



MARTHA COAKLEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

September 9, 2011

Sandra J. Burgess, Town Clerk
4 Boltwood Ave.
Amherst, MA 01002

RE: Amherst Annual Town Meeting of May 2 2011 - Case # 5987
Warrant Articles # 26, 27, and 34 (General)
Warrant Articles # 30, 31, 32, and 33 (Zoning)

Dear Ms. Burgess:

Articles 26, 27, 30, 31, 33, and 34 - We approve the amendments to the Town by-laws adopted under these Articles on the warrant for the Amherst Annual Town Meeting that convened on May 2, 2011.

Article 32 - For the reasons provided below, we have retained for further review the vote taken under Article 32 and have placed it on "**HOLD**" status pending receipt of the additional information requested below.

The Attorney General's Office has drafted a series of Forms that must be submitted to the Office with proposed by-laws and amendments for review pursuant to G.L. c. 40, § 32, and c. 40A, § 5. These Forms are intended to provide the Attorney General's Office with all the information necessary for the Office to conduct its procedural and substantive review of the submitted by-laws and amendments. Before our 90-day review period begins, we need the following information from the Town pursuant to G.L. c. 40, § 32, and c. 40A, § 5.

FORM 7 as it pertains to Articles 32A and 32B -- In the materials submitted to us for review, it is unclear and confusing whether the proper procedures for publishing and posting the notice of the planning board hearing were followed as required under c. 40A, § 5. Please provide this Office with a written explanation whether the information that was provided on FORM 7 for Articles 32A and 32 is correct.

When we receive the above information -- or notice that the Town did not comply, in whole or in part -- we will begin the Attorney General's review of the vote taken under Article 32.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless

the town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

If the Attorney General has disapproved and deleted one or more portions of any by-law or by-law amendment submitted for approval, only those portions approved are to be posted and published pursuant to G.L. c. 40, § 32. We ask that you forward to us a copy of the final text of the by-law or by-law amendments reflecting any such deletion. It will be sufficient to send us a copy of the text posted and published by the Town Clerk pursuant to this statute.

Nothing in the Attorney General's approval authorizes an exemption from any applicable state law or regulation governing the subject of the by-law submitted for approval.

Very truly yours,

MARTHA COAKLEY
ATTORNEY GENERAL

Margaret J. Hurley

by: Margaret J. Hurley, Assistant Attorney General
Chief, Central Massachusetts Division
Director, Municipal Law Unit
Ten Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600 x 4402

Town of



AMHERST Massachusetts

TOWN HALL
4 BOLTWOOD AVENUE
AMHERST, MA 01002-2301

TOWN CLERK
(413) 259-3035
Email: townclerk@amherstma.gov

ARTICLE 26
Form 2 – Submission 2
TOWN MEETING ACTION

ARTICLE 26. Bylaw Amendment – Wetlands Protection (Conservation Commission)

VOTED to amend Section V and Section VI of the Town of Amherst Wetlands Protection Bylaw, adding the language in bold italics, as follows:

A. Amend Section V. as follows:

Any person filing a permit application or a RFD with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested), **or certificates of mailing**, or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and 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.

B. Amend Section VI. as follows:

Any person filing a permit application or RFD with the Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested), **or certificates of mailing**, or hand delivery, to the zoning board, planning board, health inspections, town engineer and building commissioner.

Action taken on 5/23/2011

A true copy, Attest:

Sandra J. Burgess
Town Clerk

Town of



AMHERST Massachusetts

TOWN HALL
4 BOLTWOOD AVENUE
AMHERST, MA 01002-2301

TOWN CLERK
(413) 259-3035
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ARTICLE 27
Form 2 – Submission 2
TOWN MEETING ACTION

ARTICLE 27. Bylaw - Adoption of Stretch Energy Code (Select Board)

VOTED unanimously to adopt the “Stretch Energy Code” set forth in the State Building Code at 780 CMR 120.AA (i.e., Appendix 120.AA), as may be amended from time to time, and to amend the Town of Amherst General Bylaws by inserting a new Article entitled “Stretch Energy Code” in Article IV, Regulations Relating to Real Estate and Real Estate Users, as set forth below:

Stretch Energy Code

- 1. Adoption.** The Town of Amherst has adopted the provisions of 780 CMR 120.AA (i.e., Appendix 120.AA of the State Building Code or the “Stretch Energy Code”), as may be amended from time to time, in place of the provisions set forth under 780 CMR 13.00, 34.00, 61.00 and 93.00.
- 2. Purpose.** The purpose of the Stretch Energy Code shall be to provide the Town with a more energy efficient alternative to the base energy code otherwise set forth under the State Building Code.

