-renewal application.
- 8.4 Fees necessary for the issuance and renewal of permits or licenses shall be set by the Board of Selectmen.
- 8.5 The Fire Chief or his designee may, at all reasonable times, and upon reasonable notice to the occupant of the premises, enter any premises, public or private, for the purpose of investigating, sampling, or inspecting any record, condition, equipment, practice, or property relating to activities

subject to this By-Law/Ordinance, and may at any time and upon reasonable notice to the occupant of the premises enter such premises for the purpose of protecting the public health or safety, or to prevent damage to the environment. [Adopted 1984]

ARTICLE XIX  
COUNCIL ON AGING

- SECTION 1 There is hereby established a Council on Aging consisting of from seven to eleven citizens of this town, appointed by the Board of Selectmen for terms not to exceed four years for any member. Said terms shall be staggered so that not more than three appointments shall be made in any calendar year. Members can be re-appointed for concurrent terms.
- SECTION 2 The duties of said Council on Aging shall be to:
- (1) identify the total needs of the community's elderly population;
  - (2) educate the community and enlist the support and participation of all citizens concerning these needs;
  - (3) design, promote, or implement services to fill these needs, or coordinate present existing services in the community;
  - (4) promote and support any other programs which are designed to assist elderly programs in the community.
- SECTION 3 Said Council on Aging shall cooperate with the Commonwealth of Massachusetts Office of Elder Affairs and shall be cognizant of all state and federal legislation concerning funding, information exchange, and program planning which exists for better community programming for the elderly.
- SECTION 4 Said Council on Aging shall give an annual report to the Board of Selectmen with a copy of that report directed to the Commonwealth of Massachusetts Office of Elder Affairs.
- SECTION 5 The By-Laws of said Council shall be drawn by them and presented to the Board of Selectmen for their approval. [Adopted 1984]

ARTICLE XX  
COMMUNITY PRESERVATION COMMITTEE BYLAW

A. The Town of Manchester-by-the-Sea shall have a Community Preservation Committee to perform the duties as required in the Community Preservation Act, Massachusetts General Laws, Chapter 44B. The Committee shall evaluate the community preservation needs of the Town and develop a community preservation program and financial plan for the Town. The program shall identify short-term and long-term goals, set criteria for evaluating proposed acquisitions and initiatives, prioritize projects and estimate their costs. The financial plan shall include a multi-year revenue and expenditure forecast and identify the fund or other municipal financing source for each proposed project. The program and financial plan shall be reviewed and updated annually.

B. The Committee shall make recommendations annually to the Town Meeting for the acquisition, creation, and preservation of open space, for the acquisition, creation, and preservation of land for recreational use, for the acquisition and preservation of historic resources, for the creation, preservation, and support of community housing, and for the rehabilitation or restoration of such open space, land for recreational use, historic resources, and community housing that is acquired or created as provided in the Community Preservation Act. With respect to community housing, the Community Preservation Committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites. Before making its recommendations to the Town Meeting, the Committee shall consult with the Board of Selectmen, Conservation Commission, Planning Board, Housing Authority, Finance Committee, other municipal boards as needed, representatives for historic resources, representatives for parks and recreation, and citizens.

C. Commission as designated by the Commission, one member of the Planning Board as designated by the Board, one member of the Housing Authority as designated by the Authority, one representative for municipal finances as designated by the Finance Committee, one member of the Historic District Commission acting under its authority as the Historical Commission as designated by the Commission, one representative for parks and recreation as designated by the Board of Selectmen, and three at-large representatives as designated by the Board of Selectmen. The terms of the Committee members shall be three years.

D. The Committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the committee shall constitute a quorum. The committee shall abide by the Open Meeting Law of Massachusetts.

E. The Committee shall hold one or more public informational hearings annually regarding community preservation. The hearing notice shall be posted publicly and published for each of two weeks preceding the hearing in a newspaper of general circulation in the town.

F. Minutes of meetings shall be taken. Copies shall be provided to the Town Clerk.

G. This by-law shall not become effective unless the Town accepts the Community Preservation Act under Massachusetts General Laws, Chapter 44B. [Added 2005]

AN ACT REQUIRING THAT CERTAIN MEASURES IN THE TOWN OF MANCHESTER-  
BY-THE-SEA BE APPROVED AT A TOWN ELECTION

SECTION 1 Notwithstanding any general or special law to the contrary, in the Town of Manchester-by-the-Sea, no incurrence of indebtedness or other action that the Town's general by-law, as from time to time in effect, provides should be authorized pursuant to this Act, and no other action that a town meeting determines should be so authorized, shall be valid unless (i) with respect to such indebtedness or other action specified in the general by-law, the town meeting determines by majority vote that the incurrence of the indebtedness or the other action shall be submitted to the voters as a ballot question at a town election, and (ii) the ballot question as to such incurrence or as to the other action that is specified in the general by-law or that a town meeting has determined should be authorized pursuant to this Act is approved by a quantum of vote sufficient to authorize it at a town meeting. The election at which voters act on the question by ballot may be the annual election or a special election which the selectmen shall promptly call, held in either case not less than thirty and not more than sixty days after the dissolution of the meeting.

The question submitted to voters as a ballot question shall appear on the ballot in the following form: "Do you approve of the measure summarized below?" A fair, concise summary of the measure, as determined by the town counsel, shall follow. The polls at such election shall be open as required by section sixty-four of the General Laws for the election of town officers, and all other provisions of the General Laws pertaining to town elections shall apply. No quorum shall be required in voting on any ballot questions under this act.

