

ARTICLE 1

VALIDITY OF BYLAWS

SECTION 1

The following provisions shall constitute The General Bylaws of the Town of Berkley which shall be in lieu of all bylaws heretofore in force.

SECTION 2

These bylaws shall not be suspended for any reason, but may be added to, amended, or deleted. A public hearing shall be held by the Board of Selectmen on any such changes at least ten days prior to presentation at any town meeting for acceptance.

SECTION 3

The acceptance of these bylaws shall not void or nullify any General Law or Act previously accepted and adopted by vote of the town.

SECTION 4

The validity of any section or provision of these bylaws shall not affect the validity of any other section or provisions hereof. Neither shall disapproval by the Attorney General of any provision, clauses, sentence, or part of these bylaws invalidate- or affect any other provision, clause, sentence, or part thereof.

ARTICLE 2

TOWN MEETINGS

SECTION 1

Every town meeting shall be called by a warrant directed to a constable or other duly appointed person, and by bulk rate mailing to every residence in the Town, at least fourteen (14) days before any town meeting.

Every election shall be called by a warrant directed to a constable or other duly appointed person, by posting in five places in the Town, to be set by the Board of Selectmen no less than seven (7) days before such election.

SECTION 2

The annual town election shall be held on the Saturday following the first Monday in May.

Town officers to be elected shall be as follows:

- For a three year term of office: Moderator.
- For a three year term of office with one of these elected each year: Treasurer, Collector of Taxes, and Town Clerk.
- For a three year term of office: Highway Surveyor and Tree Warden.
- For a three year term of office, one member to be elected each year of the following three member boards: Board of Selectmen, Board of Health, Board of Assessors, Library Trustees, and Cemetery Commissioners.
- For a three year term of office, five members of the School Committee, two members to be elected in each of two years, and one member in a third year.

- For a three year term of office, five members of the Planning Board, two members to be elected each year in each of two years, and one member in a third year. To accomplish this, the newly elected person shall serve for three years, the next elected person shall serve two years, and the next elected person shall serve for one year.

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SECTION 3

The annual Town Meeting shall be held on the first Monday in June.

SECTION 4

Every article intended for insertion in the warrant for Annual or Special Town Meetings must be presented in writing to the Selectmen, in accordance with law, not less than four weeks prior to the town meetings. Each of the articles, unless inserted by the Selectmen, shall be signed personally by not less than ten (10) registered voters for the Annual Town Meeting, or by not less than one hundred (100) registered voters for a Special Town Meeting, or as specified in Massachusetts General Laws, Chapter 39, Section 10.

SECTION 5

The Constable or other person duly appointed to serve the warrant for a Town Meeting or Election shall, within twenty-four (24) hours, deliver to the Town Clerk the original warrant with his return endorsed thereon stating fully the manner in which he served the same.

ARTICLE 3

PROCEDURES AT TOWN MEETINGS

SECTION 1

The procedure at town meetings shall be governed by the “Rules of Practice” contained in “Robert’s Rules of Order of Parliamentary Practice”, except as modified by law or by these bylaws.

SECTION 2

Any town meeting such as a “yearly town meeting” or “special town meeting” shall require a quorum of 100 voters present for the legal voting on any town issues according to MGL Chapter 39, Section 13.

SECTION 3

Each annual or special town meeting shall be called to order by the Moderator promptly at the appointed hour. In absence of the Moderator, such meeting shall be called to order by the Town Clerk, who shall preside until a temporary Moderator is chosen to act during the absence of the Moderator.

SECTION 4

Immediately after the meeting has been called to order by the Moderator, the Town Clerk shall read the warrant and the return by the person who served the same, unless the meeting votes that the reading of the articles in the warrant be omitted.

SECTION 5

- a. Unless otherwise provided by law or bylaw, all motions shall require only a majority vote.
- b. If a two thirds, four fifths, or nine tenths vote of a town meeting is required by statute, the count shall be taken, and the vote shall be recorded in the records by the clerk; and provided, further, that if the vote is unanimous, a count need not be taken, and the clerk shall record the vote as unanimous.”
- c. Every article in the warrant shall be taken up in its order in the warrant, unless otherwise voted by the meeting, and no motion or resolution, the subject of which is not set forth in some article in the warrant, shall be entertained excepting for the purpose of obtaining the sense of the meeting.

SECTION 6

The vote on any motion, provided the meeting so votes shall be taken by a “Yes” or “No” ballot with the use of the check list. Any warrant article authorizing the Treasurer to borrow by bonding in excess of \$750,000.00 (seven hundred fifty thousand dollars) shall be voted only by means of a “YES” or “NO” ballot, so that an accurate count can be taken and sealed.

SECTION 7

No person, except registered voters of the town, shall be admitted to any Annual or Special Town Meeting unless permission is granted by the Moderator or by a vote of the Town Meeting. If ordered by the Moderator, or by vote of the meeting, the voting lists of the town shall be used to check the names of registered voters.

SECTION 8

No vote shall be reconsidered except upon motion to that effect or upon a notice of such motion given at the same session of the meeting and within one (1) hour after the result of such vote has been declared. A two-thirds vote of those present shall be required.

SECTION 9

A motion, if required by the Moderator, shall be put in writing before being submitted to the meeting.

SECTION 10

It shall be mandatory that the Finance Committee make a report on any motion carrying an expenditure or appropriation of money.

SECTION 11

The Town Clerk shall provide and have in readiness for use at town meetings a sufficient supply of “Yes” and “No” ballots. Such ballots shall not be distinguished from each other in size, shape, color, paper, ink, in size and style of type, or in any other way which would make it possible to distinguish what was printed on said ballot other than by examination of the word printed thereon.

ARTICLE 4
TOWN OFFICERS

SECTION 1

The Selectmen shall exercise a general supervision over matters affecting the interests or welfare of the Town, and in all matters not otherwise provided by law or bylaw.

SECTION 2

The Selectmen may appear either personally or by counsel before any committee of the Legislature, or Board, or Commission to protect the interests of the Town but they are not authorized by this bylaw to commit the Town to any course of action.

SECTION 3

The Board of Selectmen shall appoint a Police Chief, Constables, Police Officers and as many other town officials as deemed necessary to terms prescribed by Massachusetts General Laws.

SECTION 4

The Selectmen are hereby authorized to accept gifts or grants of money for the improvement or maintenance of a town department.

SECTION 5

The Board of Public Welfare shall be comprised of members of the Board of Selectmen.

SECTION 6

The Town Clerk shall have custody of the Town Seal.

SECTION 7

All conveyances under seal which may hereafter be executed by the Town, pursuant to a vote of the Town or otherwise, shall be sealed with such seal and subscribed by a majority of the Board of Selectmen.

SECTION 8

The Town Clerk shall keep true copies of all deeds and instruments and vital statistics of the Town in a properly indexed file kept for such purpose alone.

SECTION 9

It shall be the duty of the Town Clerk to see that every conveyance of any interest to the Town in land is properly recorded in the Registry of Deeds.

SECTION 10

All fees collected by any Officers or agents of the Town shall be paid to the Town Treasurer with an accounting made thereof and a suitable receipt shall be furnished said officer or agent for said fee or fees by the Treasurer or Assistant Treasurer.

SECTION 11

The Selectmen shall annually review, update and cause to be published the fees for the following departments:

The Building Inspector Department; The Fire Department; the Wiring Inspector Department; Gas Inspector Department and for Special Permits.

ARTICLE 5

FEES OF THE TOWN CLERK

Furnishing a certificate of birth, death, or marriage.....	\$ 5.00
Entering a delayed record or a correction of birth, death, or marriage.....	\$ 5.00
For recording a certificate of adoption or home birth.....	\$ 10.00
For entering a notice of intention of marriage and issuing a certificate thereof	\$ 20.00
For entering a certificate of marriage filed by persons outside of the Commonwealth.....	\$ 7.00
For filing a certificate of a person conducting business under any other title than his real name.....	\$ 30.00
For furnishing a certified copy of the certificate of a person conducting business Under other title than his real name or a statement of discontinuance, retirement, or withdrawal from such business.....	\$ 10.00
For recording order granting locations of poles, piers, abutments or conduits, alterations or transfers thereof, and increase in numbers of wires and cable or attachments under the provisions of Chapter 166, Section 22 of General Laws.....	\$ 50.00
Additional Streets.....	\$ 15.00
For filing a copy of written instruments or declarations of trust by the trustees of an association or trust, or any amendment thereof, as provided by Chapter 182, Section	\$ 20.00
For making certified copies of records..... plus cost of document	\$. 5.00
For recording any other documents.....	\$ 5.00
For furnishing certification of residency or voter status.....	\$ 5.00

ARTICLE 6

TOWN CONTRACTS

SECTION 1

No officer or board of the town shall make any contract on behalf of the town in which such officer or any member of such board is directly or indirectly financially interested, unless he is the lowest bidder on competitive bids.

SECTION 2

Every officer, board or committee of the town, when authorized to purchase any supplies or property, or erect, construct, or repair any building, shall in each case when the estimated cost of the entire amount of supplies or property to be purchased, worked or other matter exceeds twenty-five thousand dollars (\$25,000.00), shall make a written contract thereof, and before executing any such contract shall invite proposals thereof by advertising in one or more newspapers in general circulation in the town. Such notices of proposals shall state time and place for opening the proposals, and also reserve the right to reject any and all proposals.

SECTION 3

The provision of the preceding section shall not apply in cases of special emergency requiring immediate action for the preservation of life, or the protection of property.

SECTION 4

No personal property of the town shall be sold by any officer or board unless by vote of the town, except as herein provided;

- (a) If its initial cost value was two thousand (\$2,000) dollars or less, it may be sold by the joint authorization of the Board of Selectmen and the chairman of the Finance Committee.
- (b) If one thousand (\$1,000) dollars or less, by authorization of the Board of Selectmen.

Such authorization shall in each case:

- (a) Be in writing
- (b) Certify that the proposed selling price is fair
- (c) Be filed with the Town Treasurer.

ARTICLE 7

FINANCE COMMITTEE

Section 1. Membership and Organization

a). There shall be a Finance Committee consisting of seven (7) legal voters of the Town who shall be chosen by an appointing committee consisting of the Moderator, the Chairman of the Board of Selectmen and the Chairman of the last Finance Committee: three (3) to serve for three (3) years, three (3) to serve for two (2) years and one (1) to serve for one (1) year and each shall serve for three (3) years thereafter. Members shall serve without pay. After conclusion of each Annual Town Meeting the committee shall organize by choosing a chairman and a secretary.

b). Whenever a vacancy occurs in the committee by resignation, failure to qualify, or otherwise, the same shall be filled by the Committee. If the committee so votes a member who absents himself from four consecutive meetings may be deemed to have resigned. The term of any person appointed to fill a vacancy shall expire at the close of the next Annual Town Meeting, and the vacancy shall then be filled by the exercise of the appointive power under which the original appointment was made.

c). No elective Town officer or town employee shall be eligible to serve on said Committee.

d). A quorum of the Finance Committee shall consist of a simple majority of the appointed active members of said committee. An active member is a member appointed by the appointing committee or if applicable by the Finance Committee. Active members do not include any vacancies by lack of appointment, resignation, failure to qualify, or otherwise.

Section 2. Duties and Responsibilities

a). The Finance Committee shall consider matters relating to the appropriation, the borrowing, and expenditure of money by the Town, its indebtedness, the administration of its various offices and departments, and all other matter that impact the fiscal well-being of the town and may make recommendations to the town or to any board, officers or committee relative to the municipal fiscal affairs. IT shall be the duty of the Committee to make an annual report of its activities, with appropriate recommendations of the Annual Town Meeting each year.

b). The Finance Committee shall also require the Selectmen, the School Committee, and the departments not under their supervision, and all other town officers to furnish to said committee, in writing, not later than January 15th of each year, their report of the previous year and detailed estimates of amounts deemed by them necessary for the administration of their respective departments for the fiscal year ending on the 30th day of June. Such estimates shall be in such form and detail, and the Committee shall require.

In addition to expenditure forecasts, said Town departments, committees and officers shall prepare estimates of income expected or anticipated in the ensuing year which will be generated in connection with the administration of their respective offices, departments, or committees.

c). The Committee shall at each Annual Town Meeting present and explain such budget with advice and recommendations, and it shall also at each Special Town Meeting give its advice and recommendations with reference to any appropriation of the town funds or other municipal matter coming before such Special Meeting

d). It shall be the duty of the Committee to consider for all town meetings all articles in the Warrant, which involve an appropriation of money, and to report thereon at the town meeting. The Selectmen shall, immediately upon voting to include in the warrant any article, transmit a

copy thereof to the committee, which shall thereupon take the same under consideration. On the copies of the warrant provided by the Selectmen for the Town meeting members at each town meeting, there shall appear a short statement of the report and recommendations of the committee. The committee shall also consider and report upon other warrant articles and other matters, which, in the committee's judgment, affect the financial interest of the town.

Section 3. Information Gathering.

a). The Finance Committee shall give opportunity to the towns various boards, departments, and officers to be heard and explain such estimates and recommendations as they had submitted to the Finance Committee.

b). The Finance Committee shall have the authority at any time to investigate the books, accounts, and management of any department of the town, and to employ such experts and other assistance as it may deem advisable for that purpose, and the books and accounts of all of the departments and officers of the Town of Berkley shall be open to the inspection of the finance committee and of any person employed by it. The finance committee may appoint subcommittees and delegate to them such of its powers as it deems to be in the best interests of the Town of Berkley.

c). The Committee shall have the authority to summon any of the town officers before it for such information and investigation, as it shall deem necessary, as it may consider necessary to the proper discharge of its duties.

Section 4

The Finance Committee and Selectmen shall have quarterly meetings.

ARTICLE 8

CARE OF BURIAL GROUNDS AND LOTS

SECTION 1

The town will accept and forever hold in trust any money or securities which may hereafter be deposited with the Town Treasurer for the perpetual care, preservation, improvement, or embellishment of any public or private place, or any lots or graves therein, therein, agreeably to the provisions of the statutes of the Commonwealth.

SECTION 2

The Town Treasurer is authorized to enter into agreement in behalf of the town with the holders of the burial rights in any lot in the cemeteries of the town to keep forever such lot and the structures of grass thereon, in good and neat condition, so far as the same can be done by an expenditure not exceeding the income from any securities, which such holder may have deposited with the Town Treasurer for such purpose.

SECTION 3

Money and securities received under the provisions of the preceding section shall not be mingled with other money or securities of the town, but shall be kept and invested separately as

a cemetery fund and unless otherwise specially provided for in terms of the gift, the income only shall be used.

ARTICLE 9

USE OF STREETS, SIDEWALKS, AND PUBLIC PLACES

SECTION 1

No person except officers of the town in the lawful performance of their duties, and those acting under their orders shall obstruct any sidewalk or street or any part thereof, or break or dig the ground of the same, without first obtaining a written permit from the Selectmen therefore. Every person receiving such permit shall execute a written agreement to indemnify and save harmless the town against all loss, damage, or cost suffered or claimed on account of the existence of such obstruction or excavation, and shall leave the street or way at the completion of the work in as good condition as the same was before the work was commenced.

SECTION 2

No person shall throw, place or cause to be thrown or placed upon any street, roadside or sidewalk, or on the shore of any private way, without consent of the owners any dirt, ashes, stones, hoops, boards or other wood with nails projecting there from, shavings, sawdust, manure nails, spikes, screws, glass, containers, filth, rubbish, or any noxious or refuse liquid or solid matter of substance.

SECTION 3

No person shall permit horses or grazing beasts or swine or fowl, to run at large in this town, or to feed by the roadside either with or without keeper.

SECTION 4

No person shall accost or address another person with profane, obscene, or indecent language, on any street or public place, or in any public building, and no person shall be indecent, or disorderly on any street, or in any public place or building.

SECTION 5

No person shall by any noise, gesture or other means, wantonly and designedly frighten any horse in any street or other place in town.

SECTION 6

No person shall, without written permit from the Selectmen, on any street or public place (except public playgrounds) throw or shoot any ball, stone, arrow, snowball, stick, brick or other missile or hard substance, or engage in any game, exercise, or amusement in any street or public place where the same interferes with the safe and convenient use thereof, or where such act disturbs the safety of persons or property, or the peace and quiet of any person; and no person shall coast or skate on any street or public place except such as are designated by the Selectmen.

SECTION 7

No person shall without lawful authority to do so, deface, injure, or destroy any tree, fence, sign, guidepost, mailbox, stonewall or any boundary marker, electric light, telegraph or telephone pole on any street or public way in this town.

SECTION 8.

To assure the safe view of vehicles and of pedestrians across the corner, no shrub two (2) feet overall diameter or larger, and no hedge or fence shall extend higher than two (2) feet above the main finished pavement centerline grade throughout that part of the front yard required on such lot, fifty (50) feet along the street frontage of each such yard from their street corner unless; The fence is a wire fence in which the openings are not less than four (4) inches minimum dimension or 1. The fence is a wire fence that has openings that are not less than two (2) inches minimum diameter and is set back at least five (5) feet from the corner property line or 2. Any fence that is set back at least ten (10) feet from the corner property line. Enforcement by the Highway Surveyor or his designee.

SECTION 9.

No person shall permit a tree, branch thereof, hedge, brush or shrubbery growing on his land to extend over or overhand any street, sidewalk or highway so as to interfere with the full use of such street, sidewalk or highway. Enforcement by the Highway Surveyor or his designee.

ARTICLE 10

NONCRIMINAL DISPOSITION OF CERTAIN VIOLATIONS OF BYLAWS AND RULES AND REGULATIONS

SECTION 1. DEFINITIONS:

- District Court - The district court having jurisdiction thereof.
- Enforcing Person - Any constable or police officer of the town.
- Offender - Person or person's firm, corporation, trust, or other organized group, found to be in violation as defined below.
- Violation - infringement, breach, failure to keep or observe a specific Town Bylaw or a Rule and Regulation of either the Soil Conservation Board, Special Permit Granting Authority, Building Department, Planning Board, Board of Health, or Conservation Commission; or a special condition attached to a permit issued by any of the preceding boards, authorities, departments, or commissions.

