

**TOWN OF MERRIMAC  
GENERAL BY-LAWS**

<b>Article I</b>	<b>Town Meeting</b>	<b>pg</b>	<b>2</b>
<b>Article II</b>	<b>Reports of Town Officers</b>		<b>4</b>
<b>Article III</b>	<b>Finance &amp; Capital Planning</b>		<b>5</b>
<b>Article IIIA</b>	<b>Department of Finance, Budget and Personnel</b>		<b>7</b>
<b>Article IV</b>	<b>Financial Affairs</b>		<b>8</b>
	<b>Personnel By-Law</b>		<b>9</b>
<b>Article V</b>	<b>Sidewalks and Highways</b>		<b>33</b>
<b>Article VI</b>	<b>Vehicular Regulations</b>		<b>35</b>
<b>Article VII</b>	<b>Junk and Second-Hand License</b>		<b>37</b>
<b>Article VIII</b>	<b>Licenses</b>		<b>38</b>
<b>Article IX</b>	<b>Wells and Well Coverings</b>		<b>40</b>
<b>Article X</b>	<b>Regulations for Hawkers and Peddlers</b>		<b>41</b>
<b>Article XI</b>	<b>Inspection of Gas Piping and Appliances</b>		<b>42</b>
<b>Article XII</b>	<b>Inspector of Wires</b>		<b>42</b>
<b>Article XIII</b>	<b>Transportation of Refuse</b>		<b>43</b>
<b>Article XIV</b>	<b>Town Council</b>		<b>44</b>
<b>Article XV</b>	<b>Public Health and Safety</b>		<b>45</b>
<b>Article XVI</b>	<b>Repeal and Amendments of Bylaws And Penalties Thereunder</b>		<b>48</b>
<b>Article XVII</b>	<b>Building Code</b>		<b>48</b>
<b>Article XVIII</b>	<b>Affordable Housing Trust Fund</b>		<b>50</b>
<b>Article XIX</b>	<b>Non-Criminal Disposition</b>		<b>52</b>
<b>Article XXII</b>	<b>Regulations of Sewer Use</b>		<b>54</b>
<b>Article XXV</b>	<b>Wetlands Protection By-law</b>		<b>54</b>
<b>Article XXVI</b>	<b>Water Use By-law</b>		<b>54</b>
<b>Article XXVIII</b>	<b>Committees &amp; Appointments</b>		<b>55</b>
<b>Article XXIX</b>	<b>Department of Public Works</b>		<b>55</b>
<b>Article XXX</b>	<b>Stormwater Management &amp; Land Disturbance</b>		<b>57</b>
<b>Article XXXI</b>	<b>Illicit Discharge</b>		<b>69</b>
<b>Article XXXV</b>	<b>Use of Lake Attitash</b>		<b>75</b>

# Article I TOWN MEETING

**Section I:** The Annual Town Meeting, except that part dealing with the election of officers, shall be held each year on the last Monday in April at 7:30 PM. That part of the Annual Town Meeting devoted to the election of the Moderator and other Town officers, and action on such others matters as are required by law and appear on the official ballot, shall be held on the first Monday in May each year.(amend ATM 5/1/06)

**Section II: Quorum**

(1) Town Meetings on Dates Certain Those registered voters of the Town who are present at 7:30 p.m. on the following dates shall constitute the quorum to conduct town meetings other wise posted as provided by state law: the last Monday of April, the second or third Mondays of May or the third Monday of October. Sessions of town meetings must adjourn for lack of a quorum at 10:00 p.m. or at the conclusion of action on any main motion on the article being considered, unless 100 registered voters remain present.

(2) Town Meetings on Other Dates Except, as provided in subsection (1), 150 voters of the Town of Merrimac must be present to open Annual Town Meetings and all Special Town Meetings should a warrant be posted as provided by state law. Sessions of town meeting conducted under this subsection (2) must be scheduled for 7:30 p.m. and must adjourn for lack of quorum at 10:00 p.m. or at the conclusion of action on any main motion on the article considered unless 100 registered voters remain present. Resumption of town meeting conducted under the subsection (2) after adjournment shall be no less then seven days later, at 7:30 p.m. Sessions of town meeting conducted under this subsection (2) shall not resume unless 100 registered voters are present. (STM 10/22/07)

**Section III:** Notice of every Annual and Special Town Meeting shall be given by posting an attest copy of the same, in at least three public places in the Town, not less than seven (7) days before the day appointed for an Annual Town Meeting and not less than fourteen (14) days before the day appointed for a Special Town Meeting. All articles submitted to the Board of Selectmen for consideration to be placed on the warrant for the Annual Town Meeting must be presented at least forty-five (45) days before the date of the Annual Town Meeting. This by-law also applies to all articles by petition.

**Section IV:** All motions submitted for consideration of the Town Meeting, involving the expenditure of money, shall be in writing; and any other motion shall be submitted in writing when requested by the Moderator or by any voter present.

**Section V:** The conduct of all Town Meetings, not prescribed by law, nor by the foregoing rules shall be determined by the rules of practice contained in “Robert’s Rules”, so far as they are adapted to Town Meeting.

**Section VI:** The Town hereby accepts the provisions of Mass. General Laws (Ter. Ed). Chapter 54, Section 103A, as appearing in St. 1948, Chapter 477, Section 2.

**Section VII: Hours of Voting-** The polls are to be opened for voting at Annual Town Meeting no later than 10:00AM and are to remain open until 8:00PM.

**Section VIII:** The term of the Town Clerk shall be three (3) years (11/5/91)

**Section IX:** The Town accepts the provisions of Mass. General Laws, Chapter 40. Section 8 to allow the Merrimac Police Department to engage in agreements for mutual aid with other state and municipal agencies including TASK Force Units (98)

**Section X Recall Elections in the Town of Merrimac**

**Subsection 1.** Any holder of an elective office in the Town of Merrimac may be recalled by the registered voters of the town as herein provided, for reason of lack of fitness, incompetence, neglect of duties, corruption, malfeasance, misfeasance or violation of oath.

**Subsection 2.** Four hundred registered voters of the town may file an affidavit with the Town Clerk containing the name of the officer sought to be recalled and a statement of the grounds for recall. The Town Clerk shall thereupon deliver to the voters' copies of printed form petition blanks addressed to the Board of Selectmen demanding the recall. The blanks shall be issued under the signature and official seal of the Town Clerk. They shall be dated and shall contain the names of all persons to whom they are issued, the name of the person whose recall is sought, and the grounds of recall as stated in the affidavit. In addition, the petitions shall demand the election of a successor to the office. A copy of the petition shall be entered in a record book to be kept in the Office of the Town Clerk. The recall petition shall be returned and filed with the Town Clerk within 30 days after the filing of the affidavit, with signatures, names and street addresses of at least 20 per cent of the registered voters of the town. Within 5 working days of receipt, the Town Clerk shall submit the petition to the Registrars of Voters in the town, and the registrars shall forthwith certify thereon the number of signatures which are names of registered voters of the town.

**Subsection 3.** If the petition shall be found and certified by the Town Clerk to be sufficient, it shall be submitted with his/her certificate to the Board of Selectmen without delay. The Board of Selectmen shall forthwith give written notice of this receipt of the certification to the officer sought to be recalled. If the officer does not resign within 5 calendar days, the Board of Selectmen shall forthwith order an election to be held on a date fixed by them not less than 64 nor more than 90 days after the date the election is called after receipt of the certificate, but if any other town election is scheduled to occur within 100 days after the date of the certificate, the Board of Selectmen shall postpone the holding of the recall election to the date of such other election. If a vacancy occurs in the office after a recall election has been ordered, the election shall nevertheless proceed as provided in this act.

**Subsection 4.** An officer sought to be removed may be a candidate to succeed himself in an election to be held to fill the vacancy, and unless the officer requests otherwise in writing, the Town Clerk shall place said name on the ballot without nomination. The nomination of other candidates, the publication of the warrant for the removal election, and the conduct of the same, shall be in accordance with the law relating to elections, unless otherwise provided in this section.

**Subsection 5.** The incumbent shall continue to perform the duties of his office until the recall election. If the incumbent is not removed, he shall continue in office for the remainder of his unexpired term, subject to recall as before, except as provided in this act. If not re-elected in the recall election, he shall be considered removed upon the

qualification of a successor, who shall hold office during the unexpired term. If the successor fails to qualify within 5 days after receiving notification of elections, the incumbent shall thereupon be considered removed and the office vacant.

**Subsection 6.** Ballots used in a recall election shall contain the following propositions in order indicated:

For the recall of (name of officer) { }

Against the recall of (name of officer) { }

Immediately at the right of each proposition there shall be a designate place for voters to vote for either of the propositions. Under the proposition shall appear the words "Candidates", the directions to voters required by Chapter 54, Section 42, of the General Laws, and beneath this, the names of the candidates nominated as hereinbefore provided. If a majority of votes on the question is against the recall, the ballots for candidates need not be counted or take any action relative thereto. If a majority of the votes cast upon the question of recall is in favor of the recall, the officer shall be recalled and the ballots for candidates shall be counted. The candidate receiving the highest number of votes shall be declared elected.

**Subsection 7.** A recall petition shall not be filed against an officer within 3 months after he takes office, nor in the case of an officer subjected to a recall election and not recalled thereby, until 3 months have elapsed after the election at which the recall was submitted to the voters of the town. STM 10/2006)

## **Article II**

### **REPORTS OF TOWN OFFICERS**

**Section I:** Every officer in charge of a department shall annually, on or before the fourth day of March, transmit to the Selectmen a report, containing a statement of the acts and financial transactions of said department for the last financial year, to be printed in the Annual Report.

## **Article III**

# **FINANCE COMMITTEE AND CAPITAL PLANNING COMMITTEE**

**Section I:** The Moderator shall, in accordance with Mass. General Laws (Ter. Ed.), Chapter 39, Section 16, at the Annual Town Meeting appoint a Finance Committee, to consist of nine (9) citizens of the Town.

**Section II:** The heads of the Boards and Departments of the Town shall, not later than January 20 prior to the next Annual Town Meeting, submit to the Finance Committee, their budget estimates for the ensuing year, on forms approved by the Finance Committee.

**Section III:** The Finance Committee shall meet with each Department or Board and review their budgetary requests.

**Section IV:** The Finance Committee's recommendations shall be prepared in the form of a uniform budget and published prior to the Annual Town Meeting.

**Section V:** No one shall be eligible for the appointment to the Finance Committee or shall serve as a member of the Finance Committee who is an elected or appointed official of the Town.

**Section VI:** If a member, during his term, becomes ineligible to serve on the Finance Committee, his place shall become vacant.

**Section VII:** If a vacancy occurs of the Finance Committee, either by reason of death, resignation, as described in **Section VI** of this article, or in any other way or fashion, said vacancy shall be filled by appointment of the Moderator.

**Section VIII:** No action shall be taken at any meeting appropriating or involving the expenditure of money, the creation of a debt, or disposal of property of the Town, until the proposition has been referred to the Finance Committee with a specific money amount included at least fifteen (15) days prior to Town Meeting (amended 5/29/79)

**Section IX:** Members absent from one-third of the regular meetings in any calendar year may be removed by a two-thirds vote of the other members, present and voting. Said Committee shall choose its own officers. The members of said Committee shall serve without salary.

**Section X:** The Finance Committee shall have authority at any time to investigate the books, management of accounts, management of any department of the Town, and to employ such expert and other assistance as it may deem advisable for that purpose and the books and accounts of all departments and officers of the Town shall be open to the inspection of the Committee and any person employed by it for that purpose. The Committee will make public any such findings in a report to the Town.

**Section XI:** The Board of Selectmen shall establish and appoint a committee to be called The Capital Planning Committee. The Committee shall be composed of one member of the Board of Selectmen, one member from and appointed by the Finance Committee, the Finance Director and three members at large.

The representative from the Board of Selectmen and Finance Committee shall serve a term of one year. The Finance Director shall serve as an ex officio member with voting authority limited to administrative and procedural questions and during discussions prior to final votes. The members at large shall serve a three-year rotating term. The Committee shall elect its own officers to annual posts (4/28/08)

**Section XII:** The purpose of the Capital Planning Committee is to evaluate the financial effect of proposed capital projects and make recommendations including necessary guidelines for the procurement, improvement and maintenance of these major assets and projects. Only assets which have a useful life greater than five years, costing over ten thousand dollars and/or for which the Town is authorized to borrow funds are items which fall under the purview of the Capital Planning Committee. (4/28/08)

**Section XIII:** All department heads, boards and committees, school committee included, shall submit their anticipated capital requests for the next fiscal year and subsequent five years on the forms supplied to them by the Capital Planning Committee, on or before February first prior to the next fiscal year, or 45 (forty five ) days before a Special Town Meeting. The Capital Planning Committee shall decide on emergency requests as deemed necessary. All properly submitted capital requests shall be evaluated. (04/28/08)

**Section XIV:** The Capital Planning Committee shall prepare and submit to the Selectmen and Finance Committee by March 15<sup>th</sup>, an annual Budget Report for the ensuing fiscal year. This budget report shall cover all capital assets and projects that have already received funding as well as any capital items considered in the next five years. The Selectmen shall request clarification or make any recommendations and requests within 30 days. The Annual Budget Report shall be submitted to the Annual Town Meeting and any Special Town Meetings. (5/6/96)

**Section XV:** The Capital Planning Committee Annual Budget Report shall be printed, included and distributed with the report of the Finance Committee. An official copy of the Committee's Annual Budget Report shall be on file with the Town Clerk. (5/6/96)

**Article IIIA**  
**THE DEPARTMENT OF FINANCE, BUDGET AND**  
**PERSONNEL**

**Section I:** There is hereby established in the Town of Merrimac, a department of finance, budget and personnel. Said department shall have all the powers and duties presently exercised by the offices of town treasurer, town accountant and tax collector including supervision of budgets and the director of purchasing by the various town boards and departments as may be assigned from time to time by the board of selectmen. Said department shall be comprised of the divisions of treasurer, tax collector, assessors, accountant and other such divisions as the board of Selectmen may from time to time assign. Said department shall be under the direction of a full time finance director appointed by the board of selectmen. (10/26/98)

**Section II:** Upon appointment of a finance director the office of Town Treasurer and Tax Collector shall be transferred to the Department of Finance, Budget and Personnel. The incumbents in said offices shall be transferred to said department for the remainder of their current term and may be retained as employees thereafter. The director shall exercise the powers and duties of treasurer and collector and shall, subject to the approval of the Board of Selectmen, appoint a person or persons to direct divisions of accounting and assessing. (10/28/96)

**Section III:** This act shall take effect upon its passage.

**Section IV:** The Finance Director, as Treasurer and Budget Officer shall be responsible for coordinating the fiscal management practices of the Treasurer's Department, Collector of Taxes, Town Accountant, Assessor's Department and be administrator of budgeting including financial reporting, accountability and control as well as rendering advice on personnel issues/policies, financial and programmatic implications of current and future policies to all town departments and the Board of Selectmen. The director shall be responsible for coordinating all financial tasks upon the dates specified in the Massachusetts Department Revenue Municipal Calendar as amended. The director shall oversee and develop guidelines to be followed by all town departments for purchasing supplies and equipment subject to applicable laws. The Board of Selectmen shall enter into a formal written contract with the director detailing responsibilities, goals and objectives for performance evaluation criteria, salary, fringe benefits and term of contract. This by-law shall become effective as of the effective date of the Enabling Legislation proposed in Article 14 of the 1996 Special Town Meeting Warrant. (10/28/96)

## **Article IV**

### **FINANCIAL AFFAIRS**

**Section I:** Money receipts and receipted bills when required shall be promptly returned to the several Departments from which warrants for payment of the same were issued. The Treasurer shall have custody of all notes, bonds and coupons which have been paid and all bonds running to the Town, except his own and all other official surety bonds which shall be in the custody of the Selectmen.

**Section II:** No bills, charge or account against the Town shall be paid without being first approved in writing by the person or board incurring the same.

**Section III:** Any portion of an appropriation other than for a specific purpose, on which the work has not been completed, remaining unexpended at the close of the financial year, shall revert to the Town Treasury unless otherwise provided by law or by vote of the Town.

**Section IV:** Voted to rescind ATM 5/23/05

**Section V:** There shall be Annual Audit of the Town's Accounts under the supervision of the Director of Accounts of the Department of Corporations and Taxation, in accordance with the provisions of MA. General Laws (Ter. Ed.) Chapter 44, section 35.

**Section VI:** Nothing in the preceding Sections shall affect agreements for road construction or reconstruction entered into by the Town with either the Commonwealth or Essex County unless the contributing parties thereto agree.

**Section VII:** All officers, Boards and Committees making or entering into any written contract shall immediately upon the execution of the same, and the bond accompanying the same, deposit said contract and bond with the Town Treasurer.

**Section VIII:** The Town Treasurer, with the approval of the Selectmen, is hereby authorized to sell at public auction, all or any of the property acquired by the Town as the result of non-paying taxes, under the provisions of either Section 53 of Chapter 60 of the General Laws (Ter. Ed.) or Section 79 of Chapter 60 of the General Laws (Ter. Ed.)

**Section IX:** Any Board or Officer in charge of a Department of the Town may, with the approval of the Selectmen, sell any personal property of the Town within the possession or control of the Department which has become obsolete or is not required for further use by the Department, and which does not, in the opinion of the Selectmen, exceed \$300.00 value.

