

# TOWN OF ROCKPORT CODE OF BY-LAWS



Approved by Town Meeting on March 22, 1997  
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ROCKPORT CODE OF BY-LAWS

TABLE OF CONTENTS

(This Table of Contents not a formal part of the Bylaws of the Town of Rockport)

	PAGE
CHAPTER 1. GENERAL PROVISIONS.....	1
Section 1. Short Title .....	1
Section 2. Definitions of Terms.....	1
Section 3. Amendments.....	2
Section 4. Town Seal .....	2
Section 5. Town Flag.....	2
Section 6. Public Meetings.....	3
Section 7. Minutes of Meetings.....	3
CHAPTER 2 TOWN MEETINGS.....	3
Section 1. Manner in Which Town Meetings are to be called...3	
Section 2. Time of Meetings.....	4
Section 3. Preparation for Town Meetings.....	4
Section 4. Rules of Procedure.....	4
Section 5. Committees Serving Town Meeting.....	7
CHAPTER 3 ELECTED OFFICERS.....	11
Section 1. Annual Town Election .....	11
Section 2. Hours of Voting .....	11
Section 3. General.....	11
Section 4. Board of Selectmen.....	12
Section 5. School Committee .....	16
Section 6. Board of Assessors .....	16
Section 7. Board of Library Trustees.....	17
Section 8. Moderator.....	17
Section 9. Planning Board.....	17
Section 10. Housing Authority.....	18
Section 11. Town Clerk.....	18
CHAPTER 4 RESERVED.....	20
CHAPTER 5 PERSONNEL.....	20
Section 1. Purpose and Intent.....	20
Section 2. Application.....	20
Section 3. Personnel Board.....	21

Section 4.	Establishment of a Personnel System .....	21
Section 5.	Adoption of Personnel Records.....	21
Section 6.	Severability.....	22
CHAPTER 6	APPOINTED BOARDS AND COMMITTEES.....	22
Section 1.	Appointment of Specific Town Officers and Committees .....	22
Section 2.	Other Town Officers and Committees.....	23
Section 3.	Legal Affairs.....	25
Section 4.	Term of Office.....	26
Section 5.	Commencement of Term.....	26
Section 6.	Written Description.....	26
Section 7.	Office Hours and Meeting Times.....	26
CHAPTER 7	FINANCES AND FISCAL PROCEDURES.....	27
A.	Budget and Fiscal Procedures .....	27
Section 1.	Fiscal Year.....	27
Section 2.	School Committee Budget.....	27
Section 3.	Submission of Proposed Finance Plan and Budget.....	27
Section 4.	Budget Message.....	27
Section 5.	The Proposed Budget.....	28
Section 6.	Action on the Budget.....	28
Section 7.	Financial Public Records.....	28
Section 8.	Approval of Financial Warrants.....	28
Section 9.	Accounting System.....	28
Section 10.	Disposal of Town Property.....	29
Section 11.	Statement of Accounts Due.....	29
Section 12.	Interest on Unpaid Water and/or Sewer Bills.....	29
Section 13.	Revocation or Suspension of Local Licenses and Permits.....	29
B.	Records and Reports.....	31
Section 1.	Records Required .....	31
Section 2.	Access to Records .....	31
Section 3.	Annual Reports.....	31
C.	Tax Title Land.....	31
Section 1.	Sale of Tax Possession Property .....	31
Section 2.	Town Meeting Vote.....	32
D.	Land Bank Fund.....	32
Section 1.	Establishment .....	32
Section 2.	Appropriations.....	32

CHAPTER 8	PUBLIC WORKS.....	33
A.	Board of Commissioners of Public Works.....	33
	Section 1. Appointed Officials.....	33
	Section 2. Appointment of Director .....	33
	Section 3. Acting Director.....	33
	Section 4. Removal of Director.....	33
	Section 5. Compensation for Director .....	33
	Section 6. Powers and Duties of Director .....	33
	Section 7. Fees Paid to Treasury .....	34
	Section 8. Estimate of Expenditures.....	35
B.	Water, Sewer and Solid Waste.....	35
	Section 1. Administration.....	35
	Section 2. Operations.....	36
	Section 3. Rates.....	37
	Section 4. Transfer Station and Recycling Center .....	38
	Section 5. Underground Storage Tanks.....	38
C.	Discharges to the Municipal Storm Drain.....	38
	Section 1. Purpose.....	38
	Section 2. Definitions.....	39
	Section 3. Applicability.....	41
	Section 4. Authority.....	41
	Section 5. Responsibility for Administration.....	41
	Section 6. Regulations.....	41
	Section 7. Prohibited Activity.....	42
	Section 8. Exemptions.....	42
	Section 9. Emergency Suspension of Storm Drainage System Access.....	43
	Section 10. Notification of Spills.....	43
	Section 11. Enforcement.....	44
	Section 12. Severability.....	45
	Section 13. Transitional Provisions.....	45
D.	Stormwater Management By-law.....	45
	Section 1. Purpose and Intent.....	45
	Section 2. Definitions.....	46
	Section 3. Authority.....	51
	Section 4. Applicability.....	51
	Section 5. Responsibility for Administration.....	53
	Section 6. Employment of Outside Consultants.....	54
	Section 7. Performance Guarantee.....	54
	Section 8. Duration of Stormwater Management Permit.....	54
	Section 9. Enforcement of Violations.....	54

Section 10.	Severability.....	55
CHAPTER 9	HARBORS & FLOATS.....	56
A.	Harbor & Floats.....	56
Section 1.	Definition of Terms.....	56
Section 2.	Mooring of Boats.....	57
Section 3.	Town Floats.....	61
Section 4.	T-Wharf.....	61
Section 5.	Piers and Wharves.....	62
Section 6.	Headway Speed.....	62
Section 7.	Towing in Anchorage Areas.....	62
Section 8.	Stray Vessels.....	62
Section 9.	Lobstering, Fishing, or Obstructing Navigation in Harbors.....	62
Section 10.	Scuba Diving, Swimming and Snorkeling .....	62
Section 11.	Fishing.....	62
Section 12.	Livery Boat Service.....	63
Section 13.	Police Assistance.....	63
Section 14.	Violations.....	63
CHAPTER 10	PUBLIC PEACE AND ORDER.....	64
A.	Prohibited Conduct.....	64
Section 1.	Public Drinking of Alcohol.....	64
Section 2.	Window Peeping.....	64
Section 3.	Discharging Firearms.....	64
Section 4.	Dressing in Vehicles .....	64
Section 5.	Defacing Public Grounds and Property.....	64
Section 6.	Canvassing, Soliciting and Distributing Handbills on Private Premises.....	65
Section 7.	Use of Tobacco Products.....	65
B.	Animal Control.....	66
Section 1.	Purpose.....	66
Section 2.	Administration.....	66
Section 3.	Nuisance Dogs.....	66
Section 4.	Prohibited Areas.....	66
Section 5.	Control of Animals.....	66
Section 6.	Fecal Deposits.....	66
Section 7.	Dogs in Season.....	67
Section 8.	Dog Tags.....	67
Section 9.	Notice of Violation .....	67
Section 10.	Penalties.....	67
Section 11.	Pick up of Offending Dogs .....	67
Section 12.	Application of Statute.....	67

Section 13.	Forms and Tags.....	67
Section 14.	Fees.....	67
Section 15.	County Fees.....	68
Section 16.	Use of Fees.....	68
C. Water Use Restrictions.....		68
Section 1.	Authority.....	68
Section 2.	Purpose.....	68
Section 3.	Definitions.....	68
Section 4.	Declaration of a State of Water Supply Conservation.....	69
Section 5.	Restricted Water Use.....	69
Section 6.	Public Notification of a State of Emergency of Water Supply Conservation: Notification of DEP.....	69
Section 7.	Termination of a State of Water Supply Conservation Notice.....	70
Section 8.	State of Water Supply Emergency: Compliance with DEP.....	70
Section 9.	Penalties.....	70
Section 10.	Severability.....	70
CHAPTER 11          MOTOR VEHICLE, STREETS AND PARKING.....		70
Section 1.	Obstructing Streets and Sidewalks.....	70
Section 2.	Damage to Sidewalks.....	70
Section 3.	Placing Water in Streets.....	71
Section 4.	Horses on Sidewalks.....	71
Section 5.	Obstructions to Vision at Intersections.....	71
Section 6.	Snow and Ice on Streets.....	71
Section 7.	Placing Objects on Streets and Sidewalks.....	71
Section 8.	Skateboarding, Coasting in Streets.....	72
Section 9.	Parking.....	72
Section 10.	Parades and Public Gatherings.....	72
Section 11.	Camping without Permission.....	72
Section 12.	Failing to Stop or Go When Directed by Police Officer.....	72
Section 13.	Motorcycle, Motorbike, Snowmobile, Trail Bike, Motorized Scooter or any other Two-Wheeled Vehicles.....	72
Section 14.	Repair of Private Ways.....	74
CHAPTER 12          PUBLIC SAFETY.....		74
Section 1.	False Security alarms.....	74
Section 2.	Swimming Pools.....	76

Section 3.	Street Names and Building Numbers.....	77
CHAPTER 13	COMMERCE AND TRADE.....	77
A.	Signs.....	77
Section 1.	Posting Bills, Placards, Etc. ....	77
Section 2.	Signs & Advertising .....	78
Section 3.	Fines.....	80
B.	Licenses.....	81
Section 1.	Licensing.....	81
Section 2.	Criminal History Check Authorization.....	81
C.	Sale of Art.....	82
D.	Gambling.....	82
CHAPTER 14	ENVIRONMENTAL PROTECTION AND PUBLIC HEALTH.....	83
A.	Wetlands.....	83
Section 1.	Purpose.....	83
Section 2.	Definitions .....	84
Section 3.	Jurisdiction.....	83
Section 4.	Applications for Permits & RFD.....	84
Section 5.	Notice and Hearings.....	85
Section 6.	Permits and Conditions.....	86
Section 7.	Regulations.....	87
Section 8.	Security.....	87
Section 9.	Compliance.....	88
Section 10.	Burden of Proof.....	89
Section 11.	Appeals.....	89
Section 12.	Severability.....	89
B.	Litter.....	89
Section 1.	Advertising.....	89
Section 2.	Debris in Streets.....	89
Section 3.	Improper Disposal in Public Places.....	89
C.	Noise.....	90
Section 1.	Sounding of Car Horns.....	90
Section 2.	Sound Devices in Motor Vehicles.....	90
D.	Water Pollution.....	90
Section 1.	Swimming in the Public Water Supply .....	90
Section 2.	Polluting Public Water Supply.....	90
Section 3.	Pollution of the Town's Water .....	90

Section 4.	Pollution.....	90
Section 5.	Swimming in the Nude.....	90
Section 6.	Rules & Regulations.....	91
E. Aesthetics & Environment.....		91
Section 1.	Vending Machines.....	91
Section 2.	Junk and Junk Vehicles.....	91
Section 3.	Topsoil, Stone and Gravel Removal .....	93
Section 4.	Off-Road Vehicles.....	95
Section 5.	Historic District.....	95
Section 6.	Floodlights and Spotlights.....	97
CHAPTER 15	REPEAL AND TRANSITION.....	98
Section 1.	Repeal and Transition.....	98
Section 2.	Action Taken Under Prior By-laws Preserved .....	98
Section 3.	Severability.....	98
Section 4.	Specific Provisions Prevail.....	98
Section 5.	Continuation of Existing Rules, Regulations and Town Meeting Votes.....	98
CHAPTER 16	ADMINISTRATION .....	99
Section 1.	Enforcement .....	99
Section 2.	Penalties.....	99



**BY-LAWS  
TOWN OF ROCKPORT**

**CHAPTER 1. GENERAL PROVISIONS**

**Section 1. Short Title**

These by-laws (which do not include the zoning by-laws) shall be known and may be cited as the Rockport Code of By-Laws.

**Section 2. Definition of Terms**

All references to the General Laws contained in the by-laws refer to the General Laws of the Commonwealth of Massachusetts and are intended to include any amendments or revisions to such chapters and sections or to the corresponding chapters and sections of any rearrangement of the General Laws enacted subsequent to the adoption of the by-laws.

Words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular; and words importing the masculine gender shall include the feminine gender.

In addition the following words for the purposes of these by-laws shall, unless another meaning is clearly apparent from the way in which the word is used, have the following meanings:

*By-Laws.* The word “by-laws” shall mean the Rockport Code of By-laws as may be amended from time to time.

*Charter.* See definition of “Town Charter” below.

*Hackney Carriage.* The words “hackney carriage” shall mean every vehicle used, driven or set up to be used for the conveyance of persons for hire, except that it shall not include railroad cars, ambulances, trackless trolley vehicles within the meaning of Chapter 163, section 2 of the General Laws, motor vehicles operated in the same manner and for the purpose stated in Chapter 159A., section 1 of the General Laws, or sightseeing automobiles as defined in Chapter 592, section 1 of the Statutes of 1913.

*Livery Boat.* A boat hired or available for hire from a person who offers boats for hire as a regular business (MGL, Ch 90B, Sec 1). Individually owned vessels for personal use available for occasional hire are exempt from this definition.

*Mailed.* The word “mailed” shall mean deposited in U.S. Mail, postage prepaid.

*Street.* The word “street” shall mean any public way, highway, street, avenue, boulevard, alley, court, lane, common or square located within the Town, but shall not include private ways.

*Town Agency.* The words “town agency” shall mean any board, commission, committee, department or office of the town government, whether elected, appointed or otherwise constituted.

*Town Bulletin Boards.* The words “town bulletin boards” shall mean the bulletin boards on which town notices are posted.

*Town Charter.* The word “charter” or the phrase “town Charter” shall mean in “Chapter 242 of the Acts of 1959, as amended by Chapter 619 of the Acts of 1987, and as most recently amended by Chapter 133 of the Acts of 1995.”

*Town Office.* The words “town office” shall mean a position in the Town held by town officers as defined.

*Town Officer.* The words “town officer” shall mean an elected or appointed official of the town.

### **Section 3. Amendments**

The Code of By-Laws may be amended, repealed, or revised from time to time by vote of the Town Meeting. All proposed by-laws adopted by the Town Meeting shall be submitted to the Attorney General for review and published, as required by the General Laws.

### **Section 4. Town Seal**

The Town shall have a seal which shall be in the following style:



The Town Clerk shall be the keeper of the town seal. Papers and documents issued from any Town agency may be attested by the use of the town seal.

### **Section 5. Town Flag**

The Town shall have a flag which shall be in the following style:

The Board of Selectmen shall be the keeper of the town’s flag and it shall be flown at their discretion.



### **Section 6. Public Meetings**

All meetings of Elected or Appointed Boards and Committees shall be held in a public place within the Town of Rockport unless there is an official state of emergency, a required site inspection in or out of town, a joint meeting with other municipal or state or federal government officials or a specific legal requirement to meet other than in the Town of Rockport. Action at such extraordinary meetings shall be confined to the declared state of emergency or the specific legal requirement for the meeting and no other Town business may be undertaken. A copy of Section 6, Public Meetings, shall be given to all Town Officials upon their appointment or election (Added ATM 03/18/00).

### **Section 7. Minutes of Meetings**

All Boards, Commissions, Committees and subcommittees shall notify the Town Clerk within 45 days of their posted meetings that copies of all minutes, with the necessary information conforming to G.L. c.66, sec. 5A, are available. (added ATM 4/2/05)

## **CHAPTER 2. TOWN MEETINGS**

### **Section 1. Manner in Which Town Meetings are to be Called**

- a. Warrants.** Every town meeting shall be called pursuant to a warrant issued by the Board of Selectmen which shall state the time and place at which the meeting is to convene and the subjects which are to be acted upon.
- b. Notification.** The Board of Selectmen shall cause copies of the warrant for each town meeting to be posted on the Town bulletin boards and at the two post offices in the Town at least seven (7) days before the Spring Town Meeting and fourteen (14) days before the Fall Town Meeting or any Special Town Meeting. Such posting shall be deemed to be the legal notification of such meeting, and the legal service of such warrant.
- c. Ringing of Church Bells.** The Board of Selectmen shall ask that the church bells of the Town be rung for fifteen (15) minutes beginning one-half hour before any Town Meeting. The notification provided in this subsection c. shall not be deemed to be part of the legal notification of the Town Meeting and failure to comply with the provisions of this subsection shall not serve to invalidate the proceedings of any Town Meeting.

## **Section 2. Time of Meetings**

**a.** In General the Town Meeting shall meet in regular meetings twice each calendar year and in special meetings, at such times as the Board of Selectmen may direct or as otherwise provided by law.

**b.** Meeting Dates. The Spring Town Meeting, which shall be the Annual Town Meeting for purposes of G.L. c. 39 § 9, primarily concerned with the adoption of an annual budget and other warrant articles which have a fiscal effect on the Town, shall meet on the first Saturday in April. The Fall Town Meeting, which shall be primarily concerned with non-fiscal matters, shall meet on the second Monday in September.

## **Section 3. Preparation for Town Meeting**

**a. Public hearings.** Public Hearings on warrant articles are held for the purpose of informing interested citizens as provided by the charter and other sections of the by-laws.

## **Section 4. Rules of Procedure**

**a. In General.** The proceedings of Town Meetings shall be governed by the rules of parliamentary procedure contained in Robert's Rules of Order, as the same may be revised from time to time, so far as they may be adapted to Town Meetings, unless another provision is made by statute or by these by-laws.

**b. Quorum.** For any session, including any adjourned session, of a meeting convened on a date specified in Section 2.b., the quorum shall be those persons present. For any other Town Meeting 150 voters shall constitute a quorum, but a lesser number may vote to adjourn

**c. Order or Action.**

(i) Other than the first six (6) articles of the Annual Town Meeting, which shall be acted upon in the order of their arrangement in the warrant, the order of action upon articles in the warrant shall be determined by lottery conducted by the Town Clerk in such a manner to insure that, at all times, the meeting knows which article will follow the one on the floor. The Moderator may rule that certain warrant articles are related, in which event all related articles shall come on for action when the first of them is drawn.

(ii) Any person intending to move the adoption of a resolution not under any article shall give notice of any such proposed resolution to the Moderator prior to the opening of the meeting or as soon thereafter

as practicable. The Moderator shall then announce to the Town Meeting the substance of the proposed resolution and shall further announce that the proposed resolution shall be considered immediately after all business under the warrant articles has been concluded.

(iii) The meeting may by four-fifths vote exempt any warrant article from the lottery and schedule it for action at any time certain or accelerate the time for consideration of any proposed resolution. The meeting may by majority vote to postpone action under any warrant article to a time certain. (Added 03/21/98)

(iv) Each main motion pursuant to an article in the warrant must be phrased so that an affirmative (yes) vote indicates approval of the subject matter of the article and a negative (no) vote indicates disapproval of such subject matter. The use of “to postpone indefinitely” as a main motion is prohibited.

**d. Participation in Debate.** With respect to each article in the warrant, the Moderator shall first recognize the sponsor to offer a main motion. No person, except a legal voter of the Town, shall be permitted to take part in a Town Meeting except by permission of the Moderator.

**e. Addressing the Meeting: literature.** No person shall address the meeting unless recognized by the Moderator, nor speak more than once on the same subject to the exclusion of any other person who desires to speak, nor shall any literature other than copies of the warrant and official reports thereon be distributed in the building within which the meeting is held or within 150 feet thereof except that literature (clearly identified as to its proponent or source) may, with the prior approval of the Moderator, be left on tables near the entrance for the voters to pick up when entering the hall.

**f. Limitation of Individual Speakers.** Unless granted an extension of time by vote of the meeting; the individual speaking as the principal proponent on a main motion shall not speak for more than ten minutes. Subsequently, any person speaking on any motion shall not speak for more than five minutes unless granted an extension of time by the meeting.

**g. Division of Questions.** If a motion is susceptible of a division, it shall be divided and the question put separately upon each part thereof if ten voters so request, or the Moderator, in his discretion, so directs. (Amended 03/21/98)

**h. Standing Vote.**

(i) On matters requiring a majority or two-thirds vote, the vote need not be counted or recorded. However, if the vote is declared by the chair is immediately doubted or a division of the house is called for, or if a four-fifths or nine-tenths vote is required by statute and the vote is not unanimous a standing vote shall be ordered.

(ii) Before a standing vote, the Moderator shall request all persons in the house to be seated and may appoint tellers. The question shall then be distinctly stated, and those voting in the affirmative and negative, respectively, shall rise and stand in their places until they are counted by the Moderator or Tellers. No person shall be counted who does not comply with the request to occupy a seat.

(iii) Upon request of twenty voters, the vote on any question shall be taken by written ballot. The request for vote by ballot may be made at any time prior to the vote being taken on any question. The form of the ballot used and the method of issuing, collecting and counting such ballots shall be as directed and determined by the Moderator. It shall be the duty of the Town Clerk to have available at every Town Meeting a sufficient supply of such ballots.

**i. Reconsideration.** A motion to reconsider a matter previously acted upon shall require an affirmative vote of two-thirds (2/3) of those present and voting. Any person intending to move for reconsideration shall give notice of such intent to the Moderator promptly and in no event except by unanimous consent, more than thirty (30) minutes after the vote reconsideration of which is sought, regardless of whether or not the meeting is then in session. The Moderator shall, as soon as is practicable, inform the Town Meeting as to when the motion for reconsideration will be presented. All motions for reconsideration shall be presented before any new warrant article is taken up for action at the beginning of the next succeeding session of Town Meeting unless action on all other warrant articles is completed prior to the end of the session during which such notice is given, in which case motions for reconsideration shall be presented immediately after all other business, except for resolutions not under a warrant article, has been concluded.

**j. Motion to Dissolve Meeting.** No motion the effect of which would be to dissolve the meeting shall be in order until every article in the warrant has come to the floor and there has been a reasonable opportunity for a motion in accordance with Section 4.c (iv) pursuant to every article. This section shall not preclude the postponement of consideration of any article by adjournment of the meeting to a stated time.

## **Section 5. Committees Serving Town Meeting**

### **a. Finance Committee**

(i) Establishment. There shall be a finance committee having the responsibilities and organized in the manner described below.

(ii) Composition. Term of Office. The finance committee shall consist of nine voters, who shall hold no other Town office. The members shall be appointed for terms of three years each, so managed that the terms of office of three members shall expire each year.

(iii) Appointment of Members. The members of the finance committee shall be appointed by the Board of Selectmen.