Action taken on 5/23/2011

A true copy, Attest:

Sandra J. Burgess
Town Clerk

Town of



AMHERST Massachusetts

TOWN HALL
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ARTICLE 30

Form 2 – Submission 2

TOWN MEETING ACTION

ARTICLE 30. Zoning Amendment – Watershed Protection (WP) District Lot Coverage
(Planning Board)

VOTED unanimously to amend Section 6.18 and Table 3, Dimensional Regulations and footnotes of the Zoning Bylaw by adding the language in *bold italics*, as follows:
Amend Section 6.18, as follows:

6.18 Maximum Lot Coverage

Maximum lot coverage shall include the percentage of a lot covered in the manner described in Section 6.17, Maximum Building Coverage, plus that portion of a lot covered by driveways, parking areas, walkways, tennis courts, swimming pools or other similar surfaces.

For the purposes of this Bylaw, all such surfaces, whether constructed of impermeable materials (i.e., concrete, bituminous asphalt, oil and stone and the like) or constructed of permeable materials (i.e., gravel, peastone and the like) shall be included in the calculation of maximum lot coverage.

In the Watershed Protection (WP) overlay district, no use of land shall result in the rendering impermeable of more than 15% of the total area of any lot, or more than 20% with artificial recharge, or a total of 2,500 square feet, whichever is greater.

B. Amend Table 3, Dimensional Regulations, by adding o. as a superscript to the title of Maximum Lot Coverage (%) in Table 3, and adding the following new text to the Footnotes, as follows:

o. See Section 6.18.

A true copy, Attest:

Sandra J. Burgess
Town Clerk

Town of



AMHERST Massachusetts

TOWN HALL
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AMHERST, MA 01002-2301

TOWN CLERK
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ARTICLE 31
Form 2 – Submission 2
TOWN MEETING ACTION

ARTICLE 31. Zoning Amendment – Permit Submission Requirement
(Zoning Bylaw - Planning Board)

VOTED unanimously to amend Section 11.220 by deleting the ~~lined-out~~ language and adding the language in ***bold italics***, as follows:

11.220 An applicant for site plan review shall file ***with the Planning Department*** an application form, fee, ~~six~~ ***the required number of*** copies of the site plan, and any additional information as may be required, ~~with the Planning Department~~ ***in the Planning Board's Rules and Regulations***. A copy of the application shall be filed with the Town Clerk ~~by the applicant~~.

Action taken on 5/25/2011

A true copy, Attest:

Sandra J. Burgess
Town Clerk

Town of



AMHERST Massachusetts

TOWN HALL
4 BOLTWOOD AVENUE
AMHERST, MA 01002-2301

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(413) 259-3035
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ARTICLE 33

Form 2 – Submission 2

TOWN MEETING ACTION

ARTICLE 33. Petition - Zoning Bylaw – Accessory Livestock or Poultry (Gerber et al)
VOTED by a declared two-thirds vote to amend Section 5.014 and Article 12, of the Zoning Bylaw, by deleting the lined out language and adding the language in ***bold italics***, as follows:

A. **Amend Section 5.014, as follows:**

5.014 Livestock or Poultry

The raising or keeping of livestock or poultry for use by residents of the premises shall be considered as an accessory use ~~that is to residential uses in selected residential districts in Amherst, and shall not be permitted in other districts.~~ ***All livestock and poultry raised and kept as an accessory use, whether for food, as pets, or for other uses, shall be raised and kept in a safe and humane manner consistent with best agricultural practices, and shall be subject to the regulations of this section and all applicable local and state laws. The accessory raising or keeping of livestock or poultry in residential districts:***

5.0140 Shall be allowed by right in the Outlying Residence (R-O) and Low-Density Residence (R-LD) Districts;

5.0141 Shall be allowed subject to approval of a Special Permit by the Board of Appeals, in the General Residence (R-G), Village Center Residence (R-VC), and Neighborhood Residence (R-N) and Residential Village-Center Districts, under the following provisions: and not permitted elsewhere.