**Section XI:** Deleted (10/14/98)

**Section XII:** Deleted (10/13/99)

# PERSONNEL BY-LAW

## Section X: Personnel Definitions

### EMPLOYEE

Any person engaged to perform services by the Town of Merrimac and who shall receive compensation for said services and who shall be under the direct supervision of other Town of Merrimac employees or elected officials. All individuals subject to tax withholding provisions of the Internal Revenue Code ( I.R.C.) regardless of whether they may be otherwise exempt from withholding pursuant to said I.R.C., shall be deemed employees.

### FULL TIME EMPLOYEE

For the purposes of determining full eligibility for all Town Benefits, a full time employee shall be any employee who shall average at least 30 hours per week, on an annual basis, in the employ of the Town of Merrimac. All elected officials and public safety department heads shall be deemed full time employees under this policy.

### PERMANENT PART TIME EMPLOYEE

For the purposes of determining pro-rated eligibility for all Town Benefits, a permanent part time employee who shall average at least 20 hours per week, on an annual basis, in the employ of the Town of Merrimac.

### TEMPORARY EMPLOYEE

Any full time or part-time employee whose salary is funded in part by any state or federal grant or whose position is funded for a finite period of time of less than one year.

### PART TIME EMPLOYEE

Any employee of the Town of Merrimac, who is not a full time employee, permanent part time employee, or a temporary employee of the Town of Merrimac, is a part time employee. Any employee who is strictly “on call” or designated a reserve, regardless of the average weekly hours worked by said employee in any given year, is a part time employee.

### PRO-RATED BENEFITS

Permanent Part Time Employees (PTE) shall be eligible for certain Town benefits on a pro-rated basis. A PTE’s pro-rated benefits shall be based upon the PTE’s average weekly hours as they relate to 35 hours per week. For example, a PTE who works 20 hours per week would be entitled to 60% of full time benefits

### EMPLOYEE BENEFITS

The Town of Merrimac offers its eligible employees the following benefits in addition to regular compensation.

- **Vacation Leave** - In accordance with the provisions of this policy.
- **Holidays** – In accordance with the provisions of this policy.
- **Sick Leave** – In accordance with the provisions of this policy.
- **Personal Leave** – In accordance with the provisions of this policy.
- **Bereavement Leave** – In accordance with the provisions of this policy.
- **Family & medical Leave** – In accordance with the provisions of this policy.

- **Essex County Retirement Plan** – This program is a defined benefit program administered under the provisions of G.L. c.32B. Eligibility and participation is determined by the Essex County Retirement Board.
- **Deferred Compensation Plan** – All employees are eligible to participate in this supplemental retirement program
- **Cafeteria Plan** – Allows employees to pay for certain benefits out of pre-tax earnings.
- **Health Insurance** – The Town offers three separate health plans for full time and permanent part time employees. HMO Blue, Blue Care Elect and BC/BS VIP 2000. The Town contributes 50% of the cost of the premium on behalf of full time employees and a prorated share of the premium on behalf of permanent part time employees. Details and coverage options are available at the office of the Finance Director.
- **Dental Insurance** – The Town offers Dental Blue to its full time and permanent part time employees. The Town contributes 50% of the cost of the premium on behalf of full time employees and a prorated share of the premiums on behalf of permanent part time employees. Details and coverage options are available at the office of the Finance Director.
- **Life Insurance** – The Town offers Term Life Insurance in amounts up to \$10,000 to its full time and permanent part time employees. The Town contributes 50% of the cost of the premiums on behalf of full time employees and a prorated share of the premium on behalf of permanent part time employees.
- **OBRA** – The Town offers and requires all part time employees to contribute to an individual retirement account under the provisions of the Federal OBRA laws as an alternative to Social Security.

### **SICK LEAVE POLICY**

Sick leave is a benefit limited to absences caused by illness, injury, exposure to contagious disease, or illness or disability arising out of, or caused by pregnancy or childbirth.

Eligible employees will accrue one and one quarter (1 ¼) sick days per month of service (protracted for those who commence employment after July)

Employees commencing work after the fifteenth day of a month shall not receive credit for that month. The maximum accumulation of sick leave shall be two hundred (200) days.

Employees shall be entitled to sick leave without loss of pay if they have notified their supervisor, or designee, of the absence and cause thereof at least one hour before the start of their shift, or as soon thereafter as practicable.

If employees have been warned that their use of sick leave has been excessive and/or has established a pattern of abuse, the Town, in its exclusive discretion, may require a written certificate from a Town approved physician establishing incapacity, illness, or injury as a condition of payment of sick leave benefits. Excessive and/or patterned abuse shall be cause for the Town to initiate progressive disciplinary action. If an employee uses sick leave for purposes other than legitimate illness or non-work incurred injury, the employee shall be subject to discipline up to and including discharge.

The Town may require an employee who seeks to return to work after being absent, whether paid or unpaid, for three (3) or more consecutive work days, to be examined by a Town-selected physician to determine the employee's fitness for work.

Effective July 1, 2000 and thereafter, any eligible employee, upon written notice of intent to retire under the provisions of the Essex County Retirement Board by December 1<sup>st</sup> of the calendar year preceding the fiscal year in which said retirement will be effective, will be paid a lump sum of twenty five percent (25%) of all accumulated sick leave. Any employee not giving the December 1<sup>st</sup> notice as defined above, but who does give sixty (60) days notice of their intent to retire under the provisions listed above, shall also be paid a lump sum payment of twenty five percent (25%) of all accumulated sick leave. If the Board of Selectmen, because of the 60 day notice, is unable to fund the provisions of the sick leave buy back that fiscal year, the Board shall fund it as soon as possible in the following fiscal year.

### **PERSONAL LEAVE POLICY**

Full time Employees shall be granted three days of personal leave on July 1 of each year. Application for such leave must be made to supervisors as early as possible and except in an emergency, not less than one (1) working day in advance. Except in emergency situations, personal leave shall not be granted the scheduled work day before or after a holiday, vacation period, or other leave of absence.

Personal leave shall be used for non-work related personal business or family matters that can only be done during normal working hours. Personal leave shall not be considered additional vacation leave.

Personal days shall not be accrued from year to year and shall be lost if not used during the fiscal period in which they are available.

All salaried compensated Personnel shall receive one (1) additional day of personal leave in those fiscal years in which February contains 29 days and adds a workday in the fiscal year.

### **VACATION POLICY**

Full time employees shall be granted vacation with pay in each fiscal year in accordance with the following schedule:

<b>LENGTH OF SERVICE</b>	<b>VACATON PERIOD</b>
New employees to five (5) years, as of anniversary date of hire	Two (2) weeks
Six (6) years to fifteen (15) years, as of anniversary date of hire	Three (3) weeks
Sixteen (16) years to twenty five (25) years as of anniversary date of hire	Four (4) weeks
Over twenty five (25) years.	Five (5) weeks

Vacation shall accrue on an annual basis in accordance with the above schedule and shall be credited to employees on July 1 of each fiscal year. Permanent Part Time Employees shall accrue vacation leave on a pro-rated basis.

Every employee who is in their first year of employment with the Town and who has actually worked for six (6) months in aggregate prior to July 1<sup>st</sup> shall be allowed to take one (1) week vacation leave.

Vacation periods shall be granted at times to be approved by immediate supervisors or their designees. For vacation leave exceeding 2 days, the employee shall give at least one (1) week advance notice to their supervisor or designee. For leave of less than two days, the employee shall notify their supervisor no later than the morning of said leave unless said leave shall be taken the day before or the day after a holiday period in which case (1) week advance notice shall be required. Employee shall be allowed to carry forward (5) days of accrued vacation in any given fiscal year.

Employees who terminate service without having been granted the vacation, to which they are entitled, shall be paid an amount in lieu of vacation, in accordance with the provisions of Massachusetts General Laws, Chapter 41, Section 111E.

#### **LONGEVITY POLICY**

The Town will pay to full time employees in the amount of \$200.00 (two hundred) per year after the fifth full year of employment, \$250.00 (two hundred fifty) per year after the tenth full year of employment, \$300.00 (three hundred) per year after the fifteenth full year of employment and \$350.00 (three hundred fifty) per year after the twentieth full year of employment and \$400.00 (four hundred) per year after the twenty fifth full year of employment and \$450.00 per year after the thirtieth full year of employment.

#### **HOLIDAY POLICY**

Full time employee shall be granted leave with pay on the days designated by law for observance of the following holidays:

New Year's Day

Martin Luther King Day

Washington's Birthday

Patriot's Day

Memorial Day

Independence Day

Labor Day

Columbus Day

Veteran's Day

Thanksgiving Day

Day after Thanksgiving

Christmas Day

Permanent Part Time Employees shall be granted leave with pay on a pro-rated basis for all holidays that fall on a day that said employee would have otherwise worked but for the holiday.

#### **OVERTIME POLICY**

All hours worked in excess of forty (40) hours in a week shall be paid for at one and one-half (1 ½) times the employees hourly earnings. This policy shall not apply to salary compensated employees.

#### **JURY LEAVE POLICY**

Full and Permanent Part Time Employees required to serve on a jury shall promptly notify their immediate supervisor. The difference between fees received (excluding reimbursement for meals or travel) and regular compensation will be paid by the Town.

Employees dismissed from jury duty before 12 PM shall return to work for the balance of that workday.

### **RELIGIOUS HOLIDAYS**

The Town of Merrimac does not discriminate against employees because of their religious beliefs. The Town will make reasonable accommodation for the religious practices of employees, including modifying an employee's work schedule to enable the employee to have certain days off. Employees who give five (5) days notice of an intended absence from work to observe a religious holiday or Sabbath will not be required to work that day, unless granting the holiday will cause the Town undue hardship. The Town will not compensate the employee for time lost due to religious holidays. Employees may use personal or vacation days, or take unpaid leave, in order to observe religious holidays

### **BEREAVEMENT LEAVE**

Employees shall be granted leave of absence with pay in the event of death in the immediate family. Such leave shall extend from the time employee receives notification of the death to the first work day following the day of the funeral or memorial service, not exceeding a period of three (3) days. *Immediate family* shall consist of father, mother, brother, sister, spouse or significant other, child, step child, father-in-law, mother-in-law, brother-in-law, sister-in-law, grandchildren, grandparents or other relative in the household. Employees shall be granted a one (1) day leave of absence with pay in the event of the death of an aunt, uncle, nephew or niece. Employee's granted one (1) day leave of absence may be granted an additional day leave of absence with the permission of the Selectmen for travel to a memorial location outside the region.

### **WEATHER CLOSURE**

In extreme cases, the Finance Director may order the closing, late opening or early closing of non-essential buildings. Every effort will be made to contact employees directly. In such instances, employees will not be charged for the time off, but neither will employees who had already arranged for paid time off be credited with that time. In cases of severe weather and driving conditions, the Town will exercise flexibility in arrival and leaving times, so long as the time is made up or charged to vacation or floating holiday leave.

In cases where an employee feels personally at risk due to extreme weather conditions, or other extreme emergency, and an office closing has not been ordered, the employee may make up the time or take accrued vacation or floating holiday leave for the that day or part of a day that he/she chooses not to come to work or choose to leave early.

It is the responsibility of the Department Head to ensure that there is adequate office coverage at all times when Town buildings are open for business. (4/28/08)

### **EMPLOYEE ATTENDANCE POLICY GUIDELINE**

This Policy Guideline is designed to improve attendance and to ensure the efficient and economic delivery of municipal services. Abuse of the time-off privileges cannot be tolerated, since such abuse undermines effective public services and crates unwarranted costs to the town. The Town provides sick leave benefits in accordance with personnel polices and collective bargaining agreements. Sick leave is a benefit limited to absences caused by illness, injury, exposure to contagious disease, or illness or disability arising

out of, or caused by pregnancy or childbirth. All absences must be documented on the department payroll.

The attendance policy is established to ensure proper use of sick leave. This guideline is not intended to infringe on legitimate use of sick leave benefits; rather, it is designed to improve attendance and to eliminate the abuse of those sick leave benefits. Application of this policy will be helpful in initiating preventive health measures, identifying potential abusers, and correcting unacceptable behavior.

Responsibilities in combating high absenteeism are delegated to the following participants:

*Department Head* – to effectively administer the attendance policy and a progressive disciplinary process, to monitor attendance records, and to counsel employees concerning unacceptable and costly attendance practices.

*Employee* – to maintain good attendance practices and to comply with departmental work rules and regulations.

*Finance Director* – to ensure efficient and effective implementation of attendance policies and procedures, to provide orientation and advice to all participants in the effective application of the policies and to maintain a comprehensive information and record-keeping system as the basis for the implementation of the Town's program to manage attendance.

Of major importance to the Town of Merrimac's attendance policy is its consistent application. This aspect of the policy will ensure that unacceptable patterns of absence will be recognized, enabling management to implement corrective action in a fair and equitable manner.

The department head has primary responsibility for effectively implementing the attendance policy. Department head performance is affected by an employee's poor attendance. Absenteeism impacts departmental performance, causing missed deadlines, low quality of work due to inexperienced replacements, scheduling and coverage problems, excessive overtime costs, and low morale of employees who must assume the absentee's workload.

Departmental performance is affected by the productivity and morale of employees. Employee motivation and attendance are key factors affecting the productivity of the department. Therefore, department heads should appreciate that it is in their own best interest to develop and to maintain good attendance practices. Their effectiveness is measured by the accomplishments of their department. A good attendance practice within a department is indicative of a well-motivated and supervised work force.

Department heads should inform employees that good attendance records, along with other criteria, will be beneficial to employees if they request a transfer, reclassification, promotion or other personnel action.

*Supervisory Judgment* – The intention of this policy is to improve attendance, not to restrict or eliminate the legitimate use of sick leave benefits. The policy will enable department heads to monitor and to evaluate employee attendance records. Department heads will be trained to implement this policy, to counsel employees, and to take remedial action when patterned abuse and / or excessive absenteeism occur. Each department head will learn to analyze and to evaluate each situation based on its merits, considering such factors as the length of service, total sick leave accumulation, the

number of instances, the severity rate, the employee's medical history and other indicators

*Supervisory Intervention* – Department heads and employees in their agencies are the ones affected by poor attendance. Department heads must review the attendance records of their departments on at least a quarterly basis to monitor attendance practices. If abuse is detected, the department head must discuss the reasons for the absences in order to prevent them from becoming worse. A written record should be kept concerning the nature of any supervisory discussion or interview.

The implementation of a mandatory supervisory review process will provide for early detection of employee illness, or potential psychological or substance abuse problems, and will demonstrate a genuine concern for employee health-related matters. When the department head believes that the reason for the pattern of absenteeism may be related to emotional and/or substance abuse related matters, the employee should be referred to the *Employee Assistance Program*.

If, in the course of an interview, the department head learns that an employee has a chronic or disabling condition which may qualify that person for consideration as a disabled individual, or needs advice concerning the supervision of a disabled individual, he/she should contact the Finance Director. A disabled individual is defined as a person who has a physical or mental impairment which substantially limits one or more major life activities, such as caring for oneself, performing manual tasks, seeing, hearing, speaking, breathing or learning.

If the counseling session or department head intervention fails to produce an improvement in the employee attendance pattern, the department head must implement a corrective action plan, including written warnings, imposition of suspensions, and termination proceedings; all closely coordinated with the Finance Director.

#### **MANDATORY PROCEDURAL REQUIREMENTS**

The following procedures must be adhered to by the employees and department heads to ensure the effective implementation of the Town's attendance policy:

*Employee's Responsibility* – Employees shall be entitled to sick leave without loss of pay if they notify their department head or designee of the absence and cause thereof within one hour after the start of their shift, or as soon thereafter as practicable. If at the expiration of the anticipated period of absence the employee is not recovered, the employee must again notify the department head or designee of the reason for the additional period of anticipated absence. Employees who fail to provide proper notice shall be considered absent without authority and subject to progressive disciplinary action.

*Department Head's Responsibility* – The department head is authorized to complete the department payroll. As in the past, the payroll is completed each week and forwarded to the Treasurer's Office for processing. Department heads should ensure that the payroll documents all scheduled and unscheduled absences.

If an employee arrives after the scheduled beginning of a work shift, or leaves before the scheduled end of a work shift, this should be recorded on the payroll. *A record of tardiness shall be cause for the implementation of progressive disciplinary action.*

*Falsification of payrolls shall be a basis for immediate termination.*

When an employee becomes ill during regular working hours, the employee must notify the department head. The department head shall make note on the payroll. An employee

who fails to notify the department head shall be deemed absent without authority and be subject to disciplinary action.

If the duration of an absence is three (3) consecutive working days or more, a physician's certification may be required upon return to work. This certificate shall be obtained at the Town's option from a physician chosen by the Town. All physician's certificates should include the following: a diagnosis and a non-medical statement of the employee's condition; a statement that the employee is incapable (or capable) of performing the duties and responsibilities of his/her position; a statement which indicates that the physician understands the nature of the employee's duties and responsibilities; and a statement of the anticipated duration of the absence, or the expected date of return to work.

If the employee's physician's certificate does not include these statements, the department head must notify the employee to obtain the omitted information. The original physician's certificate must be forwarded to the Finance Director.

*All medical information shall be maintained confidentially.*

All department heads are central in managing attendance; the Finance Director is prepared to provide the following technical support:

- To advise department heads in their efforts to change unacceptable absence patterns;
- To interpret policy and procedures and assist in the resolution of operating problems;
- Do training in supportive skills and to facilitate communication;
- To provide problem-solving relative to attendance problems;
- To provide an early referral system for health, emotional, alcoholic, or drug related matters; and
- To provide advice concerning the implementation of progressive disciplinary action.

## **DISCIPLINARY POLICY**

Open communication between management and employees, and the establishment of a friendly, cooperative work atmosphere will help eliminate serious disciplinary problems. If, however, disciplinary problems do arise, managers should make every effort to ensure that employees have a thorough understanding of Town policies, and an awareness of what is expected in the area of job performance.