SECTION 2. NOTICE:

Pursuant to the authority of General Laws Chapter 40, Section 21D to which reference is made for any procedural matters not specified herein, any enforcing person, as defined above, taking cognizance of a violation, as defined above, may as an alternative to initiating criminal proceedings, give the offender a written notice to appear before the clerk of the district court having jurisdiction thereof not later than twenty-one (21) days after date of such notice. Such notice shall be in triplicate and shall contain the name and address, if known, of such offender the specific offense charged, and the time and place for his/her required appearance. Such notice shall be signed by the enforcing person, and shall be signed by the offender whenever practicable in acknowledgement that such notice has been received. The enforcing person

shall, if possible deliver to the offender a copy of said notice at the time and place of the violation. If it is not possible to so deliver said copy of said notice, said copy shall be mailed or delivered by the enforcing person within fifteen (15) days after said violation. Certified mail shall be used to show that such notice has been mailed in accordance with this bylaw and General Laws Chapter 40, Section 21D.

SECTION 3. DISPOSING OF NOTICE BY OFFENDER

Any offender notified to appear before the clerk of a district court as herein before provided may so appear and confess the offense charged; either personally or through a duly authorized agent or by mailing to the Town Clerk with the notice such specific sum of money not exceeding three hundred (\$300) dollars as the Town shall fix as penalty for a violation as described above. Such payment shall if mailed, be made by postal note money order or check, and all monies received shall be placed in the general fund. The payment to the Town Clerk of such sum shall operate as a final disposition of the case.

SECTION 4. CONTESTING THE NOTICE BY OFFENDER

If any person so notified to appear and desires to contest the violation alleged in the notice to appear and also to avail himself/herself of the procedure established pursuant to this section of General Laws Chapter 40, Section 21D, he/she may, within twenty-one (21) days after the date of this notice, request hearing in writing. Such hearing shall be held before district court judge, clerk magistrate or assistant clerk, as the court shall direct, and if the judge, clerk magistrate or assistant clerk shall, after hearing, find that the violation occurred and that it was committed by the offender so notified to appear, the offender shall be permitted to dispose of the case by paying the specific sum of money fixed as a penalty as aforesaid or such lesser amount as the judge, clerk magistrate, or assistant clerk shall order, which payment shall operate as a final disposition of the case.

SECTION 5. SEVERABILITY

The provisions of this bylaw shall be deemed severable. In the event that any section, paragraph, or part of this bylaw shall be held invalid or unconstitutional by any court of competent jurisdiction, the decision of such court shall not effect or impair the validity of any other section, paragraph, or part of this bylaw.

SECTION 6. PENALTIES

A included pursuant to this bylaw and Appendix A hereafter where any conflict exists within a bylaw being enforced through Non-criminal Disposition regarding the penalty to be applied, the penalty schedule provided in Appendix A shall govern. Where the enforcing agent elects or is required to issue criminal complaint to enforce the bylaw the penalty prescribed within the actual bylaw shall apply. The Town resolves to amend all bylaws so to be consistent with the penalty schedule provided in Appendix A.

Appendix A

A non-conclusive list of those bylaws subject to non-criminal disposition and their respective penalties is herein provided. Non-criminal disposition may be applied to other regulations not Listed here, so long as they meet General Laws Chapter 40, Section 21D standards.

- Use of Streets, Sidewalks, Public Places (Article 9) penalty of \$25.00 first offense; \$50.00 second offense; \$100.00 subsequent offenses.
- Alarm Systems (Article 11) penalty of \$25.00 per offense; \$100.00 for intentional false alarms
- Soil Conservation (Article 12) penalty of \$300.00 for first offense
- Hazardous Excavations (Article 14) penalty of \$200.00 per offense
- Abandoned Wells or Cesspools (Article 15) penalty of \$100.00 first offense; \$200.00 second offense; \$300.00 for third and subsequent offenses.
- Street Numbering (Article 16) penalty of \$25.00
- Mobile Homes (Article 20) penalty of \$25.00
- Zoning (Article 21) penalty of \$100.00 per offense.
- Animal Control (Article 22) penalty of \$25.00 per violation.
- Traffic Control (Article 31) penalty of \$25.00 for first offense; \$50.00 for second offense; \$100.00 for subsequent offenses.
- Marijuana ByLaw (Article 33) \$ 300.00 per offense
- Open Burning (Article 34) \$25.00 first offense; \$50.00 second offense; and \$100.00 for third and subsequent offense.

ARTICLE 11

ALARM SYSTEMS

SECTION 1. PURPOSE

It is determined that the number of false alarms being made to the Police and Fire Departments hinders the efficiency of those departments, lowers the morale of department personnel, constitutes a danger to the general public in the streets during responses to false alarms, and jeopardizes the response of volunteers; and that the adoption of this bylaw will reduce the number of false alarms and promote responsible use of alarm devices in the Town of Berkley.

SECTION 2. DEFINITIONS

For the purpose of this bylaw the following definitions shall apply:

(a). *“Alarm System”* means: an assembly of equipment and devices such as a solid state unit which plugs directly into a 110 volt AC line, arranged to signal the presence of a hazard requiring urgent attention and to which police and/or fire fighters are expected to respond. Fire alarm systems and alarm systems which monitor temperature, smoke, humidity or any other condition not directly related to the detection of an unauthorized intrusion into a premises or an attempted break at a premises are included.

(b). *“False Alarm”* means:

1. The activation of an alarm system through mechanical failure, malfunction, improper installation or negligence of the user of an alarm system or of his employees or agents.

2. Any signal or oral communication transmitted to the Police or Fire Department requesting or requiring or resulting in a response on the part of the Police or Fire Department

when in fact there has been no unauthorized intrusion, robbery, burglary, attempted threat, or fire or threat of fire, illness, injury or threat of life.

3. For the purpose of this definition, activation of alarm systems for the purposes of testing with prior approval of the Police or Fire Departments, or while there is an on-duty police officer or fire fighter, by acts of vandals, by acts of God, including but not limited to, power outages, hurricanes, tornadoes, earthquakes and similar weather or atmospheric disturbance shall not be deemed to be a false alarm.

(c). *“User”* means: the occupant of the premises containing the alarm systems.

(d). *“Contractor”* means: any firm or corporation in the business of supplying and installing alarm devices or serving the same.

SECTION 3. ADMINISTRATOR

There shall be in the Town an Administrator for alarm devices who shall have the powers and duties granted under this bylaw.

The Chief of Police or his designee shall be the Administrator under the direction and control of the Board of Selectmen which is authorized to adopt regulations for the administration of this bylaw.

SECTION 4. ALARM APPEAL BOARD

There shall be in Town an Alarm Appeal Board which shall have the powers and duties granted under this bylaw. The Alarm Appeal Board shall consist of the Board of Selectmen.

SECTION 5. REGISTRATION REQUIRED

Each alarm user shall register his alarm device or devices with the Administrator prior to use; provided that alarm devices in use as of the effective date of this bylaw may be registered no later than sixty (60) days from such date.

SECTION 6. CONFIDENTIAL INFORMATION

All information in the possession of the Administrator, the Police Department or the Fire Department concerning particular alarm users and particular alarm devices shall be confidential and shall not be divulged without the written consent of the alarm user or users concerned.

SECTION 7. CONTROL AND CURTAILMENT OF SIGNALS EMITTED BY ALARM SYSTEMS

(a) Every user shall submit to the Police and/or Fire Chief the user's name, address, daytime and nighttime telephone numbers and the names and telephone numbers of at least two other persons who are authorized to respond, after notification by the Police and/or Fire Department, to an emergency signal transmitted by an alarm system and who can open the premises wherein the alarm system is installed.

(b) All alarm systems installed after the effective date of this bylaw which use an audible horn or bell shall be equipped with a device that will shut off such horn or bell within ten (10) minutes after activation of the alarm system. All existing alarm systems must have a shutoff device installed within six (6) months of passage of this bylaw.

(c) Any alarm system emitting a continuous and uninterrupted signal for more than ten (10) minutes which cannot be shut off or otherwise curtailed due to the absence or unavailability of the alarm user or those persons designated by him under paragraph (a) of this section and which disturb the peace, comfort or repose of a community, a neighborhood, or a considerable number of inhabitants of an area where the alarm system is located, shall constitute a public nuisance.

(d) No alarm system which is designated to transmit emergency messages or signals of intrusion to the Police Department will be tested until the Police Dispatcher has been notified.

SECTION 8. PENALTIES

Upon receipt of three (3) or more false alarms within a calendar year or for failure to pay the false alarm charge for said notice.

1. The user shall be assessed twenty-five (\$25.00) dollars as a false alarm service fee for each false alarm in excess of three (3) occurring within a calendar year. The user shall submit payment to the Town Treasurer within fifteen (15) days of such notice.
2. The Police or Fire Chief may in writing order the user:
 - a. To discontinue the use of the alarm.

SECTION 9. NOTIFICATION AND APPEAL

a. False Alarm Charges

1. The Administrator shall notify the responsible alarm user of any false alarm charge by mail or by service in hand by a police officer. Within thirty (30) days after the mailing of such notice, the alarm user may file with the Administrator information to show the false alarm was not a false alarm within the meaning of this bylaw.

2. The Administrator shall consider such information, reaffirm or rescind the false alarm charge, and notify the alarm user of his decision by mail or by service in hand by a police officer. Within thirty (30) days after the mailing of such notice, the alarm user may file with the Alarm Appeal Board an appeal in writing.

b. Appeal to the Alarm Appeal Board.

1. Upon receipt of a timely appeal from a false alarm charge, the Alarm Appeal Board shall hold a hearing to consider it and shall mail notice of the time and place of said hearing to the alarm user taking the appeal at his last known address at least fourteen (14) days before the hearing. On the basis of information provided by the alarm user and other information introduced at the hearing, the Board shall affirm the charge if it finds that the charge was properly imposed or rescind the charge if the charge was not properly imposed.

c. Notice to include instructions.

1. Each notice of a false alarm charge or the reaffirmation of such a charge shall refer to and provide instructions concerning the alarm user's right to further recourse by filing information with the Administrator or an appeal with the Alarm Appeal Board, as the case may be.

SECTION 10. APPEAL FEES

a. There shall be a fee of ten (\$10.00) dollars for each appeal to the Alarm Appeal Board.

b. The amount of the fee for taking an appeal may be raised or lowered from time to time at the discretion of the Alarm Appeal Board.

SECTION 11. CHARGES AND FEES PAID INTO THE GENERAL FUND

Charges for false alarms and appeal fees will be collected by the Administrator and deposited in the general fund.

SECTION 12. TOWN ASSUMES NO RESPONSIBILITY FOR DEVICES

Notwithstanding the provisions of this bylaw, the Town, its departments, officers, agents and employees shall be under no obligation whatsoever concerning the adequacy, operation or maintenance of any alarm device or of the alarm monitoring facilities at the Police and Fire Departments. No liability whatsoever is assumed for the failure of such alarm devices or for monitoring facilities or for failure to respond to alarms or for any other act or omission in connection with alarm devices. Each alarm user shall be deemed to hold and save harmless the Town, its departments, officers, agents, and employees from liability in connection with the alarm user's alarm device.

SECTION 13. PENALTY FOR CERTAIN VIOLATIONS

Any person who performs or causes to be performed any of the following acts shall be subject to a fine of up to One Hundred (\$100.00) dollars for each such act:

- (a) Intentional causing of a false alarm, in accordance with Massachusetts General Laws
- (b) Whoever fails to comply with Section 5 paragraph (a) or Section 7 paragraphs (a), (b), (c) or (d) shall constitute violations of this bylaw.

SECTION 14. ENFORCEMENT OF THIS BYLAW

The Town, upon authorization by the Administrator may institute civil proceedings to enforce the provisions of this bylaw.

SECTION 15. EXCEPTIONS

The provisions of this bylaw shall not apply to alarm devices on premises owned or controlled by the Town, nor to alarm devices installed in a motor vehicle or motor vehicle trailer.

SECTION 16. SEVERABILITY

The invalidity of any part of this bylaw shall not affect the validity of the remaining parts or in any way act thereon.

ARTICLE 12

SOIL CONSERVATION

SECTION 1. PURPOSE

This bylaw sets forth the process for submission and review of Earth Alteration Applications before the Soil Conservation Bylaw. The purpose of the Earth Alteration Permit is to assure that proposed operations will be conducted in a manner that is consistent with land use objectives of the Town of Berkley.

SECTION 2. DEFINITIONS

ABUTTER

The term “abutter” as used in this bylaw shall mean all property owners of record sharing a common boundary line with the site and further include any other owner of record whose property is located within 300 feet of the site boundaries.

ALTERATION

The term “alteration” as used in this bylaw shall mean either:

1. The removal of earth from a site
2. The depositing (bringing in) earth to a site;
3. The physical changing of contours of earth, by more than two (2) feet, on a site.

BOARD

The term “Board” as used in this bylaw shall mean the Soil Conservation Board as established under Section 3 of this bylaw.

CONSOLIDATED SOIL

A homogeneous layer composed of solid rock or cemented earthen material

EARTH

The term “earth” as used in this bylaw shall include any non-organic material normally and naturally composing part of the world’s surface, including, but not limited to soil, loam, sand, stone, gravel and peat, and unprocessed unconsolidated deposits, but excluding water.

MASSACHUSETTS SOIL EVALUATOR

A person approved by the Massachusetts Department of Environmental Protection (MassDEP) as capable of evaluating the suitability of soils at a specific site for the use of an on-site subsurface sewage disposal system; and is currently listed on the most recent MassDEP list of approved Soil Evaluators.

MUNICIPAL REGULATORY AUTHORITY

Berkley Soil Conservation Board.

UNCONSOLIDATED SOIL

A formation composed of loose and unstratified, unsorted earthen materials, or particles such as clay, silt, sand, gravel or stones.

SECTION 3. MEMBERS

A Soil Conservation Board is hereby established in the Town of Berkley for the purpose of regulating the alteration of earth from the land located within the Town and enforcing the provisions of this Bylaw. The Board shall be comprised of the three (3) members of the Board of Selectmen and two (2) citizens at large, the latter of whom shall be registered voters of the Town of Berkley, appointed by the Board of Selectmen. No person engaged in the business of altering earth shall serve on such Board; and, should any member of the Board of Selectmen so qualify; the other members of the Board shall appoint a substitute member to serve in his or her stead. The Board shall elect a chairman and may appoint a secretary. The secretary need not be a member of the Board and shall keep a true record of the proceedings of the Board which shall be public records, or pass any vote or take any action relative thereto.

SECTION 4. PERMITS

Except as herein provided, no earth shall be altered from any land within the Town until a written permit from the Board, stating the land to which it applies, has been issued after a public hearing, a notice of which setting forth the time, place and purpose of said meeting, and the land with reference to which application has been made, shall have been published in one or more newspapers in general circulation in the Town, at least fourteen (14) days prior to the day

set for the hearing, and shall have been mailed Certified Mail, return receipt requested, to all abutters. All other provisions concerning the hearing shall be in conformance with Massachusetts General Laws, Chapter 40A, sections relative to the granting of special permits.

SECTION 5. EXEMPTIONS

A permit shall not be required for the alteration of earth in the course of excavation incidental to the construction of the foundation of buildings, walks, driveways, septic systems, nor swimming pools. A permit shall not be required for the alteration of earth in the ordinary and customary agricultural, horticultural or floricultural use of land. (Note: Excavation in the building of farm ponds and excavations that will result in the lowering or raising of an existing elevation by more than two (2) feet shall not be deemed normal and customary within the meaning of the foregoing). A permit shall not be required for the excavation and/or earth alterations made or done to complete the construction of ways and the installation of drainage and municipal services pursuant to a definitive subdivision plan submitted to and approved by the Berkley Planning Board under the Subdivision Control Law. Note: however, a permit will be required for the excavation and/or earth alteration made or done to complete the construction of such ways or installation of drainage and municipal services whenever existing elevations will be altered either in lowering or raising by more than two (2) feet. Under such circumstances, an earth alteration permit will be required in addition to approval by the Planning Board. The Soil Conservation Board may also issue a permit without a hearing for any alteration or use within the Town or not more than one hundred (100) yards of earth for any other purpose which is not commercial.

SECTION 6. APPLICATIONS

The application shall include the following information, and any other information the Board may require in its rules and regulations, and shall not be acted upon until all such information is provided.

- A. The location of the site upon which alteration is proposed, identified by both Berkley Assessor's Map and Lot number, and by street address and identified by the Registry of Deeds book and page references.
- B. The name and address of the Applicant.
- C. The name and address of the Owner.
- D. The name and address of the Operator.
- E. A certified list from the Assessor's Office of the names and addresses of all abutters, as published on the most recent Assessor's tax list.
- F. A site plan submitted to the Board in conformance with the rules and regulations of the Board.
- G. An estimated number of cubic yards of earth proposed for alteration based on field data from the engineering firm issuing the Site Plan.
- H. Under this bylaw the Board shall establish a filing fee, and the Board shall also establish a fee for the issuance of permits which shall be no more than sufficient in the opinion of the Board to reimburse the Town for the cost of applying and enforcing this bylaw; and the Board shall also establish a reasonable removal fee to be held for further appropriation at a future Town Meeting; and no permit shall be issued until such fees are paid. The fees collected under this bylaw shall, at intervals determined by the Board, be paid over to the Town Treasurer.
- I. Plan to show all relationship to any existing wetlands and/or Order of Conditions from the Conservation Commission for the entire project must accompany the application

and at least one plan with a majority of the signatures from the Conservation Commission indicating this is the plan they have reviewed and approved.