(iv) Time for Appointments. Appointments to the finance committee shall be made within thirty days following the dissolution of the Spring Town Meeting.

(v) Duties. The finance committee in addition to its other statutory duties shall each year receive and review the proposed budgets submitted by the Town Agencies. The committee shall conduct a series of meetings on the budget pursuant to Chapter 7, section 6a. and thereafter shall file its recommended budget with the office of the Town Clerk for distribution to interested citizens and subsequent Town Meeting action pursuant to Chapter 7, section 6b.. Copies of the minutes of the meetings of the finance committee shall be filed with the Town Administrator and made available to all parties.

The finance committee shall prepare for Town Meeting committee recommendations pertaining to all warrant articles which involve the expenditures of Town funds. It may also, at its discretion, report on any article in the warrant.

(vi) Filling of Vacancies. Whenever a vacancy occurs on the Committee, the Board of Selectmen shall select a voter of the Town to fill the vacancy for the unexpired term.

### **b. Town Government and By-Law Committee**

(i) Establishment. There shall be a Town Government and By-Law Committee, which shall be an advisory committee pursuant to G.L. c. 39, Section 16 and shall have the responsibilities and organized in the manner described below.

(ii) Composition; Term of Office. The Town Government and By-law committee shall consist of five (5) members who shall hold no other Town Office. The members shall be appointed for terms of three years each, so arranged that as nearly an equal number of terms as possible shall expire each year.

(iii) Appointment or Members. The members of the Town Government and By-law Committee shall be appointed by an appointing committee consisting of the Moderator, the Chairman of the Board of Selectmen, and the Chairman of the Finance Committee.

(iv) Duties. The Town Government and By-law Committee shall review all warrant articles which would, if adopted, effect or require changes in these by-laws. The committee shall also be responsible for the decennial review of the by-laws and for the review of proposed changes in the charter.

The committee shall prepare a written report stating the Committee's recommendations for favorable or unfavorable action and the reasons therefore, pertaining to any warrant articles which would, if adopted, effect changes in the by-laws or the charter.

(iv) Filling of Vacancies. Whenever a vacancy occurs on the Committee, the Moderator shall fill the vacancy for the unexpired term.

**c. Special Committees**

(i) Establishment. All special committees created by action of the Town Meeting shall be appointed by the Moderator, unless the Town directs otherwise, and shall report as directed by the Town.

(ii) Organization. Each committee shall notify the Town Clerk of its organization, the time and place of its meetings and of any vacancies which may occur on the committee.

(iii) Term. All such special committees, unless the Town directs otherwise, shall be deemed to be dissolved as of the date of the adjournment of the Spring Town Meeting next following their creation or extension. All special committees in existence at the passage of this section shall be deemed to be in existence until the adjournment of the next Spring Town Meeting.

(iv) Report. When the report of a committee is placed in the hands of the Moderator it shall be deemed to be properly before the meeting for its action thereon. A vote to accept the report shall discharge the



committee but shall not be the equivalent to a vote to carry out its recommendation without a special vote to adopt them, but the service of such committee may be extended by vote of the Town.

**d. Community Preservation Committee** (added ATM 4/6/2002 & amended by STM 6/10/02)

(i) Establishment. There is hereby established a Community Preservation Committee, consisting of nine (9) voting members pursuant to the provisions of G.L., c. 44B, s. 5. The composition of the committee, the appointing authority and the term of office for the committee members shall be as follows:

- (1) One member of the Conservation Commission as designated by the Commission;
- (2) One member of the Historical Commission as designated by the Commission;
- (3) One member of the Planning Board as designated by the Board;
- (4) One member of the DPW Board of Commissioners, whose responsibilities include the duties of the board of park commissioners established under G.L., c.45, s. 2, as designated by the Board.
- (5) One member of the Housing Authority as designated by the Authority;
- (6) Four members to be appointed by the town moderator.

Each member of the Committee shall serve for a term of three years or until the person no longer serves in the position or on the board or committee as set forth above, whichever is earlier. In order that as nearly an equal number of terms as possible shall expire each year, the initial terms of the members to be appointed by the Town Moderator shall be for one year and the initial terms of the two remaining members to be appointed by the Town Moderator shall be two years. After those initial terms, all their terms shall be three years.

Should any of the officers and commissions, boards, or committees who have appointing authority under this by-law be no longer in existence for whatever reason, the Town Administrator shall appoint a suitable person to serve in their place.

Any member of the Committee may be removed for cause by their respective appointing authority after hearing.

(ii) Duties

(1) The community preservation committee shall study the needs, possibilities and resources of the Town regarding community preservation. The committee shall consult with existing municipal boards, including the conservation commission, the historical commission, the planning board, the department of public works, and the housing authority, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the committee shall hold one annual public informational hearing, or more at its discretion, on needs, possibilities and resources of the town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the town.

(2) The community preservation committee shall make recommendations to the Town Meeting for the acquisition, creation and preservation of open space, for the acquisition and preservation of historic resources, for the acquisition, creation and preservation of land for recreational use, for the creation, preservation and support of community housing and for rehabilitation or restoration of such open space, historic resources, land for recreational use and community housing that is acquired or created as provided in this section. With respect to community housing, the community preservation committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.

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

(4) In every fiscal year, the community preservation committee must recommend either that the legislative body spend, or set aside for later spending, not less than 10% of the annual revenues in the Community Preservation Fund in each of the following areas for a. open space (not including land for recreational use), b. historic resources; and c. community housing.

(iii) Requirement for a quorum and cost estimates. The community preservation committee shall comply with the provisions of the Open Meeting Law, G.L., c. 39, s. 23B. The committee shall not meet or

conduct business without the presence of a majority of the members of the community preservation committee. The community preservation committee shall approve its actions by majority vote.

Recommendations to the Town Meeting shall include the committee's anticipated costs.

(iv) Amendments. This by-law may be amended from time to time by a majority vote of the Town Meeting, consistent with the provisions of G.L., c. 44B.

(v) Severability. In case any section, paragraph or part of this by-law be for any reason declared invalid or unconstitutional by any court, every other section, paragraph or part shall continue in full force and effect.

(vi) Effective Date. Provided that the Community Preservation Act is accepted at the 2002 Annual Town Election held on April 16, 2002, this by-law shall take effect upon the approval by the Attorney General of the Commonwealth, and after all requirements of G.L., c. 40, s. 32 have been met. Each appointing authority shall have thirty days after approval by the Attorney General to make their initial appointments.

### **CHAPTER 3. ELECTED OFFICERS**

#### **Section 1. Annual Town Elections**

The Annual Town Election to fill elected Town offices, and to determine any matters which must be determined by referendum election, shall be held on the fifth Tuesday after the first Saturday of April. (Amended ATM 03/24/01 & FTM 9/12/05)

#### **Section 2. Hours of Voting**

During all annual Town elections, the polls shall open at 7:00 a.m. and shall remain open until 8:00 p.m.; however, those who arrived by 8:00 p.m. shall be allowed to vote.

#### **Section 3. General**

**a. Elective Offices.** The offices to be filled by the voters shall be the Board of Selectmen, School Committee, Board of Assessors, Trustees of the Public Library, Moderator, Town Clerk, Planning Board, Housing Authority and such members of regional authorities or districts as may be established by statute, inter-local agreement or otherwise.

**b. Compensation.** Elected Town officers shall receive for their services such compensation as may annually be provided for that purpose by appropriation.

**c. Coordination of Officers.** Notwithstanding their election by the voters, the town officers named in this article shall be subject to the call of the Board of Selectmen, at all reasonable times, for consultation, conference and discussion of any matter relating to their respective offices.

#### **Section 4. Board of Selectmen**

**a. Composition: Term of Office.** There shall be a Board of Selectmen consisting of five (5) members elected for three (3) year terms, so arranged that as nearly an equal number of terms as possible shall expire each year.

**b. Powers and Duties.** The executive powers of the Town shall be vested in the Board of Selectmen. The Board of Selectmen shall have all of the powers and duties given to boards of selectmen under the constitution and general laws of the Commonwealth, and such additional powers and duties as may be authorized by the charter, by-law, or other Town Meeting vote. The Board of Selectmen shall cause the laws and orders of the government of the Town to be enforced and a record of all its official acts to be kept.

**c. Appointing Powers.** The Board of Selectmen shall appoint the zoning board of appeals, collector and treasurer, veterans' agent, sealer of weights and measures, inspector of animals, officers and registrars of voters other than a town clerk, director of emergency management, election officers, forest warden, building inspector, town accountant, finance committee, town attorney, members of the town police department, fire engineers, members of the board of health, a board of commissioners of public works, town administrator, and members of all appointed multiple member bodies for whom no other method of selection is provided by the charter, by-law, general or specific law, except persons serving under other elected town officers and officials appointed by state officers.

**d. Licensing Authority.** The Board of Selectmen shall be the licensing board of the Town and shall have the power to issue licenses, to make all necessary rules and regulations regarding the issuance of such licenses, and to attach such conditions and restrictions thereto as it deems to be in the public interest, and to enforce the laws relating to all businesses for which it issues licenses.

**e. Additional Powers and Duties.** In addition to those powers and duties given by the charter or by the by-laws, the Board of Selectmen shall have the following powers and duties:

- (i) The Board of Selectmen shall be the agents of the Town to institute, prosecute, defend, and compromise all claims, actions, and

proceedings by or against the Town or in which the rights or interests of the Town are or may be involved.

(ii) The Board of Selectmen shall have the authority to authorize the sale or Disposal of any property or material within the possession or control of any Town agency that has become obsolete or is not required for further use by the Town agency and shall have the sole authority to authorize in writing the sale or other disposal of any such property having a value of more than \$500 and not exceeding \$1,000 in value.

(iii) The Board of Selectmen shall have the authority and duty, consistent with other by-laws, to issue and revoke licenses to specific persons to engage in the activities set forth below. Such licenses may specify the terms and conditions under which such activities may be conducted. Such activities include, but are not limited to:

- (1) the purchasing, selling or bartering of junk old metals or second hand articles within the Town;
- (2) the setting up, using or driving of hackney carriages for the conveyance of persons for hire from place to place within the Town to places outside the Town;
- (3) the discharging, exploding, setting off (or causing any of the foregoing) fireworks within the Town;
- (4) the setting up, operating or carrying on of any self-service laundry or Laundromat, so-called, or self service dry cleaning establishment;
- (5) the setting up, operating or carrying on of any business as a transient vendor as defined in G.L. c. 101 Section 1;
- (6) the hawking or peddling of any magazines, publications, books, magazine or book subscriptions;
- (7) setting up, operating or carrying on of any business for which a license is required by statute to be issued or which may be issued by the licensing authority of the Town.
- (8) Livery Boat Service. (added ATM 4/3/04)

Every license so granted shall expire on the first day of May next after the date thereof. No license shall become effective until the licensee has paid to the Town Treasurer the appropriate fee. No license may be sold, assigned, or transferred without the consent of the Board of Selectmen endorsed thereon.

(iv) The Board of Selectmen shall have the authority and duty, consistent with other laws, to issue and revoke permits to specific persons to engage in the activities set forth below. Said permits may

specify the terms and conditions under which such activities may be conducted. Such activities include but are not limited to:

- (1) the placing of any house, or other building, in any street in the Town; and
- (2) the placing of any obstruction in any street or upon any sidewalk within the Town and allowing it to stay there.

(v) The Board of Selectmen, unless otherwise provided by law, may establish and promulgate fees to be charged:

- (1) by the Selectmen for licenses or permits issued by them;
- (2) by Town agencies for permits or other services rendered by said agencies unless fees or conditions have been established by law or otherwise;
- (3) for beach parking, resident parking, and transfer station stickers issued by Town agencies.

(vi) The Board of Selectmen shall supervise and be responsible for the efficient administration of all function under its control, as may be authorized by the charter, by-law, or by other Town Meeting vote including all officers appointed by it and their respective departments.

(vii) The Board of Selectmen shall appoint, and may remove, subject to the civil service law where applicable, all department heads, all officers and all subordinates and employees for whom no other method of appointment is provided in the charter, except persons serving under other elected agencies and appointments made by representatives of the Commonwealth.

(viii) The Board of Selectmen shall supervise and be responsible for the administration of all personnel policies, practices and related matters for all municipal employees as established by Classification and Compensation Plan, by-law and all collective bargaining agreements entered into by the Board of Selectmen of behalf of the Town. (Amended 03/24/01)

(ix) The Board of Selectmen shall fix the compensation of all Town officers and employees appointed by it within the limits established. by appropriations and the Classification and Compensation plan adopted by the Town Meeting. (Amended 03/24/01)

(x) The Board of Selectmen shall see that all of the provisions of the general laws, the charter, the by-laws and other Town Meeting votes that require enforcement by it, or officers and employees subject to its discretion and supervision, are faithfully carried out.

(xi) The Board of Selectmen shall prepare and submit a proposed annual operating budget and a proposed capital budget as provided in Chapter 6.

(xii) The Board of Selectmen shall assure that a full and complete record of the financial and administrative activities of the Town is kept and shall render a full report to the Town Meeting at the end of each fiscal year and such other times as the Town Meeting may require.

(xiii) The Board of Selectmen shall have full jurisdiction over the rental and use of all Town facilities, except schools and properties designated by charter or by-law or other Town Meeting vote. It shall be responsible for the maintenance and repair of all Town property placed under its control by charter, by-law or by other Town Meeting vote.

(xiv) The Board of Selectmen may at any time inquire into the conduct of office of any officer, employee or department under its control.

(xv) The Board of Selectmen shall keep a full and complete inventory of all property of the Town, both real and personal.

(xvi) The Board of Selectmen shall be responsible for the negotiation of all contracts involving any subject within its jurisdiction.

(xvii) The Board of Selectmen shall be responsible for purchasing all supplies, materials and equipment, and shall award all contracts for all departments and activities of the Town. It shall examine and inspect, or cause to be examined or inspected the quality, quantity and condition of materials, supplies or equipment delivered to or received by any Town agency. It may examine services performed for any Town agency secured through the purchasing procedure.

(xviii) The Board of Selectmen shall prepare a table or organization establishing personnel requirements within the Town agencies created by by-law or charter.

(xix) The Board shall perform any other duties required of it by the charter, by-law, or other Town Meeting vote.

(xx) The Selectmen shall establish emergency calling numbers for various departments of the Town and shall indicate which calling numbers shall be used by automatic or mechanical calling or signal devices and which numbers shall be restricted to individual or personal use. Any person who intends to install an automatic or mechanical

calling or signaling device which is designed to call or use a Town of Rockport Administrative calling number shall notify the Chief of Police.

(xxi) The Board of Selectmen is authorized to accept gifts of land and easements on behalf of the Town without a Town Meeting vote provided no appropriation of funds is necessary for the acquisition.(added ATM 4/5/03)

(xxii) The Board of Selectmen shall have the authority to apply for and expend state and federal grants which require town appropriation, subject to Town approval of the expenditure of those funds. (added ATM 4/5/03)

## **Section 5. School Committee**

**a. Composition; Term of Office.** There shall be a School Committee consisting of five (5) members elected for three (3) year terms, so arranged that as nearly an equal number of terms as possible shall expire each year.

**b. Powers and Duties.** The School Committee in each city and town and each regional school district shall have the power to select and to terminate the superintendent, shall review and approve budgets for public education in the district and shall establish educational goals and policies for the schools in the district consistent with the requirements of law and statewide goals and standards established by the board of education.

## **Section 6. Board of Assessors**

**a. Composition; Term of Office.** There shall be a Board of Assessors consisting of three (3) members elected for three (3) year terms, so arranged that one term shall expire each year.

**b. Powers and Duties.** The Board of Assessors shall annually make a valuation of all property, both real and personal, within the Town. The Board of Assessors may appoint an appraiser and shall have all of the powers and duties given to boards of assessors under the laws of the Commonwealth, and such additional powers and duties as may be authorized by the charter, by-law or other Town Meeting vote.

**c. Additional Powers and Duties.** The Board of Assessors shall have the following additional duties:

(i) The Board of Assessors shall compile and deliver the tax list and warrant for collections to the Town Collector. Additional warrants



shall be issued to the Collector for all taxes assessed or reassessed which are not covered by the original warrant.

(ii) The Board of Assessors shall keep the record of all tax abatements required by law. Each month the Board of Assessors shall notify the Town Collector and Town Accountant in writing of the amount of taxes abated in the preceding month; stating separately the amount abated from each tax levy.

### **Section 7. Board of Library Trustees**

**a. Composition; Term of Office.** There shall be a Board of Library Trustees consisting of three (3) members elected for three (3) year terms so arranged that one term shall expire each year.

**b. Powers and Duties.** The Board of Library Trustees shall have the custody and management of the library and of all property of the Town related thereto. All money raised or appropriated by the Town for its support and maintenance shall be expended by the Board, and all money or property that the Town may receive by gift or bequest shall be administered by the Board in accordance with the provisions of such gift or bequest. The Board of Library Trustees shall have all of the powers and duties given to boards of library trustees under the constitution and general laws of the Commonwealth and such additional powers and duties as may be authorized by the charter, by-law or other Town Meeting vote.

### **Section 8. Moderator**

**a. Composition; Term of Office.** There shall be a Moderator elected for a three (3) year term.

**b. Powers and Duties.** The Moderator shall preside and regulate the proceedings at all sessions of the Town Meeting, decide all questions of order and make public declarations of all votes. The Moderator shall have all of the powers and duties given to moderators under the constitution and general laws of the Commonwealth and such additional powers and duties as may be authorized by the charter, by by-law or by other Town Meeting vote.

### **Section 9. Planning Board**

**a. Composition; Term of Office.** There shall be a Planning Board consisting of five (5) members elected for three (3) year terms, so arranged that as nearly an equal number of terms as possible shall expire each year.

**b. Powers and Duties.** The Planning Board shall make studies and prepare plans concerning the resources, possibilities and needs of the Town. The Planning Board shall have the power to regulate the subdivision of land within the Town by the adoption of rules and regulations governing such development. The Planning Board shall annually report to the Town giving information regarding the condition of the Town and any plans or proposals known to it affecting the resources, possibilities and needs of the Town. The Planning Board shall have all of the powers and duties given to planning boards under the constitution and general laws of the Commonwealth, and such additional powers and duties as may be authorized by the charter, by by-law or by other Town Meeting vote.

### **Section 10. Housing Authority**

**a. Composition; Term of Office.** There shall be a Housing Authority consisting of five (5) members. Four members shall be chosen by ballot; the fifth member shall be a resident of the Town, appointed by the Department of Community Affairs or as provided by law. Housing Authority members shall serve five (5) year terms, so arranged that one term shall expire each year.

**b. Powers and Duties.** The Housing Authority shall have all of the powers and duties given to housing authorities under the constitution and general laws of the Commonwealth, and such additional powers and duties as may be authorized by the charter, by-law or other Town Meeting vote.

### **Section 11. Town Clerk**

**a. Composition; Term of Office.** There shall be a Town Clerk elected for a three (3) year term.

**b. Powers and Duties.** The Town Clerk shall have all of the powers and duties given to town clerks under the constitution and general laws of the Commonwealth, and such additional powers and duties as may be authorized by the Charter, by by-law or by other Town Meeting vote. The Town Clerk shall have custody of the Town Seal and shall record and file all agreements and all other papers and documents affecting the interests of the Town.

**c. Additional Powers and Duties.** The Town Clerk shall have the following additional powers and duties:

- (i) Unless otherwise specified by these by-laws, the Charter, a rule or regulation of a Town agency or other law, the Town Clerk's office

shall be the official place for the filing of any document which may or should be filed with the Town.

(ii) The Town Clerk shall have available a supply of current copies of the “Rockport Code of By-laws”, “Zoning Bylaw, Town of Rockport”, and all other by-laws, rules and regulations for which a minimum fee shall be charged.

(iii) The Town Clerk shall, as soon as practicable after any Town Meeting, transmit to the Board of Selectmen, Town Treasurer, Town Accountant, and to the Board of Assessors certified copies of all warrant articles passed by the Town Meeting appropriating money or otherwise affecting the finances of the Town, and within the same time period, the Town Clerk shall transmit to all Town agencies a certified copy of any warrant article passed by Town Meeting affecting their respective powers and duties.

(iv) The Town Clerk shall notify the Board of Selectmen or other appointing authority of any vacant committee, board or department appointments.

(v) The Town Clerk shall record, file for publication and maintain a current list of all acts of the Legislature accepted by the Town.

(vi) The Town Clerk shall, as soon as practicable after any Town Meeting, record, file for publications and make all revisions necessitated by any changes in, or additions to, the Code of By-laws voted in any Town Meeting or otherwise affecting them.

(vii) The Town Clerk shall, as soon as practicable after any election has been held by the Town, in addition to the notices he is now required to give officers whom required to take an oath of office, also issue a written or printed notice to all persons who have been elected to any other office or chosen to serve on any other committee, stating the office to which such person has been elected or the duties which such committee was chosen to perform.

(viii) The Town Clerk shall keep and cause to be permanently bound one or more files of the Town reports.

(ix) The Town Clerk shall keep a record of all highways and Town ways within the Town with an index thereto.

(x) The Town Clerk shall see that every conveyance to the Town or any interest in land is properly recorded in the Registry of Deeds and shall keep a true copy of all deeds, conveyances, or other instruments

affecting any interest in land executed by the Board of Selectmen, and shall keep on file all deeds delivered to the Town. The Town Clerk shall keep on record the reports of all committees made to the Town.

**CHAPTER 4. RESERVED**

**CHAPTER 5. PERSONNEL**

**Section 1. Purpose and Intent**

The purpose of the personnel by-law is to establish a system of personnel administration, classification and compensation that ensures a uniform, fair and efficient application of personnel policies. Personnel actions are to be taken without regard to sex, race, religion, color, age except as prescribed by law, handicap, sexual orientation, political affiliation or other non-job related factors. 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 providing the Town's services.

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**

The Town Clerk and Town of Rockport non-elective employees except those under the jurisdiction of the School Committee shall be subject to the provisions of this by-law and any regulations adopted pursuant to it. Upon formal vote of the School Committee with written notification to the Personnel Board, designated non-professional positions in the School Department shall be included in and subject to all provisions of this by-law and shall remain subject thereto until the School Committee shall notify the Personnel Board in writing that it has withdrawn said positions.

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 personnel regulations or policies.