The purpose of this policy is to provide a guideline for disciplinary action. Application of this guideline must be consistent and equitable, so that all employees receive like treatment for similar offenses.

The procedures described below are meant to assist supervisors in determining a proper course of action when discipline is needed. *They are guidelines, not a substitute for common sense.* Documentation of verbal and written warnings is important to avoid the situation of an employee being discharged for cause with no written proof of earlier warnings. In most cases, it is advisable to give an employee at least one documented verbal warning, and one written warning, before a suspension or discharge is imposed. *Warnings* – Supervisors should use their judgment in determining the length of time between warnings. A minimum of three days and a maximum of sixty days is suggested as a guideline. The warning should be specific in describing what improvement is needed. Copies of the warning should be forwarded to the Finance Director.

- A. *Verbal Warning* – Before a written warning is issued, a verbal warning may be given to the employee. This verbal warning should be recorded in the manager’s diary.
- B. *Written Warning* – If improvement is not made within the period granted in earlier warnings, it will be necessary to issue a written warning. Written warnings should include: (1) the specific violation; (2) the policy that has been violated; (3) the dates of the verbal warning(s); (4) the corrective action necessary; (5) the time frame given to improve in the problem area; and (6) a statement that puts the employee on notice that failure to improve will result in more severe discipline. Written warnings must be reviewed by the Finance Director before they are given to employees. Copies of written warnings must be forwarded to the Finance Director. If the warning is mailed to the employee, it should be sent Certified Mail.

*Consultation* - Following the issuance of a written warning, there should be consultations with the employee to check on progress and improvement in the problem area. Consultations held must be documented accurately as to the dates and outcomes of the meetings.

*Suspensions and Terminations* – Both these actions are severe. In all cases, they must be coordinated with the Finance Director and the Board of Selectmen, and approved by the appointing authority. Before recommending that an employee be suspended or terminated, the manager will review the employee’s personnel file s a whole and ask these questions:

- Has all critical information been reduced to writing and placed in the departmental personnel file?
- Is the nature of the employee’s misconduct or performance clearly described in a specific factual manner?
- Was the employee clearly informed of required standards of behavior and performance?
- Does the record progress from mild, early warnings to more serious, comprehensive documents?
- Was the employee given adequate assistance and direction by management?
- Has the employee had reasonable time and fair opportunity to improve?
- Is the performance or misconduct sufficiently persistent and serious to warrant the proposed disciplinary action?
- Have all statutory and procedural requirements been met?
- Has the employee been given fair warning of the consequences of their continued poor performance or misbehavior?

Records of verbal and written warnings may be removed from an employee’s file and destroyed after two years if, after a meeting between the Employee, the Department Head and the Finance Director, it is determined that improved behavior in the problem area has been exhibited. Employees should not be penalized unduly in future years for past difficulties.

If there is one guideline that cannot be over-emphasized, it is *consistency and equality* of treatment of employees

## **HARASSMENT POLICY**

This defines the harassment policy of the Town of Merrimac

The most productive and satisfying work environment is one in which work is accomplished in a spirit of mutual trust and respect. Harassment is a form of discrimination that is offensive, impairs morale, and undermines the integrity of employment relationships and cause serious harm to the productivity, efficiency and stability of our organization.

All employees have a right to work in an environment free from discrimination and harassing conduct, including sexual harassment, Harassment on the basis of an employees race, color, creed, ancestry, natural origin, age (40 and over), disability, sex, arrest or conviction record, marital status, sexual orientation, membership in the military reserve or use or nonuse of lawful products away from work is expressly prohibited under this policy.

This policy will be issued to all current employees and during orientation of new employees.

### **Definitions**

In general harassment means persistent and unwelcome conduct or actions on any of the bases underlined above. Sexual harassment is one type of harassment and includes unwelcome sexual advances, unwelcome physical contact of a sexual nature or unwelcome verbal or physical conduct of a sexual nature.

### **Unwelcome verbal or physical conduct of a sexual nature, but is not limited to**

- The repeated making of unsolicited, inappropriate gestures or comments;
- The display of offensive sexually graphic materials not necessary for our work;

### **Harassment on any basis (race, sex, age, disability, etc.) exists whenever**

- Submission to harassing conduct is made, either explicitly or implicitly, a term or condition of an individual's employment.
- Submission to or rejection of such conduct is used as the basis for an employment decision affecting an individual.
- The conduct interferes with an employee's work or creates an intimidating, hostile or offensive work environment.

### **Recognizing Harassment**

Harassment may be subtle, manipulative and is not always evident. It does not refer to occasional compliments of a socially acceptable nature. It refers to behavior that is not welcome and is personally offensive. All forms of gender harassment are covered. Men can be sexually harassed; men can harass men; Women can harass other woman.

Offenders can be managers, supervisors, co-workers, and non-employees such as clients or vendors.

### **Some examples:**

**Verbal:** Jokes, insults and innuendoes (based on race, sex, age, disability, etc.), degrading sexual remarks, referring to someone as a stud, hunk or babe; whistling; cat calls; comments on a persons body or sex life, or pressures for sexual favors.

**Non-Verbal:** Gestures staring, touching, hugging, patting, blocking a person's movement, standing too close, brushing against a person's body, or display of sexually suggestive or degrading pictures, racist or other derogatory cartoons or drawings.

**Grievance Procedure** Any employee who believes he or she is being harassed, or any employee, who becomes aware of harassment, should promptly notify his or her supervisor. If the employee believes that the supervisor is the harasser, the supervisor's

supervisor should be notified. If an employee is uncomfortable discussing harassment with his or her supervisor, the employee should contact the Finance Director. Upon notification of a harassment complaint, a confidential and impartial investigation will be promptly commenced and will include interviews with involved parties and where necessary with employees who may be witnesses or have knowledge of matters relating to the complaint. The parties of the complaint will be notified of the findings and their options.

**Non-retaliation** The policy also expressly prohibits retaliation of any kind against any employee bringing a complaint or assisting in the investigation of a complaint. Such employees may not be adversely affected in any manner related to their employment

**Disciplinary Action** The Town views harassment and retaliation to be among the most serious breaches of work place behavior. Consequently, appropriate disciplinary action, ranging from a warning to termination, can be expected.

#### **State and Federal Remedies**

In addition to the above, if you believe you have been subjected to discriminatory harassment of any type, including sexual harassment, you may file a formal complaint with either or both of the government agencies set forth below. Using our complaint process does not prohibit you from filing a complaint with these agencies. Each of the agencies requires that claims be filed within 300 days from the alleged incident of when the complaint became aware of the incident.

#### **The United States Equal Employment Opportunity Commission (“EEOC”)**

One Congress Street, 10 floor  
Boston, MA 02114,  
(617) 565-3200

#### **The Massachusetts Commission Against Discrimination (“MCAD”)**

Boston Office:  
One Ashburton Place, Room 601  
Boston, MA 02108  
(617) 727-3990

Springfield Office:  
424 Dwight Street, Room 220  
Springfield, MA 01103  
(413)739-2145

Worcester Office:  
22 Front Street, 5<sup>th</sup> floor  
P.O. Box 8038  
Worcester, MA 01641  
(508) 799-6379  
(9/25/06)

#### **DRUG FREE WORKPLACE POLICY**

##### **Purpose and Goal**

**The Town of Merrimac** is committed to protecting the safety, health and well being of all employees and other individuals in our workplace. We recognize that alcohol abuse and drug use pose a significant threat to our goals. We have established a drug-free

workplace program that balances our respect for individuals with the need to maintain an alcohol and drug-free environment.

- This policy recognizes that employee involvement with alcohol and other drugs can be very disruptive, adversely affect the quality of work and performance of employees, pose serious health risks to users and others, and have a negative impact on productivity and morale.
- This organization has no intention of interfering with the private lives of its employees unless involvement with alcohol and other drugs off the job affects job performance or public safety.
- As a condition of employment, this organization requires that employees adhere to a strict policy regarding the use and possession of drugs and alcohol.
- This organization encourages employees to voluntarily seek help with drug and alcohol problems.

### **Covered Workers**

Any individual who conduct business for the organization, is applying for a position or is conducting business on the organization's property is covered by our drug-free workplace policy. Our policy includes, but is not limited to managers, supervisors, full-time employees, part-time employees, off-site employees, contractors, volunteers and applicants.

### **Applicability**

Our drug-free workplace policy is intended to apply whenever anyone is representing or conducting business for the organization. Therefore, this policy applies during all working hours, whenever conducting business or representing the organization, while on call, paid standby, while on organization property and at company-sponsored events.

### **Prohibited Behavior**

It is a violation of our drug-free workplace policy to use, possess, sell, trade, and/or offer for sale alcohol, illegal drugs or intoxicants.

### **Notification of Convictions**

Any employee who is convicted of a criminal drug violation in the workplace must notify the organization in writing within five calendar days of the conviction. The organization will take appropriate action within 30 days of notification. Federal contracting agencies will be notified when appropriate.

### **Consequences**

One of the goals of our drug-free workplace program is to encourage employees to voluntarily seek help with alcohol and/or other drug problems. If, however, an individual violates the policy, the consequences are serious.

In the case of applicants, if he or she violates the drug-free workplace policy, the offer of employment can be withdrawn. The applicant may not reapply.

If an employee violates the policy, he or she will be subject to progressive disciplinary action and may be required to enter rehabilitation. An employee required to enter rehabilitation who fails to successfully complete it and/or repeatedly violates the policy will be terminated from employment. Nothing in this policy prohibits the employee from being disciplined or discharged for other violations and/or performance problems.

### **Return-to-Work Agreements**

Following a violation of the drug-free workplace policy, an employee may be offered an opportunity to participate in rehabilitation. In such cases, the employee must sign and

abide by the terms set forth in a Return-to Work Agreement as a condition of continued employment.

### **Assistance**

**The Town of Merrimac** recognizes that alcohol and drug abuse and addiction are treatable illnesses. We also realize that early intervention and support improve the success of rehabilitation. To support our employees, our drug-free workplace policy:

- Encourages employees to seek help if they are concerned that they or their family members may have a drug and/or alcohol problem.
- Offers all employees and their family member's assistance with alcohol and drug problems through MIIA Employee Assistance Program (EAP) 1-800-451-1834.
- Allows the use of accrued paid leave while seeking treatment for alcohol and other drug problems.

Treatment for alcoholism and/or other drug use disorders may be covered by the employee benefit plan. However, the ultimate financial responsibility for recommended treatment belongs to the employee

### **Confidentiality**

All information received by the organization through the drug-free workplace program is confidential communication. Access to this information is limited to those who have a legitimate need to know in compliance with relevant laws and management policies.

### **Shared Responsibility**

A safe and productive drug-free workplace is achieved through cooperation and shared responsibilities. Both employees and management have important roles to play.

All employees are required to not report to work or be subject to duty while their ability to perform job duties is impaired due to on-or-off duty alcohol or other drugs.

In addition, employees are encouraged to:

- Be concerned about working in a safe environment.
- Support fellow workers in seeking help.
- Use Employee Assistance Program.
- Report dangerous behavior to supervisors.

It is the supervisor's responsibility to:

- Inform employees of the drug-free workplace policy.
- Observe employee performance.
- Investigate reports of dangerous practices.
- Document negative changes and problems in performance.
- Counsel employees as to expected performance improvement.
- Refer employees to the Employee Assistance Program
- Clearly state consequences of policy violations.

### **Communication**

Communicating our drug-free workplace policy to both supervisors and employees is critical to our success. To ensure all employees are aware of their role in supporting our drug-free workplace program:

- All employees will receive a written copy of the policy
- The policy will be reviewed in orientation sessions with new employees.
- The policy and assistance programs will be reviewed at safety meetings.
- All employees will receive an update of the policy annually with their paychecks.

- Every supervisor will receive training to help him/her recognize and manage employees with alcohol and other drug problems. (9/25/06)

## **DRUG TESTING POLICY –CDL LICENSED EMPLOYEES**

### **Drug Testing**

To ensure the accuracy and fairness of our testing policy, all CDL testing will be conducted according to DOT rule, 49CFR Part 40 which describes the required procedure for drug and alcohol testing for the Federally regulated transportation industry. The testing will include a screening test; a confirmation test; the opportunity for a split sample; review by a Medical Review Officer, including the opportunity for employees who test positive to provide a legitimate medical explanation, such as a physicians prescription, for the positive result; and a documented chain of custody. All non-federally regulated employees of the Town of Merrimac will undergo pre-employment testing using a 9 panel testing kit.

All drug testing information will be maintained in separate confidential records.

Each employee who has a CDL license as part of his/her employment will, as a condition of employment, be required to participate in pre-employment, periodic, random, post-accident, reasonable suspicion, return-to-duty and follow up testing upon selection of request of management.

The DOT drug testing tests for amphetamines, cannabinoids, cocaine, opiates, phencyclidine (PCP). As part of the random selection certain drivers will be chosen for both drug and alcohol testing.

The non-federally regulated employees will be tested for amphetamines, methamphetamines, cocaine, marijuana, opiates, benzodiazepines, PCP, methadone and barbiturates.

Testing for the presence of alcohol will be conducted by analysis of breath. Testing for the presence of the metabolites of drugs will be conducted by the analysis of urine.

Any employee who tests positive will be immediately removed from duty, suspended without pay for a period of 30 days, referred to a substance abuse professional for assessment and recommendations, required to successfully complete recommended rehabilitation including continuing care, required to pass a Return-to Duty test and sign as Return-to-Work Agreement, subject to ongoing, unannounced, follow up testing for a period of five years and terminated immediately if he/she tests positive a second time or violates the Return-to-Work Agreement.

An employee will be subject to the same consequences of a positive test if he/she refuses the screening test, adulterates or dilutes the specimen, substitutes the specimen with that from another person or sends an imposter, will not sign the required forms or refuses to cooperate in the testing process in such a way that prevents completion of the test.

(9/25/06)

## **DRUG TESTING POLICY – NON-CDL LICENSED EMPLOYEES**

### **Drug Testing**

Each employee of the Town of Merrimac who does not use a CDL license as part of his/her employment will, as a condition of employment, be required to participate in the pre-employment, post-accident, reasonable suspicion, return-to-duty and follow-up testing upon selection or request of management.

The testing will include a screening test; a confirmation test; the opportunity for a split sample; review by a Medical Review Officer, including the opportunity for employees

who test positive to provide a legitimate medical explanation, such as a physician's prescription, for the positive result; and a documented chain of custody. All non-federally regulated employees of the Town of Merrimac will undergo pre-employment testing using a 9 panel testing kit.

All drug testing information will be maintained in separate confidential records.

The drug testing tests for amphetamines, cannabinoids, cocaine, opiates, phencyclidine (PC).

The non-federally regulated employees will be tested for Amphetamines, Methamphetamines, Cocaine, Marijuana, opiates, Benzodiazepines, PCP, Methadone and Barbiturates.

Testing for the presence of alcohol will be conducted by analysis of breath. Testing for the presence of metabolites of drugs will be conducted by the analysis of urine.

Any employee who tests positive will be immediately removed from duty, suspended without pay for a period of 30 days, referred to a substance abuse professional for assessment and recommendations, required to successfully complete recommended rehabilitation including continuing care, required to pass a Return- to- Duty test and a Return-to-Work Agreement, subject to ongoing, unannounced, follow-up testing for a period of five years and terminated immediately if he/she tests positive a second time or violates the Return-to-Work Agreement.

An employee will be subject to the same consequences of a positive test if he/she refuses the screening or the test, adulterates or dilutes the specimen, substitutes the specimen with that from another person or sends an imposter, will not sign the required forms or refuses to cooperate in the testing process in such a way that prevents completion of the test. (4/30/07)

### **SMOKING IN THE WORKPLACE POLICY**

In accordance with the provisions of Massachusetts General Laws, Chapter 270, Section 22, no smoking shall be permitted in any public building in the Town of Merrimac.

This policy is not only promulgated to comply with the law, but also for the purpose of promoting a safe and healthy environment in work areas of the Town of Merrimac. It is intended to reduce the health risks associated with exposure to tobacco smoke.

All employees are encouraged to exercise understanding of the views of others and to cooperate in the effective application of this policy. Problems or disputes arising from the implementation of this policy shall be referred to the Finance Director for resolution.

### **EMPLOYEE ASSISTANCE PROGRAM**

The Town of Merrimac offers an Employee Assistance Program (EAP) designed to offer help to those who have personal problems that impair their work attendance or performance. As an employer whose purpose is to provide public services, the Town realizes that unsatisfactory job performance often results from problems not directly related to an employee's job function. In such cases, the job performance problem will not be solved unless the basic cause is properly diagnosed and treated

The Town of Merrimac recognizes that many influences may detract from a person's effectiveness, particularly personal problems that affect them and their families. In order to serve the needs of the employees, the EAP will acquaint them with appropriate community resources and agencies. The EAP is remedial. Its purpose is to help individuals overcome problems and restore them to full job efficiency. Guidance and counseling are also available to immediate family members.

Under the Employee Assistance Program, employees are encouraged to voluntarily use the resources which the Town has provided. Hopefully, such voluntary referrals will come prior to job performance problems. In instances where job performance or attendance problems have already developed, the procedure will be as follows:

The employees will be advised that the problem must be resolved. The supervisor will attempt to assist the employee in improving work performance and attendance problems without diagnosing the cause or interfering in the employee's personal affairs. If it becomes apparent to the supervisor that the employee is either unable or unwilling to solve the problem, and normal supervisory assistance is of no avail, it is the responsibility of the supervisor to refer the employee to a professionally trained Diagnostic and Referral Resource (MIIA EAP is the resource to be used)

The Diagnostic and Referral Resource will discuss the problem with the employee on a confidential basis, determine the cause of the problem and provide a recommendation to the employee as to where assistance can be secured in the community. A comprehensive evaluation report with these recommendations is forwarded to the designated employer supervisor.