SECTION 7. PERFORMANCE SPECIFICATIONS

All work performed under an earth alteration permit granted under this bylaw shall be done in accordance with the following specifications which shall be deemed to be incorporated therein by reference:

- A. An earth alteration permit shall not be issued for alteration of earth within three hundred (300) feet of a public way or within two hundred and fifty (250) feet of a private way or within two hundred and fifty (250) feet of an abutter, unless the Board determines that such removal will not undermine the way or otherwise endanger the safety of public travel upon it, nor impair the convenience and welfare of the public or the amenities of living in the houses upon such way, nor injuriously affect the abutting owners, as further set out in Section 8 hereof.
- B. All trees are to be cut and removed in compliance with all local, state and federal laws and regulations.
- C. All loam and topsoil must be scraped and stockpiled on the site for use in later landscaping. Upon completion of all earth alteration, the loam or topsoil must be spread back over the entire area and the re-graded area must then be seeded with an acceptable material and maintained until the grass heights have reached the two (2) inch minimum. No loam or topsoil may be removed from the site, except when necessary for or incidental to the construction of a road, or other permanent facility which changes the character or use of the land: but in such case the Board shall require evidence of good faith in the intent of the applicant to complete such road or other facility, and shall make such evidence part of its records.
- D. All public ways utilized for earth alteration operations must be paved to minimize dust and mud. All access roads leading to public ways shall be paved for a distance of not less than one hundred fifty (150) feet back from the public way. Any spillage on public ways, within one thousand (1,000) feet of the access road, shall be cleaned by the operator on a daily basis following working hours.
- E. Earth must be altered to contours set forth in the approved Site Plan.
- F. Unless the site conditions or specific needs set out in the permit application expressly requires alteration of drainage patterns, the land shall be left so that natural storm drainage shall leave the property at the original natural drainage points; and so that the total discharge at peak flow is not increased; and so that the hydrograph of any post development stream is not more than that of the predevelopment stream.
- G. Any earth alteration in the vicinity of or within wetland areas governed by Massachusetts General Laws Chapter 131 or other wetland related laws, shall also be subject to orders of conditions from the Conservation Commission. Whether such proposed earth alteration projects fall within the jurisdiction of the Conservation Commission shall be determined by the Conservation Commission and applicable local, state and federal laws and regulations.
- H. The Board shall also establish rules and regulations relative to all other design or alteration standards that it deems necessary and these rules and regulations will be attached to the permit as additional conditions as outlined in section 8 hereof.
- I. No excavation/removal/processing of consolidated and unconsolidated soil will be allowed below the mean annual high groundwater elevation. The natural mean annual high groundwater shall be established by a licensed/certified Massachusetts

Soil Evaluator and the elevation shall be noted on a monument placed on the property and shown on the topographic and/or site plan for the property. The soil evaluation conducted to determine the mean annual high groundwater elevation shall be witnessed by the municipal regulatory authority or its authorized agent. The exemptions for the excavation/removal of soil shall be for properly permitted residential, general business, municipal construction, septic drinking and environmental/geophysical monitoring wells, road and cranberry bogs or other similar agricultural uses

SECTION 8. CONDITIONS

In issuing a permit, the Board may impose reasonable conditions, which shall be written upon and shall constitute part of the permit, requiring the restoration of the land within a designated period, by grading, leveling, or filling and by replacing sufficient topsoil for planting cover to the end that no substantial injury to health, safety, convenience, welfare, natural beauty, and economic prosperity of the neighborhood, town, and the inhabitants will be caused by the acts authorized by such permit, all as set out by this bylaw. Conditions may in like manner be imposed to provide adequate protection for the neighborhood, the aquifer, and the Town from nuisances that may arise from the course of such removal. If such alteration is carried on in such a way as to injuriously affect the welfare of the town, by an increase in the amount of products removed or otherwise, and the Town is not adequately protected by the conditions imposed by the permit, the Board may impose additional restrictions. The Board may, and in the case of the alteration for commercial purposes, such as soil stripping and gravel operations, shall require a bond or other security to enforce the performance of conditions listed in this paragraph, and may also revoke or suspend a permit if the conditions are not complied with.

SECTION 9. REASONS FOR DENIAL

No permit shall be issued if any of the following conditions exist and cannot be rectified through the use of reasonable conditions as provided by Section 8 to the satisfaction of the Soil Conservation Board:

- A. Any vehicular traffic of a type or quantity so as to adversely affect the immediate neighborhood.
- B. Any conditions dangerous to premises and residents in the neighborhood through fire, explosion, emission of wastes or other causes.
- C. Any creation of noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisances or serious hazards so as to adversely affect the immediate neighborhood.
- D. Rock quarry and/or associated rock processing operations.

SECTION 10. DURATION OF PERMIT

A permit issued under this bylaw shall expire upon completion of the earth alteration and subsequent re-grading for which the permit was issued, and in any event no longer than one year from the issued date. If it appears that the operations for which such permit was issued have been carried on continuously; and in good faith, but have not been completed and that all conditions presently applicable have been complied with, the permit may be renewed for an additional year without a hearing. The expiration or revocation of the permit shall not affect the obligation of the holder thereof to comply with the conditions attached to the permit, or release him or the surety on his bond from the obligations thereof or require the return of any deposit made by him until such conditions have been complied with.

SECTION 11. ENFORCEMENT

If the Board shall find that there has been a violation of this bylaw, the Board shall send by registered mail to the offender a written warning. If such violation continues, then any penalties authorized by the Massachusetts General Laws may be imposed. The penalty for earth alteration in violation of this bylaw shall be a fine of not more than three hundred (\$300) dollars for the first offense after such warning; any subsequent violation shall result in permit revocation and/or any other remedy available at law or in equity. Each day on which earth removal takes place shall constitute a separate offense for the person removing the same. If the offender holds a permit issued under this bylaw, such permit shall be revoked.

SECTION 12. ENDANGERMENT TO PUBLIC HEALTH OR SAFETY

When the Board finds that any excavation hitherto made for the purpose of earth removal is maintained in such a way as to endanger the public health or safety or to constitute a nuisance, the Board shall request the Board of Health to take such steps as are authorized by law to protect the public health and safety, or to cause such nuisance to be abated.

SECTION 13. EXISTING OPERATIONS

Whenever the Board shall find that the alteration of any earth has previously been undertaken in a particular location, and was in continuous operation at the time when notice of the warrant for the Town Meeting at which this bylaw was adopted was given, a permit for the further continuance of such operation within the same territorial limits shall be issued subject to conditions in the same manner as other permits.

SECTION 14. SEVERABILITY

The invalidity of any part of this bylaw shall not affect the validity of the remaining parts or in any way act thereon.

ARTICLE 13

BOARD OF HEALTH

SECTION 1

There shall be a Board of Health comprised of three (3) members who shall make such reasonable rules and regulations not inconsistent with law, as they may deem necessary to protect the general health, welfare, and safety of the town.

SECTION 2. SEPTIC SYSTEMS

Each subsurface sewage disposal area must be on the same contiguous lot of land as the building or dwelling for which it is to serve.

ARTICLE 14

HAZARDOUS EXCAVATIONS

Every owner of land which has been excavated shall erect barriers or take other suitable measures within five (5) days after such owners have been notified in writing by the Board of Selectmen that, in their opinion, such excavation constitutes a hazard to public safety. Any

person violating this section shall be subject to a penalty provided in Chapter 40, Section 21 and Subsection 19.

ARTICLE 15

ABANDONED WELLS OR CESSPOOLS

Every owner of land where there is located an abandoned well or cesspool shall provide a covering for such well or cesspool capable of sustaining a weight of over 1,000 pounds or fill the same to the level of the ground. Any person violating this section shall be subject to a penalty provided by Chapter 40, Section 21, and Subsection 20.

ARTICLE 16

STREET NUMBERING

Street numbers shall be provided for each dwelling and each business, industrial and other building in the Town of Berkley by the owner of such structures by ninety (90) days after approval by the Attorney General in accordance with the following:

1. The numbers shall be made of permanent weatherproof material, shall be at least three (3) inches in height and shall be clearly visible from the street or nearby roadway upon which the dwelling or building fronts.
2. The numbers shall be placed on each structure or on a suitable support near the main entrance to the structure so as to be visible.
3. The numbers shall be those assigned to each structure in accordance with the street numbering survey completed by the Board of Assessors on file in the office of the Assessors.
4. New Buildings. The owner of any property seeking a building permit for a new building or structure shall apply for and receive a building number designation from the Board of Assessors or their designate prior to submitting application to the building official for a permit, and no building permit shall be issued without designation of such building number.
5. It shall be the responsibility of each property owner in the town to obtain a number assigned to his affected structure or structures within three (3) months of the effective date of this bylaw.
6. This bylaw shall be enforced by the Board of Selectmen of the Town of Berkley either directly or through an inspector to be appointed by them. Failure to comply with this bylaw shall subject the offending property owner to a fine not exceeding ten (\$10.00) dollars.

ARTICLE 17

JUNK DEALERS

SECTION 1

No person shall be a collector of or a dealer in junk, old metals, of second hand articles, or a keeper of a shop for the purchase, sale or barter of junk, old metals, or second hand articles, unless licensed therefore by the Selectmen. The Board of Selectmen shall receive at least five (\$5) dollars for each license granted. Any dealer who openly displays his wares for sale shall do so with due discretion in regard to the health, and safety and welfare of the town.

ARTICLE 18

MOTOR VEHICLE LICENSES (Classes 1, 2, &3)

Class 1, 2, and 3 motor vehicle licenses shall be issued under General Laws of Chapter 140, Section 58. All class 3 licenses shall be subject to the following:

(1) No land or premises shall hereafter be used as a Motor Vehicle Junk Yard unless the area used as such is screened or fenced so that the use is not visible from a public way or abutting property. Minimum distance said screen or fence shall be seventy-five (75) feet from the centerline of an established public way.

(2) Hours of operation will be limited from 8 A.M. to 8 P.M. Monday through Saturday only.

ARTICLE 19

SUBDIVISION CONTROL

SECTION 1

There shall be a Board of Appeals for the Subdivision Control Law consisting of members appointed by the Selectmen in the manner prescribed by Section 81Z of Chapter 41 of the General Laws.

ARTICLE 20

MOBILE HOMES OR HOUSE TRAILERS

SECTION 1

No permit, except a temporary or replacement permit, for a house trailer or mobile home to be used for dwelling purposes shall be issued by the Inspector of Buildings.

SECTION 2

A temporary permit for a house trailer or mobile home may be issued by the Inspector of Buildings to any applicant who is, at the time of the application, in the process of actual construction, erection or making major repairs to a dwelling house on the same premises for which a permit is sought.

SECTION 3

Any house trailer or mobile home located in the Town before this bylaw becomes enacted may be replaced on said lot by succeeding house trailers or mobile homes by the same owner, provided that each succeeding house trailer or mobile home is of the same or larger floor area and is of newer manufacture than the one that preceded it. A replacement permit shall be required from the Inspector of Buildings for each replacement unit.

SECTION 4

An unoccupied house trailer or mobile home may be parked on one's property if it remains on its wheels and is not connected to any public utilities or sanitation facilities, and shall not be subjected to the provisions of this article.

SECTION 5. DEFINITIONS

a) A *HOUSE TRAILER* or *MOBILE HOME* shall be defined as a factory fabricated structure without motive power of its own, expandable or not, primarily deigned to be drawn or hauled by a motor vehicle on streets or highways on its own wheels or on a flat bed or other trailer, and to be used as a residence for living purposes, whether on wheels or on a temporary or permanent foundation.

A house trailer or mobile home is one of a variety of structures sometimes classified as "manufactured" and/or "modular " structures and regulated by a variety of state and federal regulatory agencies. It is distinguished from other "manufactured" or "modular" structures by having been constructed upon a steel frame with permanently mounted wheel and axle components which remain with the housing unit once it has been installed on a suitable foundation or support system. Generally though not always "mobile home" consist of lightweight walls and wood frame components of less than two by four (2"x4") construction covered with aluminum or vinyl siding over a minimal sheathing. Characteristically, wheels and towing yokes are removable for permanent installation and may be re-attached if the structure should be removed to another location.

b) A *PERMIT* is the authority granted by the Inspector of Buildings to allow a mobile home or house trailer to be permitted on a house lot.

c) A *TEMPORARY PERMIT* is a permit issued by the Inspector of Buildings to an applicant in the process of actual construction, erection, or the making of major repairs to a dwelling on the same premises. Such a permit shall be valid for one year, but may be extended

for one additional year if the Inspector of Buildings is satisfied that said construction, erection, or repair is being carried forward in good faith. If the construction ceases to be carried forward in good faith, said Inspector of Buildings shall revoke the permit.

d) A *REPLACEMENT PERMIT* is a permit issued by the Inspector of Buildings to an applicant who is desirous of replacing on the same lot of land his then existing house trailer or mobile home.

ARTICLE 21

ZONING

SECTION 1. PURPOSE

These regulations are enacted to promoted the general welfare of the Town of Berkley, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land throughout the town, to preserve the cultural, historical and agricultural heritage of the community, to increase the amenities of the town, and to reduce the hazard from fire by regulating the location and use of buildings and the area of open space around them, all as authorized by the provisions of the Zoning Act, G.L. c. 40A, as amended, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

SECTION 2. ESTABLISHMENT OF DISTRICTS

- A. The Town of Berkley is hereby divided into several types of districts designated as:
 - 1. Residential (R)
 - 2. General Business (GB)
 - 3. Special Business Overlay (SBO)
- B. Districts are hereby established as shown on a map entitled, "Official Zoning Map Town of Berkley", dated October 9, 2007 as amended. The map with all explanatory matter thereon and amendments thereto, is hereby incorporated and made a part of this Bylaw and is filed with the Town Clerk.
- C. Where the boundary lines are shown upon the Official Zoning Map of the Town of Berkley within the street lines of public and private ways, or utility lines, the center of such ways or lines shall be the boundary lines, unless otherwise indicated.
- D. Where the boundary lines are shown approximately on the location of property or lot lines, and the exact location of property, lot or boundary lots is not indicated by means of dimension shown in figures, then the property or lot lines shall be those lines as depicted on the Official Zoning Map.
- E. The words and terms shall have the meaning defined below; singular shall include plural; and the word "shall" indicates a requirement.

SECTION 3. DEFINITIONS

ACCESSORY BUILDING OR USE:

A building or use located on the same lot as the principal permitted building or use and customarily incidental to such main permitted building or use.

ASSISTED LIVING RESIDENCE:

A housing option for older adults who need some assistance with activities of daily living, but do not require the kind of 24-hour nursing and medical care provided by nursing facilities. The residences provide a combination of housing, personal services, and health care to individuals who cannot or choose not to live alone due to limitations with activities of daily living as defined by Massachusetts General Law Chapter 19D, Section 1.

BUILDING:

A structure having a roof and used or intended to shelter people, animals, or goods.

CONTINUING CARE RETIREMENT COMMUNITY (CCRC):

A residential community for older adults that combines independent retirement living, assisted living and nursing facility care, usually on one campus.

DRIVE-THROUGH FACILITY:

A commercial facility which provides a service directly to a motor vehicle or where the customer drives a motor vehicle onto the premise and to a window or mechanical device through or by which the customer is serviced without exiting the vehicle. This shall not include the selling of fuel at a gasoline filling station or the accessory functions of a carwash facility such as vacuum cleaning stations.

DRIVEWAY/ CURB CUT SPACING:

The distance between connections, measured from the closet edge of pavement of the driveway or curb cut to the next closest edge of the pavement along the public/private roadway.

DWELLING:

A single unit providing independent living facilities for one household, including permanent provisions for living, sleeping, cooking, eating and sanitation.

FAST FOOD RESTAURANT:

Any restaurant serving the majority of its food in disposable containers, packages, or other similar wrapping, for consumption on or off the premises.

FRONTAGE:

A continuous boundary line between a lot and a single street providing physical and legal access to the lot.

GROSS FLOOR AREA:

Sum of the area of all stories of a building measured from the exterior faces of the exterior walls including any floor area below grade when used for office, business, storage or other purposes, but excluding any area used exclusively for heating, air conditioning or other mechanical equipment, and excluding floor area intended or designed for accessory off-street parking.

HOME OCCUPATION:

An activity conducted in a dwelling by a resident thereof which makes use of no equipment or process creating noise, vibration, glare, fumes, odors, electrical or radio magnetic interference detectable to persons on adjacent premises, and which does not generate a greater volume of traffic or parking than would normally be expected from a residence.

INDUSTRY:

Extraction, developing, manufacturing, assembling, processing or treatment of raw or processed materials, parts, or assemblies using other than manual power. A light industry is one using quiet motive power and processes which do not generate more noise, odor, smoke, fumes, vibrations, glare, electrical or magnetic interference, or hazard of fire, explosion or pollution of ground water than could be expected of any of the other permitted uses in that location. A heavy industry is one generating one or more of the above neighborhood impacts.

LOT:

An area of land in one ownership with definite boundaries, described by plan or deed and recorded in the North Bristol Registry of Deeds or the Land Court.

LOT COVERAGE:

The portion of a lot that is impervious (does not absorb water). This portion includes, but is not limited to, all areas covered by buildings, roofed structures, driveways, sidewalks, and any area of concrete asphalt.

LOT LINE:

A boundary line separating a lot from another lot or lots or from a street or other public place.

NONCONFORMING STRUCTURE OR USE:

A structure or use lawfully in existence or lawfully begun at the time this by-law or any amendment thereof becomes effective which does not conform to the requirements of this by-law or of such amendment.

NURSING HOME:

Residential facility providing long term care for frail elders, short term care for individuals who have been hospitalized and need rehabilitation before returning home, and specialty care for individuals with physical and neurological disabilities.

OWNER:

A person or persons, legal entity, firm or corporation, or a duly designated agent, having a legal or equitable interest in a property.

REST HOME:

Facility licensed by the Massachusetts Department of Public Health to provide 24-hour supervision and supportive services for individuals who do not routinely need nursing or medical care. Also known as a residential care facility.

SETBACK:

An open yard, unbuilt upon, extending across a lot to the depth of 50 feet, or other depth specified according to this by-law, from any street line. No structure or building or part thereof, other than uncovered steps, shall be located in or project into the setback. Also called the front yard.

SIDE YARD:

An open space, unbuilt upon, inside and contiguous to all lot lines other than street lines to the depth of 15 feet, or other depth specified according to this by-law. No structure or building shall be located in or project into any side yard, except that uncovered steps, bulkheads, eaves, bay windows and attached chimneys may project into a side yard, but shall not be closer than 10 feet to a lot line.

SPECIAL PERMIT:

A written authority granted after a duly advertised public hearing to locate, build, or use structures or land in accordance with the provisions of this bylaw, for certain uses, including the expansion or alteration of existing nonconforming uses and buildings.

SPECIAL PERMIT GRANTING AUTHORITY:

The Board of Selectmen of the Town of Berkley or such other board as may otherwise be designated by this by-law for certain categories of special permits.

STACKING LANE:

An area of stacking spaces and driving lane provided for vehicles waiting for drive-through service, that is physically separated from other traffic and pedestrian circulation on the site.

STACKING SPACE:

An area within a stacking lane for vehicles waiting to order and/or finish a drive – through transaction.

STREET:

A way open and dedicated to public use, including a way in a subdivision approved under the provisions of the Subdivision Control Law, section 81K through 81GG of Chapter 41, General Laws.

STRUCTURE:

Any combination of materials attached to or requiring a fixed location on or in the ground. For the purposes of location on a lot, the following shall not be deemed to be structures prohibited within a setback or side yard: boundary walls and fences, utility poles, support posts not over 4 feet in height for mailboxes and name signs.

USE:

The purpose for which a building, structure or land is intended, designed or used.