### **Section 3. Personnel Board.**

**a. Composition, Mode of Selection, Term of Office.** The Board of Selectman shall appoint a Personnel Board composed of five (5) members appointed for staggered terms of three (3) years each. No member of the Personnel Board shall receive compensation or be a full-time employee of the Town.

**b. Powers, Duties and Responsibilities.** The Personnel Board shall be responsible for the establishment and maintenance of a personnel system based on established administrative principles and shall adopt personnel regulations in accordance with Section 5 of this by-law and may incur expenses subject to appropriation of funds therefor.

**c. Organization.** Annually, at the beginning of the fiscal year the Personnel Board shall meet and elect a chair. A majority of the Board shall constitute a quorum for the transaction of business. The votes of a majority of all the members of the Board shall be necessary on any matter upon which it is authorized or required to act on anything relative thereto.

### **Section 4. Establishment of a Personnel System.**

A personnel system shall be established by the adoption of regulations pursuant to Section 5 below. 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 regulations which indicate rights and obligations of employees; and other elements that are deemed necessary.

### **Section 5 Adoption of Personnel Regulations.**

**a. Preparation of Regulations.** The Personnel Board shall prepare proposed personnel regulations. Any member of the Board of Selectmen, the Personnel Board, any appointing authority, or any two (2) employees may suggest regulations for consideration by the Personnel Board. The Personnel Board need not reconsider any proposal already considered by the Board in the preceding six (6) months.

Any person suggesting a new or amended regulation shall provide the substance and reason for it in writing.

**b. Public Hearing.** At the request of the person or persons submitting a regulation, the Personnel Board shall hold a public hearing on suggested regulations. A summary of any proposed regulations or amendments to regulations shall be advertised in a newspaper circulated in the Town of Rockport and the full text shall be posted on the Town Hall bulletin board at least five (5) business days prior to the public hearing at which such

proposals are to be considered. The Personnel Board shall submit a copy of any suggested regulation to the Board of Selectmen.

**c. Personnel Board Action of Suggested Regulations.** Within a reasonable period of time not to exceed forty-five (45) days from the public hearing on any suggested regulation, the Personnel Board shall vote to determine if the suggested regulation shall be recommended for adoption by the Board of Selectmen.

**d. Action by the Board of Selectmen.** The Personnel Board shall transmit any recommendations for the adoption of personnel regulations or amendments, including the text, in writing to the Board of Selectmen. The Board of Selectmen shall consider the recommendations of the Personnel Board and may adopt or reject the recommendations provided. However, if the Board of Selectmen fails to act on anything relative thereto, recommended regulations shall be deemed adopted upon the expiration of forty- five (45) days or any mutually agreed extension from the date of transmittal of the recommendations to the Board of Selectmen.

**e. Posting of Regulations.** The Board of Selectmen shall cause the posting of the text of newly adopted regulations in prominent work locations.

**f. Official Record.** The Town Clerk shall maintain a compilation of all Personnel regulations adopted by the Board of Selectmen.

**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 regulations is held invalid, the remaining provisions of the by-law or regulations shall not be affected thereby.

**CHAPTER 6. APPOINTED BOARDS AND COMMITTEES**

**Section 1. Appointment of Specific Town Officers and Committees**

The Board of Selectmen shall appoint the following Town Officers and Committees:

Board of Commissioners of Public Works	Board of Appeals
Veteran's Agent	Sealer of Weights and Measures
Inspector of Animals	Officers and Registrars of Voters
Director of Emergency Management	Election Officers
Forest Fire Warden	Inspector of Buildings
Town Accountant	Town Administrator
Finance Committee	Town Attorney
Members of the Police Department	Fire Engineers
Board of Health	Dog Officer
Insurance Committee	Town Treasurer and Collector
Council on Aging	

## **Section 2. Other Town Offices and Committees**

When authorized or directed by law or vote of the Town, the Board of Selectmen shall appoint other town offices and committees.

**a. Building Department.** There shall be a Building Department and the Inspector of Buildings shall be the head of said Building Department.  
(Added 09/11/00)

(i) The Board of Selectmen shall appoint and designate an inspector of buildings to administer and enforce the state building code as well as MGL Ch. 22, §13A (Architectural Access Board) and the rules and regulations made under the authority thereof. The inspector of buildings shall report directly and be solely responsible to the Board of Selectmen. In addition, such person shall have a general knowledge of the quality and strength of building materials; a general knowledge of the accepted requirements for building construction, fire prevention, light, ventilation, safe exits and the requirements of MGL Ch.22, §13A and the rules and regulations promulgated pursuant thereto pertaining to accessible design standards; and a general knowledge of other equipment and materials essential for safety, comfort, and convenience of the occupants of a building or structure.

(ii) The inspector of buildings shall, subject to the approval of the Board of Selectmen, appoint inspectors of plumbing and one or more inspectors of gas fitting, who shall, in the case of the inspectors of plumbing, be practical plumbers and shall have had practical experience either as master or journeymen plumbers, continuously during five years preceding their appointment and in the case of inspectors of gas fitting, be practical gas fitters and shall have had practical experience either as master or journeymen gas fitters, continuously, during five years preceding their appointment; provided, however, that the inspector of buildings may appoint plumbing inspectors who shall also be gas fitting inspectors. Such inspector of buildings may remove them subject to the Rockport Personnel By-law and Rules and Regulations adopted there under. Said inspectors of plumbing or inspectors of gas fitting shall inspect all plumbing or gas fittings, as the case may be, in the process of construction, alterations or repair for which permits are granted within the Town and shall report to the inspector of buildings violations of any law, ordinance, by-law, rule or regulation relative to plumbing or gas fitting; they shall perform such other appropriate duties as may be required.

(iii) The inspector of buildings shall, subject to the approval of the Board of Selectmen, appoint an inspector of wires. Said inspector shall be a licensed electrician. Such inspector shall supervise every wire



over or under streets or buildings in the Town and every wire within or supplied from buildings and structures subject to the provisions of MGL Ch. 143, and the state building code, except wires within a manufactured building or building component as defined in the state building code and inspected in accordance with rules and regulations promulgated by the building code commission; shall notify the person owning or operating any such wire whenever its attachments, insulation, supports or appliances are improper or unsafe, or whenever the tags or markers thereof are insufficient or illegible; shall, at the expense of the Town remove every wire not tagged or marked as hereinbefore required, and shall see that all laws and regulations relative to wires are strictly enforced. The Town may recover in contract from the owner of any such wire removed the expense which it has incurred for the removal thereof.

**b. Council on Aging.** There is hereby established a Council on Aging consisting of from seven (7) to eleven (11) citizens of this Town appointed by the Board of Selectmen for terms not to exceed four (4) years for any member. Their terms shall be staggered so that not more than three (3) appointments shall be made in any calendar year. Members may be re-appointed for consecutive terms. The duties of said Council shall be to:

- (i) Identify the total needs of the community's elderly population.
- (ii) Educate the community and enlist support and participation of all citizens concerning these needs.
- (iii) Design, promote or implement services to fill these needs, or coordinate present existing services in the community;
- (iv) Promote and support any other programs which are designed to assist elderly programs in the community.

The Council on Aging shall cooperate with the Commonwealth of Massachusetts Commission on Aging 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. The Council on Aging shall give an annual report to the Board of Selectmen with a copy directed to the Commonwealth of Massachusetts Commission on Aging.

**c. Insurance Committee.** There shall be a permanent Insurance Committee consisting of the Town Treasurer and Town Accountant, ex-officio, and not less than three (3) nor more than five (5) other citizens of the Town, who shall be persons especially fitted by education, training or previous experience to be appointed by the Board of Selectmen. At the



first meeting of the Board of Selectmen following adoption of this by-law and annually thereafter, the Board of Selectmen shall appoint members of the committee to serve for terms of no longer than three (3) years in such manner that no more than one third of such appointed members shall have terms expiring in the same year. All of such members shall serve until their successors are appointed and qualified; any vacancy on the committee may be filled for the balance of the vacated term by the Board of Selectmen.

The Insurance Committee shall:

- (i) On a continuing basis identify and assess the risks of loss to which the Town is exposed.
  
- (ii) Consider the need for and make recommendations for the purchase of insurance.
  
- (iii) Keep informed concerning insured benefit programs, required to be maintained by the Town and other self-insurance programs.

The members of the Committee other than the ex-Officio members shall be appointed commissioners for the management and administration of the Town's municipal buildings insurance fund.

The Committee shall make an annual report and, on or before December 15th of each year, submit to the Board of Selectmen its recommendations with respect to the purchase of insurance, use of the municipal insurance fund and anticipated costs for the following year.

### **Section 3. Legal Affairs**

- a.** The Selectmen shall be agents of the Town to institute, prosecute and defend any and all claims, actions and proceedings to which the Town is a party or in which the interests of the Town are or may be involved.
  
- b.** When recommended in writing by Town counsel, the Selectmen may, at their discretion compromise or settle any claim or suit to which the Town is a party, unless otherwise expressly prohibited by law.
  
- c.** The Selectmen shall annually, after the formal adjournment of the Annual Town Meeting, appoint a member of the Bar in good standing to serve as Town Counsel, also known as the Town Attorney, for the term of one (1) year from the following July 1st and until a successor is appointed and enters upon the performance of his or her duties. They shall likewise fill any vacancy in said offices for the unexpired term, and may employ special counsel to assist the Town Counsel whenever, in their judgment, it is necessary.

**d.** It shall be the duty of the Town Counsel to conduct the prosecution or defense in actions and proceedings to which the Town is a party, or to compromise claims, and the prosecution of actions or proceedings by or on behalf of any town officer, board or committee as such, to conduct the defense of any action or proceedings brought against any town officer, board or committee as such when the Selectmen having determined that any right or interests of the Town are or may be involved therein, shall so request; to conduct proceedings brought by or against the Assessors before the Board of Tax Appeals; to examine and report upon titles to all land to be acquired by the Town; to prepare or approve contracts, bonds, deeds and other legal instruments in which the Town is a party or in which any right or interest of the Town is involved; to appear at any and all hearings on behalf of the Town whenever his or her services may be required; and generally to advise and act on anything relative thereto for the town committees upon and in legal matters touching the duties of their respective offices.

**Section 4. Term of Office**

Unless otherwise provided by law or vote of the Town, the term of office for all Town officers and committees shall be one year, or until their successors are appointed and qualified.

**Section 5. Commencement of Term**

Unless otherwise provided by law or vote of the Town, all terms of office shall commence on July 1<sup>st</sup> and terminate on the following June 30<sup>th</sup> or when a successor is appointed and qualified.

**Section 6. Written Description**

For each Town officer, board, and committee set forth in Section 1 herein, the Board of Selectmen shall:

**a. Appointed Town Officer.** Set forth a written position description describing the individual's powers and duties and any other requirements which, in the judgment of the Board of Selectmen, would be included in the position description for that Town Officer.

**b. Appointed Boards and Committees.** Set forth a written description of the board or committee's charge including its powers and duties, the scope of its jurisdiction and/or subject matter, and the composition and term of office of its members.

**Section 7. Office Hours and Meeting Times**

All officers, boards and committees shall notify the Town Clerk of their office hours or time of stated meetings.

## CHAPTER 7. FINANCES AND FISCAL PROCEDURES

### A. Budget and Fiscal Procedures

#### Section 1. Fiscal Year

The Fiscal year of the Town shall begin on July first and end on June thirtieth, unless another provision is made by general law.

#### Section 2. School Committee Budget

The budget adopted by the School Committee shall be submitted to the Board of Selectmen in sufficient time to enable it to prepare the total Town budget it is required to submit by Section 3.

**a. Public Hearing.** The School Committee shall cause to be published in a local newspaper a general summary of its proposed budget. The summary shall indicate specifically any major variations from the present budget and the reasons for such variations and a notice stating;

(i) the times and places where complete copies of the budget shall be available for examination by the public, and

(ii) the date, time and place, not less than seven nor more than fifteen days following such publication, when a public hearing shall be held by the School Committee on the proposed budget.

**b. Adoption.** The action of the School Committee in adopting the budget following the public hearing shall be summarized and the vote of each member on any amendments offered to the proposed budget shall be duly recorded.

#### Section 3. Submission of Proposed Finance Plan and Budget

By January 31<sup>st</sup> of the preceding fiscal year the Board of Selectmen shall submit to the Finance Committee a proposed financial plan and budget for the ensuing fiscal year along with a budget message and supporting documentation. (changed ATM 03/24/01)

#### Section 4. Budget Message

The budget message submitted by the Board of Selectmen shall explain the proposed budget for all Town agencies. It shall outline proposed financial policies of the Town for the ensuing fiscal year; describe important features of the budget; indicate any major variations from the budget for the current year in financial policies, expenditures and revenues together with the reasons for such changes; summarize the Town's debt position; and include such other material as the Board of Selectmen deems desirable.

**Section 5. The Proposed Budget**

The proposed budget shall provide a complete financial plan of all Town funds and activities including the budget as requested by the School committee for the ensuing year. Except as may otherwise be required by general law or by the Charter, it shall be in the form the Board of Selectmen deems desirable.

**Section 6. Action on the Budget**

**a. Finance Committee Meetings.** The Finance Committee shall consider in meetings the detailed expenditures for each Town agency submitted by the Board of Selectmen and may confer with representatives of any such agency in connection with such considerations. The Finance Committee may require the Board of Selectmen or any other Town agency to provide such additional information as it deems necessary or desirable in furtherance of its responsibility.

**b. Presentation to the Town Meeting.** The Finance Committee shall file a report of its recommendations with the Town Clerk at least seven days before the action on the budget article is to begin. The budget to be acted upon by the Town Meeting shall be the budget as proposed by the Finance Committee.

**Section 7. Financial Public Records**

Statements summarizing the budget, the capital budget, and related articles, as adopted by the Town Meeting, shall be made available in the office of the Board of Selectmen for examination by the public within a reasonable time after their adoption.

**Section 8. Approval of Financial Warrants**

Warrants for the payment of Town funds prepared by the Town Accountant in accordance with the general laws shall be submitted to the Board of Selectmen. The approval of any such warrant by the Board of Selectmen shall be sufficient authority to authorize payment by the Town Treasurer.

Department Heads (other than the School Department, which has budget autonomy by statute) may reallocate funds in their respective Department budgets between line items of Labor Accounts and such Department Heads may also reallocate funds between line items of Non-Labor Accounts if such reallocation is submitted in writing to the Town Accountant and approved by the Department's appointing authority, however, no such allocation shall be allowed between Labor and Non-Labor line items. (added STM 9/8/2003)

**Section 9. Accounting System.**

All accounts of the Town shall be kept in accordance with the system established by the Director of the Bureau of Accounts of the Massachusetts Department of Revenue, and said accounts shall be audited at such times as the director shall

determine under the supervision of said director pursuant to the provisions of Chapter 44, Section 35 of the General Laws. The accounts may be audited by an independent auditor retained by the Town at such times and in such manner as the Board of Selectmen may determine in their sole discretion.

**Section 10. Disposal of Town Property.**

Any Town agency may sell, or otherwise dispose of, any property or material not exceeding \$500 in value within its possession or control which has become obsolete, or is not required for further use by it, in accordance with procedures established by the Board of Selectmen.

**Section 11. Statement of Accounts Due**

At least once in every month each department of the Town shall deliver to the Town Accountant a statement of each account due the Town arising from transactions in said departments. Such accounts are to be committed to the Town Collector and Treasurer for collection. This section is to include all taxes and special assessments, costs and fees charged by each department

**Section 12. Interest on Unpaid Water and/or Sewer Bills**

Any water and/or sewer bill which is unpaid after thirty (30) days from the date of mailing shall incur interest from that date at the rate at which interest may be charged on tax bills under the provisions of General Laws, Chapter 59, Section 57.

**Section 13. Revocation or Suspension of Local Licenses and Permits  
(ATM 4/1/2006)**

Any board, officer, or department may deny any application or revoke or suspend any local license or permit, including renewals and transfers, for any person, corporation, or business enterprise who has neglected or refused to pay any local taxes, fees, assessments, betterment, or any other municipal charge, or with respect to any activity, event or other matter which is the subject of such license or permit and which activity, event, or matter is carried out or exercised or is to be carried out or exercised on or about real estate whose owner has neglected or refused to pay any local taxes, fees, assessments, betterments or any other municipal charges.

**a. Report of Tax Delinquents**

In accordance with Massachusetts General Laws Chapter 40, Section 57, as amended, the tax collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as the tax collector, shall annually furnish to each department, board, commission or division, hereinafter referred to as the licensing authority, that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes, fees, assessments, betterments

or other municipal charges for not less than a twelve month period, and that such party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the appellate tax board.

**b. Notice and Hearing**

The licensing authority may deny, revoke or suspend any license or permit including renewals or transfers issued by it if the person that applied for or holds the license is on the list furnished by the Tax Collector, or with respect to any activity, event or other matter which is the subject of such license or permit and which activity, event or matter is to be carried out or exercised on or about real estate owned by any party whose name appears on said list furnished by the Tax Collector. Prior to such denial, revocation or suspension, the licensing authority shall hold a hearing for which written notice shall be given by the licensing authority to the applicant or holder and to the Tax Collector. Such written notice shall be delivered or sent by certified mail not less than fourteen days prior to the date for the hearing. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit. The Tax Collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any decision made by the licensing or permit authority with respect to such denial, revocation or suspension shall be made only for the purpose of such hearing and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such denial, revocation or suspension. Any license or permit denied, suspended or revoked under this Article shall not be reissued or renewed until the licensing authority receives a certificate issued by the Tax Collector that the person has no unpaid tax, fee, assessment, betterment or other charge due to the Town as of the date of issuance of said certificate.

**c. Payment Agreement**

Any party shall be given an opportunity to enter into a payment agreement thereby allowing the licensing authority to issue a certificate indicating such limitations to the license or permit and the validity of said license or permit shall be conditioned on the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided however, that the holder shall be given written notice by delivery or by certified mail and a hearing not less than fourteen days after such notice.

**d. Waiver**

The applicant or holder may appeal in writing to the Board of Selectmen the decision of the licensing authority to deny, suspend, or revoke a license or permit in accordance with paragraph b. above within five (5) days of the decision. The Board of Selectmen shall hold a hearing on the appeal not less than fourteen (14) days after written notice of the hearing is delivered or sent by certified mail to the appealing person, the Tax

Collector, and the licensing authority. The Board of Selectmen may waive such denial, suspension, or revocation if it finds after the hearing that there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined in Chapter 268, Section 1, in the business or activity conducted in or on said property.

**e. Exceptions**

**License or permit**

**Massachusetts General Laws**

Bicycle permits

Chapter 85, Sec. 11A

Children work permits

Chapter 149 sec. 69

Clubs or associations dispensing food or beverage licenses

Chapter 140, sec. 21E

Dog licenses

Chapter 140, sec 137

Fishing, hunting and trapping licenses

Chapter 131, sec. 12

Marriage licenses

Chapter 207, sec. 28

Open burning

Chapter 48, sec. 13

Sales of articles for charitable purposes

Chapter 101, sec. 33

Theatrical events, public exhibition permits Chapter 140, sec. 181

**B. Records and Reports**

**Section 1. Records Required**

All Town officials and appointed committees shall cause records of their doings and accounts to be kept in suitable books. The persons having charge of the same shall transmit them to their successors in office. Whenever a vote affecting any Town committee is passed the Town Clerk shall transmit a copy of the vote to such committee.

**Section 2. Access to Records**

Any person shall have access, at any reasonable time, to the public records of the Town and shall have the right to examine them and make copies of them by applying to the officer in charge of the same, in accordance with the provisions of G.L. c. 66.

**Section 3. Annual Reports**

All Town officials, and committees appointed by the Board of Selectmen, shall submit a report of their activities and projects, during the past calendar year, to the Board of Selectmen on or before January 15 of each year, for inclusion in the Annual Town Report.

**C. Tax Title Land**

**Section 1. Sale of Tax Possession Property**

The Selectmen are hereby empowered to sell at public auction all or any of the Town property acquired by virtue of sale for non-payment of taxes, which sales



have been confirmed by the Land Court or the Tax Commissioner and they are authorized to give deeds therefor.

The Selectmen shall, not less than twenty-one (21) days before such sale, file a notice thereof with the Town Clerk, who shall post a copy of the notice in the Town Hall. The Selectmen shall also have a copy of the notice published at least twenty-one (21) days before such sale in a newspaper having a circulation in the Town. Such notice shall contain a description of the property to be sold sufficient to identify it, shall state the date, time and place appointed for the sale thereof, and the terms and conditions of such sale. Failure to send or to post a notice as herein provided, or any insufficiency in the notice sent or posted, shall not invalidate the title to any property sold hereunder provided the deed is approved by the Selectmen. At such sale or any adjournment thereof, if, in their opinion, no bid is made which approximates the fair value of the property, a sale need not take place. No bid is accepted until the deed, drawn in accordance therewith, has been approved by the Selectmen and accepted by the successful bidder.

The Selectmen shall include, as a part of their report in the Annual Town Report, a listing, by parcel, of all property sold under this by-law which listing shall include the date of sale, the name of the purchaser, a general description of the property and the sale price.

This by-law shall not be construed to prevent the Town of Rockport from disposing of such property under the provisions of General Laws, Chapter 40, Section 3.

**Section 2. Town Meeting Vote**

A majority vote of a regular or special Town Meeting shall be required to authorize the sale of any Town real estate acquired through tax title proceedings. Such authorization shall expire one year from the date of the authorizing vote.

**D. Land Bank Fund**

**Section 1. Establishment**

A permanent fund, to be known as the Land Bank Fund, to be used for the acquisition of land for municipal purposes is hereby established. Funding for said Fund may by Town Meeting vote be obtained from the sale of parcels of tax title, tax possessions, and town property, from state and federal grants or aid, from gifts, from trusts and foundations and from any other source that the Town may vote to appropriate to the Fund.

**Section 2. Appropriations**

The Town may appropriate money from the fund only for the acquisition of land for municipal purposes by a two-thirds vote in favor of such appropriation at any regular or special Town Meeting.



## **CHAPTER 8. PUBLIC WORKS**

### **A. Board of Commissioners of Public Works**

#### **Section 1. Appointed Officials**

The Selectmen shall appoint a Board of Commissioners of Public Works, hereinafter called the Commissioners, consisting of three persons especially qualified by education, training or experience to oversee the Department of Public Works and to serve as highway, parks, water, sewer and cemetery commissioners and may for cause remove any or all such appointees. The Commissioners shall serve three year terms, staggered so that the term of one Commissioner expires each year.