SECTION 2 This act shall take effect upon its passage. [Enacted 1991]

## APPENDIX

- 1995: Added Article III, Section 2(h).  
Approved by the April 3, 1995 Annual Town Meeting  
Approved by the Attorney General on May 23, 1995
- 1996: Amended Article II, Section 3  
Approved by the November 13, 1995 Special Town Meeting  
Approved by the Attorney General on December 1, 1995
- Added Article VIII, Section 4  
Approved by the November 13, 1995 Special Town Meeting  
Approved by the Attorney General on December 1, 1995
- 1997: Amended Article X Section 20(a) and (b)  
Approved by the April 7, 1997 Annual Town Meeting  
Approved by the Attorney General July 11, 1997
- Added Article X, Section 34  
Approved by the April 7, 1997 Annual Town Meeting  
Approved by the Attorney General on July 11, 1997
- Added Article X, Section 36  
Approved by the April 7, 1997 Annual Town Meeting  
Approved by the Attorney General July 11, 1997
- Amended Article II, Section 14(a)  
Approved by the April 7, 1997 Annual Town Meeting  
Approved by the Attorney General on July 11, 1997
- Added Article X, Section 35 (1) and (2)  
Approved by the April 7, 1997 Annual Town Meeting  
Approved by the Attorney General on September 7, 1998
- Amended Article X, Section 35  
Approved by the November 17, 1997 Special Town Meeting  
Approved by the Attorney General on January 28, 1998
- 1998: Added Article II, Section 19  
Approved by the April 6, 1998 Annual Town Meeting  
Approved by the Attorney General on June 8, 1998
- Added Article X, Section 28(c)9

Approved by the April 6, 1998 Annual Town Meeting  
Approved by the Attorney General on June 8, 1998

1998: Amended Article X, Section 28(g)3  
Approved by the April 6, 1998 Annual Town Meeting  
Approved by the Attorney General on June 8, 1998

Amended Article X, Section 28(h)  
Approved by the April 6, 1998 Annual Town Meeting  
Approved by the Attorney General on June 8, 1998

Amended Article X, Section 28(c)3  
Approved by the April 6, 1998 Annual Town Meeting  
Approved by the Attorney General on June 8, 1998

Added Article X, Section 33(4)  
Approved by the April 7, 1998 Annual Town Meeting  
Approved by the Attorney General on June 8, 1998

Added Article X, Section 37  
Approved by the April 6, 1998 Annual Town Meeting  
Approved by the Attorney General on June 8, 1998

1999: Adopted Article X, Section 38  
Approved by the April 5, 1999 Annual Town Meeting  
Approved by the Attorney General on April 14, 1999

Amended Article XVII, Section 2.1  
Approved by the April 5, 1999 Annual Town Meeting  
Approved by the Attorney General on April 14, 1999

2000 Amended Article X, by deleting Section 15A  
Approved by the April 3, 2000 Annual Town Meeting  
Approved by the Attorney General on June 16, 2000

Amended Article X, Section 33  
Approved by the April 3, 2000 Annual Town Meeting  
Approved by the Attorney General on June 16, 2000

2001 Amended Article IV, by adding Section 10  
Approved by the April 2, 2001 Annual Town Meeting  
Approved by the Attorney General July 19, 2001  
Amended Article XII, Earth Removal  
Approved by the April 2, 2001 Annual Town Meeting

- Approved by the Attorney General July 19, 2001
- 2002 Amended Article 1, Section 4(b) Enforcement  
Approved by the April 1, 2002 Annual Town Meeting  
Approved by the Attorney General July 8, 2002
- Amended Article XIII, Personnel Bylaw  
Approved by the April 1, 2002 Town Meeting  
Approval of Attorney General not required for Personnel By-laws
- 2003 Amended Article II, Section 2, Date of Annual Election  
Approved by the April 7, 2003 Town Meeting  
Approved by the Attorney General June 10, 2003
- Amended Article 1, Section 4, Item 4-Accessible Parking By-law  
Approved by the April 7, 2003 Town Meeting  
Approved by the Attorney General June 10, 2003
- 2004 Amended Article II, Section 5, Town Meeting Quorum Requirement  
Approved by the April 7, 2004 Town Meeting  
Approved by the Attorney General April 26, 2004
- 2005 Amended Article X, Section 1 and Article 1, Section 4, Printed Matter Vending Machines  
Approved by the April 4, 2005 Town Meeting  
Approved by the Attorney General May 19, 2005
- Adopted Article XX, Community Preservation Committee By-law  
Approved by the April 4, 2005 Town Meeting  
Approved by the Attorney General June 10, 2005
- 2006 Amended Article XV, Section 14(a) Counting Votes at Town Meeting  
Amended Article XII, Section 5(d) Restoration After Excavation
- 2007 Amended Article XII, Section 2, Exemptions
- 2008 Amended Article X, Section 33, House Numbering Fine  
Amended Article XX, Section (c), Community Preservation Committee membership  
Approved by the Attorney General April 23, 2009
- 2010 Amended Article XIV, Section A1, Resident Parking, Permission to Park Passenger Vehicles on Certain Streets  
Approved by Town Meeting, April 5, 2010  
Approved by Attorney General July 6, 2010

Amended Article XVII, General Wetlands By-Law, Replaces Previous Article XVII in its Entirety

Approved by the April 5, 2010 Town Meeting

Approved by the Attorney General May 24, 2010

2011 Amended Article III, Section 7, Harbormaster

Amended Article IX, Section 3, Records and Reports

Amended Article X, Section 28 (C) (3) Police and Other Regulations

Approved by Town Meeting, April 4, 2011

Approved by Attorney General July 26, 2011