5.0141.0 Only selected domesticated fowl (hens, ducks, pigeons, and doves) and domesticated rabbits (including domesticated hares) may be raised and kept as an accessory use. On such properties, no roosters, geese, swans, turkeys, pheasants, peacocks, guinea

fowl, pygmy goats, potbellied pigs, or any other livestock or poultry shall be permitted, except under the provisions of a Special Permit granted by the Zoning Board of Appeals.

- 5.0141.1** *No more than a combined total of twelve (12) total adult domesticated fowl and rabbits shall be kept on any property, regardless of the number of dwelling units. Only reproductively mature fowl and rabbits shall be considered adults counting toward this maximum.*
- 5.0141.2** *Domesticated fowl and rabbits shall be confined with fencing or other secure enclosure, which enclosure and any associated sheltering structure shall be set at least ten (10) feet from any property lines and twenty (20) feet from residential structures on any adjacent property. Within such an enclosure, a minimum of ten (10) square feet of open yard area shall be provided per adult animal. Upon receipt of a signed affidavit from all owners of property affected by a setback, in which said owners agree to a specific medication, the Building Commissioner may vary the setback from the property lines in question for enclosures, and for sheltering structures within the height and setback limitations established for accessory structures under Section 6.15.*
- 5.0141.3** *Within or attached to any such enclosure shall be provided a secure sheltering structure (e.g. coop, dovecote, or hutch, or shed as appropriate) of sufficient size to ensure the health and safety of the animals.*
- 5.0142** *In all cases, the accessory keeping and raising of livestock or poultry shall require registration of said livestock or poultry with the Amherst Health Department and shall permit regular inspections by the Animal Welfare Officer under applicable state and local law or regulations. All Special Permits issued under this section shall include as conditions of approval the submission of evidence of such registration.*
- 5.0143** *Any provision of Section 5.014, Livestock or Poultry, may be waived or modified under a Special Permit granted by the Zoning Board of Appeals for compelling reasons or for public health, safety, and general public welfare.*
- 5.014-4** *No provision of Section 5.014, Livestock or Poultry, shall apply to farm properties or agricultural operations recognized under MGL Ch. 40A, Section 3, as amended.*

B. Amend Article 12, by adding the following new definitions in alphabetical order, and renumbering the remaining sections accordingly:

12. *Livestock and Poultry: All domesticated mammals and birds that are customarily raised and kept for agricultural purposes, including but not limited to horses, ponies, donkeys, mules, cattle, goats, llamas, alpacas, swine, sheep, rabbits, hares, and fowl, which shall be defined as including, but not limited to, chickens (hens and roosters), turkeys, pigeons, capons, ducks, geese, swans, pheasants, peacocks, guinea fowl, emus, and all wild mammals and game birds raised and kept in accordance with state and local law. Except as provided for under Section 5.014, livestock and poultry shall not include domesticated animals raised and kept as pets such as dogs, cats, rabbits various species of rodents, exotic birds, reptiles, fish, amphibians or wild animals customarily as provided for raised and kept as pets in accordance with state and local law.*

12. *Pets: Domesticated animals such as dogs, cats, rabbits, selected exotic mammals (pot-bellied pigs, dwarf goats, etc.), various species of rodents (rats, mice, guinea pigs, hamsters, ferrets, chinchillas, etc.), exotic birds, reptiles, fish or amphibians. The keeping of wild animals, exotic birds, fish, reptiles, and amphibians as pets is subject to the requirements of M.G.L. Ch. 131, Sections 23, 25 and 26A, as amended, and 321 CMR 2.12 and 9.01, as amended."*

Action taken on 5/25/2011

[A motion to exclude rabbits from the article failed]