It is the employee's responsibility to accept the recommendations and follow through to receive assistance. If the employee accepts the offer of help, and the job performance or attendance problems are resolved to the supervisor's satisfaction, no further action will be taken.

If the employee refuses the offer of assistance or refuses to follow the recommendations of a designated resource person and others, to whom they refer the employee and job performance or attendance continues to be unsatisfactory, then normal disciplinary measures will be taken.

Participation in the Employee Assistance Program does not give employees a guarantee that they will avoid further disciplinary action in the case of unimproved job performance. However, it does offer employees an option for corrective behavior. The entire matter will be conducted on a confidential basis. The supervisor will need to be informed of attendance in the program and any changes in planning.

The Employee Assistance Program is offered through: MIIA Employee Assistance Program

## **FAMILY AND MEDICAL LEAVE**

### **Applicability**

This policy shall be administered in accordance with regulations issued by the U.S. Department of Labor under the authority of the Family and Medical Leave Act of 1991, and applicable state law.

### **Family Leave**

An Appointing Authority shall grant to a full or permanent part-time employee who has been employed for at least twelve consecutive months, leave of absence for up to 12 weeks in conjunction with the birth, adoption or placement of a child as long as the leave concludes within 12 months following the date of the birth, adoption or placement.

If both spouses are employees of the Town covered by these rules, they are jointly entitled to a combined total of 12 weeks of family leave for the above purposes (birth, adoption or placement.) The female employee is entitled to up to 8 of those 12 combined weeks under state law for either maternity or adoption purposes (M.G.L., Chapter 149, Sec. 05D).

### **Notice Requirements for Family Leave**

At least 30 days in advance, the employee shall submit to the Director or Budget, Finance and Personnel a written notice of his/her intent to take family leave and the dates and expected duration of the leave. If 30 days notice is not possible, the employee shall give notice as soon as practicable. The employee shall provide upon request by the Finance Director proof of the birth, adoption or placement

### **Continuation of Benefits during Family Leave**

Employees taking an unpaid leave of absence under this provision will accumulate sick and vacation leave benefits only for the first 8 weeks of such unpaid leave. The period of family leave granted under these rules shall not affect the employee's right to receive any benefits for which the employee was eligible at the start of his/her leave.

### **Medical Leave**

An Appointing Authority shall grant to a full or regular part-time employee, who has been employed for at least twelve consecutive months, an unpaid leave of absence for up to 12 weeks for:

- An employee's serious health condition which prevents him/her from performing the essential functions of his/her position.
- Caring for a spouse, child or parent who has a serious health condition.

### **Notice Requirements for Medical Leave**

At least 30 days in advance, the employee shall submit to the Director of Budget, Finance and Personnel a written notice of his/her intent to take medical leave and the date and expected duration of the leave. If 30 days notice is not possible, the employee shall give notice as soon as practicable. The Director of Budget, Finance & Personnel will inform the Department Head of the request for leave but not the underlying reasons for said leave.

### **Satisfactory Medical Evidence for Medical Leave**

The employee shall provide upon request by the Appointing Authority, satisfactory medical evidence which is defined as:

- In the case of the employee's illness, a signed statement by a licensed physician, physician's assistant, nurse practitioner, chiropractor or dentist stating that he/she has personally examined the employee, explaining the nature of the illness or injury (unless identified as being of a confidential nature), and stating that the employee was unable to perform his/her duties due to the specific illness or injury on the days in question.
- In the case of illness of a spouse, child or parent, a signed statement by a medical provider as defined above indicating that the person in question has been determined to be seriously ill and needing care on the days in question.
- The statement shall be on letterhead of the attending physician or medical provider, and shall list an address and phone number.

If the Director of Budget, Finance & Personnel has reason to doubt the validity of the medical evidence, the Director may obtain a second opinion at the Town's expense.

If there is a conflict between the second opinion and the original opinion medical statement, the Director and the employee may resolve the conflict by obtaining the opinion of a third medical provider, who is approved jointly by the Finance Director and the employee, at the Town's expense

### **Use of Paid Leave to Offset Unpaid Non-FMLA Leave**

If an employee has accumulated sick, personal, or vacation credits at the commencement of his/her family or medical leave, the employee may use such credits for which he/she may be eligible under the applicable rules.

#### **Limits of Total Family & Medical leave during a 12-month Period**

An employee is not entitled to more than 12 weeks of family and medical leave combined (including non-FMLA leave) in a 12-month period. For this purpose, a rolling 12 month period will be used, measured backward from the date of the commencement of the leave. In accordance with the provisions of G.L. c. 149 sec.52D employees may take up to an additional 24 hours of annual family obligation leave during any 12 month period in addition to the 12 weeks allowed under the Family and Medical Leave Act.

#### **TRAVEL EXPENSES AND MEAL REIMBURSEMENT**

##### **Out of State Travel**

No expenses for out-of-state travel shall be reimbursed unless prior approval is signed by the Department Head and the Board of Selectmen.

##### **Travel between Home and Work Assignment**

Transportation of any kind between and employee's home and permanently assigned office (official headquarters) is not reimbursable.

- If employees travel from home to temporary assignments rather than to their permanently assigned office, transportation expenses shall be allowed either for the distance from their homes to places of temporary assignment, or from their permanently assigned offices to places of temporary assignment, whichever is nearer.

##### **Full travel Status**

This is defined as temporary absence from home on assignment to duty for more than 24 hours. The following items shall be reimbursable while on full travel status:

- Reasonable charges for hotel rooms, based upon submission of receipted hotel bill.
- Telephone and telegraph charges over 25 cents, if itemized and listing the exchange called or place to which telegram was sent.

##### **Unallowable Travel Expenses**

Reimbursement shall not be made for expenses uncured for the sole benefit of the traveler, such as valet service, entertainment, laundry service, etc.

##### **Use of Town-owned Vehicles**

- Town owned vehicles shall be used on official business only. They shall not be operated outside the necessary working hours (working hours to include time required to travel to and from the place of authorized garaging).
- No Town-owned vehicle shall leave the Town without authorization by the employee's department head except emergency vehicles engaged in the performance of a documented emergency.
- Pleasure riding or use for private purposes is absolutely forbidden.
- No operator of a Town-owned motor vehicle shall transport a passenger or passengers other than those traveling on official business except with the approval of the Department Head.

##### **Liability When Using Town-owned Automobiles**

Operators are personally responsible for damage liabilities arising from accidents occurring during non-work related travel or involving passengers not traveling on official

business. Any accident in which a Town-owned vehicle is involved shall be reported immediately to the Finance Director. Any such accident involving death or personal injury shall be reported immediately to the Registrar of Motor Vehicles.

#### **Reimbursement of Expenses of Town-owned Automobiles**

Reimbursement shall be allowed for expenses incurred in the operation of Town-owned cars, including charges for gas, oil and reasonable charges for minor repair, public garage and parking fees, toll charges and reasonable charges for car washing.

#### **Privately-owned Automobiles and Mileage Rate**

- When use of a person's private car is necessary and has been authorized by the Department Head, the approved mileage rate will be allowed.
- Effective January 8, 2001, the mileage rate shall be \$.385 per mile. Effective July 1, of each following fiscal year, the Board of Selectmen may increase the mileage rate to be equal to the highest allowed by the IRS for business travel.
- For each trip, the city or town visited must be reported. If several addresses are visited within a city or town, state the number visited and total mileage covered. The purpose of each visit must also be reported.
- Mileage reported shall be based upon actual odometer readings.
- Private automobile mileage reimbursement shall be payable only to one of two or more employees traveling together in the same vehicle.

#### **Unallowable Expense for Automobiles**

No reimbursement shall be allowed or obligation incurred for private garaging of a Town-owned automobile operated by an employee as transportation from the place of employment to the vicinity of residence

#### **Meal Reimbursement**

Reimbursement shall be allowed for meals while on full travel status.

#### **Amount of Meal Reimbursement**

- Breakfast \$5.00
- Lunch (midday meal) \$6.00
- Supper (evening meal) \$13.00

The rates for lunch and supper may be reversed at the option of the person when entitled to both meals in one day. The rates above shall apply only when meals are not included in the rate charged for lodging or otherwise included in registration or conference fees.

#### **When Meals May be Reimbursed**

For travel status of 24 hours or more, the following are allowances on the first day:

- When travel status begins before 6:00A.M., the person is entitled to breakfast, midday and evening meals.
- When travel status begins between 6:00 A.M., and noon, the person will be entitled to midday and evening meals.
- When travel status begins noon and evening, the person will be entitled to the evening meal.

For travel status of 24 hours or more, the following are allowances on the final day:

- When travel status ends between 6:00 A.M., and noon, the person will be entitled to breakfast.
- When travel status ends between noon and 6:00 P.M., breakfast and midday meals will be allowed.

- When travel status ends after 6:00 P.M., breakfast, midday and evening meals will be allowed.
- Breakfast at beginning and evening meals at end of travel status will not be allowed unless the charge is accompanied by a statement of necessity for early departure or late return.

#### **Meal Reimbursement for Travel Less Than 24 Hours in Duration**

- For travel on one day's duration starting two hours or more before compensated time the person will be entitled to the breakfast allowance. Voucher must state time of departure and time compensation commenced.
- For travel of one day's duration ending two hours or more after compensated time, the person will be entitled to the evening meal allowance. Voucher must state the time compensation ceases and time of arrival home.
- In no event will the midday meal be allowed for travel of less than 24 hours' duration unless associated with a formal meeting or conference.
- Voucher must state necessity for early departure or late return as well as a statement giving the regularly scheduled work hours.

#### **ACCESS TO PERSONNEL FILES**

In accordance with the provisions of Massachusetts General Laws, Chapter 149, Section 52D, current and former employees have the right to review their personnel files. A personnel record is any information which has been, or could be, used relative to an employee's qualification for employment, promotion, transfer, additional compensation, or disciplinary action, as well as information kept separately from the central files, such as memos and notes maintained by supervisors. A personnel record does not include personal information about someone other than the employee, if disclosure of such information would constitute a clearly unwarranted invasion of privacy. Medical and/or psychological information about employees is maintained separately from the personnel record.

Employees must make a written request to review and/or receive a copy of their personnel file. If there is disagreement with any information in the personnel record, the Town and the employee may mutually agree to remove or correct it. If agreement is not reached the employee may submit a written statement explaining the disagreement. The statement will be retained in the personnel record. If the statement upon which there was original disagreement is transmitted to a third person, the employee's written response will also be transmitted.

#### **VOLUNTARY TERMINATION OF EMPLOYMENT**

All employees must give advance notice of not less than ten (10) working days of their intention to terminate employment with the town.

(Personnel By-law approved (10/14/98))

#### **CELLULAR PHONE POLICY**

**Purpose:** The purpose of this policy and its procedures is to provide guidelines to employees regarding the use of Town-issued cellular phones required for the purpose of conducting Town business and to provide for procurement processes and reimbursement procedures.

**Policy:** The Town is committed to providing tools and equipment that enhance the employee's ability to perform all job functions effectively. Cellular phones provide those employees with the ability to perform the functions of their duties in a much more

efficient manner. Therefore, Town management requires certain employees and department heads to be equipped with cellular phones as a condition of employment. Town business is any use in the course of performing specific job-related duties on behalf and for the benefit of the Town of Merrimac.

**Use of Cellular Phones:** Cellular phones are issued for the purpose of conducting Town business in an efficient manner, and unless otherwise authorized, Town-issued phones must be used only for business purposes. Whenever practical, employees should use alternative means of communication that would otherwise save the resource of the cellular phone service contracts. Prudent use of the Town's resources is an integral part of our duties as employees. Cellular transmissions may not be secure, and employees should use discretion when relaying confidential information.

Any misuse or negligent acts to Town owned property may result in disciplinary action or termination.

**Issuance:** The Department Head with approval by the Board of Selectmen will approve cellular phone maximum monthly minutes required for each individual phone or employee. All employees will be required to sign the Cellular Phone Use Acknowledgement Form and agree to abide by its requirements and this policy.

**Invoice Review and Payment:** Cellular phone invoices should be reviewed for accuracy by the Accountant for payment. Any discrepancies, errors or fraudulent use should be documented and dealt with appropriately and effectively with the employee and Department Head.

The Town recognizes that occasional personal use of cellular phones may be necessary. Employees that are issued cellular phones will reimburse for occasional personal use as follows: The Town will pay the maximum monthly minutes. The employee will pay for any minutes and charges over the contracted monthly amount (minutes or dollars).

Additionally, other direct costs associated with personal calls (i.e., directory assistance, long distance, etc.) will be the direct responsibility of the employee.

**Safety Guidelines:** Employees must adhere to all federal, state, or local rules and regulations regarding the use of cellular phones while driving. Accordingly, employees must not use cell phones if such conduct is prohibited by law, regulation or other ordinance. If cell phone usage is not prohibited in a particular area, employees are encouraged to exercise caution if required to use the phone while driving. If possible, employees should seek a safe alternative and complete their call. Employees are strongly encouraged to pull off to the side of the road and safely stop the vehicle before placing or accepting a call or to facilitate note taking during a conversation. Telephone calls that are made or received while driving should be kept brief. If it appears the conversation will be prolonged, the employee should either pull to the side of the road, or inform the caller that the call will need to be completed when the employee is no longer driving. If possible, the employee should have a passenger dial the telephone number for them, or wait to place the call until he or she is no longer driving.

Special care should be taken in adverse driving conditions. Cell phone usage is discouraged when the employee is driving on an unfamiliar road, if the traffic or weather conditions are poor, or if the employee knows the telephone conversation is likely to become heated, emotional or intense.

At all times, the employee's first responsibility is to the safety of other drivers, pedestrians and the passengers in their own car. Employees who are charged with traffic

violation resulting from the use of their cellular phones while driving will be solely responsible for all liabilities that result from such actions.

When an employee stops to make a call they should take extra precaution as parked callers may become victims of accidents or theft. Cellular phones are easy targets for theft. Take precautions to protect yourself, your vehicle and all belongings from theft and vandalism. All Town issued cellular phones are the property of the Town of Merrimac. Employees may be financially responsible for the loss, damage, or failure to return assigned property.

**Discipline:** Violation of this policy will subject an employee to disciplinary action up to and including termination.

**Authority:** Any changes or variations to this policy must be approved in writing by the Board of Selectmen. (ATM4/27/09)

### **ELECTRONIC COMMUNICATIONS POLICY**

**Purpose:** This guideline sets forth the policy of the Town of Merrimac, with regard to the use of, access to, and disclosure of electronic communications. For purposes of this policy statement, “Electronic Communications” include, but is not limited to, electronic mail, Internet services, Internet logs, Intranet services, archived files, operating system logs, voice mail, audio and video conferencing, and facsimile messages that are created, sent, received or retrieved by employees and other authorized users of Town Resources. For the purposes of this policy statement, “Town Resources” include, but is not limited to, Town owned, leased or rented computer systems, telephone systems, facsimile machines, related peripherals and other technical resources as well as access provided to the Town by vendors, suppliers or customers.

**Policy:** Electronic Communications and the vast amount of information available through the Internet is a tremendous resource to the Town, and important to many employees in their jobs. However, the Internet is also a source of certain information and materials entirely unrelated to our work. Additionally, some information on the Internet may be protected by copyright, and downloading it to the Town’s computers could be copyright infringement.

Therefore, the following policies are being established.

1. Town Resources are intended for legitimate Town business. Unauthorized use of Town resources for Electronic Communications can threaten the ability of the Town’s computer system to operate properly and potentially subject the user and the Town to certain liabilities. Therefore, the use of Town Resources for Electronic Communications should be reasonably related to Town business
2. Town resources are not intended to be used for personal use or commercial purposes, but some incidental and occasional personal use of Town resources is allowed (especially on the employees’ personal time) where such use is of limited and reasonable duration and frequency, and does not consume significant amounts of Town resources. The Town retains the right to limit such personal use at its sole discretion in the event such usage is excessive or otherwise impacts efficient operation of Town resources. However, in no event are Town resources to be used in any way to send, receive, access or download material where:

- a. The content of the message or material is in violation of federal or state law; or
  - b. The content of the message or material is in violation of any Town of Merrimac's policy, guideline, or standard of business ethics or conduct; or
  - c. The content of the message or material may be reasonably considered offensive or disruptive to any employee. Offensive content includes, but is not limited to, pornography, sexual comments, jokes or images, racial slurs; gender-specific comments or any other comments or images that would offend someone on the basis of his or her age, disability, gender, race, religion, national origin, physical attributes, sexual preference, or any other classification protected by federal, state or local law; or  
**Note:** This policy relates to the Town's clear policy against sexual harassment. Use of Town resources in any way which is sexually offensive or harassing is expressly prohibited.
  - d. The content of the message or material could be considered defamatory; or
  - e. The content of the message or material is in violation of the property or copyright interests of another; or  
**Note:** All employees are cautioned that downloading material from an Internet source might be an infringement under copyright laws.
  - f. Use of Electronic Communications is for personal pursuit of profit activities or business.
3. Employees who use Town resources that are owned or provided by any branch of Government or customer must at all times comply with the rules, policies and procedures governing customer or Government furnished equipment and resources. Notwithstanding the limited personal use of Town-provided resources set forth in Paragraph 2 above, Customer or Government furnished resources may not be used at any time for activities that are personal in nature or otherwise unrelated to an employee's performance or job requirements. Any use of Customer or Government furnished resources that are unrelated to an employee's job performance of a contract or agreement shall be subject to the disciplinary actions set forth in paragraph 6 below.
  4. Town resources and data stored on Town resources are, and remain at all times the property of the Town. Employees have no right to privacy as to any information or files transmitted or stored through the Town's computer systems, voicemail, electronic mail, or other technical resources. The Town reserves the right to retrieve and read any Electronic Communications. Furthermore, all Electronic Communications including text and images may be disclosed to law enforcement or other third parties without prior consent of the sender or the receiver.
  5. The Town reserves the right to monitor, on a real-time basis, any and all traffic on the Town's network on a proactive basis to ensure appropriate content access as well as reasonable resource utilization. Employees should be aware that, even when a message is erased or a visit to a Web site is closed; it

is still possible to recreate the message or locate the Web site. Additionally, Town management may direct a real-time monitoring of an individual account or machine due to suspicion of inappropriate usage. Any known or consistent usage will be documented and forwarded to the appropriate management personnel for review.