WIDTH OF LOT:

Lot width is defined as the distance between the sidelines required to allow a circle to be placed between sidelines. The required circle shall be tangential to the frontage of a given lot and shall be entirely contained within the lot boundaries. In a business District: for 100' frontage lots the circle diameter shall be 90'. In a residential district: for 200' frontage lots the circle

diameter shall be 181'. Beginning on June 2, 2008, no building or structure shall be constructed on a lot having less width than the required lot width. The following properties are specifically exempt from this definition: 1) Lots, buildings and structures which are exempt from the provisions of this definition under the provisions of MGL Ch 40A, Sec 6; and 2) Any lot shown on a plan recorded with the Registry of Deeds or filed with the Land Court prior to the effective date of this By Law amendment.

SECTION 4. USE REGULATIONS BY ZONING DISTRICT

A. Residential District:

One and One-Half Acre Lots. The following uses may be located on a lot at least one and a half acres (65,340 square feet) in area, meeting the dimensional requirements of section 4 hereof; single family dwellings, religious facilities, agriculture, parks, home occupations including day care for not over ten children. Not more than one principal permitted building, or use, together with its accessory buildings and uses, may be located on any lot. At least 30,000 sq. ft. of which must be contiguous land and must not be subject to wetlands classification, as defined by Massachusetts General Laws, Chapter 131.

Two Acre Lots. The following uses may be located on a lot at least two acres (87,120) square feet this in area, meeting the relevant dimensional requirements of Section 4 hereof; offices and studies in the home of a resident professional, such as a physician, engineer, consultant or artist; children's camps; municipal and governmental facilities and uses and public educational institutions; provided that not more than one principal permitted building, together with its accessory buildings and uses, may be located on any lot.

Special Permit Uses. The following uses shall require a special permit to be located in Berkley on a lot of one and one-half acre or greater area, as may be specified by the Special Permit Granting Authority:

- A. Public and private recreational uses;
- B. Multi-family dwellings, not to exceed four dwelling units per building and provided that the area shall comprise at least one and one-half acres (65,340 square feet) per dwelling unit;
- C. Uses permitted under paragraph 2 above but which do not comply with the applicable area or other dimensional requirements, provided the applicant demonstrates to the satisfaction of the SPGA that such dimensional deficiency will have no adverse effect on the area.

Prohibited Uses. The following uses are prohibited: uses which are noxious, offensive, harmful, or dangerous by reason of significant emission of smoke, fumes, odor, noise, electromagnetic radiation or interference, vibration, glare, or by reason of danger of explosion or fire, pollution of ground or surface water, air or soil; including specifically, but not limited to, heavy industry; asphalt or cement mixing plant; petroleum or other chemical refining or processing plant; hazardous, solid, or radioactive waste disposal or treatment facility; provided, that a municipal waste disposal facility on land owned by the Town of Berkley and serving Berkley inhabitants shall not be subject to this prohibition.

B. General Business District:

The purpose of the General Business District is to accommodate general business development in areas served by major traffic arteries with careful control over the layout of such uses. Business uses offer needed goods and services and provide employment for residents.

(1) The following are permitted uses in a building with 20,000 square feet of gross floor area or less:

1. Retail store;
2. Restaurant or other facility for the preparation of food for retail sale on the premises, without a drive-through window;
3. Entertainment or recreation facility – indoor or outdoor;
4. Professional Business or Offices, including but not limited to, travel agency, real estate office, or financial agency;
5. Bakery;
6. Bed and Breakfast;
7. Bank without a drive-through or ATM facility;
8. Uses as defined in MGL Chapter 40A Section 3;
9. Retail service or repair shop including but not limited to small appliances, plumbing, carpentry, and electrical;
10. Consumer personal services including but not limited to barber shop, beauty or tanning salon, health spa, dry-cleaning/laundry pick-up only, bicycle repair, dance/music school, photo studio;
11. Veterinary offices or hospital;
12. Medical, dental or optical, clinic;
13. Print shop and related arts and trades;
14. Funeral Home;
15. Public or private club;
16. Art gallery;
17. Lumber and Feed Establishments (Only if outdoor storage does not exceed 30% of the lot area and is fully screened from roadways and all abutting properties);
18. Municipal Buildings, structures, facilities or uses owned and operated by the Town of Berkley;
19. Fraternal Organizations, clubs, etc;
20. United State Post Office.
21. Any use permitted in a residential district except the subdivision of land for residential use – residential subdivisions, Form “A” lots, etc

(2) Uses by Special Permit granted by the Planning Board in accordance with the criteria of Section 7.C.2:

1. Permitted uses under Section B1 above in a building of 20,000 square feet of gross floor area or greater;
2. An increase to the maximum lot coverage in the General Business District to 60% where applicants provide enhanced landscaping and drainage designs meeting EPA and MDEP Low Impact Development standards;
3. Bank with an Outside ATM or drive-through;

4. Fast Food Restaurant or restaurant with a drive-through window;
5. Gasoline Service Station;
6. Commercial Kennel;
7. Warehouse and Distribution,;
8. Self Storage facility;
9. Assisted Living Residence;
10. Continuing Care Retirement Community;
11. Nursing Home or Rest Home;
12. Hotel or motel;
13. Any other use with a drive-through component;
14. Auto body shop provided that all work is done within an enclosed building and there shall be no storage of motor vehicles on the premises other than those in process of, or awaiting repair, or awaiting delivery or pickup after repair; and
15. Building materials and contractor's yards provided that all materials and equipment stored outside are screened from view from public ways or abutting properties by an opaque fence or dense vegetative screening of at least six (6) feet high and such storage does not exceed 30% of the total lot area.

C. Special Business Overlay District:

The purpose of the Special Business Overlay District is to accommodate general business and Adult Entertainment uses in areas served by major traffic arteries with careful control over the layout of such uses.

(1) The following are permitted uses in a building, with 20,000 square feet of gross floor area or less:

1. Retail store;
2. Restaurant or other facility for the preparation of food for retail sale on the premises, without a drive-through window;
3. Entertainment or recreation facility – indoor or outdoor;
4. Professional Business or Offices, including but not limited to, travel agency, real estate office, or financial agency;
5. Bakery;
6. Bed and Breakfast;
7. Bank without a drive-through or ATM facility;
8. Uses as defined in MGL Chapter 40A Section 3;
9. Retail service or repair shop including but not limited to small appliances, plumbing, carpentry, and electrical;
10. Consumer personal services, including but not limited to barber shop, beauty or tanning salon, health spa, dry-cleaning/laundry pick-up only, bicycle repair, dance/music school, photo studio;
11. Veterinary offices or hospital;
12. Medical, dental or optical, clinic;
13. Print shop and related arts and trades;
14. Funeral Home;
15. Public or private club;

16. Art gallery;
17. Lumber and Feed Establishments (Only if outdoor storage does not exceed 30% of the lot area and is fully screened from roadways and all abutting properties);
18. Municipal Buildings, structures, facilities or uses owned and operated by the Town of Berkley;
19. Fraternal Organizations, clubs, etc;
20. United State Post Office.

(2) Uses by Special Permit granted by the Planning Board in accordance with the criteria of Section 7.C.2:

1. Permitted uses under Section B above in a building of 20,000 square feet of gross floor area or greater;
2. An increase to the maximum lot coverage in the GB District to 60% where applicants provide enhanced landscaping and drainage designs meeting EPA and MDEP Low Impact Development standards;
3. Bank with an Outside ATM or drive-through;
4. Fast Food Restaurant or restaurant with a drive-through window;
4. Gasoline Service Station;
6. Commercial Kennel;
7. Warehouse and Distribution,;
8. Self Storage facility;
9. Assisted Living Residence;
10. Continuing Care Retirement Community;
11. Nursing Home or Rest Home;
12. Hotel or motel;
13. Any other use with a drive-through component;
14. Auto body shop provided that all work is done within an enclosed building and there shall be no storage of motor vehicles on the premises other than those in process of, or awaiting repair, or awaiting delivery or pickup after repair; and
15. Building materials and contractor's yards provided that all materials and equipment stored outside are screened from view from public ways or abutting properties by an opaque fence or dense vegetative screening of at least six (6) feet high and such storage does not exceed 30% of the total lot area.
16. Adult Entertainment Uses / Sexually Orientated Businesses as defined in Section 11, below.

(3) Prohibited Uses. Any use not listed is prohibited. The following uses are prohibited: uses which are noxious, offensive, harmful, or dangerous by reason of significant emission of smoke, fumes, odor, noise, electromagnetic radiation or interference, vibration, glare, or by reason of danger of explosion or fire, pollution of ground or surface water, air or soil; including specifically, but not limited to, heavy industry; asphalt or cement mixing plant; petroleum or other chemical refining or processing plant; hazardous, solid, or radioactive waste disposal or treatment facility; provided, that a municipal waste disposal facility on land owned by the Town of Berkley and serving Berkley inhabitants shall not be subject to this prohibition.

SECTION 5. DIMENSIONAL REGULATIONS

A. Table of Dimensional Requirements.

No building or use shall be permitted to be located, erected, relocated or altered, except on a lot and in a manner specified in the following table:

MINIMUM REQUIREMENTS

Permitted Use	Lot area (In sq. ft.)	Width ***** and Frontage (In ft.)	Setback *** (In ft.)	Side Yard & Rear Yard***** (In ft.)
Residential District				
1 and 1.5 acres	65,340	200	50	15
on at least 2 acres	87,120	200	50	30 *
Special Permit **	As Required	As Required	As Required	As Required
General Business District	40,000	100	35****	20
Special Business Overlay	40,000	100	35****	20

Notes:

* Next to a lot occupied by a single family dwelling or farm or land conserved through a Conservation Restriction, there shall be provided a landscaped buffer strip 100 feet wide containing no buildings, parking or outdoor storage. Mature existing vegetation is preferred to clear cutting and planting of young material.

* Steps, fireplaces, chimneys shall be permitted within the front side and rear setbacks

** The Special Permit Granting Authority may impose greater requirements where needed for the protection of the neighborhood and to minimize adverse impact.

*** Roadside stands for sale of locally grown farm products may be located within the required setback, but at least 10 feet from the street line.

**** No structures, parking, or storage shall be located in the setback.

B. Other Standards

1. Maximum building Height in residential zone shall be limited to thirty-five (35) above the average elevation of the finished grades of the building lot. Height shall be measured to the highest point on the roof of the building.
2. Maximum Lot Coverage GB: 50 %
3. In the General Business at least 30,000 square feet of each lot must be contiguous land and must not be subject to wetlands classification as defined by Massachusetts General Laws Chapter 131.
4. In a business zone, no building or other improvement shall exceed four stories or 50 feet in height. Height shall be measured to the highest point on the roof of the building.

***** A minimum Side & Rear Yard requirement of 5 feet for buildings not exceeding 120 sq. ft., or to take any other action relative thereto.

C. Parking.

All uses other than single family residence shall provide sufficient off street parking on lot, together with safe and convenient access ways, to accommodate all employees, occupants, customers, clients or patrons, and also any supply or delivery trucks, including any needed loading or unloading docks or space as determined by the table in Section 5(D), below and Section 9 Off Street Parking Requirements.

D. Parking Table

<u>USE</u>	<u>REQUIREMENTS *</u>
Assisted Living Facility	1space per staff person and 1 space for every 4 beds
Auto Repair	1 per 400 sq ft of gross floor area PLUS 1 per employee
Bank	1 per 175 sq ft gross floor area devoted to customer service PLUS 1 per 250 sq ft gross floor area not devoted to customer use
Barber Shop or Beauty Salon or Tanning Salon or Tatto Parlour or Nail Service	3 per operator's station
Church or similar place of assembly	1 per 5 occupants PLUS 1 per two employees
Continuing Care Retirement Community	1space per staff person and 1 space for every 4 beds
Doctor, dentist, veterinarian, or clinic offices	1 per 200 sq ft of gross floor area PLUS one per employee
Drive-through Restaurant	If no sit-down tables, minimum of 10 spaces PLUS 1 per employee
Farm Stands, nurseries, greenhouses	1 per 250 sq ft of retail floor area, or none required if less than 100 sq ft.
Funeral Home	1 per 50 sq ft of public floor area PLUS 1 per two employees
Gasoline Service Station	3 per service bay PLUS 1 per employee
Hotel/motel	1 per unit PLUS 1 per two employees PLUS 1 space for each 150 sq ft of banquet, assembly or meeting space.
Libraries, museums, clubs, and social buildings	1 per 250 sq. ft. of gross floor area PLUS 1 per two employees
Non-medical offices	1 per 250 sq ft gross floor area
Nursing or Rest home	1 space per 4 beds
Other personal, consumer and retail services	1 per 250 sq ft of gross floor area PLUS 1 per employee
Other business, institutional or professional uses not	1 per 200 sq ft of gross floor area PLUS

specified	1 per two employees
Recreation Facility	1 per four occupants/ 1 per four of the maximum capacity
Restaurants and theatres	1 space per three persons occupancy as allowed under the Building Code. An additional 5 spaces shall be required for a take out area without seating.
Schools, colleges, child care and day care centers	1 per 400 sq. ft of educational space
Self storage facility	Minimum of 3, or 1 per 10,000 sq ft of gross floor area, whichever is greater
* (Occupants = Design Occupancy Load under the state building code.)	

E. Previously Recorded Lots Exempt.

Any lot which was duly recorded by plan or deed in the North Bristol Registry of Deeds or the Land Court and was in a separate ownership at the time of adoption of any increase of the dimensional requirements of this by-law may be built upon for single family residential use even though such lots do not conform to the dimensional requirements of Section 5(A), above, provided such lot has at least 5,000 square feet of area and 50 feet frontage. Any lot shown on an approved subdivision plan or endorsed by the planning board as not requiring subdivision approval which was a building lot prior to the adoption of this by-law, may be built upon for a single family residential use within five years following such approval or endorsement, and may be transferred into separate ownership within said five years and built upon for single family use at any time thereafter.

F. Accessory Buildings.

Accessory Building less than 120 sq feet shall be located in any side or rear yard no closer to the lot line than seven (7) feet and no closer than fifty feet (50) from the front lot line.

SECTION 6. NONCONFORMING BUILDINGS AND USES AND STRUCTURES

A. Applicability. This zoning by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by G.L. c. 40A, s. 5 at which this zoning by-law, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.

B. Nonconforming Uses. The Board of Appeals may award a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Board of Appeals:

1. Change or substantial extension of the use;
2. Change from one nonconforming use to another, less detrimental, nonconforming use.

C. Nonconforming Structures. The Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of change to nonconforming structures to the neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals:

1. Reconstructed, extended or structurally changed;
2. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent;
3. Reconstructed after a catastrophe, provided that the owner shall apply for a building permit and start operations for reconstruction on said premises within two years after such catastrophe, and provided that the building(s) as reconstructed shall be only as great in volume or area as the original nonconforming structure.

D. The reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, including the extension of an exterior wall at or along the same nonconforming distance within a required yard, shall require the issuance of a variance from the Board of Appeals.

E. Nonconforming Single and Two Family Residential Structures. Nonconforming single and two family residential structures may be reconstructed, extended, altered, or structurally changed upon a determination that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure, and the issuance of a building permit, where applicable. The Board of Appeals may, by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

F. Abandonment or Non-Use. A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this zoning by-law.

*Single family use or structure shall be exempt

G. Reversion to Nonconformity. No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

SECTION 7. ADMINISTRATION AND PROCEDURES

A. Administration

1. Permits. This By-Law shall be administered by the Inspector of Buildings. Pursuant to the State Building Code, the Inspector of Buildings may require such plans and specifications as may be necessary to determine compliance with all pertinent laws of the Commonwealth. Buildings and structures may not be erected, substantially altered, moved, or changed in use without written certification by the Inspector of Buildings that such action is in compliance with then-applicable zoning, and that all necessary permits have been received under federal, state, or local law. Issuance

- of a Building Permit or Certificate of Use and Occupancy, where required under the Commonwealth's State Building Code, may serve as such certification.
2. *Enforcement.* The Inspector of Buildings shall institute and take any and all such action as may be necessary to enforce full compliance with any and all of the provisions of this By-Law and of permits and variances issued thereunder, including notification of noncompliance and request for legal action through the Selectmen to Town Counsel.
 3. *Penalties.* The penalty for violation of any provision of this By-Law, of any of the conditions under which a permit is issued, or of any decision rendered by the Board of Appeals shall be Three Hundred dollars (\$300.00) for each offense. Each day that each violation continues shall constitute a separate offense.

B. Board of Appeals.

1. *Establishment.* The Board of Appeals shall consist of three members and two associate members.
2. *Powers.* The Board of Appeals shall have and exercise all the powers granted to it by Chapters 40A, 40B, and 41 of the General Laws and by this By-Law. The Board's powers are as follows:
 - a) To hear and decide applications for special permits, where so designated.
 - b) To hear and decide appeals or petitions for variances from the terms of this By-Law, with respect to particular land or structures, as set forth in G.L. c. 40A, s.10. The Board of Appeals shall not grant use variances.
 - c) To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of G.L. c. 40A, ss. 8 and 15.
 - d) To hear and decide comprehensive permits for construction of low or moderate income housing by a public agency or limited dividend or nonprofit corporation, as set forth in G.L. c. 40B, ss. 20-23.

C: Special Permits.

1. *Special Permit Granting Authority.* Unless specifically designated otherwise, the Board of Selectmen shall act as the Special Permit Granting Authority.
2. *Criteria.* Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this By-Law, the determination shall include consideration of each of the following:
 - a) Social, economic, or community needs which are served by the proposal;
 - b) Traffic flow and safety, including parking and loading;
 - c) Adequacy of utilities and other public services;
 - d) Neighborhood character and social structures;
 - e) Impacts on the natural environment; and

- f) Potential fiscal impact, including impact on town services, tax base, and employment.
3. *Procedures.* Whenever an application for a special permit is filed with a Special Permit Granting Authority, the applicant shall also file, within five (5) working days of the filing of the completed application with said Authority, copies of the application, accompanying site plan, and other documentation, to the Board of Health, Conservation Commission, Inspector of Buildings, Police Chief, Fire Chief, Planning Board, and applicable water district for their consideration, review, and report. The copies necessary to fulfill this requirement shall be furnished by the applicant.
- a) An application shall not be deemed complete until all copies of required information and documentation have been filed with the Special Permit Granting Authority.
 - b) The special permit granting authority shall notify applicants by registered mail, within 14 days of submittal, of incomplete application status, and the applicant shall have 14 days from the mailing of such notice to complete an application.
 - c) Reports from other boards and officials shall be submitted to the Special Permit Granting Authority by the date of the public hearing, but in any case within thirty-five (35) days of receipt of the reviewing party of all of the required materials; failure of these reviewing parties to make recommendations after having received copies of all such required materials shall be deemed a lack of opposition thereto.
 - d) In the event that the public hearing by the Special Permit Granting Authority is held prior to the expiration of the 35 day period, said authority shall continue the Public Hearing to permit the formal submission of reports and recommendations within that 35 day period.
 - e) The Decision/Findings of the Special Permit Granting Authority shall contain, in writing, an explanation for any departures from the recommendations of any reviewing party.
 - f) The provisions of this Section 3 shall not apply to applications for special permits to reconstruct, extend, alter, or structurally change a nonconforming single or two family structure. The Board of Appeals may establish procedures governing such applications by regulation.
 - g) The Special Permit Granting Authority shall comply with the provisions of MGL Chapter 40A, Section 9A.