A true copy, Attest:



Sandra J. Burgess
Town Clerk

Town of



AMHERST *Massachusetts*

TOWN HALL
4 BOLTWOOD AVENUE
AMHERST, MA 01002-2301

TOWN CLERK
(413) 259-3035
Email: townclerk@amherstma.gov

ARTICLE 34

Form 2 – Submission 2

TOWN MEETING ACTION

ARTICLE 34. General Bylaw - Animal Welfare (Planning Board Alternative to Petition)
(Planning Board)

VOTED to amend Article II, General Regulations, Animal Welfare Bylaw, by deleting the lined out language and adding the language in ***bold italics***, as follows:

A. Amend Article II, as follows:

ANIMAL WELFARE BYLAW

(ATM – April 24, 2002 Art. 7)

Preamble

The animal welfare regulations are herein established ***are*** for the purpose of promoting the health, safety, and general welfare of the Town of Amherst and its animals. This bylaw contains standards relating to the treatment, confinement and keeping of dogs; ~~and~~ cat regulations, ***and regulations governing the raising or keeping of livestock and poultry on residential properties.*** The intent of this bylaw is to enhance the quality of life of citizens and animals in the Town of Amherst, and to protect the general public from damage, ***injury or illness*** that may be caused by unregulated animals.

1. Validity

This bylaw is not intended to derogate or limit any powers, rights, or obligations set forth in M.G.L. Chapter 140, but is in addition thereto.

2. License Requirement

Any owner/guardian or keeper of a dog six (6) months of age or older shall cause that dog to be licensed as required by M.G.L. Chapter 140, Section 137, commencing on April 1 of each year.

3. License Fee

The fee for every license shall be set by the Town Clerk in accordance with M.G.L. Chapter 40, Section 22F. The fee for a license for any dog that has been neutered or spayed and for which a certificate from a registered veterinarian has been presented to the Town Clerk, shall be set at no more than one-third (1/3) of the fee set by the Town Clerk in accordance with this section. The appropriate license fee, proof of rabies vaccination and neutering/spaying certificate, if any, must be presented to the Town Clerk at the time of application for a license, and, in addition, a stamped self-addressed envelope must accompany an application for a license by mail.

- A. A penalty of thirty dollars (\$30.00) shall be imposed upon all owners/guardians or keepers of dogs failing to renew licenses before June 1 of each year. This penalty shall take effect on June 1 of each year.
- B. No license fee shall be charged for specially trained service animals, provided one of the following: a doctor's prescription, a doctor's letter on office letterhead, a letter from a service animal training program, or a photo ID of said service animal is shown that such an animal is currently being/has been trained to assist an individual with a disability in accordance with M.G.L. Chapter 140, Section 139, the Americans with Disabilities Act and M.G.L. Chapter 272, Section 98a. Application shall be made for a license as provided in this bylaw, and license tags issued by the Town must be worn by any such service dog.
- C. In accordance with M.G.L. Chapter 140, Section 138, the owner/guardian or keeper of any dog six months old or older who is a new resident of the Town of Amherst shall register said dog within thirty days of taking up residence, subject to a late fine in accordance with Section 3.A.
- D. No license fee will, or part thereof shall, be refunded because of subsequent death, loss, spaying, neutering, removal from the Town of Amherst, or other disposal of the dog for which the license has been issued, nor shall any fee for a license issued to a new resident be prorated.

4. Dog Regulations

- A. It shall be a violation of this bylaw for which the owner/guardian or keeper shall be liable for a dog to:
 - i. go beyond the confines of the owner/guardian's or keeper's property unless the dog is held firmly on a leash, or is under the control of its owner/guardian or keeper, subject to restrictions of Section 5.A.
 - ii. disturb the peace or quiet or endanger the safety of any person or other animal, by biting, barking, howling, or in any other manner
 - iii. be unrestrained in violation of any order of the Select Board or of the Animal Welfare Officer
 - iv. frighten, kill, maim or otherwise injure another's fowl, livestock or domesticated animal
 - v. chase another's vehicle on any way open to public travel

- vi. be unlicensed or untagged in violation of state law or of this bylaw.