6. Management personnel and others acting at the direction of management of the Town have the authority to investigate suspected violations of this policy statement. The Town reserves the right to search the employee's work area and seize all relevant materials pursuant to an investigation of possible

## **Article V**

### **SIDEWALKS AND HIGHWAYS**

**Section I:** No person shall leave any vehicle or material or place any obstruction on any sidewalk, street, or public place without the permission of the Selectmen, or suffer the same to remain there after dark without maintaining sufficient light and suitable guards over or near the same or allow the same to remain after notice by a Police Officer, Constable or Selectmen to remove the same.

**Section II:** No person shall, without proper authority, extinguish or remove any light placed upon public or private property to denote any obstruction or defect in a street or way.

**Section III:** No person shall park upon, obstruct, damage or destroy any sidewalk or curbing, nor shall any person drive, wheel or draw any vehicle, except a child's carriage drawn by hand, or except at a permanent driveway, upon or across any sidewalk or curbing unless a permit is first obtained from the Superintendent of Streets and Highways as provided in paragraph one (1) hereof.

**Paragraph one.** Superintendent of Streets and Highways may grant a permit to any person authorizing the crossing or obstruction of a sidewalk, or curbing by a vehicle where the same may be necessary to the performance of any work on land, building or structure abutting thereon. All damage to any sidewalk or curbing thereby caused shall be repaired and restored by the person to whom the permit is issued to a condition satisfactory to the Superintendent of Streets and Highways at the expense of the holder of such permit, and the Superintendent may require, as a condition of the issuance of any such permit, a bond in such amount and in such form and with such surety as may be satisfactory to him for the performance of the requirement thereof and of this by-law.

**Paragraph two** Before the issuance of a permit for the construction of a building or other structure, there shall be endorsed on the application for the building permit, certification by the Superintendent of Streets and Highways that a permit has been issued in accordance with the provisions of this Section, when the proposed construction requires the crossing by vehicles of any sidewalk or curbing.

**Section IV:** No person shall place or maintain any structure, sign apparatus, awning, canopy, shade or frame for the same in or over any sidewalk or street without first obtaining a permit in writing from the Selectmen to do so.

**Section V:** Any person who deposits snow, or water or causes snow or water to be deposited or pumped from private property onto a public way that creates a hazardous condition shall be subject to a fine of \$50.00.

**Section VI:** No person, utility, or Town Department shall excavate a public highway without first obtaining a written permit from the Board of Selectmen; except, a utility may excavate in the event of an emergency involving the health or safety of the public. No person, utility, or Town Department shall excavate a public highway to the extent that the highway is closed to traffic without first notifying the Fire, Police and Highway Department of the time excavation will take place and the expected duration of the time during which the highway will be impassable to traffic.

**Section VII:** No owner or person having charge of any horse, cow, swine, sheep, goat, or other grazing animal shall permit the same to pasture in any street, sidewalk or way within the Town, either with or without a keeper; provided that this By-Law shall not affect the rights of any person to use land within the limits of such way adjoining his own premises.

**Section VIII:** Any person who deposits, throws, or causes to be thrown or placed upon any street, highway, sidewalk or other property of the Town any dirt, rubbish, vegetable substance, nails, spikes, screws, glass, tin can, or other similar articles shall be subject to a fine of up to \$250.00.

**Section IX:** No person shall commit a nuisance upon any sidewalk or street, or against any tree, building or structure adjoining the same.

**Section X:** The Board of Selectmen may cause temporary minor repairs to be made on private ways in the Town provided that the following conditions are met:

- A. The type and extent of said temporary minor repairs shall include only the filling of holes or depressions in the subsurface of such ways with sand, gravel or other suitable materials where practical to be the same as or similar to those used for such existing surface on such ways and grading, but shall not include surfacing or permanent construction of said ways. The scope of the work which can be performed will be no greater than that which has been done on the way previously. There will be no change in the character of the way and no permanent expansion or improvement therein.
- B. No drainage shall be included.
- C. A determination by vote of the Board that public convenience and necessity require said repairs.
- D. Such repairs can be made only upon petition of the abutters who own fifty (50%) percent of the linear footage of such total way and one hundred (100%) of the abutters adjacent to the affected area on which the work is to be done.
- E. The Town in making of repairs under this section shall not be liable on account of any damage caused by such repairs. Said repairs shall not be undertaken unless the Selectmen have in their possession agreements executed by all abutting owners of the affected area to release and save the Town harmless on account of any damage whatever caused by such repairs. Such agreements to release and save harmless shall be recorded in the Registry of Deeds and shall be deemed to be covenants running with the land and shall be binding upon all subsequent owners thereof.
- F. Said private way shall have been opened to public use for six years or more, and in such cases Section twenty-five (25) of Chapter Eighty-four (84) of the Massachusetts General Laws shall not apply.

## **Article VI**

### **VEHICULAR REGULATIONS**

**Section I:** The Selectmen of the Town are hereby specifically authorized and directed to make such rules and orders for the regulation of carriages and vehicles, motor and otherwise, used within the Town as authorized by Section 22 Chapter 40 of the General Laws ( Ter. Ed.)

**Section II:** The rules and orders so made shall be published at least once in a newspaper circulated within the Town and shall not take effect until published.

**Section III:** The Selectmen of the Town are hereby authorized to amend, repeal or otherwise change the rules and orders so made but such amendment, repeal or change shall not take effect until published in a newspaper circulated within the Town

**Section IV:** The rules and orders made under the provisions of this article and Section 22 of Chapter 40 of the General Laws shall be printed and copies made available to any person requesting same on payment of a fee to be set by the Selectmen, but said fee in no case is to exceed fifty cents (\$0.50).

**Section V:** Any repeal, alteration or amendment to said rules and orders is to be immediately noted in the printed copies that are to be made available to any person requesting the same and are not to go into effect until such notations are made.

**Section VI:** It shall be the duty of the Police Department to enforce the provisions of these rules and orders. Said department is hereby authorized to direct all traffic, either in person or by means of visible or audible signals in conformance with the provisions of these rules and orders provided that in the event of fire or other emergency, to expedite traffic or safeguard pedestrians, officers of the Police or Fire department may direct traffic, as conditions may require notwithstanding the provisions of these rules and orders.

**Section VII:** The chief of Police is hereby authorized to prohibit, temporarily, parking on any street or highway or part thereof, in an impending or existing emergency or for lawful assemblage, demonstration or procession provided there is reasonable justification for such prohibition. Vehicles parked in places where parking is prohibited temporarily may be moved by or under the direction of an officer.

**Section VIII:** The Board of Selectmen is hereby authorized to place and maintain or cause to be placed or maintain all official traffic signs, signals, marking and safety zones. All signs, signals, markings and safety zones shall conform to the standards as prescribed by the Department of Public Works of the Commonwealth of Massachusetts.

**Section IX:** Any person who willfully deface, injures, moves, obstructs or interferes with an official traffic sign, signal or marking shall be liable to a penalty not exceeding Twenty Dollars (\$20.00) for each and every offense.

**Section X:** The location of all bus stops, taxicab stands and service zones shall be specified by the Selectmen and the case of a taxicab the Selectmen shall designate who may use them as such.

**Section XI:** No driver of any vehicle or any streetcar shall disobey the signal or direction of any official traffic control signal, sign, marking, marker or legend, unless otherwise directed by the Police Officer.

**Section XII:** Motor Vehicles are prohibited from parking in any street or highway for more than one (1) hour from 11:00 PM to 6:00 AM, from November 15<sup>th</sup> to April 1<sup>st</sup>.

**Section XIII:** No person shall operate a motor cross vehicle between the hours of 8:00 PM and 9:00 AM.

**Section XIV:** To ban the operation of jet skis, surf skies, wet bikes or other so-called “personal watercraft” in or upon that portion of Lake Attitash in Merrimac and any person violating any provision of this by-law shall be punished by a fine not to exceed Two Hundred dollars (\$200.00)

**Section XV:** Recreational Motorized Vehicles

Definition: Motorized Scooter – Unregistered, two wheels, with handle grips, powered by a gasoline 2-stroke engine. A “motorized bicycle” or a motorcycle, as defined in Massachusetts General Laws, Chapter 90, Section I are not motorized scooters

Operating Restrictions: It shall be unlawful for any person to operate or permit others to operate any motorized scooter within the Town of Merrimac under any of the following circumstances:

1. On public sidewalks
2. On public and private roadways, if the operator does not possess a valid drivers license or Massachusetts’ learners permit.
3. In public parks and recreational areas.
4. On public school property
5. On private property without the written consent of the owner or occupant of said property. Written consent shall be required for operation of any motorized scooter upon the property of any private club or other organization that permits use by club members.
6. In such a manner as to create loud or unnecessary noise as to unreasonably disturb or interfere in the peaceful and quiet enjoyment of their property.
7. No person shall operate a motorized scooter before the hour of 7:00 AM and after the hour of 9:00PM
8. With a second rider on the scooter
9. Without wearing protective headgear conforming to Registry of Motor Vehicles standards

Any person operating a motorized scooter, within the Town of Merrimac, must conform with all traffic laws and regulations of the Commonwealth.

Penalty: Violations shall be subject to a \$25.00 (twenty five dollar) fine for the first offense and no more than a \$50.00 (fifty dollar) fine for subsequent offenses.

(ATM 6/10/03)

## **Article VII**

### **JUNK AND SECOND-HAND LICENSE**

**Section I:** The Selectmen may license suitable persons to be dealers in and keepers of shops for the purchase, sale or barter of junk, old metals or second-hand articles in the Town. They may also license suitable persons as junk collectors, to collect, by purchase or otherwise, junk, old metals and second-hand articles from place to place in the Town. They may also provide that such shops and all articles or merchandise in any place, vehicle or receptacle used for the collection or keeping of the articles aforesaid may be examined at all times by the Selectmen or by any person by them authorized so to do.

**Section II:** Any dealer in or keeper of a shop for the purchase, sale or barter of junk, old metals, or second-hand articles shall be required to keep those articles within an enclosed and roofed structure unless he is permitted to do otherwise in writing by the Selectmen.

**Section III:** Every keeper of a shop for the purchase, sale or barter of junk, old metals or second-hand articles, within the limits of the Town shall keep a book in which shall be written, at the time of every purchase of any such articles, a description thereof, the name, age and residence of the person from whom and the day and hour when such a purchase was made; such book shall at all times be open to the inspection of the Selectmen and of any person by them authorized to make such inspection; every keeper of such shop shall put in a suitable and conspicuous place on his shop a sign having his name and occupation legibly inscribed thereon in large letters; such shop and all articles of merchandise therein may at all times be examined by the Selectmen or by any person by them authorized to make such examination; and no keeper of such shop and no junk collector shall directly or indirectly, either purchase or receive by way of barter or exchange any of the articles aforesaid of a minor or apprentice, knowing and having reason to believe him to be such, and no articles purchased or received by such shopkeeper shall be sold until at least one week from the date of its purchase or receipts has elapsed.

**Section IV:** No person shall use any building, enclosure or other structure for the storage, sale or keeping of rags, waste, paper stock, old clothing or any flammable material when such building, structure or enclosure is within five hundred (500) feet of any other building; nor in any building, structure or enclosure beyond that distance from another building, without a written license therefore from the Selectmen.

**Section V:** No occupier or owner of land shall permit more than one unregistered used motor vehicle within public view on land owned or occupied by him, unless such used unregistered motor vehicles are used regularly on the premises or unless such unregistered used motor vehicles are displayed by a properly licensed person or persons or corporation for the purpose of selling the same. Violation of the By-Law shall be punished by a fine of \$20.00 for each offense. Every day that such offending vehicles shall be allowed to remain on the premises after notice by the Selectmen shall be considered a separate offense.

## **Article VIII LICENSES**

**Section I:** Reasonable fees for any permit, licenses or applications for the same considered or granted by the Selectmen or any licensing authority of the Town shall be established by the Selectmen in conformity with the laws of the Commonwealth. A schedule of the fees so established shall be posted in the Town Offices and in at least three public places in the Town.

**Section II: Licenses and permits of Delinquent Taxpayers**

- a) The Tax Collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges hereinafter referred to as tax collector, shall annually furnish the Board of Selectmen hereinafter referred to as 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) The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers of any party whose name appears on said list furnished to the licensing authority from the tax collector, provided, however, that written notice is given to the party and the tax collector, as required by applicable provisions of law, and the party is given a hearing to be held not earlier than fourteen days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party, The tax collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the licensing authority with respect to such license denial, revocation or suspension. shall be made only for the purposes of such proceedings at law, except for any appeal from such license denial, revocation, or suspension. Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the license authority receives a certificate issued by the tax collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges, payable to the municipality as the date of issuance of said certificate.
- c) Any party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitations to the license or permit and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; however, that the holder be given notice and a hearing as required by applicable provisions of law.

- d) The Board of Selectmen may waive such denial, suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or member of his immediate family, as defined in section one (1) of chapter two hundred and sixty eight (268) in the business or activity conducted in or on said property.

This by-law shall not apply to the following licenses and permits:

- a. Permits for open burning: G.L. c.48, Section 13
- b. Bicycle permit: G.L. c. 85, Section 11A
- c. Permits to sell articles for charitable purposes: G.L. c.101, Section 33
- d. Work permits for children: G.L. c.149, Section 69
- e. Food and Beverage License: G.L. c.140, Section 21E
- f. Dog License: G.L. c.,140, Section 137
- g. Fishing & Hunting License: G.L. c.131, Section 12
- h. Marriage License: G.L. c.207, Section 28
- i. Theatrical and Public Exhibit Permits: G.L. c.140, Section 181

(10/28/96)

**Section III:** Any person, who constructs a building or builds an addition to an existing building; or who causes such construction or addition, without first obtaining the proper permit from the Board of Selectmen, shall be subject to a fine not more than \$50.00.

**Article IX**  
**WELLS AND WELL COVERINGS**

**Section I:** Owners of land whereon is located an abandoned well, or a well in use shall provide a covering for such well capable of sustaining a weight of three hundred pounds (300) or to fill the same to the level of the ground. The penalty for not complying with this requirement shall be a fine of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00).

## **Article X**

### **REGULATIONS FOR HAWKERS AND PEDDLERS**

**Section I:** Hawkers and peddlers who intend to carry on their business in the Town under authority of licenses granted to them under the provisions of the General Laws (Ter. Ed.) Chapter 101, Section 22 and 24 must appear in person before the Chief of Police of the Town at least two days, not including Saturday and Sunday, before they intend to engage in business in the Town and produce said licenses for the examination and authentication by said Chief of Police.

**Section II:** In lieu of the person appearing before the Chief of Police of the Town, required under Section I, hawkers and peddlers may forward, by certified mail, to said Chief of Police an authenticated copy of the license referred to in said Section along with a photograph of themselves. This mailing must be sent at least seven (7) days, not including Saturday and Sunday, before said hawkers and peddlers intend to engage in his business in the Town.

**Section III:** Hawkers and peddlers shall also inform the Chief of Police of the Town at the time of their appearance before him as described in Section I above, or as part of their mailing as described in Section II above, the names of the communities in which they have engaged in hawking or peddling, within three months of the date of their appearance before the Chief of Police, or before the date of the mailing to him.

**Section IV:** Hawkers and peddlers are subject to all traffic rules and regulations of the Town as well as all applicable ordinances and By-laws.

**Section V:** This article has been enacted as an ordinance and By-law of the Town in order to aid in the preservation of peace and good order and in no way is designated to discriminate in any way against any persons or group of persons. All hawkers and peddlers are subject to the same regulations which are to be applied to all in the same way, manner and fashion.

**Section VI:** No hawker, peddler or solicitor shall call house to house between the hours of sunset and sunrise.

**Article XI**  
**INSPECTION OF GAS PIPING AND APPLIANCES**

**Section I:** The Selectmen shall annually appoint an Inspector of Gas piping and gas appliances in buildings, whose duty shall be the enforcement of the rules and regulations adopted by the Board established under Section 12H of Chapter 25 of the General Laws.

**Article XII**  
**INSPECTOR OF WIRES**

**Section I:** The Selectmen shall annually appoint an Inspector of Wires as required by Section 32 of Chapter 166 of the General Laws , who shall enforce the provisions of the General Laws contained in said Chapter.

**Section II:** The Inspector of Wires of the Town shall have the duty of enforcing the regulations relative to the installation, repairs and maintenance of electrical wiring and electrical fixtures made and promulgated by the Board of Fire Prevention regulations under the provisions of Section 31 of Chapter 143 of the General Laws.