4. *Conditions.* Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of this By-Law.

5. *Plans.* The applicant shall submit a plan as may be required by the Special Permit Granting Authority.

a. The provisions of this Section 7 shall not apply to applications for special permits to reconstruct, extend, alter, or structurally change a nonconforming single or two family structure. The Board of Appeals may establish procedures governing such applications by regulation.

6. *Lapse.* Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 24 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) with the Town Clerk.

7. *Regulations.* The Special Permit Granting Authority may adopt regulations for the administration of special permits.

D. Site Plan Review.

1. Applicability. The following types of activities and uses require site plan review by the Planning Board:

- a) Construction, exterior alteration or exterior expansion of, or change of use within, an institutional, commercial, industrial, or multi-family structure involving more than 500 square feet;
- b) Construction or expansion of a parking lot for an institutional, commercial, industrial, or multi-family structure or purpose.

2. Exemptions.

- a) A building wholly or partially destroyed may be rebuilt without recourse to this section if rebuilt without change to the building footprint or the square footage of usable space.
- b) The construction, reconstruction, or alteration of a single and two family residence is exempt from the requirements of this Section.

3. Procedures.

- a) Use, Structure, or Activity Available As of Right. An application for a building permit to perform work as set forth herein available as of right shall be accompanied by an approved Site Plan. Prior to the commencement of any activity set forth herein available as of right, the project proponent shall obtain site plan approval from the Planning Board. Applicants for site plan approval shall submit five (5) copies of the site plan to the Planning Board for review, and within three (3) days thereafter shall also submit a copy of the site plan to the Board of Selectmen, Board of Health, Police Chief, Fire Chief, the Inspector of Buildings, and the Conservation Commission for their advisory review and comments. The Planning Board shall review and act upon the site plan, with such conditions as may be deemed appropriate, within sixty (60) days of its receipt, and notify the applicant of its decision. The decision of the Planning Board shall be upon a majority of those present and shall be in writing. No building permit shall be issued by the Inspector of Buildings without the written approval of the site plan by the Planning Board, or unless 60 days lapse from the date of the submittal of the site plan without action by the Planning Board.
- b) Use or Structure Available by Special Permit or Variance. An application for a special permit or a variance to perform work as set forth herein shall be accompanied by an approved site plan. Applicants for site plan approval shall submit five (5) copies of the site plan to the Planning Board for review, and within three (3) days thereafter shall also submit a copy of the site plan to the Board of Selectmen, Board of Health, Police Chief, Fire Chief, the Inspector of Buildings, and the Conservation Commission for their advisory review and comments. The Planning Board shall review and act upon the site plan, with such conditions as may be deemed appropriate, within sixty (60) days of its receipt, and notify the applicant of its decision. The decision of the Planning Board shall be upon a

majority of those present and shall be in writing. No special permit or variance shall be issued by the Board of Appeals without the written approval of the site plan by submittal of the site plan without action by the Planning Board. Where the Planning Board approves a site plan "with conditions", and said site plan accompanies a special permit or variance application to the Board of Selectmen or Board of Appeals, the conditions imposed by the Planning Board shall be incorporated into the issuance, if any, of a special permit or variance.

- c) Where the Planning Board serves as the special permit granting authority, it shall consolidate its site plan review and special permit procedures.
- d) An application for site plan approval shall be accompanied by a fee, as set forth in the Planning Board's Rules and Regulations.
- e) The applicant may request, and the Planning Board may grant by majority vote, an extension of the time limits set forth herein.
- f) No deviation from an approved site plan shall be permitted without modification thereof.

4. Preparation of Plans.

Applicants are invited to submit a pre-application sketch of the proposed project to the Planning Board and to schedule a comment period at a regular meeting of the Board. Site Plans shall be submitted on 24-inch by 36-inch sheets. Plans shall be prepared by a Registered Professional Engineer, Registered Land Surveyor, Architect, or Landscape Architect, as appropriate. Dimensions and scales shall be adequate to determine that all requirements are met and to make a complete analysis and evaluation of the proposal. All plans shall have a minimum scale of 1" = 40'.

5. Contents of Plan.

The contents of the site plan are as follows:

- a) Five (5) separate plans prepared at a scale of one (1) inch equals twenty (20) feet or such other scale as may be approved by the planning board. The plans are as follows:
 1. Site layout, which shall contain the boundaries of the lot(s) in the proposed development, proposed structures, drives, parking, fences, walls, walks, outdoor lighting, loading facilities, and areas for snow storage after plowing. The first sheet in this plan shall be a locus plan, at a scale of one (1) inch equals one hundred (100) feet, showing the entire project and its relation to existing areas, buildings and roads for a distance of one thousand (1,000) feet from the project boundaries or such other distance as may be approved or required by the planning board.
 2. Topography and drainage plan, which shall contain the existing and proposed final topography at two-foot intervals and plans for handling storm water drainage.
 3. Utility and landscaping plan, which shall include all facilities for refuse and sewerage disposal or storage of all wastes, the location of all hydrants, fire alarm and firefighting facilities on and adjacent to the site, all proposed recreational facilities and open space areas, and all wetlands including flood plain areas.

4. Architectural plan, which shall include the ground floor plan and architectural elevations of all proposed buildings and a color rendering.
5. Landscaping plan, showing the limits of work, existing tree lines, and all proposed landscape features and improvements including screening, planting areas with size and type of stock for each shrub or tree, and including proposed erosion control measures.

a.) The site plan shall be accompanied by a written statement indicating the estimated time required to complete the proposed project and any and all phases thereof.

b) A written summary of the contemplated projects shall be submitted with the site plan indicating, where appropriate, the number of dwelling units to be built and the acreage in residential use, the evidence of compliance with parking and off-street loading requirements, the forms of ownership contemplated for the property and a summary of the provisions of any ownership or maintenance thereof, identification of all land that will become common or public land, and any other evidence necessary to indicate compliance with this by-law.

c) The site plan shall be accompanied by drainage calculations by a registered professional engineer. Storm drainage design must conform to Town of Berkley subdivision regulations.

d) The Planning Board may require narrative assessments of the on-site and off-site impacts of the proposed project, including traffic, drainage, noise, and other environmental factors. The Planning Board may require that such narrative assessments be prepared by qualified experts.

e) Certification that the proposal is fully compliant with the provisions, if applicable, of the Americans with Disabilities Act and the Massachusetts Architectural Barriers Board.

6. Waiver of Technical Compliance.

The Planning Board may, upon written request of the applicant, waive any of the technical requirements of Section 7.D.4 where the project involves relatively simple development plans or constitutes a minor site plan.

7. Minor site plan.

Applications for permits to build, alter or expand any nonresidential building, structure or use in any district where such construction will exceed a total gross floor area of 500 square feet but not exceed a total gross floor area of 2000 square feet, or will not generate the need for more than 10 parking spaces, shall be deemed a minor site plan. For the purposes of computing the total gross floor area of a minor site plan, the Planning Board shall aggregate all such applications made within the five (5) previous calendar years. Minor site plans shall set forth all of the information required by Section 6.D.4; provided, however, that the scale of the site plan may be 1' = 80', and the plan may depict topographical contours at intervals available on maps provided by the United States Geological Survey.

8. Approval.

Site Plan approval shall be granted upon determination by the Planning Board that the plan meets the following objectives. The Planning Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to promote these objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and storm water drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations. New building construction or other site alteration shall be designed in the Site Plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, so as to:

- a) Maximize pedestrian and vehicular safety both on the site and egressing from it;
- b) Minimize obstruction of scenic views from publicly accessible locations;
- c) Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;
- d) Minimize glare from headlights and lighting intrusion;
- e) Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places.
- f) Minimize contamination of groundwater from on-site waste-water disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substance;
- g) Ensure compliance with the provisions of this Zoning By-Law, including parking and landscaping.

9. Lapse.

Site plan approval shall lapse after one year from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Planning Board upon the written request of the applicant.

10. Regulations.

The Planning Board may adopt and from time to time amend reasonable regulations for the administration of these Site Plan guidelines.

E. Amendments.

This By-Law may from time to time be changed by amendment, addition, or repeal by the Town Meeting in the manner provided in G.L. c. 40A, s.5, and any amendments thereto.

F. Applicability.

1. Other Laws. Where the application of this By-Law imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this By-Law shall control.

2. Conformance. Construction or operations under a Building Permit shall conform to any subsequent amendment of this By-Law unless the use or construction is commenced within a period of six months after the issuance of the permit, and in cases involving construction, unless

such construction is continued through to completion as continuously and expeditiously as is reasonable.

G. Separability.

The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision herein.

SECTION 8. RATE OF DEVELOPMENT

A. The purpose of this section is to regulate the timing of development of building lots in residential subdivision and street lots (ANR - FORM A) in a manner which promotes the health, safety, convenience and welfare of the inhabitants of the Town of Berkley. This bylaw has the following broad objectives:

1. To prevent the development of traffic conditions which are hazardous to citizens due to heavy vehicular travel or usage.
2. To coordinate the timing of land development in Berkley with the economic feasibility of the expansion of public services.
3. To preserve the unique rural character and natural resources of the Town.

B. For the purpose of administering Section 8 (Rate of Development), the Planning Board shall be the Special Permit Granting Authority.

C. The Building Commissioner shall not issue building permits authorizing more than ten (10) dwelling units during any twelve month period to any parcel or parcels of land which, as of the effective date of this bylaw, were contiguous and in the same ownership as several lots; or of continuous street frontage as one large parcel sufficient to create two or more lots in accordance with zoning regulations; or in different ownership's each involving one (1) or more of the same principals; or to any one (1) applicant or set of applicants involving one (1) or more of the same principals, unless the Special Permit Granting Authority (S.P.G.A.) has granted a Special Permit for rapid development. Such Special Permit shall be granted only upon determination of the S.P.G.A. that all Special Permit criteria as set forth in MGL Chapter 40A Section has been fulfilled and that such development, after a public hearing, in the opinion of the S.P.G.A. as expressed in an affirmative vote thereof; (a) would serve a salient housing need; (b) would be economically infeasible if limited to ten (10) construction permits over a twelve month period and (note "or") (c) would not overburden existing public services. (Public services shall include, but are not limited to, fire, police, and ambulance services, public highway maintenance, and public school transportation services.) This bylaw shall apply to all legally created lots as defined by MGL Chapter 40A (The Zoning Act), especially Section 6, in addition to lots legally created under the provisions of MGL Chapter 41 Sections 81K-81GG (The Subdivision Control Law) and all current conditions of zoning control as set forth in the Town of Berkley Zoning Bylaw and as it may, from time to time, be amended.

SECTION 9. OFF STREET PARKING

A. Parking Requirements

1. All required off-street parking shall be accommodated on the same premises as the activity it serves.
2. Required parking and loading areas and their access drives shall be paved with bituminous concrete.
3. There shall not be more than one entrance and one exit from such lots per three hundred feet of street frontage. If necessary to meet this standard uses shall be arranged with shared egress and ingress. No parking area shall be located or designed so as to require backing onto or off a public way
4. Adequate off-street loading that does not conflict with the required parking spaces shall be provided. These facilities shall be sized and arranged so that no trucks need to back onto or off a public way or be parked on a public way while loading, unloading or waiting to do so.
5. Each off-street parking space shall have minimum dimensions of nine (9) by twenty (20) feet excluding the driveway to such space. Aisles and spaces shall be consistent with the following:

Aisle Width	<i>Parking Angle (in degrees)</i>				
	0	30	45	60	90
One-Way traffic	13 ft	11 ft	13 ft	18 ft	24 ft
Two-Way traffic	20 ft	20 ft	21 ft	23 ft	24 ft

6. Drainage facilities for each parking area shall be designed and constructed to contain storm water run-off on the premises in accordance with the Rules and Regulations for water quality adopted by the Berkley Planning Board.
7. No parking lot shall be illuminated so as to cause glare for motorists, pedestrians or neighboring premises.
8. No paved area designated for parking on a lot shall be located closer than twenty (20) feet from any street. No paved area designed for parking on a lot shall be located closer than seven and a half feet from any building wall.
9. All parking lots consisting of ten (10) or more parking spaces shall provide two-hundred (200) square feet of interior landscaping for every ten (10) spaces. These landscaping areas shall contain a minimum of two (2) canopy trees, a minimum of ten (10) feet in height and minimum three inch caliper, and two (2) understory trees/shrubs, a minimum of two (2) feet in height. To prevent cars from parking too close to trees or damaging shrubs, a curb or wheel stop shall be provided for interior parking lot landscaped islands.

5. Drive-through facilities

1. Drive-through facilities shall provide a minimum of (8) eight stacking spaces (within the site) before the order board. The facility shall provide another (4) four stacking spaces between the order board and the transaction window. If the facility has two transaction windows the (4) four stacking spaces may be split between each of the windows. An additional stacking space shall be provided after the last transaction window(s).

2. Each stacking space shall be a minimum of twenty (20) feet in length and ten (10) feet in width along straight portions. Stacking spaces and stacking lanes shall be a minimum of twelve (12) feet in width along curved segments. Stacking lanes shall be delineated from traffic aisles, other stacking lanes and parking areas with striping, curbing, landscaping and the use of alternative paving materials or raised medians.
3. Entrances to stacking lane(s) shall be clearly marked and be a minimum of sixty (60) feet from the intersection with the public street. The distance shall be measured from the property line along the street to the beginning of the entrance.
4. Stacking lanes shall be designed to prevent circulation congestion, both on site and on adjacent public streets. The circulation shall: (a) separate drive –through traffic from site circulation, (b) not impede or impair access into or out of parking spaces, (c) not impede or impair vehicle or pedestrian traffic movement, and (d) minimize conflicts between pedestrian and vehicular traffic with physical and visual separation between the two. Stacking lanes shall not interfere with required loading and trash storage areas and loading or trash operations shall not impede or impair vehicle movement. If said separate stacking lane is curbed, an emergency by-pass or exit shall be provided. Stacking lanes shall not enter or exit directly into a public right-of-way. Stacking lanes shall be integrated with the on-site circulation pattern.
5. The intersection of stacking lanes and walk-in customer access shall be a minimum of fifty (50) feet from any access connections and/or transaction windows. Said intersections shall be provided with a crosswalk. These crosswalks shall use enriched paving and striping and include warning signage aimed at both the pedestrian and vehicle. Any outdoor service facilities (including menu boards, speakers, etc.) shall be a minimum of one hundred (100) feet from the property line of abutting residential uses. Menu boards shall be a maximum of thirty (30) square feet, with a maximum height of six (6) feet and shall be shielded from any public street and residential properties.
6. Traffic Impact Study: A detailed traffic impact analysis shall be submitted for any special permit or site plan approval application containing a drive-through facility. A registered professional engineer experienced and qualified in traffic engineering shall prepare the traffic impact study. The traffic impact study shall contain the following information:
 - i. Existing traffic conditions- average daily and peak hour volumes, average and peak speeds, sight distances, accident data for the previous 3 years, and levels of service (LOS) of intersections and streets affected by the proposed development. Generally, such data shall be presented for all streets and intersections adjacent to or within 1000 feet of the project boundaries, and shall be no more than 12 months old at the date of application, unless other data is specifically approved by the Board.
 - ii. Projected traffic conditions for design year of occupancy shall include: statement of design year of occupancy, average annual background traffic growth, impacts of proposed developments which have already been approved, under construction and /or are pending before a town board.
 - iii. Projected impacts of the proposed development shall include: Projected

peak hour and daily traffic generated by the development on roads and ways in the vicinity of the development; sight lines at the intersections of the proposed access connection and adjacent streets; existing and proposed traffic controls in the vicinity of the proposed development; and the projected post development traffic volumes and levels of service of intersections and streets likely to be affected by the proposed development (as defined above).

- iv. Proposed mitigation shall include: A plan (with supporting text) to minimize traffic and safety impacts through such means as physical design and layout concepts, staggered employee work schedules, promoting use of public transit or carpooling, or other appropriate means; and an interior traffic and pedestrian circulation plan designed to minimize conflicts and safety problems. Measures shall be proposed so that all streets and intersections to be impacted by the project shall have the same Level of Service or better than the pre-development conditions at post-development.

SECTION 10. SIGNAGE

- A. This section is adopted pursuant to MGL Chapter 40A, MGL Chapter 93, Section 29, MGL Chapter 143, Section 3 and governs the placement of signs within the Town of Berkley. No sign(s) shall be attached, erected or otherwise installed on any property without first obtaining a sign permit from the Building Inspector.
- B. *Purpose.* The purpose of this section is to provide standards for the installation of signs so as to reduce traffic safety hazards, protect property values, promote economic development, and protect the aesthetic appearance of the town.
- C. *General Requirements.* A sign permit may be granted only in accordance with the following requirements:
 - i. Flashing, shimmering and/or rotating lights shall not be permitted.
 - ii. All signs shall be limited to the identification of premises, their occupants or users, the placement or the business conducted therein.
 - iii. No sign shall be placed which prevents the driver of a vehicle from having a clear and unobstructed view of approaching or merging traffic.
 - iv. No signs shall be internally illuminated.
- D. *Exemptions.* The following signs shall be exempted from these regulations:
 - i. Signs of less than two (2) square feet in surface area identifying occupancy of a residence;
 - ii. Historic or commemorative plaques not exceeding two (2) square feet in surface area
 - iii. No trespassing, no hunting and similar ownership signs not exceeding two (2) square feet in surface area

- E. *Residential.* The display of a sign pertaining to the use or uses of the premises with a total area of not more than nine (9) square feet. Lighting, if any, shall be by indirect white light only.
- F. **General Business.**
1. Wall mounted signs.
 - a. The sign or signs shall be firmly affixed to a building.
 - b. The sign or signs shall not extend beyond the wall or the building to which it is attached. Roof signs shall not project more than four (4) feet above the roofline.
 - c. The sign or signs shall not project more than twelve (12) inches (in the case of a sign parallel with the wall, or four (4) feet (in the case of a sign projecting perpendicular from the wall) from the face of the wall on which it is attached.
 - d. No one wall mounted sign shall be greater than 120 square feet and no longer than 15 feet in length, which includes logos, business name and all other visual and/or written communication.
 - e. Wall mounted signs shall not total more than 180 square feet and shall cover no more than 15% of the wall area on which they are mounted.
 2. Free standing signs.
 - a. No part of any free standing sign other than the post or other support structure shall be located lower than eight (8) feet above the ground level (except for signs beyond eight (8) feet from the boundary line), and no sign shall be more than twenty-three (23) feet in height above the ground level and no wider than fifteen (15) feet.
 - b. No face of a standing sign shall be larger than one hundred and twenty (120) square feet, nor shall any sign be located in such a way so as to impede or obstruct the view of traffic and in no event shall any part be less than eight (8) feet from any boundary line.
 3. Window signs.
 - a. Signs painted or placed on the inside of the glass of a window may be permitted in addition to the above, provided that the aggregated area of such sign(s) do not exceed fifty (50%) percent of the area of the window glass.