Violation of this subsection may be subject to a penalty of fifty dollars (\$50.00) for each such violation.

- B. Any person may make a complaint to the Animal Welfare Officer regarding an alleged violation of the preceding subsection. Upon receipt of such complaint, the officer shall investigate, and may issue a written order that the dog be temporarily restrained or muzzled, as the officer deems necessary. Within twenty-one days of the issuance of such a written order, the officer shall file a report requesting a Select Board hearing. On receipt of such report and after examination of the complaint, the Select Board may take actions it deems necessary. The owner/guardian or keeper of a dog subject to such an order of the Select Board may within ten days file an appeal in district court.
- C. The Animal Welfare Officer may impound any dog determined by her/him to be involved in a violation of either of the two preceding subsections hereof. If the owner/guardian or keeper can be ascertained by some identification device on the dog, the Animal Welfare Officer shall immediately advise that person of the dog's impoundment, the procedures for reimbursing the animal holding facility, the right to redeem the dog, and licensing procedures if applicable. Any dog so impounded and unredeemed after 10 days may be disposed of as provided in Chapter 140, Section 151A of the Massachusetts General Laws.

5. Dogs Unleashed

- A. No dog shall be permitted to be unleashed while in any public park, public playground, public building, or public recreational field or facility, or in any school yard or school recreational field during school hours or after-school hours when an athletic or other event is occurring on school grounds, or in the downtown business areas. Notwithstanding the prohibitions contained in the preceding sentence, the Conservation Commission, Leisure Service and Supplemental Education Commission, Amherst and Amherst-Pelham Regional School Committees, Select Board or Town Manager may issue regulations which may permit dogs to be unleashed on land controlled by said Commission, Committee, Board or Town Manager.

Violation of this subsection may be subject to a penalty of twenty-five dollars (\$25.00) for each such violation.

- B. Any dog found to be unleashed while in any public park, public playground, public building, or public recreational field or facility, or in any school yard or school recreational field during school hours or after-school hours when an athletic or other event is occurring on school grounds, or in the downtown business areas of the Town of Amherst, except as allowed in Section 5.A., may be apprehended and confined by the Animal Welfare Officer and/or a Police Officer.

- C. Any dog found to be unleashed while in any public park, public playground, public building, or public recreational field or facility, or in any school yard or school recreational field during school hours or after-school hours when an athletic or other event is occurring on school grounds, or in the downtown business areas of the Town of Amherst and not in the presence of its owner/guardian or keeper, except as allowed in Section 5.A., shall be apprehended and confined by the Animal Welfare Officer and/or a Police Officer. Upon impoundment of any dog in accordance with this subsection or the preceding subsection, the Animal Welfare Officer shall notify forthwith the licensed owner/guardian or keeper of said dog, giving the said owner/guardian or keeper a period of ten (10) days within which to recover the dog. For each and every dog picked up by the Animal Welfare Officer or her/his agent there shall be a pickup fee in increasing amounts for each occurrence, not to exceed fifty dollars (\$50.00). Fees, including the daily fee for the care of the dog, are payable by the owner/guardian or keeper before retrieval of the dog shall be allowed.

- D. It shall be unlawful for any person to fasten, chain or tie a dog to a stationary object for a period of time in the downtown business area so as to create an unhealthy situation for the animal or a potentially dangerous situation for a pedestrian, as determined by the Animal Welfare Officer.

Violation of this section may be subject to a penalty of twenty-five dollars (\$25.00) for each offense.

- E. The Animal Welfare Officer of the Town of Amherst and/or any Police Officer of said town shall enforce the provisions of this section of the bylaw.

6. Prohibits Dog Waste Excretion on Public Ways

- A. It shall be unlawful for the owner/guardian or keeper having care of a dog to permit such dog, either willfully or through failure to exercise due care or control of such animal, to excrete any solid waste upon any sidewalk, public street or public park, schoolyard or school recreational field, or public recreational areas, or upon any real property other than the real property owned or controlled by such owner/guardian or keeper. No violation of this section shall be deemed to have occurred if the owner/guardian or keeper of the offending animal promptly and voluntarily removes the animal waste.