## **Article XIII**

### **TRANSPORTATION OF REFUSE**

**Section I:** Any person who transports waste, rubbish, garbage or refuse on a public way in the Town shall do so only if said material is placed in covered containers unless a permit to do otherwise is granted by the Selectmen. The Selectman may grant such a permit reasonably restricting the means or method of transportation or conveying said material and the use of other means or methods than those specifically permitted shall revoke the permit granted and shall be considered a violation of this By-law.

**Section II:** Any person who deposits rubbish at a place other than within the area assigned as the Town refuse disposal area shall be subject to a fine of \$20.00.

**Section III:** No person shall deposit rubbish in the Town refuse disposal area that is collected outside the boundaries of the Town except by a permit of the Board of Health.

**Section IV:** Any person transporting rubbish over the streets of the Town who, through carelessness or neglect, allows rubbish to be spilled on the streets of the Town, or on private property, shall be subject to a fine of not more than \$20.00.

**Section V:** Refuse of each of the following types: (1) cardboard (chipboard, corrugated board, other cardboards), newspapers, magazines, (2) bottles and other glass containers made of clear or green glass, (3) aluminum, steel and tin cans, and (4) all other refuse, shall be separately set out for collection or deposited in the Town Dump and shall be collected and so deposited and then recycled. The Board of Health shall, from time to time, promulgate regulations to implement the purpose of this section; provided that no regulation shall be promulgated under this section except after a public hearing. A notice of any such hearing containing the date, and the time and location of the hearing and a summary of the regulation under consideration shall be published at least seven days prior to the hearing in a newspaper circulated in the Town.

**Section VI:** Any brush involved in a land clearing operation, either single house lot or sub-division, must be chipped before being deposited at the Town land fill area. small quantities of brush gathered from general yard cleaning may be deposited in the Land Fill Area without first being chipped. Stumps, logs or tires shall be deposited in the Town landfill area except from a commercial operation. (Amended 5/5/80)

**Section VII:** No person shall deposit rubbish in the Town Refuse Area unless such person shall have first obtained a Disposal Area Permit which shall be permanently displayed on said person's motor vehicle.

**Article XIV**  
**TOWN COUNCIL**

**Section I:** The Selectman annually shall appoint a Town Council for general purposes.

## **Article XV**

### **PUBLIC HEALTH AND SAFETY**

**Section I:** Any person or persons owning or having control of any building or premises, shall keep the same in a clean condition and any such person having control of any building or premises, in or upon which there is any substance or materials, or any condition, which is or may become a source of danger to the public health or a nuisance shall, when ordered by the Board of Health in writing, remove or abate the same within the time specified in said order.

**Section II:** Any person or persons owning or having control of any premises abutting on a private way, and having the right to use such private way shall, when ordered by the Board of Health in writing, remove or abate from that part of said private way adjoining such premises, any substance, material or condition which is, or may become a menace to the public health or a nuisance, and such removal or abatement shall take place within the time specified in said order.

**Section III:** No person or persons shall place or cause to be placed or left in or upon any public or private street or way, enclosure or grounds, or in any body or stream of water within the limits of this Town, the body of a dead animal, fowl, or any substance or material that is, or may become offense or cause a nuisance.

**Section IV:** No owner or occupant or agent of any building or premises shall permit any sewage, garbage, contents or drainage of a private vault, cesspool or water closet or sink drain or any other filth to empty on the surface of the ground or to enter into any ditch, brook, stream or body of water unless specially permitted to do so by the Board of Health.

**Section V:** No person shall loiter, saunter, or stand in any street, sidewalk, public place or Town Building so as to obstruct or impede the free passage or in any manner, annoy or disturb any other person, after being directed by a Police Officer to move on.

**Section VI: 1.** The following words, terms and phrases, as used in and for the purpose of this by-law, shall be deemed to have the following meanings:

**(a) Swimming pool** – A body of water, artificially constructed in whole or in part, including so-called below and above ground pools, having at any point a depth of more than eighteen inches below the grade or level of the ground, area, platform or edge surrounding it, located out of doors on a lot or lots, within 250 feet of any abutting property or street line, and designed, established, constructed, maintained or used for bathing or swimming purposes, by any person, the members of his household and their guests.

**(b) Fence** – A permanent barrier or obstruction not less than three feet nor more than six feet in height, so constructed as entirely to enclose the area on which the swimming pool is located and to bar all reasonable and normal access to the swimming pool except through a substantial, self-closing gate or gates of the same height as the fence, equipped with facilities for locking said gate or gates when the pool is unattended or unguarded.

**(c) Person** – Any individual, firm or corporation having an interest in the lot or lots on which the swimming pool is located, as owner, tenant, occupant, or the agent, servant or employee of such owner, tenant or occupant.

**2.** No person shall construct, maintain or use, or cause, suffer or permit to be constructed, maintained, or used a swimming pool on any lot or lots in the Town, unless there shall be constructed and maintained a fence enclosing the area on which the swimming pool is located, provided, however, that in the case of so-called above ground pools, where the side of the pool or other barrier surrounding the pool is three or more feet in height, no fence is required if the ladder or means of access can be removed or raised when the pool is unattended or unguarded.

**3.** Provisions of this by-law shall apply to swimming pools now existing and to pools hereinafter constructed, provided, however, that as to swimming pools now existing and not enclosed by a fence, there is hereby established a period of sixty (60) days from April 15, 1973 within which to construct such fence.

**4.** The gate or gates in the fence shall be kept closed at all times, except when being used for ingress or egress, and shall be kept locked at all times when the pool is unattended or unguarded. In the case of above ground pools, so constructed in accordance with part two hereof, that a fence is not required, the ladder or other means of access shall be removed from the pool so as to prevent access to the pool at all times the pool is unattended or unguarded.

**5.** Any person violating any provision of this by-law shall, upon conviction, pay a fine not exceeding \$50.00. Each day that such violation shall continue shall be deemed a separate offense.

**Section VII:** No person shall use or consume any alcoholic beverages, as defined in Chapter 138, Section 1 of the Massachusetts General Laws, while in or upon any public way or in any way in which the public has access or invitees or licensees, park or playground or private land, building, structure, or place without the consent of the owner or person in control thereof. All alcoholic beverages being used in violation of this by-law shall be seized and safely held until final adjudication against the person or persons arrested or summoned before court, at which time, they shall be returned to the persons entitled to lawful possession. Each arrest shall be considered a separate offense.

**Section VIII:** Not passed 10/21/74

**Section IX:** Not passed 10/21/74

**Section X:** No person shall without right, stand or remain upon a wall or fence or upon any doorstep or other projection from a house or other building so as to obstruct any passage to or from such house or building, after having been requested by a Police Officer of the Town or by owner or occupant of any such building, to depart there from.

**Section XI:** No person shall make any obscene or indecent figure or write any obscene words upon any fence, building, or structure in any public area.

**Section XII:** No owner or person having charge of any dog shall permit the same to commit a nuisance by barking, biting, howling, or otherwise disturbing the peace and quiet of any neighborhood or endangering the safety of any person. An owner of a dog who is found to be in violation of any provision of Section XII shall be subject to the following fines. 1<sup>st</sup> offense: Warning. 2<sup>nd</sup> offense: \$15.00 (fifteen) fine, and each subsequent offense \$25.00 (twenty-five).

**Section XIII:** No person shall own or keep in the Town of Merrimac, outside the confines of the owners or keepers property, any dog which is not held firmly on a leash or under the immediate control of such owner or keeper, excluding dogs that are used in Police work and/or dogs that are being used for hunting purposes during the hunting season. Failure to comply with this by-law shall be punishable by the fines established by the Board of Selectmen and on record with the Town Clerk. Each 24 hour period shall constitute a separate offense. (ATM4/27/09)

**Section XIV:** All dogs six (6) months old or over must be licensed and tagged. Licensing will be done in the office of the Town Clerk. The owner or keeper of an unlicensed dog after June 1<sup>st</sup> will be fined. All fines and licenses established by the Board of Selectmen and on record with the Town Clerk All monies collected for licenses, ( minus the \$.75 Town Clerk fee ), and fines will be retained by the town. (ATM4/27/09)

**Section XV:** The Animal Control Officer shall perform assigned duties in accordance with Chapter 140 of the General Laws of the Commonwealth of Massachusetts, and in any other appropriate statues relative hereto. The Animal Control Officer shall attend to all complaints and any other matters pertaining to dogs and shall take whatever action deemed necessary.

**Section XVI:** Hunting on private property in the Town of Merrimac shall be with the written permission of the landowner only.

**Section XVII:** Any person owning or having custody of an animal, shall immediately remove that animal's waste from any public property or private property other than that of the animal's owner. Violation shall be subject to fines established by the Board of Selectmen and on record with the Town Clerk. (ATM4/27/09)

**Section XVIII:** A uniform numbering system for residential and commercial structures within the town by the Board of Assessors, with approval of the Selectmen, Fire and Police Departments shall assign all residential and commercial structures existing as of the adoption of this by-law a street number and, furthermore, shall assign to vacant properties numbers to be held in reserve for future use. Streets built subsequent to the adoption of this by-law will be assigned numbers by the Board of Assessors at the time of approval by the planning Board

**ARTICLE XVI  
REPEAL AND AMENDMENT OF BY-LAWS AND  
PENALTIES THEREUNDER**

**Section I:** Those by-laws may be repealed or amended at any Annual Town Meeting or at any other Town Meeting specially called for the purpose, an article or articles for such purpose having been inserted in the warrant for such meeting.

**Section II:** Every violation of any of the by-laws of the Town of Merrimac, except otherwise provided by Law or these by-laws, shall be punishable by a fine of not more than \$50.00 for each violation thereof.

**Section III:** These by-laws shall go into effect upon their acceptance by the Town and their approval and publication in the manner required by Law and all by-laws previously adopted inconsistent herewith are hereby repealed on and after the date these by-laws take effect.

**Action IV:** Nothing in these by-laws, specifically including Section III of this Article, but not excluding any other provision shall be taken as an Amendment, repeal or alteration of any of the Articles, Sections or other parts of the Zoning by-laws.

**Article XVII  
BUILDING CODE**

**Section I:** That a certain document, a copy of which is on file in the office of the Town Clerk of the Town of Merrimac, being marked and designated as “The BOCA Basic Building Code , Fifth Edition, 1970” as published by the Building Officials and Code Administrators International, Inc., is the Building Code of the Town of Merrimac; for the control of buildings and structures as herein provided; and each and all of the regulations, provisions, penalties, conditions, and terms of the BOCA Basic Building Code, Fifth Edition 1970 are hereby referred to, adopted and made a part hereof, as if fully set out in this by-law, with the additions, insertions, deletions and changes, if any, prescribed in Section II of this By-law.

**Section II:** Additions, Insertions and Changes.

**That the following sections are hereby revised as follows:**

**Section: 100.1** (Page 1, Second Line) Insert “Town of Merrimac”

**Section: 100.1** (Page 1, Seventh Line) Insert “Town of Merrimac”

**Section: 105.1** (Page 3, Second Line) Insert “the date this  
By-law takes effect”

**Section**

**: 107.1** (page 4, Second Line) Insert “Town of Merrimac”

**Section: 118.2; 118.3; 118.4; 118.5;** (Page 12) Delete these  
Sections and insert in place thereof:

**Section: 118.2 SCHEDULE OF PERMIT FEES:**

Deleted (5/4/96)

- Section: 122.3** (Page 15, seventh line) Insert \$100.00 and delete  
“or by imprisonment not exceeding one year, or  
both such fine and imprisonment “.
- Section: 123.2** (Page 16, forth and fifth lines) Insert “not less  
than \$25.00 or more than 50.00”.
- Section: 126.3** (Page 18, Second Line) Insert “\$10.00 per hour”.
- Section: 200.0** (Page 22, Third Line) Insert “Town of Merrimac “
- Section: 200.2** (Page 22, Third Line) Insert “Town of Merrimac “
- Section: 201.0** (Page 25, Thirteenth Line) Insert “Chief  
Appointing Authority; The Board of Selectmen”.
- Section: 300.0** (Page 47, First and Second Line) Delete the words  
“The Division of the Municipality of “Name of
- Sections: 301.0; 301.1; 301.2; 301.3; 302.0; 302.1; 302.2; 302.3;  
303.31; 302.4; 302.6; 303.0; 303.1; 303.2; 303.3;  
303.31; 303.4; 303.5; 303.6; 303.7; 303.71;  
303.72; 303.8; 303.9; 303.10;  
304.1; 304.2; 304.3; 304.4;  
305.0; 305.1; 305.2 (page 47,48,49,50 and 51)**  
Delete Section 301.0 thru 305.2
- Section: 1308.21** (Page 345, Second Line) Insert “Three”.
- Section: 1408.1** (Page 355, Third Line) Insert “Bond or  
Insurance Policy have been filed in the sum of  
\$5,000.00 as herein required”.
- Section: 1408.2** (Page 355, Third Line) Insert “Town of  
Merrimac”.
- Section: 1703.1** (Page 388, Third Line) Insert “Town of  
Merrimac”.
- Section: 1900.1** (Page 400, Third Line) Insert “Town of  
Merrimac”.

## **ARTICLE XIII**

### **AFFORDABLE HOUSING TRUST FUND**

**Section I** The Merrimac Affordable Housing Trust Fund, hereby called the trust, is established to provide for creation and preservation of affordable housing for the benefit of low and moderate income households in Merrimac, as defined in Article 2 of the Merrimac Zoning By-laws.

**Section II:** There shall be a board of trustees, hereby called the board, which shall include no less than 5 and no more than 7 trustees, including the chief executive officer to be represented by one (1) member of the Board of Selectmen. Trustees shall be appointed by the Board of Selectmen, serve for a term not to exceed two (2) years; and are designated as public agents for the purposes of the constitution of the commonwealth.

**Section III:** The powers of the board shall include the following;

1. To accept and receive real property, personal property or money, by gift grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the trust in connection with any ordinance or by-law or any general or special law or any other source, including money from Chapter 44B;

2. to purchase and retain real or personal property, including without restriction investments that yield a high rate or income or no income;

3. To sell lease, exchange, transfer, or convey any personal, mixed, or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to trust property as the boards deems advisable notwithstanding the length of any such lease or contract;

4. to execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the board engages for the accomplishment of the purposes of the trust and approved by the Board of Selectmen;

5. to employ advisors and agents, such as accountants, appraisers and lawyers as the board deems necessary;

6. to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the board deems advisable;

7. to apportion receipts and charges between incomes and principal as the board deems advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation or otherwise;

8. to participate in any reorganization, recapitalization, merger or similar transaction; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest, and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;

9. to deposit any security with any protective organization committee, and to delegate to such committee such powers and authority with relation thereto as the board

- may deem proper and to pay, out of trust property, such portion of expenses and compensation of such committee as the board may deem necessary and appropriate;
10. to carry property for accounting purposes other than acquisition date values;
  11. to make distributions or divisions of principal in kind;
  12. to comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation and subject to the provisions of this act, to continue to hold the same for such period of time as the board may deem appropriate;
  13. to manage or improve real property; and to abandon any property which the board determined not to be worth retaining;
  14. to hold all or part of the trust property uninvested for such purposes and for such time as the board may deem appropriate; and
  15. to extend the time for payment of any obligation to the trust

**SECTION IV** Notwithstanding any general or special law to the contrary, all monies paid to the trust in accordance with any zoning ordinance or by-law, exaction fee, or private contributions shall be paid directly into the trust and need not be appropriated or accepted and approved into the trust. General revenues appropriated into the trust become trust property and to be expended these funds need not be further appropriated. All moneys remaining in the trust at the end of any fiscal year, whether or not expended by the board within I year of the date they were appropriated into the trust, remain trust property.

**SECTION V.** The trust is a public employer and the members of the board are public employees for the purposes of chapter 258.

**SECTION VI.** The trust shall be deemed a municipal agency and the trustees' special municipal employees for the purposes of chapter 268A.

**SECTION VII.** The trust is exempt from chapters 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the commonwealth or any political subdivision thereof.

**SECTION VIII.** The books and records of the trust shall be audited annually by an independent auditor in accordance with accepted accounting practices.

**SECTION IX.** The trust is a government body for purposes of sections 23A, 23B and 23C of chapter 39.

**SECTION X.** The trust is a board of the city or town for purposes of chapter 30B and section 15A of chapter 40; but agreements and conveyances between the trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the city or town shall be exempt from said chapter 30B.

## SECTION XIX: NON CRIMINAL DISPOSITION OF VIOLATIONS OF CERTAIN TOWN BY-LAWS

Enforcement:

- a. Criminal Complaint: Whoever violates any provision of these by-laws may be penalized by indictment or on complaint brought in the district court. Except as otherwise provided by the law and as the district court may see fit to impose, the maximum penalty for each violation, or offense, brought in this manner, shall be three hundred dollars
- b. Non-Criminal Disposition: Whoever violates any provision of these by-laws, the violation of which is subject to a specific penalty, may be penalized by a non-criminal disposition as provided by M.G.L. Chapter 40, Section 21D. The non-criminal method of disposition may also be used for violations of any rule or regulation of any municipal officer, board or department which is subject to a specific penalty.