#### **Section 2. Appointment of Director**

The Commissioners shall appoint a Director of Public Works, herein called the Director, who shall be appointed without regard to his political belief. He need not be a resident of the Town when appointed, but shall be a resident of the Town while in service as Director should the Commissioners so decide. Before entering upon the duties of his office, the Director shall be sworn to the faithful and impartial performance thereof by the Town Clerk, or by a justice of the peace. He shall execute a bond in favor of the Town for the faithful performance of his duties in such sum and with such surety or sureties as may be fixed or approved by the Commissioners, the premium for said bond to be paid by the Town.

#### **Section 3. Acting Director**

The Director may designate, by letter approved by the Commissioners, filed with the Town Clerk, a qualified officer of the Town to perform his duties during his temporary absence or disability. Pending the appointment of a Director, or the filling of any vacancy, or the failure of the Director of Public Works to designate a temporary Director, or during the suspension of the Director, the Commissioners shall appoint a suitable person to perform the duties of the office.

#### **Section 4. Removal of Director**

The Commissioners by a majority vote of the full membership of the Board may remove the Director.

#### **Section 5. Compensation for Director**

The Director shall receive such compensation for his services as the Commissioners shall determine, but it shall not exceed the amount appropriated therefor by the Town.

#### **Section 6. Powers and Duties of Director**

In addition to other powers and duties expressly provided for in the Town Charter, the Director shall have the following powers and duties:

**a.** The Director shall supervise and direct and shall be responsible for the efficient administration of all offices, boards and committees appointed by him and their respective departments.

**b.** The Director shall keep full and complete records of his and shall render as may be required by the Commissioners a full report of all operations during the period reported on.

**c.** The Director shall keep the Commissioners fully advised as to the needs of the Town and shall recommend to the Commissioners for adoption such measures requiring action by them or by the Town as he may deem necessary or expedient.

**d.** The Director shall be responsible for the maintenance and repairs of all Town property except school buildings and grounds. He shall be responsible for the preparation of plans and the supervision of work on all construction, reconstruction, alterations, improvements and other undertakings authorized by the Town, subject however, to the approval of the Town committee with respect to plans for the construction or improvement of school buildings or property.

**e.** The Director shall perform such other duties consistent with his office as may be required of him by the by-laws or vote of the Town or by vote of the Commissioners.

**f.** The Director shall have access to all Town books and papers for information necessary for the proper performance of his duties.

**g.** The Director shall appoint, upon merit and fitness alone, and may, subject to the provisions of MGL Ch. 31 where applicable, remove for cause all employees of the Department of Public Works.

**h.** Whenever any payroll, bill or other claim against the Town is presented to the Director of Public Works he shall, if the same seems to him to be of doubtful validity, excessive in amount, or otherwise contrary to the interests of the Town, refer it to the Commissioners who shall immediately investigate the fact and determine, what, if any, payment should be made. Pending such investigation and determinations by the Commissioners payment shall be withheld.

**i.** The Director shall prepare and submit a budget to the Commissioners in sufficient time for the Commissioners' review.

#### **Section 7. Fees Paid to Treasury**

The aggregate compensation of each Town Officer or Employee appointed by the Director of Public Works shall be limited to the amount established in accordance

with the provisions of this act or anything relative thereto, and all fees received in accordance with the provisions of any general or special laws shall be paid into the Treasury of the Town.

**Section 8. Estimate of Expenditures**

On or before the fifteenth day of December of each year, the Commissioners shall submit to the Board of Selectmen a copy of their annual budget, which shall contain a careful, detailed estimate of the probable expenditures of the Department of Public Works for the ensuing fiscal year, showing specifically the amount necessary to be provided for each office and activity, together with a statement of the expenditures for the same purposes in the two preceding years and an estimate of expenditures for the current year. With the assistance of the Town Accountant, the Commissioners shall also submit to the Selectmen a statement showing all revenues received by the Town from the Department's activities in the two preceding years, together with an estimate of the receipts of the current year.

**B. Water, Sewer and Solid Waste System**

**Section 1. Administration**

The water, sewer and solid waste functions and services, including maintenance of the water supply and distribution, sewers and sewerage systems, shall be performed by the Department of Public Works.

**a.** The Department of Public Works shall have and exercise all of the powers vested in the Town by the General Laws, Municipal State and Federal rules and regulations or special acts pertaining to the water and sewer systems. The Commissioners may appoint such officers, agents and assistants as shall be necessary to accomplish the administration of the water works and sewerage systems.

**b.** The Department of Public Works shall cause to be read all meters used for the purpose of measuring water and/or sewage utilized by the owner at least once in each year, and at more frequent intervals if so directed by the Commissioners. Whenever water service is discontinued at the request of the owner of any premises, or for nonpayment of water and/or sewage bills, or any other reason, it shall forthwith read or cause to be read, the water user's meter. The Commissioners, or their designee, shall assess all charges for water supplied by the Town and/or sewage utilized by the owner in accordance with the rates as established from time to time, and the same shall be committed to the collector, who shall after notice to the persons to whom they are assessed, collect the same and pay the proceeds to the Town Treasurer. All charges for water and/or sewage shall be due and payable to the Collector within thirty days after he shall mail or deliver to the water and/or sewage user a bill.

c. The Commissioners shall have the authority and duty to adopt, issue and administer rules and regulations for the administration and operations of the water and sewer functions and services, water usage and all subjects related to the functioning of the water works and sewerage systems.

## **Section 2. Operations**

a. An application for the use of water, signed by the owner or agent of the premises where it is desired, must be made at the office of the Department of Public Works. The application shall contain such information as shall be prescribed by the Commissioners.

b. Each service pipe shall be of such size and material as the Department of Public Works shall determine on each application. The Department of Public Works shall maintain all water services from street main to curb valve near the property line with a proper service box at no expense to the property owner. A replacement of an existing line with a larger service and all new services shall be at the expense of the property owner.

The service pipe from the curb valve may be furnished and installed by any competent person whose work shall be satisfactory to the Department or its inspector. The Department may lay service pipe from curb valve to and through the cellar wall and place a meter valve on the end of the pipe. A Department estimate of the cost of the work to be performed by the Town shall be made and the amount shall be deposited with the Town Treasurer before the work is begun.

c. The owner shall furnish and install, at least one  $\frac{3}{4}$ " meter, approved by the Department, per building. Property owners needing a larger or additional meter shall furnish and install such a meter at the property owner's expense. The Town of Rockport shall maintain or replace a meter with an existing size meter at no cost to the property owner (except meters disconnected, lost, tampered, damaged by the property owner and/or stored per request of the property owner to replace). Should a larger size or additional meter be requested in or outside of an existing building, the property owner shall pay for all related costs. (Amended 03/21/98)

Meters and their appurtenances, including outside meter reading devices, shall be located by the Department, at the discretion of the Department head or his designee, and shall become the property of the Town after installation.

d. When a water taker fails to receive a sufficient supply of water through his service pipe, he shall furnish information satisfactory to the Department that the pipe is clear of obstructions within his own premises

to the curb valve before any opening will be made in the street by said Department.

**e.** The following regulations shall be considered a part of the contract with every person who takes water and every such person by taking the water shall thereby express his assent to be bound thereby. Whenever any regulation is violated, the Department of Public Works may cut off the water to the building or place of such violation, although two or more parties may receive the water and/or sewage utilized through the same pipe and it shall not be let on again except by order of the Commissioners, and on the payment of all applicable fees. In case of such violation, said Commissioners shall have the right to retain as liquidated damages for such violation any payment made for the water and/or sewage utilized by the persons committing such violation.

(i) Every person taking the water shall, at his own expense, keep the pipes within his premises in good repair and protected from frost and shall be held liable for all damage which may result from his failure to do so.

(ii) Every person taking the water shall prevent all unnecessary waste of water and shall not conceal the purpose for which the water is used.

(iii) No alteration shall be made in any of the pipes, meters or appurtenances belonging to the Town except by its agents.

(iv) No water shall be supplied to a person not entitled to its use under these rules and regulations, except by special permission of the Commissioners.

(v) A representative of the Department of Public Works, upon reasonable notice, may enter the premises of any water user to install, repair, or read meters, or to examine pipes and fixtures used and the manner of their use.

### **Section 3. Rates**

Water, sewer, solid waste, cemetery and related rates shall be set after a public hearing by the Commissioners.

**a.** If a meter fails to register, the consumer shall be charged for water and/or sewage upon the basis of the average consumption for a corresponding period as shown by the meter when in order or by estimate.

**b.** A charge may be made for water used through fixtures which are installed solely for protection against fire.

c. The charge for turning on or turning off water shall be set by the Commissioners within such limits as established by law.

d. The Commissioners or their designee may make adjustments in the water charges to a consumer to correct an error in billing or usage.

#### **Section 4. Transfer Station and Recycling Center**

**a. Transfer Station:** No person or business using the Town of Rockport's Transfer Station and Recycling Center shall place yard waste, tin or glass containers, aluminum containers, number 1 and number 2 plastic containers, newspapers, magazines and corrugated cardboard into the trash trailers.

**b. Recycling Center:** The articles referred to above shall be recycled into the proper bin or designated area within the Transfer Station and Recycling Center. However, this section shall not prohibit the dumping of mixed waste material including the aforementioned recyclables by authorized Department of Public Works employees in the course of assigned duties.

#### **Section 5. Underground Storage Tanks**

Regulation of underground storage tanks, hazardous materials and regulated substances will be regulated under the Department of Public Works Rules and Regulations.

### **C. Discharges to the Municipal Storm Drain**

#### **Section 1. Purpose**

Regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of the town's water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment. The objectives of this bylaw are:

- a) To prevent pollutants from entering the town's municipal separate storm drain system (MS4);
- b) To prohibit illicit connections and unauthorized discharges to the MS4;
- c) To require the removal of all such illicit connections;
- d) To comply with state and federal statutes and regulations relating to stormwater discharges; and
- e) To establish the legal authority to ensure compliance with the provisions of this bylaw through inspection, monitoring, and enforcement.

## **Section 2      Definitions**

For the purposes of this bylaw, the following shall mean:

**AUTHORIZED ENFORCEMENT AGENCY:** The DPW Board of Commissioners.

**BEST MANAGEMENT PRACTICE (BMP):** An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

**CLEAN WATER ACT:** The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) as hereafter amended.

**DISCHARGE OF POLLUTANTS:** The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.

**GROUNDWATER:** Water beneath the surface of the ground.

**ILLICIT CONNECTION:** A surface or subsurface drain or conveyance, which allows an illicit discharge into the municipal storm drain system, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this bylaw.

**ILLICIT DISCHARGE:** Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Section 8. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or a Surface Water Discharge Permit, or resulting from fire fighting activities exempted pursuant to Section 8 of this bylaw.

**IMPERVIOUS SURFACE:** Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and rooftops.

**MUNICIPAL SEPARATE STORM DRAIN SYSTEM (MS4) or MUNICIPAL STORM SEWER SYSTEM:** The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Rockport.

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT:** A permit issued by United States

Environmental Protection Agency or jointly with the State that authorizes the discharge of pollutants to waters of the United States.

**NON-STORMWATER DISCHARGE:** Discharge to the municipal storm drain system not composed entirely of stormwater.

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

**POLLUTANT:** Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or non-point source, that is or may be introduced into any sewage treatment works or waters of the Commonwealth. Pollutants shall include without limitation:

- a) Paints, varnishes, and solvents;
- b) Oil and other automotive fluids;
- c) Non-hazardous liquid and solid wastes and yard wastes;
- d) Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
- e) Pesticides, herbicides, and fertilizers;
- f) Hazardous materials and wastes; sewage, fecal coliform and pathogens;
- g) Dissolved and particulate metals;
- h) Animal wastes;
- i) Rock, sand, salt, soils;
- j) Construction wastes and residues; and
- k) Noxious or offensive matter of any kind.

**PROCESS WASTEWATER:** Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

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

**STORMWATER:** Storm water runoff, snow melt runoff, and surface water runoff and drainage.

**SURFACE WATER DISCHARGE PERMIT.** A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts.



**TOXIC OR HAZARDOUS MATERIAL OR WASTE:** Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under G.L. Ch.21 C and Ch.21 E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

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

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

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

### **Section 3      Applicability**

This bylaw shall apply to flows entering the municipally owned storm drainage system.

### **Section 4      Authority**

This bylaw is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Procedures Act, and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34 and the Phase II ruling from the Environmental Protection Agency found in the December 8, 1999 Federal Register.

### **Section 5      Responsibility for Administration**

The DPW Board of Commissioners shall administer, implement and enforce this bylaw. Any powers granted to or duties imposed upon the DPW Board of Commissioners may be delegated in writing by the DPW Board of Commissioners, to its employees and authorized agents.

### **Section 6      Regulations**

The DPW Board of Commissioners may promulgate rules and regulations to effect the purposes of this bylaw. Failure by the DPW Board of Commissioners to

promulgate such rules and regulations shall not have the effect of suspending or invalidating this bylaw.

## **Section 7 Prohibited Activities**

**Illicit Discharges.** No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the municipal separate storm drain system (MS4), into a watercourse, or into the waters of the Commonwealth.

**Illicit Connections.** No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

**Obstruction of Municipal Storm Drain System.** No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior written approval from the DPW Board of Commissioners.

## **Section 8 Exemptions**

Discharge or flow resulting from fire fighting activities.

The following non-stormwater discharges or flows are exempt from the prohibition of nonstormwaters provided that the source is not a significant contributor of a pollutant to the municipal storm drain system:

- a) Waterline flushing;
- b) Flow from potable water sources;
- c) Springs, water courses and wetlands;
- d) Diverted stream flow;
- e) Rising groundwater;
- f) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
- g) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
- h) Discharge from landscape irrigation or lawn watering;
- i) Water from individual residential car washing;
- j) Discharge from dechlorinated swimming pool water (less than one ppm chlorine) provided the water is allowed to stand for one week prior to draining, the pool is drained in such a way as not to cause a nuisance and notification is provided to the Department of Public Works;
- k) Discharge from street sweeping;
- l) Dye testing, provided verbal notification is given to the DPW Board of

- Commissioners as far in advance as possible prior to the time of the test;
- m) Non-stormwater discharge permitted under an NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
  - n) Discharge for which advanced written approval is received from the DPW Board of Commissioners as necessary to protect public health, safety, welfare or the environment.
  - o) Discharge or flow that results from urgent conditions and occurs during a State of Emergency declared by any agency of the federal or state government, or by the Town of Rockport Town Administrator, the Board of Selectmen or the Board of Health.

### **Section 9      Emergency Suspension of Storm Drainage System Access**

The DPW Board of Commissioners may suspend municipal storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the DPW Board of Commissioners may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

### **Section 10     Notification of Spills**

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants to the municipal drainage system or waters of the Commonwealth, the person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the municipal Fire and Police departments, the DPW Board of Commissioners and the Board of Selectmen.

In the event of a release of non-hazardous material, the reporting person shall notify the Board of Selectmen, the DPW Board of Commissioners and the Fire Department no later than the next business day. The reporting person shall provide to the Board of Selectmen, the DPW Board of Commissioners and the Fire Chief written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at

least three years.

## **Section 11    Enforcement**

The DPW Board of Commissioners, its employees and its authorized agents (the "enforcing person") shall enforce this bylaw, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

**Civil Relief.** If a person violates the provisions of this bylaw, regulations, permit, notice, or order issued there under, the DPW Board of Commissioners may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

**Orders.** The DPW Board of Commissioners, its employees and its authorized agents may issue a written order to enforce the provisions of this bylaw or the regulations there under, which may include: (a) elimination of illicit connections or discharges to the MS4; (b) performance of monitoring, analyses, and reporting; (c) that unlawful discharges, practices, or operations shall cease and desist; and (d) remediation of contamination in connection therewith.

If the enforcing person determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the town may, at its option, undertake such work, and expenses thereof shall be charged to the violator.

Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the town, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Board of Selectmen within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the Board of Selectmen, affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Ch. 59, 57 after the thirty-first day at which the costs first become due.

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

or continues shall constitute a separate offense.

**Non-Criminal Disposition.** As an alternative to criminal prosecution or civil action, the Town of Rockport may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, 21D and the Town of Rockport General Bylaws Chapter 16, Section 2.(b). The DPW Board of Commissioners, or its authorized employees or agents, shall have authority to issues notices of violations. The penalty for the first violation shall be \$100.00. The penalty for the second violation shall be \$200.00. The penalty for the third and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

**Entry to Perform Duties Under this Bylaw.** To the extent permitted by state law, or if authorized by the owner or other party in control of the property the DPW Board of Commissioners, its employees and its authorized agents may enter upon privately owned property for the purpose of performing their duties under this bylaw and regulations and may make or cause to be made such examinations, surveys or sampling as the DPW Board of Commissioners, its employees and its authorized agents deem reasonably necessary.

**Appeals.** The decisions or orders of the DPW Board of Commissioners shall be final. Further relief shall be to a court of competent jurisdiction.

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

## **Section 12 Severability**

The provisions of this bylaw are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this bylaw or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not " affect the other provisions or application of this bylaw.

## **Section 13 Transitional Provisions**

All property owners shall have 30 days from the effective date of the bylaw to comply with its provisions or petition the DPW Board of Commissioners for an extension provided good cause is shown for the failure to comply with the bylaw during the specified period.

### **D. Stormwater Management By-law**

#### **Section 1 Purpose and Intent**

The purpose and intent of this bylaw are to:

1. Protect water resources
2. Require practices that mitigate soil erosion and sedimentation and control the volume and rate of stormwater runoff resulting from land disturbance activities so that the after-development runoff characteristics are equal to or less than the pre-development runoff characteristics;
3. Promote infiltration and the recharge of groundwater;
4. Protect land resources, minimize cut and fill, encourage on site infiltration of stormwater
5. Ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process, and are implemented and maintained;
6. Encourage the use of Low-Impact Development practices such as reducing impervious cover and the preservation of green space and other natural areas, to the maximum extent practicable;
7. Comply with state and federal statutes and regulations relating to stormwater discharges and establish regulations and decision-making processes in Rockport to accomplish this;
8. Establish the Town of Rockport as the legal authority to ensure compliance with the provisions of this by-law and associated regulations through inspection, monitoring, and enforcement;
9. Establish provisions for the long-term maintenance of structural stormwater control facilities and non-structural stormwater management practices to meet the permit criteria, including adequate funding mechanism, including surety, for proper review, inspection and long-term maintenance

## **Section 2. Definitions**

**ABUTTER:** The owner(s) of land abutting the lot on which the activity is proposed to take place.

**AGRICULTURE:** The normal maintenance or improvement of land in agricultural or aquacultural use, as defined by the Massachusetts Wetlands Protection Act G.L. c. 131, § 40, and its implementing regulations.

**APPLICANT:** Any person, individual, partnership, association, firm, company, corporation, trust, authority, agency, department, or political subdivision, of the Commonwealth or the Federal government to the extent permitted by law requesting a soil erosion and sediment control permit for proposed land-disturbance activity.

**AUTHORIZED ENFORCEMENT AGENCY:** The Department of Public Works and/or its respective employees or agents designated to enforce this by-law.

**BEST MANAGEMENT PRACTICE (BMP):** An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of storm water runoff as described in the Stormwater Management Handbook and

any other applicable local regulations.

**CERTIFIED PROFESSIONAL IN EROSION AND SEDIMENT CONTROL (CPESC):** A certified specialist in soil erosion and sediment control. This certification program, sponsored by the Soil and Water Conservation Society in cooperation with the American Society of Agronomy, provides the public with evidence of professional qualifications.

**CONSTRUCTION AND WASTE MATERIALS:** Excess or discarded building or site materials, including but not limited to concrete truck washout, chemicals, litter and sanitary waste at a construction site that may adversely impact water quality.

**CLEAN FILL:** Fill that does not contain lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, asphalt, concrete, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing or similar materials, or any other waste products or hazardous waste.

**CLEARING:** Any activity that removes the vegetative surface cover in part or in its entirety, that causes irreversible damage to roots or trunks; destroying the structural integrity of vegetation; and/or any filling, excavation, grading, or trenching in the root area of a tree which has the potential to cause irreversible damage.

**DEVELOPMENT:** The modification of land to accommodate a new use or expansion of use, usually involving construction.

**DISTURBANCE OF LAND:** Any action that causes a change in the position, location, or arrangement of soil, sand, rock, gravel, ledge or similar earth material, and includes earth fill, earth moving, and earth removal.

**EARTH FILL:** The addition of earth materials to a lot or parcel, including but not limited to, sand, gravel, stone, soil, loam, sod, clay and mineral products.

**EARTH MOVING:** The addition, removal or relocation of earth materials within the boundaries of a lot or parcel, including but not limited to sand, gravel, ledge, stone, soil, loam, sod, clay and mineral products and includes the processes of grading and grubbing.

**EARTH REMOVAL:** The removal of earth materials from a lot or parcel, including but not limited to sand, gravel, ledge, stone, soil, loam, sod, clay and mineral products.

**EROSION:** The wearing away of the land surface by natural or artificial forces such as wind, water, ice, gravity, or vehicle traffic and the subsequent detachment and transportation of soil particles.

**ESTIMATED HABITAT OF RARE WILDLIFE AND CERTIFIED VERNAL POOLS:** Habitats delineated for state-protected rare wildlife and certified vernal pools for use with the Wetlands Protection Act Regulations (310 CMR 10.00) and the Forest Cutting Practices Act Regulations (304 CMR 11.00).



**GRADING:** Changing the level or shape of the ground surface.

**GRUBBING:** The act of clearing land surface by digging up roots and stumps

**IMPERVIOUS SURFACE:** Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and roof tops.

**LAND-DISTURBING ACTIVITY:** Any activity that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material, including without limitation: earth fill, earth moving, earth removal, clearing, grubbing, or grading,

**LOT:** A single parcel of land held in identical ownership throughout and defined by metes, bounds, or boundary lines in a recorded deed or on a recorded plan.

**LOW IMPACT DEVELOPMENT:** A set of strategies that seek to maintain natural systems for treating stormwater during the development process and after the development is complete. Stormwater is managed with a distributed network of swales and rain gardens, and other options rather than a centralized system of pipes and ponds.

**MASSACHUSETTS ENDANGERED SPECIES ACT:** (G.L. c. 131A) and its implementing regulations at (321 CMR 10.00) which prohibit the "taking" of any rare plant or animal species listed as Endangered, Threatened, or of Special Concern.