- B. Violation of this section may be subject to a penalty of fifteen dollars (\$15.00) for each offense.

- C. This regulation shall not apply to a dog accompanying any handicapped person who, by reason of his/her handicap, is physically unable to comply with the requirements of this section.

7. Cat Regulations

- A. *Cats shall be immunized against rabies and records kept in accordance with M.G.L. Chapter 140, Section 145B.*
- B. *The Health Director, Town Animal Inspector, Police Officers, and the Animal Welfare Officer shall enforce the provisions of this bylaw.*

8. Urban Livestock or Poultry Regulations

The raising or keeping of livestock or poultry for private purposes as an incidental use by the owner(s) of any single-family residential property or on any parcel under one ownership with no more than three dwellings thereon, shall be permitted and regulated under the provisions of this bylaw and other applicable local and state regulations. The provisions of this bylaw shall not apply to farm properties or agricultural operations recognized under MGL Ch. 40A, Section 3.

- A. *Regulations - All livestock or poultry governed by this by-law shall be raised and kept in a safe and humane manner, consistent with best agricultural practices and as required under all applicable state and local regulations. Best practice regulations for the raising and keeping of livestock or poultry in Amherst under this bylaw may be promulgated by the Health Director, following consultation with the Animal Welfare Officer and the Agricultural Commission. Said regulations shall be published and otherwise made available to members of the public and prospective registrants.*

Best practice regulations shall include, but are not limited to, the following minimum standards:

- 1) *Enclosure & Shelter. Domesticated fowl or rabbits shall be confined with fencing or other enclosure sufficient to prevent access to the animals by dogs or other predators, which enclosure shall contain a minimum of ten (10) square feet of open area per adult animal. Within or attached to any such enclosure shall be provided a covered, predator-proof shelter or roosting structure (e.g. coop, dovecote, hutch, or shed, as appropriate) that is thoroughly ventilated, of sufficient size to admit free movement of the animals, designed to be easily accessed, cleaned and maintained by the owners, and at least 2 square feet per animal in size. As appropriate to the species, animals may be required to be shut into the shelter coop at night, from sunset to sunrise.*
- 2) *Feed Storage. Feed shall be stored in a secure, rodent- and predator-proof container in a manner that will not attract pests.*
- 3) *Waste. Accumulated waste shall be stored in a covered container and removed from the property at suitable intervals, or composted on site in a manner that will not attract pests or promote disease. No animal manure may be put into household trash. Applicants must have a compost bin set up at the time of any inspection.*
- 4) *Odors & Noise. Odors from domesticated fowl and rabbits, their waste, compost, or other related substances shall not be perceptible at the property boundaries. It shall be a violation of these regulations for the owner, custodian, or keeper of any animal*

governed under these regulations to allow the animal(s) to be a nuisance to any neighbors, including but not limited to: noxious odors from the animals or their enclosure; and noise of a loud and persistent and habitual nature. Complaint shall be to the Health Director.

The Animal Welfare Officer may interpret these standards and apply stricter standards, as authorized under state law.

- B. Registration & Inspections - Prior to acquiring livestock or poultry, the property owner shall register with the Amherst Health Department an application describing fully and accurately their proposal to raise and keep livestock or poultry, and registering the property involved. The Health Director may require that such applications be made on forms provided by the Amherst Health Department. All registration applications shall be reviewed and approved, denied, or approved with conditions by the Health Director after consultation with the Animal Welfare Officer. Any approved registrant shall thereafter abide by the provisions of the best practice regulations established hereunder and any specific conditions imposed under the approval, and shall permit annual inspections and such other inspections of the premises as may be required by the Animal Welfare Officer under the provisions of MGL Ch. 129, Section 7.*
- C. Fees - Under the provisions of MGL Ch. 40, Section 22F, the Health Director is authorized to set reasonable fees for registration and such inspections as may be required. There shall be no reimbursement or pro-rating of application or inspection fees.*
- D. Notice – Except as provided for under Section F., as part of every application made under these regulations, an applicant shall provide a copy of a certified abutter's list obtained from the Assessor and written notice of their intent to raise or keep livestock or poultry, to be sent by the Health Department by standard mail to parties in interest as required under MGL Ch. 40A, Section 11. The notice shall fully and accurately describe the location and the proposed number and type of animals, as well as all associated structures and facilities. The notice shall also indicate that abutters have the right to file with the Health Director written comments in support of or objecting to the application, and shall indicate the deadline for submission of comments.*
- E. Administrative Hearing - Where no special permit will be required under Amherst's zoning for the keeping or raising of animals for which application is also being made under these regulations, the Health Director shall not act on said application until more than fourteen (14) working days have passed since the mailing of notice to abutters. If at the end of that period the Health Director has received written comments whereby the owners of a majority of the abutting properties have expressed objection to the application, the Director shall schedule and hold, within thirty (30) days of the deadline for receiving abutter comment, an administrative hearing for the purpose of taking public testimony regarding the proposal. The Director shall give written notice of the time and place of the hearing, not less than seven (7) days prior to the hearing, to the applicant by certified mail, to abutters and parties in interest by mail, by posting with the Town Clerk, and by*