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

Article	Section	Description	Fine
V	V	Depositing of snow on Public Ways	\$ 50.00
V	VIII	Littering Town Property	250.00
VI	IX	Defacing official signs	20.00
VI	XIV	Operation of "personal Watercraft"	200.00
VI	XV	Recreational Motorized Vehicles -1 <sup>st</sup>	25.00
		Subsequent Offenses	50.00
VII	V	Unregistered used motor vehicles	20.00
VIII	III	Building without permit	50.00
XIII	II	Depositing of rubbish	20.00
XIII	IV	Rubbish spilled while transporting	20.00
XV	VI	Pool by-law violations	50.00
XV	XII	Dog creating nuisance-1 <sup>st</sup>	Warning
		2 <sup>nd</sup>	15.00
		Subsequent offenses	25.00
XV	XIII	Leash Law violation -1 <sup>st</sup>	25.00
		2 <sup>nd</sup>	50.00
		Subsequent offenses	100.00
XV	XIV	Unlicensed dog-after June 1 <sup>st</sup>	20.00
		July 1 <sup>st</sup>	25.00
		August 1 <sup>st</sup>	35.00

XXV	XVII	Animal Waste on public property-1 <sup>st</sup>		10.00
		Subsequent offenses		20.00
XXVI		Water Use By-law		
		Water Supply Conservation by-law violations		
			1 <sup>st</sup>	50.00
			2 <sup>nd</sup>	100.00
XXIV	I	Rain-sensor by-law	1 <sup>st</sup>	Warning
			2 <sup>nd</sup>	50.00
XXX	12.5	Stormwater Management & Land Disturbance	1 <sup>st</sup>	250.00
			Subsequent offenses	300.00
XXI	12.5	Illicit Discharge		100.00

**Article XXII**  
**REGULATION OF SEWER USE**  
**SUGGESTED RULES AND REGULATIONS**

Found under separate cover entitled Sewer Use By-Law Town of Merrimac  
April 2005

**Article XXV**  
**WETLANDS PROTECTION BY-LAW**  
**MERRIMAC, MASSACHUSETTS**

Found under separate cover entitled Town of Merrimac, Massachusetts  
Wetland Protection Regulations. Public Hearing date August 21, 2004

**Article XXVI**  
**WATER USE BY-LAW**

Found under separate cover entitled Water Use By-Law Merrimac Water  
Department July 2005

## Article XXVII

### Committees and Appointments

**Section I Residency Requirement:** Any appointed member of any board or commission in the Town of Merrimac must be a registered voter in the Town of Merrimac (ATM 4/30/07)

## ARTICLE XXIX

### DEPARTMENT OF PUBLIC WORKS

**Section 1.** There is hereby established in the Town of Merrimac a Department of Public Works under the jurisdiction of the Board of Selectmen. The Department shall have charge of and responsibility for the management of public works operations of the town not assigned to other departments of the town, including, but not limited to, the following: Highway Department, Parks and Recreation Department, Solid Waste and Recycling, Wastewater Department, Water Department; and all other related construction and operations as may be assigned from time to time by the Board of Selectmen when deemed necessary or desirable.

The Board of Selectmen may make all policy decisions relating to the Department of Public Works except as may be reserved to the Parks and Recreation Commissioners.

**Section 2.** The Board of Selectmen shall appoint a Director of Public Works, who shall recommend to the Board of Selectmen all employees of the Department of Public Works. The compensation of such employees shall be set in the same manner as for other employees of the town, as provided in section 5.

**Section 3.** The Director of Public Works shall supervise and direct the operations and employees of the Department of Public Works in accordance with the town's personnel By-law and any applicable collective bargaining agreements. The Director of Public Works shall be especially qualified by education, training and experience to perform the duties of the office and shall have such other qualifications as the town may require from time to time. While employed by the town, the Department of Public Works Director shall hold no other elective office, nor engage in any other business or occupation, relating to public works unless approved in advance by the Board of Selectmen. Nothing in this section shall prevent the Director of Public Works from serving on special ad hoc committees in order to represent the Department of Public Works

**Section 4.** On the effect date of this act, the Wastewater Commissioners and the Water Commissioners and the appointed position of Water Manager shall be abolished, and

their powers, duties, responsibilities, and compensation shall be transferred to the Director of Public Works.

**Section 5.** No person in the regular permanent full time or part time service or employment of the town shall forfeit rate of compensation, grade, step, or time of service on account of the establishment of the Department Works. Each person shall retain in a capacity as similar to the person's former capacity as practical. No collective bargaining agreement, contract, or liability in force on the effective date of this act shall be affected by this act. (ATM 4/28/08)

# ARTICLE XXX

## Stormwater Management and Land Disturbance

### Section I Purpose

**1.1** Eroded soil and storm water runoff entering water resources are considered non-point sources of pollution that are responsible for the degradation of water quality and hydrology in lakes, ponds, streams, rivers, wetlands and groundwater. The United States Environmental Protection Agency (EPA) estimates that polluted storm water runoff is the leading cause of impairment to the nearly 40% of impaired water bodies in the United States. (Source: 1998 EPA 303 (d) list of impairment by category. The impacts of construction activities and post development stormwater runoff quantity and quality can adversely affect public health, land, surface and groundwater resources, drinking water supplies, recreation and aquatic life and habitat. The purpose of this section is to reduce the degradation of public health, land and the environment due to construction activities and land development from:

1. Soil erosion and sedimentation
2. Storm water runoff.

### Section 2 Authority

This By-law 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 40CFR 122.34

### Section 3 DEFINITIONS

**ABUTTER:** Property owner of any property having a common boundary line with the Applicant's property, or any owner of any property located adjacent to the Applicant's property on a public way or stream, or any property owner located within a distance of three hundred feet (300') of the property.

**AGRICULTURE:** The normal maintenance or improvement of land in agricultural or aqua cultural use, as defined by the Massachusetts Wetlands Protection Act and its implementing regulations.

**ALTERATION OF DRAINAGE CHARACTERISTICS:** Any activity on an area of land that changes the water quality, force, direction, timing or location of runoff flowing from the area. Such changes include: change from disturbed runoff to confined, discrete discharge; change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater on the area.

**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 purposed land-disturbance activity.

**AUTHORIZED ENFORCEMENT AGENCY:** The Town of Merrimac Planning Board, hereafter the Board, its employees or agents designated to enforce this by-law.

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

**THE BOARD:** Town of Merrimac Planning Board.

**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 MATERIAL:** 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.

**CONVEYANCE:** Any structure or device, including pipes, drains, culverts, curb breaks, paved swales, or man made swales of all types designed or utilized to move or direct stormwater runoff or existing water flow.

**CLEARING:** Any activity that removes the vegetative surface cover.

**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 or similar earth material

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

**EROSION AND SEDIMENTATION CONTROL PLAN:** A document containing narrative, drawings and details developed by a qualified professional engineer (PE) and 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.

**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 (310CMR 10.00) and the Forest Cutting Practices Act Regulations (304 CMR 11.00)

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

**GROUNDWATER:** All water beneath any land surface including water in the soil and bedrock beneath water bodies.

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

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

**INFILTRATION:** The act of conveying surface water into the ground to permit groundwater recharge and the reduction of stormwater runoff from a project site.

**LAND-DISTURBING ACTIVITY:** Any activity that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material.

**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 Sec. 40 and Massachusetts Clean Water Act G.L. c. 21 Sec 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 Merrimac.

**NEW DEVELOPMENT:** Any construction or land disturbance of a parcel of land that is currently in a natural vegetated state and does not contain alterations by man-made activities.

**NON-POINT SOURCE POLLUTION:** Pollution from many diffuse sources caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into water resource areas.

**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 point at which stormwater flows out from a point source discernible, confined and discrete conveyance into waters of the Commonwealth.

**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 & 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.

**PHASING:** Clearing a parcel of land in distinct sections, with the stabilization of each section before the clearing of the next.

**POINT SOURCE:** Any discernible, confined, and discrete conveyance, including but not limited to, any pipe ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged.

**POST-DEVELOPMENT:** The conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

**PRE-DEVELOPMENT:** The conditions that exist at the time that plans for the land development of a tract of land are submitted to the Conservation Commission or Planning Board.

**PRE-CONSTRUCTION:** All activity in preparation for construction.

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

**RECHARGE:** The replacement of underground water reserves.

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

**RESOURCE AREA:** Any area protected under including, without limitation: the Massachusetts Wetlands Protection Act, Massachusetts Rivers Act, or Town of Merrimac Wetlands Protection Regulations.

**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 sediment.

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

**SLOPE:** The incline of a ground surface as a ratio of horizontal distance to vertical distance.

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

**STORMWATER AUTHORITY:** Town of Merrimac Planning Board or its authorized agents are responsible for coordinating the review, approval and permit process as defined by this by-law.

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

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

**STORMWATER MANAGEMENT PLAN:** A plan required as part of the application for a Stormwater Management and Land Disturbance By-law Permit.

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

**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 sec. 40 and Town of Merrimac Wetlands Protection Regulations.

**WETLANDS:** Tidal and non-tidal areas characterized by saturated or nearly saturated soils most of the year that are located between terrestrial (land-based) and aquatic (water-based) environments, as defined in the Massachusetts Wetlands Protection Act G.L. c. 131 sec. 40, including freshwater marshes around ponds and channels (rivers and

streams), brackish and salt marshes; common names include marshes, swamps, bogs and wet meadows.

## **Section 4 APPLICABILITY**

**4.1**No person may undertake a construction activity, including clearing, grading and excavation that results in a land disturbance that will disturb equal to or greater than 20,000 square feet of land or will disturb less than 20,000 square feet of land but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than 20,000 square feet of land draining to the Town of Merrimac without a Stormwater Management and Land Disturbance Permit from the Board.

**4.2**In addition, as authorized in Phase II Small MS4 General Permit for Massachusetts, storm water discharges resulting from the above activities that are subject to jurisdiction under the Wetland Protection Act and demonstrate compliance with the Massachusetts Storm Water Management Policy as reflected in an Order of Conditions issued by the Conservation Commission and contain an approved Stormwater Pollution Prevention Plan may be exempt from compliance with the review process of this by-law, as determined by the Planning Board upon submittal of the following:

**4.2.1**Two copies of a completed Application Form along with copies of the Conservation Commission's Order of Conditions. The Planning Board shall issue a Stormwater Management and Land Disturbance Permit at its next regularly scheduled meeting after receipt of said materials. The filing fee shall be waived.

## **Section 5 EXEMPTIONS**

**5.1** Normal maintenance and improvement of land in agricultural, aqua cultural, forestry, or nursery operations as permitted as a main or accessory use.

**5.2** Any emergency activity which is immediately necessary for the protection of public health, property or natural resources.

**5.3** Emergency repairs to any stormwater structure.

**5.4** Maintenance of existing landscaping, gardens or lawn areas.

**5.5** Construction of patios, walkways, driveways, fences, swimming pools and the replacement of wells or septic systems on lots having an existing dwelling.

**5.6** Construction or emergency repair to any utilities other than drainage, which would not alter the ground cover or drainage patterns.

## **Section 6 ADMINISTRATION**

**6.1** The Board shall administer, implement and enforce this by-law. Any powers granted to or duties imposed upon the Board may be delegated in writing by the Board to its agent.

**6.2** The Board may waive strict compliance with any requirement of this by-law or the rules and regulations promulgated hereunder, where:

1. such action is allowed by federal, state and local statutes and/or regulations
2. is in the public interest, and
3. is not inconsistent with the purpose and intent of this by-law.

**6.3** Rules and Regulations. The Board may adopt, and periodically amend rules and regulations to effectuate the purposes of this by-law. Failure by the Board to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

## **Section 7 PERMITS AND PROCEDURE**

**7.1** If a project requires a Stormwater Management and Land Disturbance Permit, the applicant shall file eight (80 copies of a completed Stormwater Management and Land Disturbance Permit Application Package to the Planning Board. Review of the complete application may be conducted concurrently with other applications to the Board. The applicant shall include the following

**7.1.1** Completed Application Form with original signatures.

**7.1.2** A list of abutters, certified by the Assessors Office.

**7.1.3** A Stormwater Management and Erosion and Sediment Control Plan as specified in Section 8 of this by-law.

**7.1.4** A Stormwater Operation and Maintenance Plan (O&M) as specified in Section 8 of this by-law

**7.1.5** Payment of the application and review fees as specified in Section 7 of this by-law.

**7.2** Filing an application for a permit grants to the Board or its agent, permission to enter the site to verify the information and to inspect for compliance with permit conditions.

**7.3** The Board shall notify the Town Clerk of receipt of the application, and shall give one copy of the application package to the Highway Department, Water Department, the Conservation Commission and the Board of Health.

### **7.4** Public Hearing

**7.4.1** The Board shall hold a public hearing in conformance with the provisions of G.L. c. 40A, Section 9.

**7.4.2** The public hearing shall be held within 65 days after the filing of the application.

**7.4.3** Notice shall be given by publication and posting and by first class mailing to parties of interest as defined in G.L. c. 40A, Section 11

**7.5** The applicant shall submit all additional information requested by the Board to issue a decision on the application.

### **7.6** The Board may:

**7.6.1** Approve the Stormwater Management and Land Disturbance Permit Application and issue a permit if it finds that the proposed plan will protect water resources and meets the objectives and requirements of this by-law.

**7.6.2** Approve the Stormwater Management and Land Disturbance permit Application and issue a permit with conditions, modifications or restrictions that the Board determines are required to ensure that the project will protect water resources and meets the objectives and requirements of this by-law.

**7.6.3** Disapprove the Stormwater Management and Land Disturbance Permit Application and deny the permit if it finds that the proposed plan will not protect water resources or fails to meet the objectives and requirements of this by-law.

**7.6.4** The decision of the Board shall be filed with the board and the Town Clerk within 90 days following the close of the public hearing.

**7.6.5** Failure of the Board to act within 90 days of the close of the public hearing shall be deemed a grant of the permit applied for.

**7.7** Fees. Each application must be accompanied by the appropriate application fee as established by the Board. Applicants shall pay review fees as discussed and determined by the Board sufficient to cover any expenses connected with the public hearing and review of the Stormwater Management and Land Disturbance Permit Application before the review process commences. The Board is authorized to retain a Registered Professional Engineer or other professional consultant to advise the Board on any or all aspects of the Application. The Board may require an additional fee for review of any change in or alteration from an approved permit.

The review fee collected under the by-law shall be deposited in a pass book account held by the Town of Merrimac,

Subject to applicable law, any unused portion of any review fees collected shall be returned by Planning Board to the applicant within forty-five calendar days of a written request by the applicant, unless the Planning Board decides in a public meeting that other action is necessary.

**7.7.1** A non-refundable application fee of \$100 plus \$.0030 times the total square footage of the area to be altered by the project shall be due and payable to the Town of Merrimac at the time an application is filed.

**7.8** Project Changes. The permittee or their agent. must notify the Board in writing of any change or alteration of a land-disturbing activity authorized in a Stormwater Management and Land Disturbance Permit before any change or alteration occurs. If the Board determines that the change or alteration is significant, based on the design requirements listed in Section 8.2 and accepted construction practices, the Board may require that an amended Stormwater Management and Land Disturbance Permit application be filed and a public hearing held. If any change or alteration from the Stormwater Management and Land Disturbance Permit occurs during any land disturbing activities, the Board may require the installation of interim erosion and sedimentation control measures before approving the change or alteration.

## **SECTION 8. STORMWATER MANAGEMENT & EROSION & SEDIMENT CONTROL**

**8.1** The Stormwater Management & Erosion and Sediment Control Plan shall contain sufficient information to describe the nature and purpose of the proposed development, pertinent conditions of the site and the adjacent areas, proposed erosion and sedimentation controls and proposed stormwater management controls. The applicant shall submit such material as is necessary to show that the proposed development will comply with the design requirements listed in Section 8.2 below.

**8.2** The design requirements of the Stormwater Management & Erosion and Sediment Control Plan are:

**8.2.1** Minimize total area of disturbance.

- 8.2.2 Sequence activities to minimize simultaneous areas of disturbance.
- 8.2.3 Minimize peak rate of runoff in accordance with the Massachusetts Department of Environmental Protection's Stormwater Management Policy dated March 1997 as amended.
- 8.2.4 Minimize soil erosion and control sedimentation during construction, provided that prevention of erosion is preferred over sedimentation control.
- 8.2.5 Encourage the use of nonstructural stormwater management and low-impact development practices, such as reducing impervious cover, preserving green space, using bio-retention areas, rain gardens and vegetated filter strips.
- 8.2.6 Divert uncontaminated water around disturbed areas.
- 8.2.7 Maximize groundwater recharge.
- 8.2.8 Install and maintain all Erosion and Sediment Control measurers in accordance with the manufacturer's specifications and good engineering practices.
- 8.2.9 Prevent off site transport of sediment.
- 8.2.10 Protect and manage on and off-site material storage areas (Overburden and stockpiles of dirt, borrow areas or other areas used solely by the permitted project are considered a part of the project).
- 8.2.11 Comply with applicable Federal, State and local laws and regulations, including waste disposal, sanitary sewer or septic system regulations, and air quality requirements, including dust control.
- 8.2.12 Prevent significant alteration of habitats mapped by the Massachusetts Natural Heritage & Endangered Species Program as Endangered, Threatened or Of Special Concern, Estimated Habitats of Rare Wildlife and Certified Vernal Pools, and Priority Habitats of Rare Species from the proposed activities.
- 8.2.13 Institute interim and permanent stabilization measurers, which shall be instituted on a disturbed area as soon as practicable but no more than 14 days after construction activity has temporarily or permanently ceased on that portion of the site.
- 8.2.14 Properly manage on-site construction and waste materials.
- 8.2.15 Prevent off-site vehicle tracking of sediments.

**8.3 Stormwater Management & Erosion and Sediment Control Plan Content.** The plan shall contain the following information.