**MASSACHUSETTS STORMWATER MANAGEMENT POLICY:** The Policy issued by the Department of Environmental Protection, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act G.L. c. 131 §. 40 and Massachusetts Clean Waters Act G.L. c. 21, §. 23-56. The Policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

**MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or municipal storm drain system:** The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Rockport.

**NEW DEVELOPMENT:** Development on sites that have not previously been subject to extensive land disturbance activities; development on sites with less than 250sf of impervious surface; and development on sites with less than 10% of the site receiving land disturbance in the last 25 years.

**OPERATION AND MAINTENANCE PLAN:** A plan setting up the functional, financial and organizational mechanisms for the ongoing operation and maintenance



of a stormwater management system to insure that it continues to function as designed.

**OUTFALL:** The location where a sewer, drain, stream or other point source discharges into receiving waters.

**OUTSTANDING RESOURCE WATERS (ORWs):** Waters designated by Massachusetts Department of Environmental Protection as ORWs. These waters have exceptional sociologic, recreational, ecological and/or aesthetic values and are subject to more stringent requirements under both the Massachusetts Water Quality Standards (314 CMR 4.00) and the Massachusetts Stormwater Management Standards. ORWs include vernal pools certified by the Natural Heritage Program of the Massachusetts Department of Fisheries and Wildlife and Environmental Law Enforcement, all Class A designated public water supplies with their bordering vegetated wetlands, and other waters specifically designated.

**OWNER:** A person with a legal or equitable interest in property.

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

**POINT SOURCE:** Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, ground boring that produces the discharge of water, or container from which stormwater and/or pollutants are or may be discharged.

**PRE-CONSTRUCTION:** The conditions that exist at the time that plans for the land disturbance of a tract of land are formulated and are subsequently submitted to the Stormwater Permit Authority for a Stormwater Permit, or the conditions that exist at the time that plans for the land disturbance of a tract of land are formulated for activities that require other permits or approvals to undertake the proposed activity in the Town of Rockport

**POST-CONSTRUCTION:** The conditions that reasonably may be expected or anticipated to exist after completion of the land disturbance activity.

**PRIORITY HABITAT OF RARE SPECIES:** Habitats delineated for rare plant and animal populations protected pursuant to the Massachusetts Endangered Species Act and its regulations.

**RAIN GARDEN** A planted depression that is designed to absorb rainwater runoff from impervious areas like roofs, driveways, walkways, and compacted lawn areas. This reduces rain runoff by allowing stormwater to soak into the ground (as opposed to flowing into storm drains and surface waters which causes erosion, water pollution, flooding, and diminished groundwater).

**REDEVELOPMENT:** Development, rehabilitation, expansion, demolition or phased projects that disturb the ground surface or increase the impervious area on previously developed sites.

**RUNOFF:** Rainfall, snowmelt, or irrigation water flowing over the ground surface.

**SEDIMENT:** Mineral or organic soil material that is transported by wind or water, from its origin to another location; the product of erosion processes.

**SEDIMENTATION:** The process or act of deposition of sediment.

**SITE:** Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.

**SLOPE:** The incline of a ground surface expressed as a ratio of vertical distance to horizontal distance (ratio of rise over run).

**SOIL:** Any earth, sand, rock, gravel, or similar material.

**STABILIZATION:** The use, singly or in combination, of mechanical, structural, or vegetative methods, to prevent or retard erosion.

**STORMWATER:** Rainfall runoff, snow melt runoff, and surface water runoff and drainage.

**STORMWATER MANAGEMENT PERMIT: (SMP):** A permit issued by the Planning Board or Conservation Commission after review of an application, plans, calculations, and other supporting documents, which is designed to implement this Bylaw.

**STORMWATER MANAGEMENT PLAN:** A plan required as part of the application for a Stormwater Management Permit (see Section 6 and Planning Board Rules and Regulations). A document containing narrative, drawings and details developed by a qualified professional engineer (PE) or a Certified Professional in Erosion and Sedimentation Control (CPESC), which includes best management practices, or equivalent measures designed to control surface runoff, erosion and sedimentation during pre-construction and construction related land disturbance activities.

**STORMWATER PERMIT AUTHORITY:** This title shall apply to any of the several entities authorized to issue Stormwater Management Permits in the following circumstances: The Conservation Commission *shall* be the Permit Authority when any part of the project comes solely under their jurisdiction in the Wetlands Protection Act and the Rockport Wetlands Protection Act and not under the jurisdiction of any other Town Board or Commission. The Planning Board shall be the Permit Authority for all applications subject to Rockport Zoning Bylaw including Site Plan Review, or Rules and Regulations Governing the Subdivision of land. The Zoning Board of Appeals shall be

the Permit Authority for Comprehensive Permits under MGL Chapter 40B. The Planning Board shall be the Permit Authority for all other activities that require a Stormwater Management Permit. The Stormwater Permit Authority is responsible for coordinating the review, approval, and permit process as defined in this Bylaw. Other Boards and/or departments participate in the review process as defined in the Stormwater Regulations adopted by the Town of Rockport.

**STORMWATER UTILITY:** The Department of Public Works, or its designee may, upon Town Meeting approval, adopt a Stormwater Utility pursuant to M.G.L. Chapter 83 Section 16 and Chapter 40 Section 1A. The Department of Public Works, or its designee, shall administer, implement and enforce this Utility. Failure by the Department of Public Works to promulgate such a Stormwater Utility through this Bylaw or a legal declaration of its invalidity by a court shall not act to suspend or invalidate the effect of this Bylaw.

**STRIP:** Any activity which removes the vegetative ground surface cover, including tree removal, clearing, grubbing, and storage or removal of topsoil.

**SWALE:** A constructed watercourse shaped or graded in earth materials and stabilized with site suitable vegetation, for the safe conveyance and water quality improvement of storm runoff.

**TSS:** Total Suspended Solids.

**VERNAL POOLS:** Temporary bodies of freshwater which provide critical habitat for a number of vertebrate and invertebrate wildlife species.

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

**WETLAND RESOURCE AREA:** Areas specified in the Massachusetts Wetlands Protection Act G.L. c. 131, § 40 and in the Town of Rockport wetland bylaw/ordinance.

### **Section 3 Authority**

- A. This bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34.
- B. Nothing in this Bylaw is intended to replace the requirements of any other bylaw that has been made or may be adopted by the Town of Rockport.

### **Section 4 Applicability**

- A. This bylaw shall apply to all land disturbing activities that are part of new development or redevelopment that result in disturbance of an area of land 20,000 or more square feet that drain to the Municipal Separate Storm Sewer System

(MS4). Any activity that will alter the drainage characteristics of a parcel of land, unless exempt pursuant to Section 4.B of this Bylaw will be subject to the bylaw. A permit from the applicable Stormwater Permit Authority shall be required for any land disturbing, new development, or redevelopment activity that results in a land disturbance that will disturb equal to or greater than 20,000 square feet; or will disturb less than 20,000 square feet but which is part of a larger common plan of development or sale which will ultimately disturb 20,000 square feet or greater, which drains to the Town of Rockport municipal separate storm sewer system.

B. Construction activities that are exempt are:

- 1 Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulations 310 CMR 10.04 and MGL Chapter 40A, section 3;
- 2 Maintenance of existing landscaping, gardens, or lawn areas associated with a single family dwelling provided such maintenance does not include the addition of more than 100 cubic yards of soil or other material, or alteration of drainage patterns;
- 3 The construction of fencing that will not alter existing terrain or drainage patterns;
- 4 Normal maintenance of Town owned land, ways, and appurtenances;
- 5 Repair or maintenance of an individual subsurface septic disposal system, and related elements such as pipes, etc.; provided that the post-repair condition drainage is equal to the pre-repair condition.
- 6 Any work or projects for which all necessary approvals and permits have been issued before the effective date of this Bylaw section.
- 7 Activities undertaken in connection with any existing, permitted sand and gravel operation or similar enterprise where such activity is allowed by zoning, but shall not include expanded operations;
- 8 Maintenance, reconstruction or resurfacing of any public way; and the installation of drainage structures or utilities within or associated with public ways that have been approved by the appropriate authorities provided that written notice be filed with the Planning Board fourteen (14) days prior to commencement of activity;
- 9 Activities undertaken in connection with the refurbishing of an existing athletic field;

- 10 Activities that are subject to jurisdiction under the Wetlands Protection Act and demonstrate compliance with the Massachusetts Storm Water Management Policy as reflected in an Order of Conditions issued by the Conservation Commission, as authorized in the Phase II Small MS4 General Permit for Massachusetts.

## **Section 5      Responsibility for Administration**

A.      For the purpose of this Bylaw section, as noted in B. below, the term Stormwater Permit Authority shall indicate the Conservation Commission, the Planning Board, or the Zoning Board of Appeals as applicable in Section 2 of this Bylaw. Any powers granted to or duties imposed upon the Stormwater Permit Authority may be delegated in writing by the Permit Authority to its employees or agents.

B.      To the extent that the Planning Board is the Permit Authority under the Zoning Bylaw, Section 11, and the Rules and Regulations Governing the Subdivision of Land, and for certain other activity; and to the extent that the Conservation Commission is under the Wetlands Protection Act; and to the extent that the Zoning Board of Appeals is under MGL Chapter 40B; then each of the above named Town boards or Commissions shall also be the Permit Authority in that instance.

1.      Applications, plans and accompanying data under this bylaw may be filed simultaneously with and may be incorporated into those plans and documents required in other permitting processes.

2.      Rules and Regulations. The Planning Board shall adopt, and may periodically amend Rules and Regulations to effectuate the purposes of this Bylaw section. Failure by the Planning Board to promulgate such rules and regulations shall not have the effect of suspending or invalidating this bylaw. The Rules and Regulations shall include but shall not be limited to: the size, quantity, and distribution of plans; filing fee; required details for Stormwater Management Plan; Operation and Maintenance Plan; and Inspection and Site Supervision, etc.

C.      Stormwater Management Manual.

1.      The Stormwater Permit Authorities will utilize the policy, criteria and information including specifications and standards of the latest edition of the Massachusetts Stormwater Management Policy to execute the provisions of this Bylaw. This Policy includes a list of acceptable stormwater treatment practices, including the specific design criteria for each. The Policy may be updated and expanded periodically, based on improvements in engineering, science, monitoring, and local maintenance experience. Unless specifically altered in the Regulations, stormwater treatment practices that are designed,

constructed, and maintained in accordance with these design and sizing criteria will be presumed to be protective of Massachusetts water quality standards.

2. Stormwater Credit System. The Stormwater Authority may adopt a Stormwater Credit System as part of the regulations authorized by this Bylaw section. This credit system will allow applicants the option to use better site design practices to reduce some of the requirements specified in the criteria section of the Regulations. Failure of the Planning Board to promulgate such a credit system through its Regulations or a legal declaration of its invalidity by a court shall not act to suspend or invalidate the effect of this Bylaw.

## **Section 6 Employment of Outside Consultants**

The Permit Authority may employ outside consultants, at the Applicant's expense, under the terms of MGL Ch. 44 Section 53G, the Town of Rockport Zoning Bylaw, and Planning Board Rules and Regulations, to assist in its permit decision, including but not limited to plan review, drainage and stormwater analysis; to determine conformance with this Bylaw section and other requirements; and for construction inspection, etc.

## **Section 7 Performance Guarantee**

A. The Permit Authority may require the Permittee to post, before the start of land disturbance activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security as performance guarantee, to be in an amount deemed sufficient by the Permit Authority to ensure that the work will be completed in accordance with the permit. If the project is phased, the Permit Authority may release part of the bond as each phase is completed in compliance with the permit but the bond may not be fully released until the Permit Authority has received the Final Report as required by this bylaw and issued a Certificate of Completion.

B. The Stormwater Rules and Regulations shall establish reasonable criteria for assessing the Performance Guarantee.

## **Section 8 Duration of Stormwater Management Permit**

A Stormwater Management Permit is granted for a period of three years from the date of its approval and shall lapse if substantial use or construction has not commenced by such date, except for good cause as shown.

## **Section 9 Enforcement of Violations**

A. The Department of Public Works, or an authorized agent of the Department of Public Works, shall enforce this by-law, regulations, orders, violation

notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

#### B. Orders

1. The authorized agent of the Department of Public Works may issue a written order to enforce the provisions of this by-law or the regulations thereunder, which may include:

- a) a requirement to cease and desist from the land-disturbing activity until there is compliance with the bylaw and provisions of the land-disturbance permit;
- b) maintenance, installation or performance of additional erosion and sediment control measures;
- c) monitoring, analyses, and reporting
- d) remediation of erosion and sedimentation resulting directly or indirectly from the land-disturbing activity.

2. If the enforcing person determines that abatement or remediation of erosion and sedimentation is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of Rockport may, at its option, undertake such work, and the property owner shall reimburse the Town of Rockport expenses.

C. **Non-Criminal Disposition.** As an alternative to criminal prosecution or civil action, the Town of Rockport may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, 21 D and General Bylaw Chapter 16, Section 2, *Penalties* for violation of the Town of Rockport. The penalty for the first violation shall be \$100.00. The penalty for the second violation shall be \$200.00. The penalty for the third and subsequent violations shall be \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense

D. **Appeals.** The decisions or orders of the Stormwater Permit Authorities shall be final. Further relief shall be to a court of competent jurisdiction.

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

### **Section 10 Severability**

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



**A. Harbors & Floats****Section 1. Definition of Terms**

The following words, for the purposes of these by-laws, shall have the following meanings unless another meaning is clearly apparent from the way in which the word is used.

*Adrift.* The word “adrift” shall mean without being fast to a stationary object.

*Aground.* The word “aground” shall mean stuck on the bottom.

*Anchor.* The word “anchor” shall mean to hold a vessel in place by lowering a heavy weight into the water by cable, chain, line or other method.

*Anchorage areas.* The words “anchorage areas” shall mean areas designated for anchoring.

*Awash.* The word “awash” shall mean a semi-submerged vessel or object.

*Berth.* The word “berth” shall mean a position to tie up to or anchor.

*Boating season.* The words “boating season” shall mean the period from July 1 to the following June 30.

*Harbormaster.* The word “harbormaster” shall mean the harbormaster and assistant harbormasters duly appointed by the Board of Selectmen.

*LOA, Length Overall, Overall length.* The terms “LOA” and “Length overall” and “Overall length” are interchangeable and, where used, shall be taken to mean the length of a vessel from its forward-most part to its aft-most part.

*Moor.* The word “moor” shall mean to hold a vessel in place by cable, chain, line or other method as to a pier or buoy.

*Mooring.* The word “mooring” shall mean a semi-permanent anchorage installation, consisting of a heavy anchor, chain, a mooring buoy and a pennant.

*Mooring buoy.* The words “mooring buoy” shall mean a white buoy with a blue band marking a mooring.



*Mooring permit.* The words “mooring permit” shall mean annual written authority signed by the Harbormaster pursuant to M.G.L c . 91, §10A. Also known as a “10A permit”.

*Pennant.* The word “pennant” shall mean a line or chain by which a vessel is made fast to a mooring buoy.

*Person.* The word “person” shall mean and include an individual, a receiver, a trustee, a co-partnership, a joint venture, a firm and unincorporated association, a syndicate, a trust, a corporation, or any other entity.

*Pier.* The word “pier” shall mean any structure built out into the water for use as a landing place.

*Rockport harbors.* The term “Rockport harbors” includes Rockport Harbor, Old Harbor, Granite Pier Harbor and Pigeon Cove Harbor.

*Scuba.* The word “scuba” shall mean self-contained underwater breathing apparatus consisting of a diving apparatus with compressed air tanks for breathing underwater.

*Snorkel.* The word “snorkel” shall mean a breathing tube extending above the surface of the water, used in swimming just below the surface.

*Transient permit.* A mooring permit issued for no more than seven (7) consecutive days.

*Vessel.* The word “vessel” shall mean ships of all kinds, barges, houseboats, sailing vessels, watercraft and powerboats of any type or kind by whatever means propelled, every structure designed, adapted or capable of being navigated, towed or operated on water from place to place for the transportation of merchandise, people, or for any other purpose.

*Wharf.* The word “wharf” shall mean any structure generally parallel to the shore for use as a landing place.

*Winter buoy.* The words “winter buoy” shall mean a winter mooring marker.

## **Section 2      Mooring of Boats**

### **a. Permits**

- (i) Mooring Permits. No person shall moor, anchor or set any mooring, vessel or float within the limits of Rockport harbors without first obtaining a mooring permit from the Harbormaster.
- (ii) Mooring Permit Application. No mooring permit shall be issued until the applicant files an application with the Harbormaster on a form setting forth the applicant's name and address, date of birth, business and home telephone numbers, length and type of vessel, the applicant's preference with regard to Rockport harbors, and such further reasonable information as the Harbormaster deems necessary. The application shall be accompanied by a fee to be determined by the Board of Selectmen.
- (iii) Issuance of Mooring Permit. Upon receipt of a completed mooring application and any inspection of the mooring gear as the Harbormaster may require, and upon full payment of any fee that may be required pursuant to this by-law, a mooring permit may be issued designating the mooring location if in the opinion of the Harbormaster, the mooring and gear is sufficient to moor the vessel described in the application and there is available space within Rockport harbors to moor the vessel without endangering other vessels. The Harbormaster may reassign any vessel to a different mooring location as he deems appropriate.
- (iv) Waiting List. If, in the opinion of the Harbormaster, there is not available space within Rockport harbors to moor the vessel described in the application specified above, the applicant shall be placed on a waiting list maintained by the Harbormaster and a mooring permit shall be issued designating the mooring location when and if, in the opinion of the Harbormaster the mooring and gear is sufficient to moor the vessel described in the application and there is available space within Rockport harbors to moor the vessel. Applicants shall be issued permits on a first come, first served basis, taking into account availability of space, vessel size and such other factors as the harbormaster deems fit and reasonable to equitably allocate space. In order to remain on the waiting list from year to year, the applicant shall pay an annual fee to be determined by the Board of Selectmen.

The Harbormaster shall maintain and make available for public inspection records of issuance, modification, surrender and revocation of mooring permits, and will post a list detailing all such changes to the waiting list on the Town Bulletin Board in Town Hall, with copy to the Board of Selectmen, twice per year.

- (v) Transfer of Permit. No person may transfer his mooring permit and no person shall cause any vessel to be attached to the mooring

unless the vessel is described in the aforesaid application; provided, however, the Harbormaster may permit the use of a mooring by another vessel. In the event of the death of a mooring permit holder, the Harbormaster may assign the mooring permit to the decedent's spouse if said spouse is the vessel's registered owner or title holder, and requests the transfer in writing within one (1) year of the event of death.

- (vi) **Mooring Permit Terms.** No mooring permit will be issued for longer than a twelve-month period. No mooring permit shall be issued until the applicant files an application with the Harbormaster on a form supplied by him setting forth the applicant's name and address, date of birth, business and home telephone numbers, length and type of vessel to be attached thereto, and such further reasonable information as the Harbormaster deems necessary to enable him to pass on the adequacy of the application, and until the applicant makes full payment of all fees that may be required whether imposed by Statute or pursuant to this by-law. No transient mooring permit shall be issued for more than seven (7) consecutive days.
- (vii) **Maximum Vessel Length.** The maximum overall length of vessels on moorings in Rockport's harbors shall not exceed fifty (50) feet.
- (viii) **Vessel Sales or Changes.** The Harbormaster must be notified within thirty (30) days of the sale of any vessel, or the transfer of any interest therein, assigned to a mooring in the Rockport harbors. The permit holder has one (1) year to replace the vessel. In extenuating circumstances, the Harbormaster can extend the time limit. Replacement vessels must conform to the type and size boat that has been approved by the Harbormaster. The Harbormaster may, if he deems appropriate, reassign any such replacement vessel to a different mooring.
- (ix) **Designated Use.** A permit holder may, with the written approval of the Harbormaster, authorize a non-permit holder the use of said permit holder's mooring. The name of the non-permit holder must be present on the Waiting List [ref. Par. (iv) above]. Authorization can be granted for a maximum period of one (1) year. The same non-permitted boat will not be allowed to use the same mooring for more than one boating season. In the event that a permit holder shall not use his mooring for thirty (30) days in any boating season it may be deemed abandoned and reassigned, unless the permit holder has notified the Harbormaster, in advance and in writing, of his intent not to use the mooring for a period not to exceed one boating season. In such event the Harbormaster may make the mooring available for assignment.

- (x) Skiffs, Floats. Stickers will be issued for skiffs. All skiffs shall bear identification indicating the name and number of its owner, and the vessel to which it is a tender. A fee will be charged to skiffs not covered on a mooring permit. There should be a six (6) feet of slack in bow line when skiff is tied to a float, chain will not be allowed. Maximum length of skiffs will be twelve (12) feet, motors are not allowed.

**b. Gear**

- (i) Mooring Buoy Identification. The holder of a mooring permit shall cause his name and boat length to be painted or placed on the mooring buoy of the mooring. Any mooring not properly marked may be removed by the Harbormaster. Mooring buoys shall be standard white with a two inch blue band.
- (ii) Winter Buoy. The holder of a mooring permit may use winter buoys to mark the location of his mooring. The winter buoy shall be upright and clearly marked with the name of the permit holder and length of boat. Winter buoys shall be removed by the first of July and not set until Labor Day of each calendar year without the written permission of the Harbormaster. The top part of all winter buoys shall be painted white with a blue band so as to be easily visible at any tide level. Any winter buoy not removed by the first of July may be considered abandoned and may be removed by the Harbormaster unless written permission has been granted by the Harbormaster to maintain the winter buoy beyond the July first deadline.
- (iii) Mooring Gear Inspection. Holders of mooring permits shall annually inspect moorings and gear, including pennants and buoys, and if the gear is found defective, shall correct the defective condition immediately. The Harbormaster shall order the permit holders to have their mooring lifted at the permit holder's expense once each three (3) years for visual examination to determine its condition. In lieu of lifting moorings, replacements may be made or, at the holder's expense, the Harbormaster may permit an underwater visual inspection by an independent diver or a diver satisfactory to the Harbormaster who shall report the mooring condition to the Harbormaster.
- (iv) Minimum Mooring Gear. The Harbormaster may issue mooring gear rules and regulations, including minimum standards for anchors and ground tackle, in order to protect against endangering other vessels. These rules and regulations shall prescribe the minimum gear required prior to the issuance or renewal of a

mooring permit. It shall be the permit holder's responsibility to make sure that the gear selected is adequate to moor the permitted vessel in all conditions. The permit holder ought not rely solely upon the minimum gear standards that may be set forth in the Rockport Harbor Regulations as these standards are only minimum in nature. All gear must be installed and inspected by persons qualified by the Harbormaster to install ground gear. Gear not properly installed will be removed at the permit holder's expense.