publication once in a newspaper of local circulation. Failure to hold an administrative hearing within the specified time period shall be considered to constitute a constructive grant of approval of the application.

- F. Exception - No certified abutters list, nor any notice to abutters, nor an administrative hearing shall be required in those instances where a special permit will also be required under Amherst's Zoning Bylaw for the keeping or raising of animals subject to an application under this bylaw.*
- G. Decision – Following the close of an administrative hearing, the Health Director shall within five (5) working days render a decision in writing based upon compliance of the proposal with best practices and such other factors of public health and welfare as the Director may deem appropriate. In approving an application, the Health Director may, following consultation with the Animal Welfare Officer, impose any reasonable conditions, safeguards and limitations including conditions above and beyond those specified in the best practices regulations developed under this section, all as in compliance with existing zoning and other regulations.*
- H. Violations – Violation of this section may be subject to a penalty of \$25.00 for each offense, with each day the violation continues constituting a separate offense.*
- I. Enforcement – Enforcing persons shall be the Animal Welfare Officer, the Health Director, or the Health Inspector/Sanitarian.*

§ 9. Conduct of Persons in Control of Animals Other than Dogs

Cattle and other animals in the public way. A person who owns or is in control of any goat, sheep, swine, horse, cow, other neat cattle, or fowl, shall not permit such animal to go at large in any of the streets, commons or parks of this town, and shall not drive or lead such animal along or upon any of the sidewalks, parks or commons of this town, except in the case of sidewalks for the purpose of immediately crossing the same. Horses used by the police department shall be excluded from this prohibition.

Violation of this subsection may be subject to a penalty of fifty dollars (\$50.00) for each violation.

§ 10. Frightening Animals

No person by noise, gesture or other means shall maliciously frighten any horse or other domestic animal in any street or public place in this town.

Violation of this subsection may be subject to a penalty of twenty-five dollars (\$25.00) for each violation.

9. Cat Regulations

- A. ~~Cats shall be immunized against rabies and records kept in accordance with M.G.L. Chapter 140, Section 145B.~~
- B. ~~The Health Director, Town Animal Inspector, Police Officers, and the Animal Welfare Officer shall enforce the provisions of this bylaw.~~

10 11. Severability Clause

The provisions of this bylaw shall be deemed severable, so that the invalidity of any one provision of the bylaw shall not affect the validity of another provision, and if any part of this bylaw shall be adjudged unconstitutional, inconsistent with state law, or otherwise invalid, such judgment shall not affect any other valid part of this bylaw.

11 12. Non-Criminal Disposition

Any enforcing person, as set forth below *herein*, taking cognizance of a violation of this bylaw, may, as an alternative to initiating criminal proceedings, enforce this bylaw non-criminally pursuant to M.G.L. Chapter 40, Section 21D. For purposes of this section, the following shall be enforcing persons: Animal Welfare Officer, *Health Director*, and Police Officer. The specific penalty for violation shall be the amount established in this bylaw.

Action taken 5/25/2011.

A true copy, Attest:



Sandra J. Burgess
Town Clerk