- 8.3.1 Names, addresses and telephone numbers of the owner, applicant, and person (s) or firm(s) preparing the plan.
- 8.3.2 Title, date, north arrow, names of abutters, scale. Legend and locus map.
- 8.3.3 The existing zoning, and land use at the site.
- 8.3.4 The proposed land use.
- 8.3.5 Watercourses and water bodies, wetland resources areas and all floodplain information, including the 100- year flood elevation based upon the most recent Flood Insurance Rate Map, or as calculated by a professional engineer for areas not assessed on these maps.
- 8.3.6 Existing and proposed vegetation including tree lines, canopy layer, shrub layer, and ground cover.

- 8.3.7 Surveyed property lines showing distances and monument locations, all existing and proposed easements, the size of the entire parcel, and the delineation and number of square feet of the land area to be disturbed.
- 8.3.8 Habitats mapped by the Massachusetts Natural Heritage & Endangered Species Program as Endangered, Threatened or of Special Concern, Estimated Habitats of Rare Wildlife and Certified Vernal Pools, and Priority Habitats of Rare Species within five hundred (500) feet of any construction activity.
- 8.3.9 Lines of existing abutting streets showing drainage and driveway locations, curbs cuts and utilities.
- 8.3.10 Topographical features including existing and proposed contours at intervals no greater than two (2) feet with spot elevations provided when needed.
- 8.3.11 Proposed improvements including location of buildings or other structures, impervious surfaces, and drainage facilities, if applicable.
- 8.3.12 Existing soils, volume and nature of imported soil materials.
- 8.3.13 Location and details of erosion and sediment control measures with a narrative of the construction sequence/phasing of the project, including both operation and maintenance for structural and non-structural measures, interim grading, and material stockpiling areas.
- 8.3.14 Estimated seasonal high groundwater elevation in areas to be used for stormwater retention, detention, or infiltration.
- 8.3.15 A drainage area map showing pre and post construction watershed boundaries, drainage areas and stormwater flow paths.
- 8.3.16 Pre and post development stormwater runoff calculations in accordance with the Department of Environmental Protection's Stormwater Management Policy.
- 8.3.17 A description and drawings of all components of the proposed drainage system including:
- a. location, cross sections, and profiles of all brooks, streams, drainage swales and their method of stabilization.
  - b. all measures for the detention, retention or infiltration of water
- 8.3.18 All measures for the protection of water quality.
- 8.3.19 The structural details for all components of the proposed drainage systems and stormwater management facilities.
- 8.3.20 Notes on drawings specifying materials to be used, construction specifications, and typicals.
- 8.3.21 Path and mechanism to divert uncontaminated water around disturbed areas, to the maximum extent practicable.
- 8.3.22 Location and description of industrial discharges, including stormwater discharges from dedicated asphalt plants and dedicated concrete plants, which are covered by this permit.
- 8.3.23 Location and description of and implementation schedule for temporary and permanent seeding, vegetative controls and other stabilization measures,
- 8.3.24 A description of construction and waste materials expected to be stored on-site. The Plan shall include a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater and spill prevention and response.

8.3.25 A description of provisions for phasing the project where one acre of area or greater is to be altered or disturbed.

8.3.26 Plans must be stamped and certified by a qualified Professional Engineer registered in Massachusetts and a Certified Professional in Erosion and Sediment Control (CPESC).

8.3.27 Timing, schedules, and sequences of development including clearing, stripping, rough grading, construction, final grading, and vegetative stabilization.

8.3.28 A maintenance schedule for the period of construction

8.3.29 Any other information requested by the Board.

8.3.30 An Operation and Maintenance Plan (O&M Plan) is required at the time of application for all projects. The Board will consider natural features, proximity of site to water bodies and wetlands, extent of impervious surfaces, size of the site, the types of stormwater management structures, and potential need for ongoing maintenance activities when making this decision. The Operation and Maintenance Plan shall remain on file with the Board and shall be an ongoing requirement. The maintenance plan shall contain the following:

8.3.30.1 Designed to ensure compliance with the Permit, this By-law, and that the Massachusetts Surface Water Quality Standards, 314 CMR 4.00 are met in all seasons and throughout the life of the system.

8.3.30.2 The O&M Plan shall be prepared in conformance with the Department of Environmental Protection Stormwater Management Policy.

8.3.30.3 The owner(s) of the stormwater management system must notify the Board of changes in ownership or assignment of financial responsibility.

8.3.30.4 The maintenance schedule in the Maintenance Agreement may be amended to achieve the purposes of this by-law by mutual agreement of the Board and the Responsible Parties. Amendments must be in writing and signed by all Responsible Parties. Responsible Parties shall include owner(s) persons with financial responsibility, and persons with operational responsibilities.

## **SECTION 9 PERFORMANCE GUARANTEE**

As a condition of a Stormwater Management and Land Disturbance Permit approval, the Planning Board may require that a performance bond, be secured by deposit of money or negotiable securities in the form elected by the Planning Board, be posted with the Town to guarantee that the work will be completed in accordance with the permit. The Board may also require that an amount must be included for land restoration not having to do with the construction of improvements. The amount of security shall be determined by an estimate from the applicant's engineer which may be confirmed or increased by the Board. If the project is phased, the Board 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 Board has received the final report as required in Section 11 and issued a certificate of completion.

9.2 The Town may use the secured funds for their stated purpose in the event that the applicant does not complete all improvements in a manner satisfactory to the Board

within two years from the date of approval, or the final date of the last extension of such approval, if any.

## **SECTION 10 INSPECTIONS**

10.1 Prior to starting clearing, excavation, construction, or land disturbing activity the applicant, the applicant's technical representative, the general contractor or any other person with authority to make changes to the project, shall meet with the Board and its designated agent, to review the permitted plans and their implementation.

10.2 The Board or its designated agent shall make inspections as hereinafter required and shall either approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the land disturbance permit as approved. The Permit and associated plans for grading, stripping, excavating, and filling work, bearing the signature of approval of the Board, shall be maintained at the site during the progress of the work. In order to obtain inspections, the permittee shall notify the Board or its designated agent at least two (2) working days before each of the following events:

10.2.1 Erosion and sediment control measures are in place and stabilized, and site clearing limits are clearly marked in the field.

10.2.2 Site Clearing has been substantially completed

10.2.3 Rough Grading has been substantially completed

10.2.4 Final Grading has been substantially completed.

10.2.5 Close of the Construction Season; stabilization of the site.

10.2.6 Final Landscaping (permanent stabilization) and project final completion.

10.3 The permittee or his/her agent shall conduct and document inspections of all control measures no less than weekly or as specified in the permit, and following storm events greater than 0.5 inches. The purpose of such inspections will be to determine the overall effectiveness of the control plan, and the need for maintenance or additional control measures. The permittee or his/her agent shall submit bi-weekly reports to the Board of designated agent in a format approved by the Board.

10.4 To the extent permitted by State law, or if authorized by the owner or other party in control of the property, the Board, its agents, officers and employees may enter upon private property for the purpose of performing their duties under this by-law and may make or cause to be made such examinations, surveys or sampling as the Board deems reasonably necessary to determine compliance with the permit.

## **SECTION 11 FINAL REPORTS**

11.1 Upon completion of the work, the permittee shall submit a report (including certified as-built construction plans) from a Professional Engineer (P.E.) or a Professional Land Surveyor (P.L.S.) and a Certified Professional in Erosion and Sediment Control (CPESC), certifying that all erosion and sediment control devices and approved changes and modifications, have been completed in accordance with the conditions of the approved permit. Any discrepancies should be noted in the cover letter.

11.2 The issuing authority will issue a letter certifying completion upon receipt and approval of the final reports and/or upon otherwise determining that all work of the permit has been satisfactorily completed in conformance with this by-law

## **SECTION 12 ENFORCEMENT**

12.1 The Board or an authorized agent of the Board shall enforce this by-law, regulations, orders, violations notices and enforcement orders, and may pursue all non-criminal dispositions for such violations.

12.2 The Board or an authorized agent of the Board may issue a written order to enforce the provisions of this by-law or the regulations hereunder, which may include:

12.2.1 A requirement to cease and desist from the land-disturbing activity until there is compliance with the by-law and provisions of the land-disturbance permit.

12.2.2 Maintenance, installation or performance of additional erosion and sediment control measurers.

12.2.3 Monitoring, analyses, and reporting

12.2.4 Remediation or erosion and sedimentation resulting directly or indirectly from the land-disturbing activity.

12.3 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 Merrimac may, at its option, undertake such work and the property owner shall reimburse the Town of Merrimac's expenses.

12.4 Within thirty (30) days after completing all measurers necessary to abate the violation or to perform remediation, the violator and the property owner shall be notified of the costs incurred by the Town of Merrimac, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Board within thirty (30) days of receipt of the notification of 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 affirming or reducing the costs, or from a final decision of a court 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, as provided in G.L c59, s 57, after the thirty-first day following the day on which the costs were due.

12.5 Any violation of this by-law, any regulation promulgated hereunder, or any Stormwater Management and Land Disturbance Permit, will be punishable by non-criminal disposition under G. L.c. 40, Section 21D. The Town of Merrimac, in which case, the Planning Board or authorized agent shall be the enforcing person. The penalty for the 1<sup>st</sup> violation shall be \$250. The penalty for the 2<sup>nd</sup> violation shall be \$300. The penalty for the 3<sup>rd</sup> and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

### **SECTION 13 SEVERABILITY**

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

### **SECTION GENERAL**

14.1 Any application not accompanied by the appropriate fee shall be deemed incomplete. Payment must be made to the Town of Merrimac in cash, money order, bank or certified check payable to the Town of Merrimac.

14.2 An Applicant's failure to pay additional review or inspection fee within five business days of receipt of the notice that further fees are required shall be grounds for disapproval.

14.3 The Applicant or the Applicant's representative will publish the public notice and send abutter notifications. Abutter notification shall be by certified mail-return receipt requested. The applicant shall provide the Planning Board with copies of the public notice and the return receipt cards.

14.4 Professional review fees include engineering review, legal review, and clerical fees associated with the public hearing and permit processing. A fee estimate may be provided by the Planning Board's consulting engineer. (STM10/22/07)

## **ARTICLE XXXI**

### **ILLICIT DISCHARGE DETECTION AND ELIMINATION**

#### **Section I: Purpose:**

Regulations of illicit connections and discharges to the municipal drain system is necessary for the protection of the Town of Merrimac water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment.

The objectives of this by-law are:

1. to prevent pollutants from entering the Town of Merrimac's municipal separate storm sewer system (MS4);
2. to prohibit illicit connections and unauthorized discharges to the MS4;
3. to require the removal of all such illicit connections;
4. 4 to comply with state and federal statutes and regulations relating to stormwater discharges; and
5. to establish the legal authority to ensure compliance with the provisions of this by-law through inspection, monitoring and enforcement.

#### **Section 2: Authority**

This by-law 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

#### **Section 3: Definitions:**

**Authorized Enforcement Agency:** The Merrimac Board of Selectmen (hereafter the Board), its employees or agents designated to enforce this by-law.

**Board:** The Merrimac Board of Selectmen

**Best Management Practices:** 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 A.S. C. Sec 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, toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this by-law.

**Illicit Discharge:** Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Article XXXI Section 9. 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 exempt pursuant for Article XXXI Section 9(14) of this by-law.

**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 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 Merrimac.

**National Pollutant Discharge Elimination System (NPDES)**

**Stormwater Discharge Permit:** A permit issued by the United States Environmental Protection Agency or jointly with the State that authorizes the discharge of pollutants to water 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 nonpoint source, that is or may be introduced into any sewage treatment works or waters of the Commonwealth. Pollutants shall include without limitation:

1. paints, varnishes, and solvents;
2. oil and other automotive fluids
3. non-hazardous liquid and solid wastes and yard wastes;
4. refuse, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
5. pesticides, herbicides, and fertilizers;
6. hazardous materials and wastes; sewage, fecal coliform and pathogens;
7. dissolved and particulate metals;
8. animal wastes;
9. rock, sand, salt, soils;

10. construction wastes and residues; and
11. 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 waster 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 the 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 material 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. 12 and Ch. 21E, 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, costal 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 or byproduct or waste product.

#### **Section 4: Applicability**

This by-law shall apply to flows entering the municipally owned storm drainage system/

#### **Section 5: 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.

#### **Section 6: Responsibility for Administration**

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

#### **Section 7: Regulations**

The Board may promulgate rules and regulations to effectuate the purpose of this by-law. Failure by the Board to promulgate such rules and regulations shall not have the effect if suspending or invalidating this by-law.

## **Section 8: Prohibited Activities**

**Illicit Discharges.** No person shall dump, discharge, cause or allow to be discharged any pollutants or non-stormwater discharge into the municipal separate storm sewer 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 drain system without prior written approval of the Board.

## **Section 9: Exemptions**

Discharge or flow resulting from fire fighting activities

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

1. Waterline flushing
2. Flow from potable water sources.
3. Springs;
4. Natural flow from riparian habitats and wetlands;
5. Diverted stream flow;
6. Rising groundwater
7. Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
8. Water from exterior foundation drains, footings drains (not including active groundwater dewatering systems<sup>0</sup>, crawl space pumps, or air conditioning;
9. Discharge from landscape irrigation or lawn watering;
10. Water from individual residential car washing;
11. Discharge from dechlorinated swimming pool water (less than 1 ppm chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
12. Discharge from street sweeping;
13. Dye testing, provided verbal notification is given to the Board prior to the time of the test; Non-stormwater discharge permitted under 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 ordered and applicable laws and regulations.

## **Section 10: Emergency Suspension of Storm drainage System Access**

The Board 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 environment. In the event any person fails to comply with an

emergency suspension order, the Authorized Enforcement Agency may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

### **Section 11: Notification of Spills**

Notwithstanding other requirements of local, state, 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 clean up 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 and the Merrimac Highway Department. In the event of a release of non-hazardous material, the reporting person shall notify the Authorized Enforcement Agency no later than the next business day. The reporting person shall provide to the Authorized Enforcement Agency 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 12: Enforcement**

12.1 The Board or an authorized agent of the Board shall enforce this by-law, regulations, orders, violation notices and enforcement orders, and may pursue all civil remedies for such violations

12.2 If an Illicit Discharge occurs or an Illicit Connection is maintained, the Board shall give or cause to be given written notice directed to the Owner of the parcel from which the Illicit Discharge is emanating, or on which the Illicit Connection is maintained, ordering an immediate cessation of any act or condition in violation of this By-law.

12.3 The Board either with such notice or at any reasonable time thereafter may order the Owner or any other person either responsible for violating this By-law to begin and thereafter diligently prosecute to compliance, such remediation efforts as the Board in its reasonable discretion may deem appropriate.

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 Merrimac may, at its option undertake such work, and expenses thereof shall be charged to the violator.

12.4 Within thirty (30) days after completing all measures to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town of Merrimac including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Board 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 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. 59,-57 after the thirty-first day at which the costs first become due.

12.5 Any violation of this by-law, any regulation promulgated hereunder, will be punishable by non-criminal disposition under G.L. c. 40, Sec 21D. The Town of Merrimac, in which case, the Board of Selectmen or authorized agent shall be the enforcing person. The penalty for any person or entity which causes an illicit discharge shall be subject to a fine of \$100 per day for each day that the illicit discharge continues after notice thereof is given by or at the direction of the Board. This fee may be waived by the Board to allow time for compliance.

The penalties set out herein may be assessed by the Board and are in addition to and not in substitution for any remedial action the Board may order.

### **Section 13: Appeals**

Any person or Owner aggrieved by an action of the Board which was neither (i) the assessment of a penalty for which the provisions of M.G.L. c 40, Sec21D apply, nor (ii) an action taken by the Board at a meeting of which the aggrieved person or Owner was given notice and was afforded the opportunity to present evidence and argument with a view to causing the Board to modify its earlier action (such action being a “final action”) shall, within thirty days of such Board action, request a hearing before the Board at which the aggrieved person or Owner may present evidence and argument concerning final action by the Board. The Board shall hold such hearing within thirty (30) days following said request and within thirty days thereafter shall either confirm the Board’s previous action or order such other final action as it may determine.

Any person or Owner aggrieved by a decision of the Board of Selectmen under this by-law may appeal such decision to the appropriate court of competent jurisdiction.

### **Section 14: Severability**

The provisions of this by-law are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this by-law 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 by-law.

### **Section 15: Transitional Provisions**

Residential property owners shall have 30 days from the effective date of the by-law to comply with its provisions provided good cause is shown for the failure to comply with the by-law during that period. (STM 10/22/07)

## **Article XXXV USE OF LAKE ATTITASH**

### **Section I:**

- A. The use of gas powered augers, chain saws or similar cutting devices on the Lake Attitash ice is prohibited except between the hours of 7:00 AM and 4:00PM.

### **Section II:**

- A. The use of trucks, campers, trailers, automobiles, or other motorized street Vehicles on the Lake Attitash ice is prohibited.

### **Section III:**

- A. Any person violating any provision of this Bylaw shall be punished by a fine not to exceed \$200 (two hundred dollars).

### **Section IV:**

- A. Restrictions regarding Indian Head Park
  1. Sticker required to enter park with Selectmen determining the fee to be charged and enforcement by the Merrimac Police Department
  2. Park open sunrise to sunset from Memorial Day to Columbus Day
  3. Sticker required to enter the park beginning on the Friday before Memorial Day through Columbus Day.
  4. No beaching or launching of power operated watercraft
  5. Charcoal fires in designated grill areas only and no open fires of any kind.
  6. No glass containers
  7. No pets
  8. No alcoholic beverages
  9. Local groups and organizations require special permission from the Merrimac Parks & Recreation Commission or Selectmen to use Indian Head Park for a group outing.