**c. Fees**

Before a mooring permit is issued, and annually thereafter upon the sending of mooring permit bills, the applicant or holder shall pay a mooring permit fee. Such fee shall be assessed on a per foot basis, according to the overall length (LOA). The mooring permit fee for a float shall be assessed likewise. Fees shall be paid to the Town of Rockport. All mooring permit fees shall be calculated in the same manner. The Harbormaster may revoke any permit upon which the applicable fee has not been paid in full within ninety (90) days.

Transient mooring fees shall be paid on a per foot per day basis.

All mooring fees shall be established on an annual basis as recommended by the Harbormaster and as approved by the Board of Selectmen.

**Section 3. Town Floats**

**a. Tying of Vessels.** Any person using the Town floats shall tie up their vessels as directed by the Harbormaster and shall move from the float when so directed by the Harbormaster.

**b. General Use.** Town floats may only be used for the prompt loading and unloading of passengers or supplies. For example, temporarily casting off from the float and then returning to the float within an hour will be considered unreasonable use of the float.

**c. Charter/Party Boat Use.** No person shall load or unload passengers for charter or party vessels except at the Town floats designated for that purpose. No person operating a charter or party boat will cause a charter or party boat to arrive at Town floats until just before loading time or to discharge passengers, and any person operating a charter or party boat shall leave the Town float immediately after loading or discharging passengers. One side of the Town Float in Rockport Harbor shall be left open for non-commercial use.

#### **Section 4. T-Wharf**

**a.** Loading and Unloading of Traps, Fish and Gear. No person shall moor a boat at the area at the head of T-Wharf designated for loading and unloading lobster traps, fish, lobsters, nets and related gear.

**b.** Fueling and Repair of Vessels. No person shall moor a boat at the area of T-Wharf north of the Town Float designated for fueling repairs and related activities of commercial vessels.

#### **Section.5. Piers and Wharves**

No person shall moor or station a vessel alongside piers or wharves in the Town of Rockport without permission of the Harbormaster.

#### **Section 6. Headway Speed**

No person shall operate a vessel at a speed greater than five (5) miles per hour or cause a disturbing wake in Rockport harbors.

#### **Section 7. Towing in Anchorage Areas**

No person shall operate a vessel while towing water-skiers, aquaplanes or similar devices in Rockport harbors.

#### **Section 8 Stray Vessels**

A vessel which is:

- 1) In a deteriorated or un-seaworthy condition, or
- 2) Sunken or likely to sink, or
- 3) Aground, or
- 4) Adrift and likely to damage piers, wharves, floats or other vessels or to constitute a menace to navigation, or
- 5) Secured to a mooring or pier without proper authorization, or in violation of these by-laws, or
- 6) Awash,

is hereby declared to be a public nuisance and shall be considered a stray vessel. All stray vessels shall be delivered to the possession of the Harbormaster until claimed by the owner or disposed of according to law. The vessel owner shall pay all expenses incurred in connection therewith including charges for raising and storing same. Removal of any stray vessel by the Harbormaster shall be without liability to the Town of Rockport, its officers, agents or employees. The Harbormaster may order the owner of any stray vessel to properly moor or remove any such vessel and failure to do so shall be a violation. For purposes of This section, the registered owner or title holder or any person commanding said vessel at the time just prior to it becoming "stray" shall be presumed to be the vessel owner.

#### **Section 9. Lobstering, Fishing, or Obstructing Navigation in Harbors**

No person shall place or maintain any obstruction to navigation, including a lobster pot or buoy attached thereto, or anchor any vessel within Rockport harbors, or any approach thereto.

**Section 10. Scuba Diving, Swimming and Snorkeling**

No person shall scuba dive, swim or snorkel in Rockport harbors except for purposes related to hull and mooring inspection, cleaning and maintenance.(amended ATM 4/5/03)

**Section 11. Fishing**

No fishing is allowed from any Town float.

**Section 12. Livery Boat Service**

A Livery Boat Service licensed under Chapter 13.B.1.h. operating within the boundaries of the Town or the waters under its jurisdiction shall provide the following safety support:

- a. Demonstrations of the rented/leased equipment to customers.
- b. The following waterproofed documents to be placed aboard every rented/leased vessel:
  - (i) Written instructions for operating the equipment.
  - (ii) Abbreviated Rules regarding marine Right-of-Way.
  - (iii) Chart sections of the anticipated areas of operation.
- c. Such other equipment and/or training as may be mandated by Federal, Commonwealth, or Town regulations.
- d. Personnel certified in CPR and other first aid techniques (added ATM 04/03/04)
- e. A designated means of retrieving the property of the Livery Boat Service or proof of contract for such retrieval services. (added ATM 04/02/05)

**Section 13. Police Assistance**

Police officers shall assist the Harbormaster or his or her assistants in enforcing the orders relative to the use of the floats and the provisions of this By-law. The Chief of Police or his designee, may, upon request of the Harbormaster, and where the interest of safety so requires, close some or all of any wharf or street to permit the orderly hauling or storage of vessels.

**Section 14. Violations**

Violations of Rockport Harbor Regulations may result in loss of mooring permit, fines or both.

## **CHAPTER 10. PUBLIC PEACE AND ORDER**

### **A. Prohibited Conduct**

#### **Section 1. Public Drinking of Alcohol**

No person shall drink any alcoholic beverage (as defined in Massachusetts General Laws, C. 138, s. 1) or possess an opened container, full or partially full, of any alcoholic beverage, while in or upon any street, sidewalk, park, playground or other public place in the Town. No person shall drink any alcoholic beverage (as defined in Massachusetts General Laws, C. 138, s. 1) or possess an opened container, full or partially full, of any alcoholic beverage, while in or upon any private land or place in the Town without the consent of the owner or persons having control thereof.

#### **Section 2. Window Peeping**

No person, except an officer of the law in the lawful performance of his duties, shall enter upon the premises of another with the intention of peeping into the windows of a residence or of spying in any manner upon any person or persons therein.

#### **Section 3. Discharging Firearms**

No person shall fire or discharge any gun, pistol or other firearm in or across any street or other public place within five hundred (500) feet thereof, nor on private grounds beyond the five hundred (500) feet limit, against the objection of the owner; 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.

No person shall fire or discharge any firearms or explosives of any kind within the limits of any highway, park or other public property except with the written permission of the Board of Selectmen, or hunt or discharge any firearm on any private property except with the written permission of the owner or legal occupant thereof; provided, however, that this by-law shall not apply to the lawful defense of life or property nor to any law enforcement officer acting in the discharge of his or her duties. Said consent of the Board of Selectmen, owner, or legal occupant shall be carried at all times by any person hunting, and upon request shall be shown to any police officer or officer of the Department of Conservation or the property owner or his or her agent. Any person violating this by-law shall be punished by a fine of not more than fifty dollars for each offense.

#### **Section 4. Dressing in Vehicles**

No person shall dress or undress in a motor vehicle or trailer on any street in the Town.



**Section 5. Defacing Public Grounds and Property**

No person shall willfully deface or damage any gravestones and markers in cemeteries, public playground, planting, space, flower bed, guidepost or guideboard, official sign, post or signaling device for the direction of traffic, lamp post or lamp or lantern, or any building, fence or monument, or other thing situated, erected or made for the use or ornament of the Town, subject to a \$300.00 fine.

**Section 6. Canvassing, Soliciting and Distributing Handbills on Private Premises**

No person shall canvass, solicit, throw, deposit or distribute any commercial or non-commercial handbill upon any private premises, if requested by the owner or occupant not to do so, or if there is placed on the premises in a conspicuous position near the entrance, a sign bearing the words: "No Trespassing", "No Peddlers or Agents", "No Advertising", "No Canvassing or Soliciting", or similar notice. No person shall canvass or solicit in the Town without first having filled out an application form and offered sufficient identification in the form of a driver's license or other suitable picture identification with the Police Department.

**Section 7. Use of Tobacco Products**

**a. Definitions** As used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:

*Smoking:* The lighting of any cigar, cigarette, pipe or other tobacco product or having the possession of any lighted cigar, cigarette, pipe or other tobacco product.

*Public building:* Any enclosed, indoor area that is located in a building owned or occupied by any department or agency of the Commonwealth, or any political subdivision thereof.

**b. School Property.** The use of tobacco products within school buildings, the school facilities, or on school grounds by any individual, including school personnel, is prohibited.

**c. Public Buildings.** No person shall smoke in any public building except in an area that has been designated as a smoking area.

**d. Penalties.** Any person who violates any provision in b. and c. above shall be punished by a fine as follows:

First Offense:	Warning
Second offense:	\$25.00
Third and subsequent offense:	\$50.00

(Added 03/21/98)

## **B. Animal Control**

### **Section 1. Purpose**

The purpose of this by-law is to control animals, to prevent injury to property, persons and animals and to provide for the elimination of nuisance acts of dogs.

### **Section 2. Administration**

The Board of Selectmen shall annually appoint an Animal Control Officer and may appoint assistants who shall be responsible for the enforcement of this bylaw.

### **Section 3. Nuisance Dogs**

No person owning, harboring or having custody or control of a dog shall permit such dog to be or cause a public nuisance. Public nuisance shall include, but not be limited to, making repeated and prolonged excessive noise, chasing or otherwise molesting people, attacking people or other animals, chasing vehicles and trespassing on private or public land in such a manner as to cause damage.

### **Section 4. Prohibited Areas**

No person owning, harboring or having custody or control of a dog shall allow such dog to enter or remain upon any cemetery grounds at any time, upon any public school property between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday during the school year and any special sessions, or upon any public beach from June 1<sup>st</sup> to September 15<sup>th</sup>. This section, however, shall not prohibit a trained guide dog accompanying a person with visual impairment.

### **Section 5. Control of Animals**

No person owning or keeping a dog in Rockport shall permit such dog at any time to run at large in town, unless in an area or at a time exempted from this section by order of the Animal Control Officer for the Town of Rockport which order shall first be approved by the Board of Selectmen. Each time a dog licensed or unlicensed is at large shall constitute a separate violation under this section. Dogs under law enforcement auspices shall be exempt.

As used in this section the term 'at large' shall mean that a dog is off the premises of the owner and keeper and not on a leash or, except in the downtown district of Rockport, under direct voice control. For purposes of this section the downtown district is that area encompassed by the shoreline from King Street southerly to High Street, then to Parker Street, then to Railroad Avenue to King Street and King Street to the shoreline; within this area dogs can only be on a leash. The owner or keeper must accompany the dog and must have a leash in possession at all times. (Amended ATM 3/18/2000)

### **Section 6. Fecal Deposits**

The person owning, harboring or having custody or control of a dog shall remove and dispose of (in a suitable container) 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.

**Section 7. Dogs in Season**

Every female dog in heat shall be confined in a building or secure enclosure in such a manner that such female dog cannot come into contact with another animal except for planned breeding.

**Section 8 Dog Tags**

All dogs shall wear a collar or similar device with the current dog tags (license) attached.

**Section 9. Notice of Violation**

The Animal Control Officer shall issue a notice of violation of this by-law. The violation notice shall be given to the owner or person harboring or having control or custody of the dog that violated this by-law.

**Section 10 Penalties** (changed FTM 9/11/2006)

Any person who violates any provision in section 3-7 of this by-law shall be punished by a fine as follows:

First Offense:	\$25.00
Second Offense:	\$50.00
Third Offense:	\$100.00
Fourth and Subsequent Offenses:	\$200.00

The violation of any other provision in this by-law or in M.G.L., c. 140, §136A-§174B shall be punished by a fine not greater than \$100.00 for each offense.

**Section 11 Pick-up of Offending Dogs**

Any dog found to be in violation of this by-law and not under the immediate control of its owner or any other person may be picked up by the Animal control Officer and either returned to the owner or deposited in a dog pound or similar facility. The owner shall be required to pay (in addition to any applicable fine) a pick up fee of \$20.00 and also shall be responsible for all costs of maintaining and keeping the animal at the dog pound or similar facility.

**Section 12 Application of Statute**

The provisions of General Laws Chapter 140, Sections 136A to 174B, inclusive, as from time to time amended, shall apply within the Town of Rockport and shall govern the control/and licensing of dogs, except as modified herein and by Section 147A in said Chapter 140.

**Section 13 Forms and Tags**

Dog license forms, dog tags, kennel license forms and kennel dog tags shall be provided by the Town.

**Section 14. Fees**

Dogs licenses shall be annual licenses that are effective during the licensing period for which they are issued, which period shall run from May first through the following April 30<sup>th</sup>. The failure to obtain a license prior to the end of the month of May in each year or to properly license a dog or kennel shall be punishable by a graduated fine of \$5.00 per month for each month the dog or kennel is not registered up to a total fine of \$25.00

The annual fee for every license shall be as follows:

Sterilized male dog or spayed female	\$10.00
Male or female dog (not neutered)	\$16.00
Kennel license (four or more but less than 10 dogs)	\$40.00
Kennel license (10 or more dogs)	\$60.00

**Section 15 County Fees**

All fees and costs designated as paid by the County, in said sections 136A to 174B, inclusive, shall be paid by the Town.

**Section 16. Use of Fees**

All fees received hereunder shall be paid into the treasury of the Town for its use.

**C. Water Use Restrictions**

**Section 1. Authority**

This by-law is adopted by the Town under its police power to protect public health and welfare and its powers under M.G.L. c. 40, BB21 et seq. and implements the Town's authority to regulate water use pursuant to M.G.L. c. 41, B69B. This by-law also implements the Town's authority under M.G.L. c. 40, B41A, conditioned upon a declaration of water supply emergency issued by the Department of Environmental Protection.

**Section 2. 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 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 Department of Environmental Protection.

**Section 3. Definitions**

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

*State of Water Supply Emergency*: shall mean a State of Water Supply Emergency declared by the Department of Environmental Protection under M.G.L.c.21G, B15-17.

*State of Water Supply Conservation*: shall mean a State of Supply Conservation declared by the Town pursuant to Section 4 of this by-law.

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

#### **Section 4. Declaration of a State of Water Supply Conservation**

The Town, through its Board of Commissioners of Public Works, 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 6 of this by-law before it may be enforced.

#### **Section 5. 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 restrictions, conditions or requirements shall be included in the public notice required under Section 6.

- a. Odd/Even 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.
- b. Outdoor Watering Ban:** Outdoor watering including, but not limited to the watering of lawns, gardens, washing of motor vehicles, is prohibited.
- c. Outdoor Watering Hours:** Outdoor watering is 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.
- d. Filling Swimming Pools:** Filling of swimming pools is prohibited.
- e. The use of sprinklers, soaker hoses and in-ground sprinkler systems is prohibited (Amended ATM 03/29/99).**

#### **Section 6. Public Notification of a State of Water 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

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 5 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.

**Section 7 Termination of State of Water Supply Conservation: Notice**

A State of Water Supply Conservation may be terminated by a majority vote of the Board of Commissioners of Public Works upon a determination that the water supply shortage no longer exists. Public notification of the termination of a State of Water Supply shall be given in the same manner required by Section 6.

**Section 8 State of Water Supply Emergency: Compliance with DEP**

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

**Section 9. Penalties**

Any person violating this by-law shall be liable to the Town in the amount of \$50.00 for the first violation and \$100.00 for each subsequent violation which shall inure to the Town for such uses as the Board of Commissioners of Public Works 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 violation shall constitute a separate offense.

**Section 10. Severability**

The invalidity of any portion or provision of this by-law shall not invalidate any other portion or provision thereof. (Added 03/21/98)

**CHAPTER 11. MOTOR VEHICLES, STREETS AND PARKING**

**Section 1. Obstructing Streets and Sidewalks**

No person, unless he is the holder of a permit issued by the Department of Public Works and except in accordance with the terms and conditions of such permit, shall obstruct any street or sidewalk by placing therein any structure, house or other building, permanent or temporary, within the Town and allow it to remain there, or allow shrubbery to overhang sidewalks so as to impede free passage of pedestrians and snow removal equipment.

**Section 2. Damage to Sidewalks**

No person, unless he is the holder of a permit issued by the Department of Public Works and except in accordance with the terms and conditions of such permit,

shall break or dig up any public sidewalk, street, or highway in the Town. Any person having such a permit, shall before the expiration of same restore such sidewalk, street or highway to its original condition or to a condition satisfactory to such officials. Any such permit issued under the provisions of this section shall be in force for such time as the officials may specify and shall be subject to such other conditions as they may prescribe. During the whole of every night from sunset to sunrise, lighted lanterns, or similar devices, shall be provided by the permit holder to protect persons from danger. No person having obtained such a permit shall fail to comply with the conditions thereof. The official granting such permit shall have the right to revoke the same at any time, and may require a bond either before or after the commencement of work or during its progress to secure its performance.

**Section 3. Placing Water in Streets**

No person, shall knowingly permit any water or other liquid substance to run or be discharged from any structure or property owned by him or under his control, or onto or across any sidewalk or street in the Town. Nothing in this section shall prohibit a person from washing windows or other parts of a building on private property so long as the activity does not endanger the public.

**Section 4. Horses on Sidewalks**

No person shall ride or drive a horse on any public sidewalk in the Town. Nothing in this section shall prohibit a person from riding or driving a horse across a public sidewalk where it is necessary to access private property.

**Section 5. Obstruction to Vision at Intersections**

**a. Prohibition.** No person, owning, possessing or having under his control any real estate abutting any intersection of streets in any section of the Town, shall erect, place, plant or permit or suffer the erection, placing or planting or maintenance of any fence or structure, shrubbery, foliage, hedge, tree or the like in such a manner that it shall materially impede the vision of operators of motor vehicles between a height of two and one half (2 ½) and ten (10) feet above the centerline grades of the intersecting streets in the area bounded by the street lines of said real estate and a line joining points thirty (30) feet along said street lines from the point of intersection of said street lines.

**b. Enforcement.** This section shall be enforced by fence viewers.

**Section 6 Snow and Ice on Streets**

No person shall cause snow or ice to be deposited on a street, sidewalk or gutter other than in line with and contiguous to snow and ice plowed by the Town. Property owners shall remove snow and ice from sidewalks on and adjacent to their property to the extent practicable.



**Section 7. Placing Objects on Streets and Sidewalks**

No person shall place in any street or sidewalk any object so as to obstruct a free passage for travelers and pedestrians, nor allow any object to remain more than one hour after being notified by police officer to remove it. Nothing in this section shall be construed to prohibit a person from using streets and sidewalks for building purposes if he is the holder of a permit issued by the Department of Public Works.

**Section 8. Skateboarding, Coasting in Streets**

No person shall use skateboards or similar devices or coast on sleds, inflatable tubes, toboggans or similar devices on any public way, street, sidewalk or private way to which the public has the right of access, except in those areas, if any, designated for such use by the Chief of Police, and approved by the Board of Selectmen.

**Section 9 Parking**

The Board of Selectmen may make rules and regulations regulating traffic and parking upon the streets and highways of the Town and parking on Town property for the health, safety and welfare of its citizens. The rules and regulations shall be known as the Town of Rockport Traffic Rules and Regulations and shall be adopted in accordance with the provisions of G.L. c.40, Section 22.

**Section 10. Parades and Public Gatherings**

No person shall form or conduct any parade in any public street, public sidewalk or public way within the Town or form or conduct for the purpose of display or demonstration, any procession or assembly of people, (except a military or funeral parade or procession within such public street, sidewalk or way), without first obtaining a written permit from the Chief of Police; and no person shall take part in any such parade, procession or assembly which is not authorized by such a permit.

**Section 11. Camping without Permission**

No person shall set up on any property, public or private, at any time without written permission of the owner of the land, a camp or tent.

**Section 12. Failing to Stop or Go When Directed by Police Officer**

No person having charge of a vehicle, whether motor or horse driven, in any public way shall neglect to stop the same or to place the same when stopped as directed by a police officer of the Town, nor shall neglect to refuse to go upon that part of the said way to which such person is directed by a police officer of the Town.

**Section 13. Motorcycle, Motorbike, Snowmobile, Trail Bike, Motorized Scooter, or any other Motorized Two-wheel Vehicles. (added STM 9/10/01)**



**a.** It shall be unlawful for any person to operate a motorcycle, motorbike, snowmobile, trail bike, motorized scooter, or any other motorized two-wheel vehicle under the following circumstances and the operator shall be subject to the traffic laws and regulations of the commonwealth:

(i) On private property of another without the express permission to do so by the owner or occupant of the property.

(ii) On public school grounds, public property, park property, playgrounds, conservation areas, wetland areas, recreational areas, cemeteries and beaches without the express provision or permission to do so in writing by the proper public authority.

(iii) In a manner as to create loud, unnecessary or unusual noise so as to disturb or interfere with the peace and quiet of other persons.

(iv) In a careless, reckless or negligent manner so as to endanger the life and safety of any person or the property of any other person.

(v) On sidewalks and public paths.

(vi) Operate a motorized scooter on any way without being equipped with a braking system to enable the operator to bring the scooter traveling at a speed of fifteen miles per hour to a smooth safe stop within thirty feet on a dry, clean, hard level surface.

(vii) Operate a motorized scooter without a helmet as described under 540 CMR 22.08. Furthermore, this regulation insists that any helmet meet current U.S. Department of Transportation (DOT) Federal Motor Vehicle Safety Standard No 218.

(viii) Operate a motorized scooter during the period from one-half hour after sunset to one-half hour before sunrise without displaying to the front of the scooter a lamp emitting a white light visible from a distance of at least five hundred feet, and to the rear of said scooter a lamp emitting a red light, or a red reflector visible for not less than six hundred feet when directly in front of lawful lower beams of headlamps of a motor vehicle. A generator powered lamp that emits light only when the scooter is moving shall meet the requirements of the clause.

(ix) To park a motorized scooter upon any way or sidewalk in such a manner as to obstruct vehicular or pedestrian traffic.

(x) Failure of the operator of a motorized scooter to report any accident involving either personal injury or property damage in excess of one hundred dollars, or both, to the Rockport Police Dept.