SECTION 11. ADULT ENTERTAINMENT USES SEXUALLY ORIENTATED BUSINESS

A. Purpose.

The intent of the bylaw is to regulate the locations of adult entertainment uses in order to lessen the harmful secondary effects on adjacent areas. These secondary effects, which are documented in various studies of cities and towns include an increase in crime, a decline in property values, a flight of existing businesses and gradual blight of residential neighborhoods. The purpose of the Adult Entertainment Use bylaw is to prevent crime, maintain property values, protect the town's retail trade and protect and preserve the quality of residential neighborhoods. The bylaw does not prohibit adult entertainment uses, but rather provides reasonable alternative avenues of expression throughout the town.

B. Definitions

Within this section the following definitions shall be used:

ADULT BOOKSTORE. An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws. For the purposes of this definition "substantial or significant portion of stock" shall mean greater than ten percent (10%) of the subject establishment's inventory stock; or ten percent (10%) of the subject premise's gross floor area, or 200 sq ft, whichever is greater.

ADULT CLUB. An establishment having twenty-five (25) percent or more of its entertainment devoted to a person or persons working or performing in a state of full or partial nudity, or distinguished or characterized by an emphasis on a matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws.

ADULT MOTION PICTURE THEATRE. An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws.

ADULT PARAPHERNALIA STORE. An establishment having as a substantial or significant portion of its stock, devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws. For the purposes of this definition "substantial or significant portion of stock" shall mean greater than ten percent (10%) of the subject establishment's inventory stock; or ten percent (10%) of the subject's premise's gross floor area, or 200 sq ft, whichever is greater.

ADULT LIVE NUDITY ESTABLISHMENTS. An establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in sections 31 of chapter 272 of the Massachusetts General Laws.

ADULT VIDEO STORE. An establishment having a substantial or significant portion of its stock in trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws. For the purposes of this definition "substantial or significant portion of stock" shall mean greater than ten percent (10%) of the subject establishment's inventory stock; or ten percent (10%) of the subject premise's gross floor area, or 200 sq ft, whichever is greater.

ADULT ENTERTAINMENT USE . For the purposes of this by-law, Adult Entertainment Use shall be defined as any of the following: Adult Bookstore, Adult Club, Adult Motion Picture Theater, Adult Paraphernalia Store, Adult Video Store, Adult Live Nudity Establishment, Sexually Oriented Business as defined below, or any other business or establishment characterized by an emphasis depicting, describing or related to sexual conduct or excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws. For the purposes of this definition an adult use is any use or combination of uses which_ either have greater than ten percent (10%) of the subject establishment's inventory stock; or ten percent (10%) of the subject premise's gross floor area, or 200 sq ft, whichever is greater devoted to materials for sale or rent distinguished by or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws.

SEXUALLY ORIENTATED BUSINESS: A business having as a substantial or significant portion of its stock in trade any of the following:

- a. Books, magazines, newspapers, or other written material which are distinguished or characterized by depicting or describing sexual conduct or sexual excitement as defined in General Laws Chapter 272, Section 31 as amended
- b. Videos, movies, photographs or other filmed material which are distinguished or characterized by depicting sexual conduct or sexual excitement as defined in General Laws Chapter 272, Section 31 as amended
- c. Toys and novelty items which are distinguished or characterized by depicting sexual conduct or sexual excitement as defined in General Laws Chapter 272, Section 31 as amended;
- d. Sexual paraphernalia consisting of devices, objects, tools or toys which are distinguished or characterized by depicting sexual conduct or sexual excitement as defined in General Laws Chapter 272, Section 31 as amended, and which are without medical utility; As used in this definition a "substantial or significant portion of stock in trade" shall be deemed to exist under any of the following circumstances.
- e. When the cost of such portion of the stock in trade on hand exceeds more than ten percent (10%) of the cost of all stock in trade on hand;
- f. When monthly sales, including rentals, from such portion of the stock in trade exceeds more than ten percent (10%) of the monthly sales of all stock in trade;
- g. When an area of more than ten percent (10%) of the floor area open to or observable by customers is wholly or partially used for the display or storage of such portion of the stock in trade

VIEWING BOOTHS. An enclosed portion of any commercial building or structure smaller than 20' X 20' used for the purpose of the private showing, displaying, or projecting of any motion pictures, other film products, video tapes or live acts distinguished by or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws for a fee.

C. Adult Entertainment Use Establishments

All Adult Entertainment Use Establishments as defined above are allowed in the Special Business Overlay District upon the granting of a special permit by the Zoning Board of Appeals. All Adult Uses shall comply with the following requirements:

D. Additional Sitting Requirements

- I. An Adult Entertainment Use shall not be allowed within a building containing other retail, consumer or residential uses, or within a shopping center, shopping plaza, or mall.
- II. The building shall be designed so that noise from any proposed entertainment is not audible (0 decibels) outside. Also all building openings, entries and windows shall be screened in such a manner as to prevent the visual access to the interior of the establishment from the exterior.
- III. A five (5) foot high solid fence or a landscaped buffer of evergreen trees or shrubs five (5) foot high at the time of planting shall be provided and maintained along the side and rear property lines.

- IV. There shall be no viewing booths within an Adult Entertainment Use establishment.

E. Sign Requirements

- I. Sign content shall identify the name of the establishment only and shall contain no advertisement in addition to this identification. Only one identification sign to be mounted on the building wall face shall be allowed for an adult entertainment use. All other signs whether on the exterior of the building or visible from the exterior of the building are prohibited.
- II. No adult entertainment establishment may have any flashing lights visible from outside the establishment. Furthermore, no sign shall rotate, or contain reflective or fluorescent elements.
- III. No pictures, publications, videotapes, movies, covers or other advertising items that fall within the definition of an adult bookstore, adult club, adult motion picture theater, adult paraphernalia store, adult live video store, adult video store or sexually oriented business shall be displayed in the windows of, or on the building of, any adult entertainment use establishment.

F. Special Permit Submission And Approval

A site plan shall be submitted by the applicant in order that the Special Permit Granting Authority may determine that the above standards have been met. The site plan shall be prepared and submitted in accordance with Section 7.D. Site Plan Review of this by-law. The site plan shall also show when appropriate the distances between the proposed adult entertainment use establishment and any residential use or zoning district, public or private school, church or other religious facility, public park or recreation area, group day care center, family day care center, nursing home and hospital, municipal building, and any other adult entertainment use establishment(s). All applications for a Special Permit must include the following information:

- I. Names and addresses of the legal owner(s) of the Adult Entertainment Use Establishment.
- II. Name and addresses of all persons having a fee, equity and/or security interest in such establishment and the on-site manager. In the event a corporation, partnership, trust or other entity is listed, the name and address of every person who has an ownership interest and/or beneficial interest in the entity must be listed in order that the Special Permit Granting Authority will know who are the persons who will actually own and control the establishment. The applicant and/or owner must disclose if they have been convicted of violating the provisions of Massachusetts General Laws section sixty-three of chapter one hundred and nineteen or section twenty-eight of chapter two hundred and seventy-two.
- III. The number of employees, or proposed number of employees, as the case may be.
- IV. Proposed security precautions.

G. In approving a Special Permit, the Special Permit Granting Authority may attach such conditions, limitations and safeguards as are deemed necessary to protect the immediate area and the Town, including limitations on hours of operation, provided however that no such

conditions in fact prohibit the use of the property for the use intended. No Special Permit shall take effect until such decision has been recorded in the Registry of Deeds.

H. The Special Permit shall be issued to the owner of the establishment and shall not transfer with a change in ownership of the business and/or property.

I. Special Permits for Adult Entertainment Establishments shall not be granted to any person or persons convicted of violating the provisions of Massachusetts General Laws Chapter 119, Section 63, nor Massachusetts General Laws Chapter 272, Section 28, similar laws in other states.

J. Lapse of Permit. Any special permit granted hereunder for an adult entertainment use establishment shall lapse after one year, including such time required to pursue or await the determination of an appeal from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause, or if in the case of a permit for construction, if construction has not begun by such date except for good cause, including such time to pursue or await the determination of an appeal referred to in Massachusetts General Laws Chapter 40A, Section 17, from the grant thereof.

- i. The Special Permit shall lapse after two years, unless a shorter term is specified by the Special Permit Granting Authority. Upon receipt of a valid application, the Special Permit Granting Authority may grant another Special Permit provided that the Board finds that all conditions of this Section and of approval have been complied with.
- ii. The Special Permit shall not be renewed if any of the following has taken place on or in proximity to and associated with the premises, a) unlawful sexual activity; b) gambling; c) drug use; d) violent crimes; e) offenses against children; f) repeated public disturbances requiring intervention by the police; and, g) any other illegal activities.
- iii. Violation of any of the conditions of approval of the Special Permit shall be grounds for non-renewal of the Special Permit as provided for above.

K. Prohibited Uses. Nothing in this By-law is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violated any Town Ordinance or Statute of the Commonwealth of Massachusetts regarding public nuisances, sexual conduct, lewdness, or obscene or harmful matter, or the exhibition or public display thereof.

Section 12: AQUIFER PROTECTION DISTRICT

A. Purpose and Intent:

The purpose of this Aquifer Protection District is to prevent the contamination of and protect and preserve the availability of clean ground water, which provides existing as well as potential water supply to the Town of Berkley's residences and businesses;

1. To conserve the natural resources of the town;
2. To protect the groundwater and the major recharge areas of the Town from adverse land use practices.

B. Definition of Terms:

Aquifer: A geologic formation composed of rock, sand, or gravel, capable of yielding over eighty gallons per minute of potentially usable, or recoverable, amounts of water.

Groundwater: Water in the surface zone beneath the water table where most or all pore spaces are filled with water.

Hazardous substance: Any hazardous substance or mixture of such physical, chemical, or infectious characteristics as to pose significant actual or potential hazard to water supplies, or to human or animal health, if such substance or mixture were discharged to land or waters of this town.

Impervious surface: Natural or manmade material on or above the ground that does not allow surface water to penetrate into the subsurface soil.

Leachable waste: Waste materials, be they directly relatable or by-products of surface or subsurface generators including solids, sewage, sludge, and agricultural wastes that are capable of releasing waterborne contaminants to the surrounding environment.

Mining of land: Removal or relocation of geologic materials, including topsoil, for the purpose of extracting soil, sand, loam, gravel, metallic cores, or bedrock.

Pervious Surface: Surface areas that consist of natural or manmade material on or above the ground that allows surface water to penetrate into the subsurface soil and which do not become impervious due to use or other actions.

Recharge area: That area (including primary, secondary, and tertiary recharge areas) composed of permeable stratified sand and gravel, and certain wetlands that collect surface water and carry it to aquifers.

Primary recharge area: Part of the recharge area that lies directly over the designated aquifer, and adjacent areas of strata, from which groundwater flows directly into the aquifer.

Secondary recharge area: Part of the recharge area that lies adjacent to the primary area, and from which groundwater moves down gradient into the aquifer.

Tertiary recharge area: These are the upstream drainage areas that traverse the primary and/or secondary recharge areas.

Septage: Sludge produced by domestic waste that is pumped from septic tanks.

Solid waste: Discarded solid material, decomposing or not, which may contain other liquid or gaseous materials, but with insufficient liquid content to be free-flowing. This includes, but is not limited to, rubbish, garbage, scrap materials, junk, refuse, inert fill material.

C. Scope:

The Aquifer Protection District encompasses those areas of the Town where groundwater flow rates equal (100 – 300) gallons per minute or greater, as delineated on a map at a scale 1:X, titled "Aquifer Protection District, Town of Berkley" and is the most recent on file at the office of the Town clerk. These boundaries reflect the USGS hydrogeologic information as of the date of the enactment hereof. The boundaries encompass the aquifer, and the aquifer's most significant recharge areas. The Aquifer Protection District imposes additional regulations, in cases of conflicting use regulations, the more restrictive zoning requirements shall apply.

D. Delineation of Aquifer Protection District:

Certain Aquifer Protection Districts are hereby established within the Town. These Districts contain aquifers and/or aquifer recharge areas as determined by United States Geological Survey (USGS) standard geological and hydrogeologic investigations that have included observation wells, existing boring data, geophysical techniques, pump tests, water samples and geologic maps.

The boundaries of this District are delineated on a map at a scale of 1:X titled "Aquifer Protection District, Town of Berkley" and is the most recent. This map is on file in the office of the Town Clerk. These boundaries reflect the best USGS hydrogeologic information available as of the date this map was created. Where these boundaries are in doubt or in dispute, the burden of proof shall

be upon the owner(s) of the land in question to show where the boundaries should be properly located. At the request of the owner(s), the town may engage a professional geologist; hydrogeologist, engineer, or other qualified expert trained and experienced in hydrogeology to determine more accurately the location and extent of an aquifer or recharge area, and may charge the owner(s) for the entire cost of the investigation.

E. Use Regulations:

1. Uses Authorized: The following specific uses of land shall apply within the boundaries of the Aquifer Protection District.
 - a) Maximum, one dwelling unit per 65,340 square feet of land area, provided no more than 15% of each, lot including driveways and roofs of buildings and structures, is rendered impervious. Larger percentages, if required, may be constructed with permeable material;
 - b) Subject:Pesticides and fertilizers which are in compliance with mandated and revised federal and state regulations, greater than household quantities, and which are subject to a yearly review and update by the Board of Health;
 - c) Storage of liquid petroleum products of any kind, except those incidental to home or businesses intended to be consumed on-site for space heating, hot water heating, cooking purposes or outdoor maintenance shall be in tanks not exceeding (660 – 1,000) gallons for residential use and (2,000) gallons for commercial use whose design and installation is reviewed and approved by the Fire Department in accordance with safety regulations, 527 CMR 9.0. Storage must be above ground, either in a free standing container within a building or in a free standing container above ground level with protection adequate to contain a spill the size of the container's total storage capacity;
 - d) Conservation of soils, water, plants, and wildlife;
 - e) Outdoor recreation, nature study, fishing, hunting;
 - f) Runoff from impervious surfaces shall be recharged on-site and diverted towards areas covered by vegetation for surface infiltration to the maximum extent possible;
 - g) Normal residential lawn and garden maintenance;
2. Uses Not Permitted:
 - a) Storage of animal manures, unless such storage is covered or contained, or in accordance with the specifications of the National Resource Conservation Service (NRCS).
 - b) Dry cleaning processing plants;
 - c) Floor Drains – No floor drain may be permitted in any structure as per 310CMR 22.21 (2)(a)8;
 - d) The manufacture, use, storage or disposal of hazardous substances;

- e) Car washes, Laundromats, automotive service and repair facilities, sanitary landfills, dumps, junk yards, storage or disposal of solid waste. Sludge or septage may only be stored in compliance with 310 CMR 32.30 and 32.31;
 - f) Storage of commercial fertilizers as defined in M.G.L. c. 182, §63, unless such storage is within a structure designed to prevent the generation and escape of leachable waste or contaminated runoff;
 - g) The mining/removal of land within four feet of the historical high groundwater table elevation as per 310 CMR 22.21 (2)(b)6;
 - h) Impervious cover on any lot, including buildings, structures, driveways, parking areas, gravel areas, patios, storage areas or any other impermeable surfaces that exceed 15% percent in the Residential District of land area or 9801 square feet;
 - i) Sewage treatment facilities but not individual sewage disposal systems;
 - j) Underground storage of petroleum or similar product.
 - k) Commercial photographic processing;
 - l) Commercial exterior storage of sodium chloride, calcium chloride, chemically treated abrasives or other chemically treated abrasives or other chemicals used for snow and ice removal;
 - m) Industrial uses which discharge process wastewater on-site.
3. Uses Requiring Special Permit:
- a) Commercial or industrial uses which are permitted in the underlying zone, provided that the development will not increase any loading of contaminants to the groundwater. All such commercial and industrial uses may be constructed and operated in such a manner as to discharge no wastewater except normal sanitary waste to subsurface disposal systems;
 - b) Any use not mentioned above or in the sections of these Bylaws shall be By a Special Permit;
 - c) Replacement, rehabilitation and modification of pre-existing non-conforming uses, in accordance with the Town of Berkley's Zoning Bylaws. The Special Permit Granting Authority shall not grant such approval unless it shall find that such expansion shall not increase the risk of contamination of groundwater.

F. Special Permits and Procedure:

After public notice and public hearing per M.G.L. Chapter 40A, Section 9, and after due consideration of any reports and recommendations of other boards or agents, the Planning Board may grant a Special Permit provided only that the proposed use or work:

- a) Is in harmony with the purpose and intent of this Bylaw and will promote the protection of this district;
- b) Is appropriate to the natural topography, soils and other characteristics of the site to be developed;
- c) Will not have, during construction and after, an adverse environmental impact on an aquifer or its recharge area;
- d) Will not adversely affect an existing water supply.

G. Right of Appeal:

Any person aggrieved by a decision of the Planning Board may seek judicial review thereof in accordance with M.G.L. Chapter 40A, Section 17.

H. Invalidity

The invalidity of any section, sentence or provision of this Bylaw shall not affect the validity on any other section, sentence, or provision thereof

SECTION 13: ACCESSORY APARTMENTS

1. Purpose and Intent:

The intent of this subsection is to allow accessory apartments in owner-occupied single-family dwellings. Its purpose is to:

- a. Add moderately-priced rental units to the housing stock to meet the needs of small households, both young and old;
- b. Make housing units available to moderate-income households who might otherwise have difficulty finding housing in the town;
- c. Provide older homeowners with a means of obtaining rental income, companionship, security and services, and thereby enabling them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave.