(xi) Operator of a motorized scooter not yielding right-of-way to pedestrians.

**b. Penalty for violation.** Any person who violates any provision of this section shall be fined in accordance with Chapter 16, Section 2, Penalties of the Rockport Code of By-laws.

#### **Section 14. Repair of Private Ways (Added ATM, 4/7/2007)**

The Town may make temporary repairs and perform temporary maintenance on private ways. A private way shall be defined as private in ownership but open to the public use. To qualify under this by-law, the private way must abut three (3) or more year-round occupied residences, be at least three hundred (300) feet in length and have been open to the public for a minimum of six (6) years. The repairs may include both the sub-surface and surface of a private way. This by-law shall not authorize the installation or repair of sewer piping, the installation, maintenance and repair of drainage, asphalt surfacing or resurfacing of the roadway, or the maintenance of any trees, shrubs or bushes.

Upon petition of the Director of Public Works, the Board of Commissioners of Public Works or by fifty (50%) percent of the abutters of a private way open to the public for a minimum of six (6) years, the Board of Selectmen by majority vote may declare that the repairs to the said private way are required because of public necessity and convenience.

Repairs to a private way proposed to be made pursuant to this by-law shall not be made unless eighty five (85%) per cent of the abutters adjacent to the affected area of said repairs have executed written agreements stipulating that the way in question is private and is open to public use, agreeing to the said repairs, and further agreeing to release, defend, indemnify and hold harmless the Town, its officers, employees and agents, from all claims arising out of the carrying out of said repairs, or out of the Town's failure to make repairs to any portion of the way at any time, including all claims brought pursuant to M.G.L. c.84 §25. The Town shall incur no liability on account of damages caused by such repairs. Nothing in this by-law is intended to create any duty to maintain or repair such private ways on an annual basis. Betterments may be assessed for such repairs at the discretion of Town Meeting. The Board of Commissioners of Public Works shall require a cash deposit of 75% of the total project cost from the abutters prior to beginning the project, which shall be applied toward the cost of such repairs. The requirement for a cash deposit can be waived by Town Meeting action.

## **CHAPTER 12. PUBLIC SAFETY**

**Section 1. False Security Alarms**

**a. Definition of False Alarms.** The term *false alarm* shall mean:

(i) the activation of an alarm through mechanical failure, malfunction, improper installation, or the negligence of the user of the alarm system, and/or his employees or agents;

(ii) any signal requesting, or requiring, or resulting in a response on the part of the Police and/or Fire Department, when in fact, there has been no unauthorized intrusion into the premises, and no attempted robbery or burglary at the premises. Excluded from this definition will be false alarms that are caused by power outages, hurricanes, tornadoes, earthquakes, wind, or rain storms and similar conditions.

**b. Persons to be Notified.** Every alarm user shall submit to the Police Department and/or Fire Department, the names, addresses and telephone numbers of at least two (2) other persons who can be reached at any time, day or night, and who will be authorized to respond to an emergency signal transmitted by an alarm system, and who can open the premises wherein the alarm system is installed. The names, addresses and telephone numbers of these persons must be kept current at all times by the alarm user.

It shall be the responsibility of the user to instruct the persons receiving calls from the Police Department and/or Fire Department as to their responsibility when notified of an alarm and their responsibility to accept all calls from the Police Department and/or Fire Department, and accepting charges for said calls.

**c. False Alarm Report.** The Police Department and/or Fire Department shall notify the user in writing of each false alarm attributable to his alarm system, and it shall be the responsibility of the user to forward a full written explanation specifying the reasons for such false alarms, and the corrective action to be taken to prevent the further occurrence of said false alarms. The written explanation shall be forwarded directly to the Police Department and/or Fire Department no later than fifteen (15) days from the date of notification of a false alarm.

**d. Penalties for False Alarms.** Any user of an alarm system which transmits false alarms shall be assessed a fine for each false alarm in excess of three (3) within the calendar year, as provided by the following schedule:

First Offense	No Charge
Second Offense	No Charge

Third Offense	No Charge
Fourth Offense	\$ 25.00
Fifth Offense	\$ 50.00
Sixth & Subsequent Offenses	\$100.00

The Police Department and Fire Department shall provide written notification to the user of the assessment of set fines. Payment shall be made to the Town of Rockport through the Police Department and/or Fire Department within fifteen (15) days of the receipt of notification of said assessment. Failure to pay said fines within thirty (30) days of the assessment shall result in the disconnection of the alarm system from the Police Department until such payments of fines are made.

**e. Testing of Equipment.** No person shall work on, test, or demonstrate any alarm system designed to transmit emergency messages directly to the Police and/or Fire Department. Permission is not required to test or demonstrate alarm devices not transmitting emergency messages directly to the Police Department and/or Fire Department. An unauthorized test will constitute a false alarm with a subsequent penalty imposed.

**f. Start Up Period for New Connections.** Each user shall be allowed a period of thirty (30) days from the date of installation to correct faults, and/or defects, within the system, and to properly train all persons in the operation of the system. During this start up period no fines will be assessed.

**g. Waiver of fines.** The Chief of Police or Fire Chief shall be authorized to waive the fines assessed for false alarms in the event the alarms are the result of a problem that cannot be readily identified, provided the unidentified problem is substantiated by a written report of a qualified alarm company which will also outline what steps are being made to identify the problem. Said waiver of fines may be granted by the Chief of Police or Fire Chief for a reasonable period not to exceed thirty (30) days to allow the system to be repaired.

**h. Disconnection by Town.** The Town of Rockport, through its Chief of Police or Fire Chief, reserves the right to order the disconnection of any alarm system which is connected in any way to the Police Department and/or Fire Department for violation of any of the provisions of this by-law. Said disconnection shall occur only after the expiration of thirty (30) days from the date of written notification of pending actions by the Chief of Police or Fire Chief.

## **Section 2. Swimming Pools**

a. Any persons owning land in the Town of Rockport on which there is a swimming pool in-ground or above-ground, shall erect and maintain around such swimming pool an enclosure adequate to ensure that such pool is inaccessible to small children. Such enclosure shall extend from the ground to height of not less than five (5) feet above the ground or otherwise made inaccessible to children from the outside. Such enclosure shall be at least (5) feet from the edge of the swimming pool.

b. Above ground pool decks are subject to the requirements in Section 2. If the enclosure is on the deck around a swimming pool, it shall extend to a height of not less than five (5) feet above the deck at all points.

c. Pre-existing swimming pools lawfully installed prior to the original enactment of the requirements set forth herein are exempt from the requirement in the last sentence in Section 2, which requires a five (5) foot set back from the edge of the swimming pool, to the extent that the location or shape of the swimming pool precludes a minimum enclosure set back from the edge of the pool of at least five (5) feet.

### **Section 3. Street Names and Building Numbers**

a. In order to promote public safety and to implement the Enhanced 911 system, the Board of Selectmen shall adopt rules and regulations for the identification of unnamed private driveways serving two or more lots.

b. All buildings in the town shall be numbered. Building numbers shall be of a sufficient size and shall be affixed so as to be visible from the public or private way that provides access to said building. (Added 03/21/98)

## **CHAPTER 13. COMMERCE AND TRADE**

### **A. Signs**

#### **Section 1. Posting Bills, Placards, Etc.**

No person shall post any written or printed matter, or any bill, placard, with paste or by any other means, or shall write any other figures, words or devices upon any building, fence or wall in the Town without consent of the owner or occupant of the same, nor upon any property of the Town, without the consent of the Board of Selectmen, or the official having jurisdiction over said property. No person shall deface or tear down any bill, placard or notice posted under the provisions of the preceding sentence, unless the same is affixed to premises owned by him or her or under their control.

No signs or advertising devices, or displays of goods of any kind or nature shall be erected on any premises or affixed to the outside of any structure, in the Town of Rockport without a permit issued by the Board of Selectmen, except as are

permissible under section 2. Said permit shall establish the location thereof and signs shall be subject to the following:

## **Section 2. Signs & Advertising**

### **a. Signs permitted in All Zoning Districts without the need for a permit:**

(i) One "For Sale" sign or "For Rent" sign, having not more than six (6) square feet of signboard area and advertising only the premises on which the sign is located may be displayed.

(ii) One sign, not exceeding six (6) square feet of signboard area may be displayed on the Premises while any structure is actually under construction.

(iii) Signs containing political, religious or personal messages shall not exceed six (6) square feet of signboard area and shall be subject to all other provisions of this section (Added, Article 21 c. September 8, 1997, Town Meeting; Approved December 23, 1997)

(iv) **Poster.** Poster advertising non-profit or civic events may be placed in a window or on a bulletin board before the event and must be removed the next business day after the event.

### **b. IN ALL ROCKPORT ZONING DISTRICTS, as defined in the Zoning By-Law, signs or advertising devices or display of goods are permitted only as follows:**

(i) No person or corporation shall, out-of-doors, or extending beyond the door jambs, in connection with offering goods, wares or merchandise for sale, expose the same or a sign advertising the same, within the General District and Downtown District, without having first obtained a permit from the Board of Selectmen. No such display shall be placed in any district in such a manner as to create a public nuisance. Signs painted outdoors on driveways, sidewalks or rocks shall conform to this By-law. (amended ATM 4-6-13)

(ii) All signs or advertising devices or displays or goods shall be stationary and shall not contain any visible, moving or movable parts; no signs or advertising device shall be of neon or illuminated tube (gaseous discharge) type; lighting of any sign or advertising device shall be continuous, not intermittent nor flashing nor changing; no internally lighted signs are permitted; use of iridescent or luminescent types of paint are not permitted.

(iii) Sign illumination is permitted only between the hours of seven o'clock in the morning and eleven o'clock in the evening, except that signs may be illuminated during any hours

establishments are open to the public.

(iv) Signs shall relate to the premises on which they are located and shall identify only the residence, property and/or occupant of such premises and advertise only the articles or services available within said premises except by special permission of the Board of Selectmen.

(v) No sign shall be affixed to any public shade tree.

(vi) There shall be no temporary or permanent special promotional signs, banners, balloons, windsocks, streamers or placards erected, suspended, posted, or affixed in any manner outdoors or on the exterior of any commercial building, except by permission of the Board of Selectmen.

(vii) All signs protruding over Town property shall require a permit from the Board of Selectmen and shall be covered by such insurance as the Selectmen deem adequate.

**c. IN GENERAL, DOWNTOWN AND SEMI-RESIDENTIAL DISTRICTS**, as defined in the Zoning By-Law, signs or advertising devices or display of goods are permitted only as follows: (Amended 4-6-13)

(i) On each lot in a General, Downtown or Semi-Residential District, there are permitted two signs affixed to the exterior of a building for the occupant or business; the top edge of each sign shall not be higher than the lowest point of the roof except within the pediment. In buildings containing more than one business, not more than one sign per business shall be permitted. All signs affixed to buildings in General, Downtown and Semi-Residential Districts, except Bearskin Neck, shall not be more than ten (10) square feet signboard area per sign except by special permit from the Board of Selectmen. (Amended ATM 4-6-13)

(ii) All signs on Bearskin Neck shall be by special permit from the Board of Selectmen.

(iii) No free-standing sign shall have a signboard area (or display area if no signboard) exceeding ten (10) square feet gross area, measured from the tops of the topmost display elements to the bottom of the lowest display elements, and from exterior side of display elements and including in such measurements any blank space between display element: no display or free standing signboard dimension shall exceed four (4) feet except by special



permit by the Board of Selectmen. Businesses shall be limited to one (1) free-standing sign per business or occupant.

(iv) **Window Signs.** Signs painted or placed on the inside of the glass of a window shall be permitted, provided, that the aggregate area of such signs does not exceed ten percent of the area of the window glass.

(v) **Directory Signs.** In buildings properly used for business, commercial or industrial uses, one directory sign which sets forth a directory of the establishments occupying a building may be erected and maintained at each public entrance to the building, provided that such directory sign shall not exceed an area determined on the basis of one square foot for each establishment lawfully occupying the building.

**d. IN RESIDENTIAL, RESIDENTIAL A, AND SINGLE RESIDENCE DISTRICTS** as defined in the Zoning By-Law, signs or advertising devices or displays of goods are permitted only as follows:

(i) One sign displaying the street number or name of the occupant of the premises, or both, not exceeding three (3) square feet in area; such sign may be attached to a building or may be on a rod or post not more than six (6) feet high and not less than three (3) feet from the street line; such sign may include identification of an accessory studio or professional office in the dwelling or on the premises, or may identify other permitted accessory uses, including customary home occupation.

(ii) For churches and institutions two (2) bulletin or announcement boards or identification signs are permitted; for each church or institution one sign shall not be more than ten (10) square feet signboard area and the other not more than six (6) square feet signboard area – no sign shall be located less than three (3) feet from the street line.

(iii) On a premises with a lawful non-conforming use, one sign of not more than six (6) square feet signboard area may be displayed. Other accessory signs require a special permit from the Board of Selectmen.

**e. Fines** (Amended ATM 4-6-13)

Violators of Chapter 13A shall be punishable by fines as follows:

First Offense:	Warning
Second and subsequent offenses	\$100.00



Each day that the By-law is violated shall constitute a separate offense

## **B. Licenses**

**Section 1.** No person, without having first obtained a license in accordance with Chapter 3, Section 4 c.(iii) of these by-laws, shall conduct the following activities within the Town:

- a.** Purchase, sell or barter junk, old metals or second hand articles within the Town;
- b.** Set up, use or drive hackney carriages for the conveyance of persons for hire from place to place within the Town or from within the Town to places outside the Town;
- c.** Discharge, explode, set off (or cause any of the foregoing) fireworks within the Town;
- d.** Set up, operate or carry on a self-service laundry or laundromat, so called, or self service dry cleaning establishment.
- e.** Set up, operate or carry on any business as a transient vendor as defined in G.L. c. 101, Section 1.
- f.** Hawk or peddle any magazines, publications, books, magazine and book subscriptions;
- g.** Set up, operate or carry on any business for which a license is required by statute to be issued or which may be issued by the licensing authority of the Town.
- h.** Set up, operate or carry on a livery boat service for motor, sail or man-powered vessels. (added ATM 4/3/04)

**Section 2.** Criminal History Check Authorization. (Added ATM 4-6-13)

- a.** In accordance with the provisions of M.G.L. c.6, §172B½, the Police Department shall fingerprint the persons listed below and conduct state and national fingerprint-based criminal history checks for such individuals. To carry out these criminal history checks, the Police Department shall be authorized to utilize Federal Bureau of Investigations records; provided, however, that such records shall not be disseminated to unauthorized entities and shall be maintained and disclosed in accordance with law.

The licensing authority is hereby authorized to deny an

application for any license specified herein, including renewals and transfers thereof, from any person who is determined unfit for the license due to information obtained pursuant to this by-law. Factors that shall be considered in making a determination of fitness shall include but not be limited to whether the record subject has been convicted of, or is under pending indictment for, a crime that bears upon the subject's ability or fitness to serve in that capacity, including any felony or a misdemeanor that involved force or threat of force, possession of a controlled substance, or a sex-related offense.

**b.** All applicants for Hawkers and Peddlers, Door-to-Door Sales, Pawn Brokers, Solicitors, or Taxi and Livery licenses, and for any license to sell alcoholic beverages, including the "responsible manager" listed on the license application, shall be subject to the requirements of this by-law.

**c.** The Board of Selectmen, in consultation with the Chief of Police, shall promulgate regulations for the implementation of this by-law, which may include, but shall not be limited to; establishment of submission deadlines; procedures for making recommendations to the licensing authority or making a licensing decision as a result of such criminal history check; procedures for accessing, correcting or amending any such record; and criteria for fitness determinations in addition to those set forth in Section 1 of this by-law.

**d.** The Police Department shall charge a fee of one hundred dollars (\$100.00) for each fingerprinting and criminal history check. A portion of the fee, as specified in M.G.L. c.6, §172B½, shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund, and the remainder of the fee shall be retained by the Police Department for costs associated with the administration of the fingerprinting system.

**C. Sale of Art**

No person shall advertise or sell a painting within the Town as an original work of art unless it is one of a kind. No person shall sell a painting within the Town that has been signed by a fictitious or fraudulent signature, or otherwise than by the bona fide signature of the artist who created the work.

**D. Gambling (Added 09/11/00)**

No person shall operate any vessel or its launches to support gambling or games of chance, and use harbor facilities in the Town of Rockport, without first obtaining approval of a majority vote by citizens attending a regular or special Town Meeting.

## CHAPTER 14 ENVIRONMENTAL PROTECTION AND PUBLIC HEALTH

### A. WETLANDS (Amended 03/29/99)

#### Section 1. Purpose

The purpose of this by-law is to protect the wetlands, water resources, and adjoining land areas in Rockport by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon resource area values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention including coastal storm flowage, water quality, water pollution control, fisheries, shellfish, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture, and recreation values deemed important to the community (collectively, the “resource area values protected by this by-law”). This by-law is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act (G.L. c. 131, s.40) and Regulations there under (310 CMR 10.00).

#### Section 2. Definitions

Except as otherwise provided in this by-law or in regulations of the Commissions, the definition of terms in this by-law shall be as set forth in the Wetlands Protection Act on anything relative thereto (G.L., c. 131, s. 40) and Regulations (310 CMR 10.00).

The following definitions shall apply in the interpretation and implementation of this by-law.

The term “*quarry pit*” shall include any open pit previously used for cutting stone, which has since become inundated with water from rain, runoff, or springs. This includes small pits known locally as “*motions*”.

The term “*alter*” shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this by-law.

- a. Removal, excavations, or dredging of soil sand, gravel, or aggregate materials of any kind.
- b. Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics.
- c. Drainage, or other disturbance of water level or water table.

- d. Dumping, discharging, or filling with any material which may degrade water quality.
- e. Placing of fill or removal of material, which would alter elevation.
- f. Driving of piles, erection, or repair of buildings, or structures of any kind.
- g. Placing of obstructions or objects in water.
- h. Destruction of plant life including cutting of trees.
- i. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters.
- j. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or ground water.
- k. Incremental activities, which have, or may have, a cumulative adverse impact on the resource areas protected by this by-law.

### **Section 3 Jurisdiction**

Except as permitted by the Conservation Commission or as provided in this by-law, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter within the following resource areas: any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; quarry pits and motions; rivers; streams; creeks; beaches; dunes; estuaries; the ocean; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; lands subject to tidal action; lands within 100 feet of above cited resource areas; coastal storm flowage, or flooding (collectively the “resource areas protected by this by-law”). Said resource areas shall be protected whether or not they border surface waters.

### **Section 4. Applications for Permits and Requests for Determination (RFD)**

Written application shall be filed with the Commission to perform activities affecting resource areas protected by this by-law. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this by-law. No activities shall commence without receiving and complying with a permit issued pursuant to this by-law.

The Commission in an appropriate case may accept as the permit application and plans under this by-law the Notice of Intent (NOI) and plans filed under the

Wetlands Protection Act on anything relative thereto (G.L. c. 131, s. 40) and Regulations (310 CMR 10.00).

Any person desiring to know whether or not a proposed activity or an area is subject to this by-law may in writing request a determination from the Commission. Such a Request for Determination (RFD) shall include information and plans as are deemed necessary by the Commission.

At the time of a permit application or RFD, or application for a Certificate of Compliance the applicant shall pay a filing fee specified in Regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act on anything relative thereto (G.L. c. 131, s.40) and Regulations (310 CMR 10.00). The fee shall be deposited in a dedicated account, for use only for wetlands protection activities, from which the Commission may withdraw funds with the approval of the Board of Selectmen.

**Section 5. Notice and Hearings** (Amended 09/11/00)

Any person filing a permit application with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters and abutters to the abutters within 300 feet of the property line of the parcel or parcels of land where the proposed activity is to take place 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, including any in another municipality or across a body of water. The notice to abutters shall have enclosed a copy of the permit application or request, with plans, or shall state where copies may be examined and obtained by abutters. The applicant shall obtain a certified list of names and addresses of all persons required to be notified from the Rockport Board of Assessor's Office. The applicant shall file with the Commission an affidavit of service signed by the person serving the notices, the certified list of names and addresses from the Rockport Board of Assessor's Office and a copy of the notices mailed and delivered. When a person requesting a determination is other than the owner of the property where the activity is proposed, the request (RFD) or permit application (NOI) shall also be mailed or delivered to the owner by the applicant and proof of service shall be filed with the Commission. The Commission shall send a copy of the notice of hearing and a copy of the determination or permit to both the owner and applicant.

The Commission shall conduct a public hearing on any permit application or RFD, with written notice given at the expense of the applicant, five business days prior to the hearing, in a newspaper of general circulation in the municipality.

The Commission shall commence the public hearing 21 days from receipt of a completed permit application or RFD unless an extension is authorized in writing by the applicant.

The Commission shall issue its permit or determination in writing within 21 days of the Close of the public hearing thereon unless an extension is authorized in writing by the applicant.

The Commission in an appropriate case may combine its hearing under this by-law with the hearing conducted under the Wetlands Protection Act on anything relative thereto (G.L. c. 131 s. 40) and Regulations (310 CMR 10.00)

The Commission shall have the authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations of other boards and officials.

### **Section 6. Permits and Conditions**

If the Commission, after a public hearing, determines that the activities which are subject to the permit application or the land and water uses which will result therefrom are likely to have a significant individual or cumulative effect upon the resource area values protected by this by-law, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions. The Commission shall take into account the cumulative adverse effects of loss, degradations, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.

The Commission is empowered to deny a permit for failure to meet the requirements of this by-law; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area values protected by this by-law; and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

To prevent wetlands loss, the Commission shall require applicants to avoid wetlands alteration wherever feasible; shall minimize wetlands alteration; and, where alteration is unavoidable, shall require mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication.

A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work. Provided that annual notification of time and location of work is given to the Commission, any permit may be renewed once for an additional one-year period, provided that a request for a renewal is received in writing by the Commission prior to expiration. Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land.

For good cause the Commission may revoke or modify a permit or determination issued under this by-law after notice to the holder of the permit or determination, notice to the public, abutters, and town boards, pursuant to section 4 above, and a public hearing.

The Commission in an appropriate case may combine the permit or determination issued under this by-law with the Order of Conditions or Determination of Applicability issued under the Wetlands Protection Act on anything relative thereto (GL c. 131, s. 40) and Regulations (310 CMR 10.00).

No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the Registry of Deeds or, if the land affected is registered land, in the Registry section of the Land Court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the permit has been recorded.

#### **Section 7. Regulations**

After a public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this by-law effective when voted and filed with the Town Clerk, and approved by the Board of Selectmen. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act on anything relative thereto to suspend or invalidate the effect of this by-law.

At a minimum these regulations shall define key terms in this by-law not inconsistent with the by-law and procedures governing the amount and filing fees.

#### **Section 8. Security**

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

- a.** By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the



Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit.

**b.** By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

### **Section 9. Compliance**

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this by-law, 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.

The Commission, its agents, officers, and employees, may enter upon the land where the proposed work is to be done in response to a request for a prior determination, or for the purpose of carrying out its duties under this by-law, and may, or cause to be made such examination or survey as deemed necessary.

The Commission shall have the authority to enforce this by-law, its regulation, and permits issued thereunder, by violation notices, administrative orders (if the community has accepted G.L., c. 40 s. 21D), and civil and criminal court actions. Any person who violated 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.

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

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

Any person who violates any provision of this by-law, or regulations, permits, or administrative orders issued there under, shall be punished by a fine of not more than \$300.00. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the by-law, regulations, permits, or administrative orders violated shall constitute a separate offense.

As an alternative to criminal prosecution in a specific case, the Commission may issue citations under the non-criminal disposition procedure set forth in G.L., c.



40, s. 21D, which has been adopted by the Town in Chapter 16, Section 2.b. of these By-laws.

**Section 10. Burden of Proof**

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

**Section 11. Appeals**

A decision of the Commission shall be reviewable in the Superior court in accordance with G.L., c. 249, s. 4.

**Section 12. Severability**

The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination, which previously has been issued.

**B. Litter**

**Section 1. Advertising**

No person shall throw, cast, hand out or distribute, or cause or permit to be thrown, cast, handed out or distributed any handbills, fliers, menus, or other advertising matter whatsoever, in or upon any public street or public place within the Town of Rockport. Nothing herein shall be deemed to prohibit the lawful distribution of anything other than commercial and business advertising matter.

**Section 2. Debris in Streets**

No unauthorized person shall place, or cause to be placed, on any public sidewalk, street or highway or upon any of the common lands of the Town, any gravel, dirt, wood, lumber, buildings, vehicles, boxes, barrels, stones, coal ashes, rubbish or filth of any kind, noxious or refuse liquid or solid matter or substance, or any other things. No person shall throw or place, or cause to be thrown or placed, in any street or any sidewalk of the Town, any nails, spikes, screws, glass or other similar articles. No person shall willfully tip over or upset the contents of any box or barrel containing ashes, house dirt, or rubbish of any kind upon any sidewalk or into any public way of the Town, or in or upon coastal or inland wastewaters, except ashes for burial.

**Section 3. Improper Disposal in Public Places**

No person shall deposit household trash, garbage or waste materials in litter barrels and collection devices on any public way, public park area to which the public has a right of access.

**C. Noise**

**Section 1. Sounding or Car Horns**

No person shall unnecessarily sound a car horn on public or private ways creating a loud noise or disturbance.

**Section 2. Sound Devices in Motor Vehicles (Added 09/11/00)**

No person shall play any radio, music player such as a boom box or any audio system, or use any device to increase muffler or motor sounds in any type of motor vehicle at such a volume as to be clearly audible from fifty (50) feet away, which annoys, disturbs or endangers the quiet, comfort or repose of persons within the Town of Rockport.

The following penalties shall apply:

First offense	mandatory warning citation
Second offense	\$ 50.00
Third offense	\$100.00
Fourth and each subsequent offense	\$300.00

**D. Water Pollution**

**Section 1. Swimming in the Public Water Supply**

No person shall bathe, wade or swim in a pond, stream, quarry or reservoir which is used for public water supply in the Town of Rockport.

**Section 2. Polluting Public Water Supply**

No person shall deposit excrement, foul waste, decaying matter, or any pollutant or contaminant in any water source used for domestic or public water supply within the Town or upon any shore or within fifty (50) feet of the water of any pond, stream or reservoir used for domestic or private water supply. Nothing in this section shall prohibit the lawful enrichment of land for agricultural purposes by any person owning, leasing or controlling real estate in the Town.

**Section 3. Pollution of the Town's Waters**

No person shall discharge sewage, waste, refuse, fuel oil, or any other pollutant to the waters of the Town. Such discharge shall be punishable by fine and/or loss of mooring permit.

**Section 4. Pollution**

No person shall deposit or leave any excrement, waste materials, pollutant, contaminant or refuse on any beach in the Town.

**Section 5. Swimming in the Nude**

No person shall swim or bathe nude in any of the waters in or surrounding the Town.

**Section 6. Rules and Regulations**

The Board of Selectmen may make reasonable rules and regulations concerning beach use and activities in order to promote public health, safety and welfare.

**E. Aesthetics and Environment**

**Section 1. Vending Machines**

**a.** No person shall place a vending machine on property owned or controlled by the Town without a license from the Board of Selectmen. The term “vending machine” shall mean any self-service device offered for public use which, upon insertion of a coin, coins, token, paper currency, or by other means, dispenses, sells or otherwise delivers food, beverage, either in bulk or in package, or any goods, papers or supplies.

**b.** An application for a vending machine license shall be made to the Board of Selectmen on a form approved by them. No such license shall be for a term of longer than twelve months. Each license application shall specify the size of the vending machine, what shall be offered for sale from each machine, the exact proposed location for each machine and the power source for the operation of each machine. The name and address of the applicant and the name and address and telephone number of the party responsible for the maintenance of each machine shall be included with each application.

**c.** The Board of Selectmen shall not issue a license unless it finds that the granting of the license and the placement and operation of the machine will not have a negative impact upon the neighborhood in which it is to be placed by reason of noise, odor, light and trash, and will not have a negative impact upon the character of the neighborhood in which it is to be placed.

**Section 2. Junk and Junk Vehicles**

**a. Junk Licenses**

(i) License Required. No person shall do business as a junk collector or dealer in junk unless licensed to do so by the Board of Selectmen. No person shall allow the accumulation of junk, junk cars, or other trash upon his property so as to create a nuisance.

(ii) Fees. Junk Licenses shall be assigned and recorded by the Town Clerk before being delivered to the licensee. Such license shall continue in force until the May 1<sup>st</sup> following issuance, at which time

they shall automatically expire, unless sooner revoked at the pleasure of the Selectmen.

(1) Rules and Regulations. The Selectmen may make rules and regulations governing and imposing restrictions upon the use of junk licenses.

(2) Fee for License. The fee for such license shall be set by the Selectmen.

**b. Junk Vehicles**

(i) No person in charge or in control of any real estate within the Town, whether owner, tenant, occupant, lessee or otherwise, shall allow any partially dismantled, non-operating or wrecked motor vehicles to remain on such property longer than 60 days without a valid windshield sticker, so-called, issued and displayed in accordance with the requirements of Chapter 90, Section 7A of the General Laws, as amended, and the rules and regulations of the Registrar of Motor Vehicles, unless a permit has been obtained from the Board of Selectmen. Said permit (s) must be affixed to the vehicle (s) plainly and visibly. The Board shall not issue a permit unless it finds that such vehicle on said premises does not constitute a hazard to the safety and welfare of the inhabitants of the Town nor will otherwise nullify or substantially derogate from the purpose or intent of the Zoning By-laws. No such permit shall be required for a vehicle in an enclosed building nor for a vehicle on the property of a lawful business or farming enterprise if necessary to such operations, nor for motor vehicles at the place of business of a holder of a class 3 license under Sections 58 and 59 of Chapter 140 of the General Laws.

(ii) For purposes of this by-law, a junk vehicle shall include:

- a. Any motor vehicle which is worn out, cast off, or discarded;
  - b. Any motor vehicle which is ready for dismantling or destruction;
  - c. Any motor vehicle which has been collected or stored for salvage or for scrapping in order to make use of the parts thereof.
- Any parts from a junk vehicle shall also be considered a junk vehicle under this by-law.

(iii) No such permit shall be required for a vehicle in an enclosed building not for a vehicle on the property of a lawful business or farming enterprise necessary to such operations, nor for motor vehicles at the place of business of a holder of a class 3 license under Sections 58 and 59 of Chapter 140 of the General Laws.

c. A license to keep not more than two (2) junk vehicles may be requested by filing with the Town Clerk an application in writing to the Board of Selectmen. The Board shall hold a public hearing upon such request. The cost of publishing a notice of the hearing shall be paid by the applicant for the license.

d. The Board of Selectmen may grant a one (1) year license upon such conditions as the Board deems appropriate to keep such junk vehicles in the open after a public hearing has been held, and the Board determines that the keeping of same will not depreciate property values in the area, will not create a hazard to the public safety, or will not become a public nuisance. Renewal of this license shall be granted only after the procedure set forth above is followed.

e. Upon the filing with the Board of Selectmen of a petition signed by at least ten (10) legal residents of Rockport asking for revocation of any license issued under this by-law, the Board shall call a public hearing to review the conduct of the licensee under said license. If the Board determines that the operation of the license is such as to depreciate property values in the area, create a hazard to the public safety, or constitute a public nuisance; the Board may by majority vote, revoke said license. The effective date shall be thirty (30) days after the said vote of revocation.

### **Section 3      Top Soil, Stone and Gravel Removal**

**a. Permit Required.** The removal for sale or for use elsewhere other than on the parcel of land involved, of soil, (including turf or top soil), loam, sand, ledge, gravel and stone from any parcel of land not in public use in the Town, is prohibited unless in accordance with the terms of a permit issued by the Board of Selectmen.

**b. Application for Permit.** An application for a permit shall be filed with the Board of Selectmen and shall be accompanied by a plan of the land involved showing the boundaries, area and dimensions, the abutting land owners, and the location and extent of the portion from which the applicant proposes to remove said material. A fee for the permit shall be set by the Board of Selectmen.

**c. Public Hearing.** The Board of Selectmen shall hold a public hearing, together with the Planning Board and Conservation Commission, to consider the application. The Board of Selectmen shall publish a notice in a local newspaper in general circulation in the Town not less than ten days before the date set for the hearing. The Board of Selectmen shall give notice of the hearing by mail postage prepaid to all known abutting land

owners, as shown by the records of the assessors of the Town of Rockport, and to any other person or persons who, in the opinion of the Selectmen, may be interested in the application, not less than ten days before the hearing. The applicant shall bear the expense of the publication and mailing.

**d. Refer to Planning Board and Conservation Commission.** After the hearing has been concluded the Board of Selectmen shall refer the application to the Planning Board and Conservation Commission for their recommendations thereon.

**e. Consideration of Public Welfare.** The Board of Selectmen, in passing upon such application, shall give due consideration to the property rights of the applicant and may not arbitrarily refuse to grant the permit.

The Board of Selectmen shall also give due consideration to the public welfare, safety, health and interest. The Board of Selectmen may refuse to grant the permit if they find that the proposed use is likely to adversely affect property values in the area or produce disagreeable dust and noise or a dangerous condition or unreasonably injure the character of the area or cause an objectionable condition or result in the other detriment to the public good or for any other valid reason. The Board of Selectmen may or, if requested in writing at the hearing by the applicant or other interested person shall, set forth in their records the reasons for their action.

**f. Limitations to Permit.** In granting such a permit the Board of Selectmen may impose limitations both of time and of use, and a continuation of the use permitted may be conditioned upon compliance with regulations to be made and amended from time to time.

**g. Continued Use of Land.** Notwithstanding the provisions of this by-law, any lawful use of land of the type regulated herein may be continued to the extent such use exists at the time this by-law becomes effective, such use to be restricted to the area then actually appropriated for such use.

**h. Penalties for Violations.** The penalty for violation of this By-law shall be as follows:

First offense	\$ 50.00
Second offense	\$100.00
For each subsequent offense	\$200.00

**i. Permit Transfers.** Permits issued shall not be transferable.

#### **Section 4 Off - Road Vehicles**

**a.** The Board of Selectmen shall adopt, and may, from time to time, amend regulations governing the use of Town property by off-road vehicles, including, without limiting the foregoing, mini-bikes, motorbikes and off-road vehicles. This section shall not apply to vehicles, registered with the Commonwealth of Massachusetts, on public and private ways and public parking areas.

#### **Section 5. Historic District**

**a. Purpose.** The purposes of the by-law, adopted under the provisions of General Law, Chapter 40C, are to promote the educational, cultural, economic and general welfare of the public and the owners of property located in historic districts, through the preservation and protection of the distinctive characteristics of buildings and places significant in the history of Rockport and the Commonwealth or their architecture, and to maintain and improve the settings of those buildings in the district.

**b. Establishing of Districts.** There may be established in the Town of Rockport districts to be known as “Rockport Historic Districts” with the descriptions of each district to be set forth herein:

(i) Main Street Historic District - The Main Street Historic District is hereby created and shall be bounded and described as shown on a plan entitled “Main Street Historic District”, dated June 1976, a copy of which is on file with the Town Clerk's Office, which plan is incorporated herein by reference.

(ii) Mt. Pleasant/South Street Historic District - The Mt. Pleasant/South Street Historic District is hereby created and shall be bounded and described as shown on a plan entitled “Mt. Pleasant/South Street Historic District”, dated June 1976, a copy of which is on file with the Town Clerk's Office, which plan is incorporated herein by reference.

(iii) Downtown Historic District - The Downtown Historic District is hereby created and shall be bounded and described as shown on a plan entitled “Downtown Historic District” dated September 1980, a copy of which is on file in the Town Clerk's Office, which plan is incorporated herein by reference.

(iv) Broadway Historic District - The Broadway Historic District is hereby created and shall be bounded and described as shown on a plan entitled “Broadway Historic District” dated September 1982, a copy of

which is on file in the Town Clerk's Office, which plan is incorporated herein by reference.

**c. Establishment of Commission.** There is hereby established an Historical Commission under the provisions of the “Historic Districts Act”, General Laws, Chapter 40C, as amended, consisting of five (5) members appointed by the Selectmen including one (1) member, where possible, from two (2) nominees submitted by the Sandy Bay Historical Society; one (1) member, where possible, from two (2) nominees submitted by the Massachusetts State Chapter of the American Institute of Architects; one (1) member, where possible, from two (2) nominees of the Board of Realtors covering Rockport; and two (2) members, where possible, from four (4) nominees, each residents of Historic Districts in Rockport.

When the Commission is first established one (1) member shall be appointed for one (1) year, one (1) member shall be appointed for a term of two (2) years, and three (3) members shall be appointed in like manner for three years, and their successors shall be appointed in like manner for terms of three (3) years.

**d. Powers of Commission.** The Historical Commission shall have the powers and duties of historic district commissions as provided by the Historic District Act, General Laws, Chapter 40C and the powers and duties of historical commissions as provided by General Laws, Chapter 40, Section 8D.(added STM 9/10/2001)

**e. Rules and Regulations.** The Historical Commission shall adopt rules and regulations for the conduct of its business not inconsistent with the provisions of the Historic Districts Act on anything relative thereto, General Laws, Chapter 40C, as amended, and may be subject to appropriation, employ clerical and technical assistants or consultants and may accept money gifts and expend same for such purposes.

**f. Applications.** Applications for certificates, restrictions concerning building permits, factors to be considered by the Commission, notice of hearing and hearing requirements, powers, functions and duties of the Commission and appeals not provided for in this by-law shall be governed by General Laws, Chapter 40C, the Historic Districts Act.

**g. Determinations.** When taking action under the provisions of the Historic Districts Act General Laws, Chapter 40C, as amended, the Historical Commission shall make a determination within the time specified by the statute for a certificate of appropriateness, or such further time as the applicant may in writing allow.



**h. Severability.** The parts and provision of this by-law shall be deemed to be severable if any of its provisions shall be held to be invalid or unconstitutional by any court of competent jurisdiction and the remaining parts and provisions shall continue in full force and effect.

## **Section 6. Floodlights and Spotlights (Added ATM 03/24/01)**

**a. Purpose.** The need for exterior lighting is widely recognized. Used properly it increases safety, helps provide security and can enhance the Town's nighttime character. New technologies have produced extremely powerful lights. Unless used properly, they can produce excessive glare and light trespass. Glare is a safety issue. Light trespass is a privacy issue. Controlling these will benefit the nighttime sky.

### **b. Definitions.**

*Fixture:* An assembly that houses a lamp or lamps, and which may any other parts such as a reflector, lens or mounting bracket.

*Flood or Spotlight:* Any light fixture or lamp which concentrates the light output into a directed beam in a particular direction.

*Foot-candle:* A unit of light intensity measured at a distance from the source.

*Lamp:* The component of a luminaire which produces light.

*Lumen:* A unit of light output

*Luminaire:* A complete lighting system including a lamp or lamps and a fixture.

### **c. Regulations.**

(i) Any flood or spot luminaire rated at 2200 lumens or greater shall not emit any light beyond the property line on which the luminaire is located.

(ii) A difference of more than 0.1 foot-candles measured with and without the lights turned on, at a height of 5 feet at the property line, will indicate non compliance. The measurement will be made with a calibrated light meter directed at the luminaire.

(iii) Existing luminaires that do not conform to the above requirement shall be shielded to conform, replaced with a conforming luminaire or be extinguished within one year from the date of acceptance of this amendment.

(iv) For safety reasons, any private outdoor lighting fixture, whether temporary or permanent, shall be so placed or hooded that the light source itself shall not constitute a safety hazard or a nuisance to neighbors.

(v) The provisions of this Section 6 shall be enforced by the Building Inspector.

## **CHAPTER 15. REPEAL AND TRANSITION**

### **Section 1. Repeal and Transition**

All by-laws or provisions thereof heretofore adopted which are inconsistent with the provisions of this Code of By-Laws are hereby repealed and annulled; but the provisions of this Code of By-laws, insofar as they are the same as the provisions of by-laws heretofore adopted, shall be construed as a continuation thereof and not new enactments.

### **Section 2. Action Taken Under Prior By-laws Preserved**

The repeal of any by-law or portion thereof heretofore adopted shall not be construed to revoke, invalidate, or otherwise alter acts done, ratified, or confirmed in compliance therewith or under authority thereof; or any right accrued or established; or any action, suit, or proceeding commenced or had in any case; nor shall any such repeal affect any punishment, penalty, or forfeiture incurred under any such prior by-law.

### **Section 3. Severability**

The provisions of this Code of By-laws, as amended from time to time, are severable. If any provisions of this Code of By-laws, or any amendment thereto, is held invalid, the other provisions of this code of By-laws shall not be affected thereby. If the application of such provisions, or any amendment thereto, is held invalid, the application of such provision to other persons and circumstances shall not be affected thereby.

### **Section 4. Specific Provisions Prevail**

To the extent that any specific provision of this Code of By-laws, as amended from time to time, shall conflict with any provision expressed in general terms, the specific provision shall apply.

### **Section 5. Continuation of Existing Rules, Regulations and Town Meeting Votes**

All prior Town Meeting votes and all rules and regulations of or pertaining to the Town or any Town agency which are in force when this Code of By-laws takes effect and which are not specifically or by clear implication repealed hereby, shall continue in full force and effect until amended or rescinded by due course of law or until they expire by their own limitation. In the event of any inconsistency

between the Code of By-laws, any such Town Meeting vote, rule or regulation, this Code of By-laws shall be deemed controlling.

**CHAPTER 16. ADMINISTRATION**

**Section 1 Enforcement**

Unless otherwise provided by the Charter, by-law or general or special law, the provisions of these by-laws shall be enforced by the following Town Officials:

- Chapter 9A Harbormaster, with assistance from the Police Department as requested.
- Chapter 10A the Police Department (Amended 03/21/98)
- Chapter 10A Section 7b\* Principals of the High School, Middle School and Elementary School with the assistance from the Police Department and Building Inspector as required.
- Section 7c. \*Building Inspector with the assistance from the Police Department as necessary. (\*7b & 7c added 03/21/98)
- Chapter 10B Animal Control Officer with the assistance from the Police Department as requested.
- Chapter 10C Department of Public Works with assistance from Police Department as requested (Added 09/11/00)
- Chapter 11 Police Department except § 5, which is enforced by the Building Inspector.
- Chapter 12 Police Department
- Chapter 13A Building Inspector with the assistance from the Police Department as requested.
- Chapter 13B&C Police Department
- Chapter 14A Conservation Commission with the assistance from the Police Department as requested
- Chapter 14B Police Department
- Chapter 14C Police Department
- Chapter 14D Police Department and Harbormaster
- Chapter 14E
  - Section 1. Police Department
  - Section 2. Building Inspector
  - Section 3. Selectmen
  - Section 4. Police Department
  - Section 5. Historical Commission
  - Section 6. Building Inspector

**Section 2 Penalties**

**a. Criminal (Misdemeanor)** Unless a specific penalty is otherwise provided in these by-laws or by law, whoever violates any provision of this by-law shall be punished by a fine not exceeding three hundred (\$300.00) dollars for each violation

**b. Non-Criminal Disposition**

(i) Any person taking cognizance of any violation of a specific by-law, rule or regulation which he is empowered to enforce, hereinafter referred to as the enforcing person, as an alternative to initiating criminal proceedings may, pursuant to G.L. c40 Section 21D, give the offender written notice of the offense. Such notice shall be in triplicate and shall contain the name and address, if known, of the offender, the specific offense charged, and the time and place for his required appearance. Such notice shall be signed by the enforcing person, and shall be signed by the offender whenever practicable in acknowledgment that such notice has been received.

The enforcing officer shall, if possible, deliver to the offender a copy of said notice at the time and place of the violation. If it is not possible to deliver a copy of the notice to the offender at the time and place of the violation, said copy shall be mailed or delivered by the enforcing person, or by his commanding officer or the head of his department or by any person authorized by such commanding officer or department head to the offender's last known address within fifteen (15) days after said violation.

Such notice as so mailed shall be deemed a sufficient notice, and a certificate of the person so mailing such notice that it has been mailed in accordance with this section shall be prima facie evidence thereof.

(ii) Where the by-laws specify a fine for a particular violation, that fine shall be assessed for each violation.

Where the by-law provides for a fine up to a maximum amount of three hundred (\$300.00) dollars, fines shall be assessed as follows:

First offense:	\$100.00
Second offense:	\$200.00
Third & subsequent offenses	\$300.00

Each act on anything relative thereto in violation of these by-laws shall constitute a separate offense.

End of the Bylaws of the Town of Rockport.