2. Accessory Apartments by Special Permit:

The Planning Board may grant a Special Permit for the alteration of a single family dwelling to include an accessory apartment in any residential district, subject to the following provision

- a. The apartment will be a complete, separate housekeeping unit that functions as a separate unit from the principal dwelling.
- b. The accessory apartment shall not exceed 900 s.f. or fifty percent of the living space of the main dwelling. The apartment shall be built to the smaller square foot dimension. Garages and basements shall not be included in the calculation for the living space. The alterations shall be limited to only one structure on the lot, the principal dwelling. Accessory apartments shall contain the following:
The unit shall be provided with a separate closet.
 1. The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a clear working space of not less than 30 inches in front.
 2. The unit shall be provided with a separate bathroom containing a water closet, lavatory and bathtub or shower.
- c. Any new outside entrance to serve an accessory apartment shall be located on the side or in the rear of the building.
- d. The apartment shall not be held in, or transferred into separate ownership from the principal dwelling under a condominium form of ownership, or otherwise.
- e. At least one parking space is available for use by occupants of the apartment.
- f. The record owner of the lot shall reside on the property, in either the principal dwelling or the accessory apartment.
- g. The sanitary disposal system for the accessory apartment and principal structure shall comply with the applicable Berkley Board of Health and Title V regulations.
- h. Utilities such as water, electric, and gas necessary for the accessory apartment shall be extensions of the existing utilities serving the principal single-family dwelling. No new utility services or meters shall be installed for the use of the accessory apartment.
- i. The Special Permit shall be issued to the record owner of the lot and shall specify that the owner must occupy one of the dwelling units.
- j. The Special Permit shall be recorded at the Registry of Deeds or Land Court against the title of the record owner of the lot.
Prior to the issuance of a building permit, the applicant must submit proof of the recording of the special permit
- k. Prior to the issuance of a permit, the owner(s) must notify the Building Inspector in writing that the owner will occupy one of the dwelling units on the premises as the owner's permanent/primary residence, except for bona fide temporary absence

- l. When a structure which has received a Permit for an accessory apartment is sold, the new owner(s), if they wish to continue to exercise the Permit, must within thirty (30) day of the sale, submit a sworn and notarized written statement to the Building Inspector stating that they will occupy the principal dwelling unit on the premises as their primary residence. This statement shall be listed as a condition on any permits that are issued under this Section.
- m. No more than one accessory (1) apartment shall be allowed within a single-family dwelling.
- n. Amnesty:

Owners of existing dwellings with an un-permitted accessory apartment shall have one year of amnesty from the effective date of this section to obtain a Special Permit from the Planning Board. By filing the Application for Special Permit for the accessory unit, all owners consent to an inspection without a warrant upon reasonable notice by the Building Inspector and the Fire Department to ensure compliance with all terms of this section and conditions imposed upon the grant of the Special Permit

ARTICLE 22

ANIMAL CONTROL BYLAW

SECTION 1. LICENSE FEES

The annual fee for every dog license and kennel license shall be set by January 1st of each year by the Board of Selectmen. No fee shall be charged for a license for a dog especially trained to lead or serve as a guide dog or service dog. No license fee or part thereof shall be refunded because of the subsequent death, loss, spaying, or removal from the Commonwealth, or other disposal of the dog, nor shall any license fee or part thereof paid by mistake be paid or recovered back after it has been paid over to the Town Treasurer.

All kennels shall be subject to annual inspections by the and Animal Control Officer prior to issuing license and as deemed necessary.

- Kennel Licenses:
- a. Four dogs or less shall be issued by the Town Clerk.
 - b. Five to Ten dogs for non-commercial use shall be approved the by the Animal Control Officer prior to issuing the license.
 - c. Facilities housing Eleven to Fifteen dogs or more for either commercial or non-commercial use shall be approved by the Animal Control Officer before issuance.

SECTION 2. DISTURBING THE PEACE

No person shall own or keep in the Town any dog which by biting, excessive barking, howling or in any other manner disturbs the quiet of the public or creates a public nuisance.

SECTION 3. COMPLAINT OF NUISANCE

If any person shall make a complaint in writing to the Animal Control Officer that any dog owned or harbored within his jurisdiction is a nuisance by reason of vicious disposition or excessive barking or other disturbance, the Animal Control Officer shall investigate such complaint, which

may include an examination under oath of the complainant, and submit a written report to the Selectmen of his findings and recommendations, together with the written complaint. Upon receipt of such report and examination of the complainant under oath, the Selectmen may make such order concerning the restraint; muzzling or disposal of such dog as may be deemed necessary. The Animal Control Officer, after investigation, may issue an interim order that such dog be restrained or muzzled for a period not to exceed fourteen (14) days to enable the Selectmen to issue their order following receipt of the report of the Animal Control Officer. If the Selectmen fail to act during the period of the interim order, upon expiration of the period of the interim order automatically is vacated.

SECTION 4 . RESTRAINTS OR MUZZLING

The Animal Control Officer may restrain or muzzle, or issue an interim order to restrain or muzzle, for a period not to exceed fourteen (14) days, any dog for any of the following reasons:

For having bitten or threatened any person.

If found at large or unmuzzled, as the case may be, which an order for the restraint of such dog is in effect.

If found in a school, schoolyard or public recreational area.

For having killed or maimed or otherwise damaged any domestic animal.

For chasing any vehicles (including bicycles) upon any public way or way open to public travel in Town.

For any violation of Section 2.

Upon restraining or muzzling, or issuing an interim order to restrain or muzzle, the Animal Control Officer shall submit in writing to the Selectmen a report of his action and the reasons thereof. Upon receipt of such report, the Selectmen may make such order concerning the restraint; muzzling or disposal of such dog as may be deemed necessary. If the Selectmen fail to act upon the report during the period the dog is restrained or muzzled, upon expiration of the period, the interim order is automatically vacated.

SECTION 5 . APEAL OF RESTRAINT OR MUZZLING

The owner or keeper of any dog that has been ordered to be restrained or muzzled or has been restrained under this article, may file a request in writing with the Animal Control Officer that the restraining be vacated, or that the dog be released; and after investigation by the Animal Control Officer such officer may vacate such order or release the dog if the order or restraint was imposed by him. If the order was imposed by the Selectmen, the Animal Control Officer shall submit a written report of his investigation with his recommendations to the Selectmen who may vacate such order.

SECTION 6 . FAILURE TO COMPLY

Any owner or keeper of a dog who shall fail to comply with any order of the Animal Control Officer or Selectmen issued pursuant to this article shall be punishable by a fine of twenty-five (\$25.00) dollars.

SECTION 7 . UNLICENSED DOGS

Any dog within the limits of the Town unlicensed or not wearing a valid license tag shall be impounded by the Animal Control Officer and not released until the Pound fees, in accordance with the General Laws, Pickup Fees, Late Licensing Fee (if applicable), are paid and current license obtained from the Town Clerk. The Board of Selectmen shall annually set reasonable Pickup and Pound Fees. Any dog not claimed within seven (7) days will become the property of

the Town and will be either put up for adoption, sent to an approved rescue facility or euthanized according to State guidelines.

- a. The Selectmen shall annually within 10 days after July 1st issue a warrant to the Animal Control Officer or Officers directing him or them to seek out, catch, and confine all dogs within the town which then have not been licensed, collared or harnessed and tagged as required by law.

SECTION 8. ANIMAL CONTROL OFFICER

The Selectmen shall appoint an Animal Control Officer to enforce this bylaw. In the event of the absence of the Animal Control Officer, the Police Department shall make suitable provisions for impounding dogs and strays. The Town shall provide such equipment and means as deemed necessary by the Board of Selectmen for proper enforcement.

SECTION 9. LEASHING OF DOGS

Restraint –

1. No person owning or harboring, keeping, having care, custody or control of a dog, poultry, cattle, sheep, swine, goat, llama, equine or any other fur-bearing animal shall suffer or allow it to run at large in any of the streets or public places in the Town of Berkley or allow it upon the premises of anyone other than the owner or keeper of such animal without permission of the owner or occupant of such premises.

2. No dog shall be permitted in any street or public place within the Town of Berkley unless it is effectively restrained as above defined by a chain or leash.

Defecation or urination by dogs –

1. No person owning or keeping a dog shall permit it to defecate or urinate within the boundaries of any municipally owned playground, part or open space to which the public has access, unless expressly permitted in specially designated areas.

2. No person owning or keeping a dog shall permit it to defecate or urinate upon any street or sidewalk, provided, however, that defecation will not be in violation of this subsection if removed immediately thereafter.

3. No person owning or keeping a dog shall permit it to defecate or urinate on privately owned premises other than the premises of the owner or keeper without the knowledge and consent of the owner or persons in possession of such premises.

4. In any prosecution under this section, the presence of such dog which is unleashed upon the premises other than the premises of the owner or keeper of such dog, shall be prima facie evidence that such knowledge and consent of said owner or person in possession of said premises was not had.

The penalties for violation of any portion of this section shall be in the amount provided by applicable town by-law.

SECTION 10. All dogs, cats and ferrets are required to have current rabies vaccines unless deemed exempt by the Board of Health upon review of a certificate attesting to said exempt status in accordance with G. L. C140, Sec 145B, from a licensed veterinarian.

- a. Any owner, keeper, having care, custody or control of an animal placed under strict confinement by the Animal Inspector shall receive written instructions according to the Commonwealth of Massachusetts rabies protocol and shall be responsible for any and all inspection fees and/or rabies testing. The Selectmen shall annually set reasonable inspection fees.

ARTICLE 23

PERSONNEL BYLAW

SECTION 1. *PURPOSE*

The purpose of this bylaw is to establish fair and equitable personnel policies and a system of personnel administration that ensures uniform application of personnel policies.

SECTION 2. *APPLICATION*

All town departments and positions shall be subject to the provisions of this bylaw except elected positions and employees of the school department. In the event of conflict between a particular personnel rule and a collective bargaining agreement provision or an approved police or fire department regulation, the collective bargaining agreement provisions or police or fire department regulation shall prevail.

SECTION 3. *ADMINISTRATION*

The Personnel Board shall be responsible for the administration of this bylaw and regulations promulgated pursuant to Section 5. The Personnel Board shall be comprised of the Board of Selectman.

Establish written rules and regulations consistent with the purpose and provisions of this bylaw.

- b. Ensure that the Town acts affirmatively in providing opportunities to all persons regardless of sex, age, color, creed, race or national origin for entry level and promotional positions and provides equal treatment in all other aspects of personnel administration.
- c. Maintain a centralized personnel record keeping system.
- d. The Board of Selectmen shall be responsible for all collective bargaining except as exempted by Massachusetts General Law.

SECTION 4. *ESTABLISHMENT OF A PERSONNEL SYSTEM*

A town wide personnel system may be established by the promulgation of regulations pursuant to Section 5. The personnel system shall make use of modern concepts of personnel management.

SECTION 5. *ADOPTION AND AMENDMENT OF REGULATIONS*

The Personnel Board shall promulgate regulations defining the personnel policies and procedures of the Town of Berkley. The personnel regulations shall be adopted or amended as follows:

(a) Regulations may be proposed by any member of the Board of Selectmen, an elected official, department head, Personnel Board or employee.

(b) The Personnel Board shall consider all proposed regulations submitted to them and shall determine if the proposed regulation has merit. If the Personnel Board determines that a regulation has merit, a public hearing shall be held.

(c) Sufficient notice of the public hearing shall be provided by posting a notice of the public hearing in conspicuous locations in the principal work locations of employees indicating the substance of the proposed regulation.

(d) The Personnel Board shall consider comments received and may adopt (with or without modifications) or reject regulations. The effective date of the regulation shall be stated.

(e) Copies of the compiled regulations shall be provided to all department heads and available for inspection by employees.

SECTION 6. PROBATIONARY PERIOD

An employee shall serve a probationary period of six months following appointment, provided, however, the police department may provide for a greater period as specified in departmental regulations. Such employee may be dismissed, suspended or demoted at any time during the probationary period at the discretion of the appointing authority and shall not be eligible for an appeal of such action.

SECTION 7. ABOLITION OF A POSITION

A position may be abolished or the number of personnel reduced for reasons of economy or for reasons of reorganization.

SECTION 8. SEVERABILITY

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

SECTION 9. EFFECTIVE DATE

This bylaw shall take effect on the date of approval of the Attorney General.

Note: MGL 40, S 32 states a by-law takes effect once it is approved by Attorney General, posted and published by the Town Clerk in accordance with Section 32.

ARTICLE 24

LICENSES AND PERMITS OF DELINQUENT TAXPAYERS

SECTION 1

The Town Collector or other town official responsible for records of all municipal taxes, assessments, betterments, and other municipal charges, hereinafter referred to as the Town Collector, shall annually furnish to each department, board or commission, hereinafter referred to as the licensing authority, that issues licenses or permits, including renewals and transfers, a list of any person, corporation or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes, fees, assessments, betterments, or other municipal charges for not less than a twelve (12) month period, and that such party has not filed in good faith a pending application or an abatement of such tax or pending petition before the appellate tax board.

SECTION 2

The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfer, of any party whose name appears on said list furnished to the licensing authority

from the Town Collector; provided, however, that written notice is given to the party and the Town Collector and the party is given a hearing not earlier than fourteen (14) days after said notice. Said list shall be prima facie evidence for 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 purpose of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license denial, revocation or suspension. Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the licensing authority receives a certificate issued by the Town 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 town as the date of issuance of said certificate.

SECTION 3

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 suspension or revocation of said license or permit; provided, however, that the holder be given notice of and a hearing is held as required by Section 2 hereof.

SECTION 4

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 members of his immediate family, as defined in Section 1 of Chapter 268A of the Massachusetts General Laws, in the business or activity conducted in or on said property.

SECTION 5

This Article shall not apply to licenses and permits for open burning; bicycle permits; children work permits; sales of articles for charitable purposes; licenses to allow clubs or associations to dispense food or beverages; dog licenses; fishing, hunting and trapping licenses; marriage licenses and permits for theatrical events or public exhibitions.

ARTICLE 25

PROTECTION OF WATER SUPPLIES FROM GASOLINE AND OTHER POLLUTION

Underground Storage Tank Installation and Inspections in the Town of Berkley shall be under the supervision of the Chief of the Fire Department.

All inspections and installations shall be in accordance with the Federal Energy Acts of 2005 mandates as well as Massachusetts Underground Storage Regulations (527 CMR 9) and in accordance with the Rules and Regulations of the Chief of the Town of Berkley Fire Department. Penalties

Whosoever violates any provisions of this By-Law shall be subject to a fine of \$100.00. Each day of noncompliance with the orders of the Chief of the Fire Department shall constitute a separate offense and shall be fined accordingly

ARTICLE 26

FLOOD PLAIN DISTRICT BYLAW

SECTION 1. STATEMENT OF PURPOSE

The purposes of the Flood Plain District are to:

1. Ensure public safety through reducing the threats to life and personal injury
2. Eliminate new hazards to emergency response officials
3. Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding
4. Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
5. Eliminate costs associated with the response and cleanup of flooding conditions;
6. Reduce damage to public and private property resulting from flooding waters.

SECTION 2. FLOOD PLAIN DISTRICT BOUNDARIES AND BASE FLOOD ELEVATION AND FLOOD WAY DATA FLOOD PLAIN DISTRICT BOUNDARIES

The Flood Plain District is herein established as an overlay district. The District includes all special flood hazard areas designated within the Town of Berkley designated as Zone A, AE, or VE on the Bristol County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of National Flood Insurance Program. The map panels of the Bristol County FIRM that are wholly or partially within the Town of Berkley are panel numbers 25005C0251F, 25005C0252F, 25005C0256F, 25005C0257F, 25005C0258F, and 25005C0259F dated July 7, 2009; and panel numbers 25005C0253G, 25005C0254G, 25005C0261G, 25005C0262G, and 25005C0263G dated July 16, 2014. The exact boundaries of the district may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Bristol County Flood Insurance Study (FIS) report dated July 16, 2014. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official, and Conservation Commission.

BASE FLOOD ELEVATION AND FLOOD WAY DATA

1. **FLOOD WAY DATA.** In Zone A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, Local, or other flood way data shall be used to prohibit encroachments in flood ways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. **BASE FLOOD ELEVATION DATA.** Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is lesser, within unnumbered A zones

SECTION 3. NOTIFICATION OF WATERCOURSE ALTERATION

Notify, in a riverine situation, the following, of any alteration or relocation of a watercourse:
Adjacent Communities

NFIP State Coordinator - Massachusetts Department of Conservation and Recreation, 251 Causeway St, Suite 600-700 - Boston, MA 02114-2104
NFIP Program Specialist – Federal Emergency Management Agency- Region I – 99 High St., 6th Floor, Boston, MA 02110.

SECTION 4. REFERENCE TO EXISTING REGULATIONS

The Flood Plain District is established as an overlay district to all other districts. All development in the district, including structural and non-structural activities, whether permitted by right or by Special Permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

- Section of the Massachusetts Building Code which addresses flood plain and coastal high hazard areas (currently 780 CMR);
- Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- Inland Wetlands Restriction, DEP (currently 310 CMR 13.00)
- Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

Any variance from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

OTHER USE REGULATIONS

1. Within Zones AH and AO on the FIRM, require adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.
2. In Zone AE, along water courses that have a regulatory floodway within the Town of Berkley designated on the Bristol County FIRM, encroachments are prohibited in the regulatory flood way which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
3. Review all subdivision proposals to assure that; a). such proposals minimize flood damage; b) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and c) adequate drainage is provided to reduce exposure to flood hazards.
4. Existing contour intervals of site and elevations of existing structures must be included on the plan proposal.
5. There shall be established a “routing procedure” which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Town Engineer, Building Inspector, Highway Surveyor and the Board of Selectmen for comments which will be considered by the appropriate permitting board prior to issuing permits.
6. Man-made alteration of sand dunes within Zone VE which would increase potential damage are prohibited.
7. All new construction within Zone VE must be located landward of the reach of mean high tide.

SECTION 5. PERMITTED USES

The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged provided they are permitted in the underlying district.

- Agricultural uses such as farming, horticulture, truck farming, etc.
- Forestry and nursery uses.
- Outdoor recreational uses, including fishing, boating, play areas.
- Conservation of water, plants, wildlife.
- Wildlife management areas, foot, bicycle, and/or horse paths.

- Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
- Buildings lawfully existing prior to the adoption of these provisions.
- Construction of single family dwellings and such other structures as may be permitted by Town of Berkley Zoning Bylaws.

SECTION 6. DEFINITIONS

AREA OF SPECIAL FLOOD HAZARD is the land in the flood plain within a community subject to one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, A1-30, AE, A99.

BASE FLOOD means the flood having a one percent chance of being equaled or exceeding in any given year.

DEVELOPMENT means any manmade change to improved or unimproved real estate, including but not limited to building other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

DISTRICT means flood plain district.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the Flood hazard areas.

FLOOD BOUNDARY AND FLOOD WAY MAP means an official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100 year and 500 year floods and the 100 year flood way. (For maps done in 1987 and later, the flood way designation is included on the FIRM).

FLOOD HAZARD BOUNDARY MAP (FHBM) means an official map of a community issued by FEMA where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E.

FLOOD INSURANCE RATE MAP (FIRM) means an official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY means an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevation, or an examination, evaluation and determination of flood related erosion hazards.

FLOOD WAY means the channel of river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

LOWEST FLOOR means the lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

MANUFACTURED HOME a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term "manufactured home" also includes park trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, or other similar vehicles.

MANUFACTURED HOME PARK OR SUBDIVISION means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NEW CONSTRUCTION means, for flood plain management purposes, structures for which the “start of construction” commenced on or after the effective date of a flood plain management regulation adopted by a community. For the purpose of determining insurance rates, “new construction” means structures for which the “start of construction “ commenced on or after the effective date of an initial FIRM (7/3/78).

ONE HUNDRED YEAR FLOOD see Base Flood.

REGULATORY FLOOD WAY see Flood Way.

SPECIAL FLOOD HAZARD AREA means an area having special flood and/or flood related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99 or AH.

START OF CONSTRUCTION includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, or floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE means, for flood plain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground. Structure for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site.

For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

SUBSTANTIAL DAMAGE means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construct” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed.

ZONE A means the 100 year flood plain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local or other data.

ZONE A1-30 AND ZONE AE (for new revised maps) means the 100 year flood plain where the base flood elevation has been determined.

ZONE AH and ZONE AO means the 100 year flood plain with flood depths of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

ZONE A99 means areas to be protected from the 100 year flood by federal flood protection system under construction. Base flood elevations have not been determined.

ZONES B, C, and X are areas identified in the community Flood Insurance Study as areas of moderate and minimal flood hazard. Zone X replaces Zones B and C on new and revised maps

ARTICLE 27

CAPITAL IMPROVEMENT PLANNING COMMITTEE

SECTION 1

The Town of Berkley shall establish and appoint a committee to be known as the Capital Improvement Committee, composed of five registered voters from the Town of Berkley. No member may hold any other elective or appointed town position during his term of office. Said committee shall be appointed by the Chairmen of the Finance Committee, Moderator, and Selectmen.

SECTION 2

Each member of this committee shall service a three-year overlapping term except for the first initial appointment two members shall service a 3-year term, two shall service a two-year term, and one a one-year term. The committee shall appoint it's own officers. Such officers shall consist of a Chairperson and a secretary. Each office shall be voted annually.

SECTION 3

The committee shall study proposed capital projects involving major non-recurring tangible assets and projects which:

- are purchased or undertaken at intervals of not less than three years;
- have a useful life of at least three years; and
- cost over \$5,000.

All officers, boards and committees, including the Selectmen and School Committee, shall by January 30th of each year, given to the Committee on forms prepared by it, information concerning all anticipated projects requiring Town Meeting action during the ensuing ten years. The Committee shall consider the relative need, impact, time and cost of these expenditures and the effect each will have on the financial position of the Town. No appropriation shall be voted for a capital improvement required by a department, board of commission, unless the proposed capital improvement is considered in the Committee's report, or the Committee shall first have submitted a report to the Finance Committee explaining the omission. No report is required if the committee does not have a quorum to conduct business, or to take any other action relative thereto.

SECTION 4

The Committee shall prepare an annual report recommending a Capital Improvement Program including recommended capital improvements for the following ten fiscal years. The report shall be submitted to the Finance Committee for its consideration and approval. The Committee shall submit it's approved Capital Budget to the Annual Town Meeting for adoption by the town.

SECTION 5

Such Capital Improvement Program, after it's adoption, shall permit the expenditure on projects included therein of sums from departmental budgets for surveys, architectural or engineering advice, options or appraisals; but no such expenditure shall be incurred on projects which have not been so approved by the Town through the appropriation of sums in the current year or in prior years, or for preliminary planning projects to be undertaken more than five years in the future.

SECTION 6

The committee's report shall be published and made available in a manner consistent with the Finance Committee's operation budget report. The committee shall deposit its original report with the Town Clerk.

ARTICLE 28

"RESERVED FOR FUTURE USE"

ARTICLE 29

SEPARATION OF RECYCLABLE MATERIALS

DISPOSAL OF RECYCLABLE MATERIAL IN TRASH.

The disposal of any recyclable material in any trash generated by the residents of the Town of Berkley and its municipal buildings, going to any landfill within the Town of Berkley, or to any waste disposal facility outside the Town of Berkley, if such disposal is provided by the Town, is prohibited.

DETERMINATION OF WHAT CONSTITUTES RECYCLABLE MATERIALS.

They are as follows: Antifreeze, automobile and household batteries, corrugated cardboard, fluorescent light bulbs, glass –clear and colored food and beverage containers, leaves and grass clippings, magazines, metal –any item more than 50% metal, mixed paper –excluding plastic coated, newspapers, paint –including thinners, phone books, plastic bags – any number, plastic - #1 (HDPE and #2 (PETE), textiles, used oil and used oil filters, white goods – washers, dryers, freezers, rangers, refrigerators, air conditioners.

The total amount of materials recycled must meet or exceed those standards as set forth by state mandate. The committee reserves the right to temporarily remove any item from the above list due to market restrictions or environmental regulations.

VIOLATIONS AND PENALTIES.

Failure to comply with any of the provisions of the Article shall result in a fine of \$25.00. Habitual violations (more than three in any one fiscal year) may result in the Recycling and Solid Waste Committee revocation of violator(s) disposal permit.

ARTICLE 30

COAL ASH PROHIBITION

SECTION 1. COAL ASH DUMPING PROHIBITED

Ash produced from the nonresidential combustion of coal, including but not limited to coal ash, fly ash, and bottom ash, is prohibited from being disposed of, stored, stockpiled, or used as fill material for any and all purposes, within the Town of Berkley. This prohibition shall not effect the internal storage of coal ash or its by products for the manufacturing process of concrete.

SECTION 2. DEFINITIONS.

For the purposes of this Chapter of the Bylaws, the following terms and words are given the meanings stated below:

Coal ash. Waste produced from the combustion of coal, including but not limited to fly ash, bottom ash and slag, and including wastes associated with the combustion of coal when added to fly ash, bottom ash or slag.

Fill. A material used to fill a cavity, passage or hole in the ground, or to raise the level of the ground or to alter the grades of the ground.

SECTION 3. ENFORCEMENT.

This bylaw shall be enforced by the board of health. Any violation of this bylaw, or of any order of the board of health pursuant to this bylaw shall be punishable to a fine of not more than three hundred dollars. Each day of noncompliance with this bylaw or of any order of the board of health pursuant to this bylaw shall constitute a separate offense.

ARTICLE 31

TRAFFIC CONTROL BY-LAW

Section 1. The Board of Selectmen shall, in conjunction with the Chief of Police, declare a State of Emergency for any or all town roads or public ways in the town whenever it is deemed necessary for the safety or well being of the citizens of the Town of Berkley.

Section 2. In accordance with MGL, Chapter 85, Section 7B, no person, other than an employee in the service of the commonwealth or town or an employee in the service of an independent contractor acting for the commonwealth or town, shall pile, push, or plow snow or ice onto or across any town road or public way so as to impede the flow of traffic on such way. Whoever violates this section shall be punished by a fine of \$25.00 first offense; \$50.00 second offense; \$100.00 subsequent offenses as stated in Article 10 of the Town of Berkley By-laws.

Section 3. In accordance with MGL, Chapter 40, Section 22B, the Police Chief or his designee, for the purpose of insuring the free flow of traffic or for the purpose of snow and ice control operations on any town road or public way, may, by its own employees or with such other assistance as it may require, remove or cause to be removed to the nearest convenient place any vehicle interfering with such traffic or such operation. Whoever violates this section shall be punished by a fine of \$25.00 first offense; \$50.00 second offense; \$100.00 subsequent offenses as stated in Article 10 of the Town of Berkley By-laws.

Section 4. No person shall permit any vehicle under his care or control to stand across any public highway or street in such a manner as to obstruct travel over the same for an unnecessary length of time. No person shall stop with a vehicle in any public street so near to another vehicle as to obstruct public travel, and no person shall stop with any vehicle upon any crossing in any street or highway in the town. Whoever violates this section shall be punished by a fine of \$25.00 first offense; \$50.00 second offense; \$100.00 subsequent offenses as stated in Article 10 of the Town of Berkley By-laws.

Section 5. No person shall occupy any part of the public street as storage room for any vehicle for a period exceeding forty-eight hours. Whoever violates this section shall be punished by a fine of \$25.00 first offense; \$50.00 second offense; \$100.00 subsequent offenses as stated in Article 10 of the Town of Berkley By-laws.

Section 6. Unless designated by signage, there shall be no public parking on any area known as the Berkley Common until and unless the Board of Selectmen grants a permit. At time of issuance of said permit, the Board of Selectmen shall in conjunction with the Police Chief or his designee and the Highway Surveyor or his designee shall impose specific parking regulations. Whoever violates this section shall be punished by a fine of \$25.00 first offense; \$50.00 second offense; \$100.00 subsequent offenses as stated in Article 10 of the Town of Berkley By-laws.

Section 7. "Water Flow onto Streets". No person shall pump, pipe, channel or divert water by any means in such manner as to cause it to flow onto any street or way where it may adversely impact the flow of vehicular or pedestrian traffic or create a hazardous traffic condition.

ARTICLE 32

STORM WATER BYLAW

Land development projects and other land use conversions, and their associated changes to land cover, permanently alter the hydrologic response of local watersheds and increase storm water runoff rates and volumes, which in turn increase flooding, stream channel erosion, and sediment transport and deposition, and decrease groundwater recharge;

Land development projects and other land use conversions also contribute to increased nonpoint source pollution and degradation of receiving waters;

The impacts of post-development storm water runoff quantity and quality can adversely affect public safety, public and private property, surface water drinking water supplies, groundwater

resources, drinking water supplies, recreation,, aquatic habitats, fish and other aquatic life, property values and other uses of lands and waters;

These adverse impacts can be controlled and minimized through the regulation of storm water runoff quantity and quality from new development and redevelopment, by the use of both structural and nonstructural Best Management Practices;

Localities in the Commonwealth of Massachusetts are required to comply with a number of both State and Federal laws, regulations and permits which require a locality to address the impacts of post-development storm water runoff quality and nonpoint source pollution.

Therefore, the Town of Berkley has established this storm water management bylaw to provide reasonable guidance for the regulation of post-development storm water runoff for the purpose of protecting local water resources from degradation. This bylaw regulates the post construction storm water controls for both new and re-development projects.

It has been determined that it is in the public interest to regulate post-development storm water runoff discharges in order to control and minimize increases in storm water runoff rates and volumes, post-construction soil erosion and sedimentation, stream channel erosion, and nonpoint source pollution associated with post-development storm water runoff.

1.0 PURPOSE

A) The purpose of this Bylaw is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-development storm water runoff and nonpoint source pollution associated with new development and redevelopment. It has been determined that proper management of post-development storm water runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, environment and general welfare of the public, protect water and aquatic resources and promote groundwater recharge to protect surface and groundwater drinking supplies. This Bylaw seeks to meet that purpose through the following objectives:

1. Establish decision-making processes surrounding land development activities that protect the integrity of the watershed and preserve the health of water resources;

2. Require that new development, redevelopment and all land conversion activities maintain the after-development runoff characteristics as equal to or less than the pre-development runoff characteristics in order to reduce flooding, stream bank erosion, siltation, nonpoint source pollution, property damage, and to maintain the integrity of stream channels and aquatic habitats;

3. Establish minimum post-development storm water management standards and design criteria for the regulation and control of storm water runoff quantity and quality; Establish minimum design criteria for the protection of properties and aquatic resources downstream from land development and land conversion activities from damages due to increases in volume, velocity, frequency, duration, and peak flow rate of storm water runoff; Establish minimum design criteria for measures to minimize nonpoint source pollution from storm water runoff which would otherwise degrade water quality;

4. Establish design and application criteria for the construction and use of structural storm water control facilities that can be used to meet the minimum post-development storm water management standards;

5. Encourage the use of nonstructural storm water management, storm water better site design practices or "low-impact development practices", such as reducing impervious cover and the preservation of green space and other natural areas, to the maximum extent practicable; Coordinate site design plans, which include green space, with the Town's green space protection plan;

6. Establish provisions for the long-term responsibility for and maintenance of structural storm water control facilities and nonstructural storm water management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety;

7. Establish provisions to ensure there is an adequate funding mechanism, including surety, for the proper review, inspection and long-term maintenance of storm water facilities implemented as part of this Bylaw;

8. Establish administrative procedures for the submission, review, approval or disapproval of storm water management plans, and, for the inspection of approved active projects, and long-term follow up; Establish certain administrative procedures and fees for the submission, review, approval, or disapproval of storm water plans, and the inspection of approved projects.

B) Nothing in this Bylaw is intended to replace the requirements of the Town of Berkley Zoning Bylaws, the Town of Berkley General Wetlands Protection Bylaw, or any other Bylaw that may be adopted by the Town of Berkley. Any activity subject to the provisions of the above-cited Bylaws must comply with the specifications of each.

2.0 DEFINITIONS

The following definitions shall apply in the interpretation and implementation of this Bylaw. Additional definitions may be adopted by separate regulation:

ALTER: Any activity, which will measurably change the ability of a ground surface area to absorb water or will change existing surface drainage patterns. Alter may be similarly represented as "alteration of drainage characteristics," and conducting land disturbance activities."

BEST MANAGEMENT PRACTICE (BMP): Structural, non-structural and managerial techniques that are recognized to be the most effective and practical means to prevent and/or reduce increases in storm water volumes and flows reduce point source and nonpoint source pollution, and promote storm water quality and protection of the environment. "Structural" BMPs are devices that are engineered and constructed to provide temporary storage and treatment of storm water runoff. "Nonstructural" BMPs use natural measures to reduce pollution levels, do not require extensive construction efforts, and/or promote pollutant reduction by eliminating the pollutant source.

BETTER SITE DESIGN: Site design approaches and techniques that can reduce a site's impact on the watershed through the use of nonstructural storm water management practices. Better site design includes conserving and protecting natural areas and green space, reducing impervious cover, and using natural features for storm water management.

GENERAL STORMWATER MANAGEMENT PERMIT (GSMP): A permit issued for an application that meets a set of pre-determined standards outlined in the Regulations to be adopted by the Planning Board under Section 4 of this Bylaw. By meeting these predetermined standards, the proposed project will be presumed to meet the requirements and intent of this Bylaw.

HOTSPOT: Land uses or activities with higher potential pollutant loadings, such as auto salvage yards, auto fueling facilities, fleet storage yards, commercial parking lots with high intensity use, road salt storage areas, commercial nurseries and landscaping, outdoor storage and loading areas of hazardous substances, or marinas.

MASSACHUSETTS STORMWATER MANAGEMENT POLICY: The Policy issued by the Department of Environmental Protection, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act (G.L. c. 131 § 40 and Massachusetts Clean Waters Act G.L. c. 21, §. 2-- 56. The Policy addresses storm water impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

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

NONPOINT 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.

PERSON: Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town Bylaws, administrative agency, public or quasi-public corporation or body, the Town of Berkley, and any other legal entity, its legal representatives, agents, or assigns.

PRE-DEVELOPMENT: The conditions that exist at the time that plans for the land development of a tract of land are submitted to the Planning Board. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first plan submission shall establish pre-development conditions.

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. Post-development refers to the phase of a new development or redevelopment project after completion, and does not refer to the construction phase of a project.

RECHARGE: The replenishment of underground water reserves.

REDEVELOPMENT: Any construction, alteration, or improvement exceeding land disturbance of Five Thousand (5,000) square feet, where the existing land use is commercial, industrial, institutional, or multi-family residential.

BOARD OF HEALTH: The Board of Health for the Town of Berkley or its authorized agent(s) is responsible for coordinating the review, approval and permit process as defined in this Bylaw. Other Boards and/or departments, participate in the review process as defined in the 'Storm Water Regulations adopted by the Town of Berkley.

STORMWATER CREDITS: A form of incentive for developers to promote conservation of natural and open space areas. Projects that comply with prescribed requirements are allowed reductions in storm water management requirements when they use techniques to reduce storm water runoff at the site.

STORMWATER MANAGEMENT PERMIT (SMP): A permit issued by the Board of Health, after review of an application, plans, calculations, and other supporting documents, which is

designed to protect the environment of the Town from the deleterious affects of uncontrolled and untreated storm water runoff.

3.0 AUTHORITY

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34, and as authorized by the residents of the Town of Berkley at Town Meeting, dated June 2, 2008.

4.0 ADMINISTRATION

A) The Board of Health shall administer, implement and enforce this Bylaw. The Board of Health may delegate any powers granted to or duties imposed upon the Board of Health in writing to its employees or agents.

B) Storm water Regulations. The Board of Health may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), procedures and administration of this Storm Water Management Bylaw by majority vote of the Board of Health, after conducting a public meeting to receive comments on any proposed revisions. Public notice of the meeting date will meet the requirements of the Massachusetts General Laws and any relevant town bylaws. After public notice and a public meeting, the Board of Health may promulgate rules and regulations to effectuate the purposes of this Bylaw. Failure by the Board of Health to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this Bylaw.

C) Storm Water Management Manual. The Board of Health will utilize the policy, criteria and information including specifications and standards of the latest edition of the Massachusetts Storm Water Management Policy, or approved local equivalent, for execution of the provisions of this Bylaw. This Policy includes a list of acceptable storm water treatment practices, including the specific design criteria for each storm water practice. The Policy may be updated and expanded periodically, based on improvements in engineering, science, monitoring, and local maintenance experience. Unless specifically altered in the storm water regulations, storm water management practices that are designed, constructed, and maintained in accordance with these designs and sizing criteria will be presumed to be protective of Massachusetts water quality standards.

D) General Permit. The Board of Health shall have the authority to develop a General Storm Water Management Permit (GSMP) for specific types of projects, such as, without limitation Construction of a Deck, Patio, Retaining Wall, Existing Driveway Expansion, Shed, Swimming Pool, Tennis or Basketball Court. Any such General Storm Water Management Permit Requirements shall be defined and included as part of any Storm Water Regulations promulgated as a result of this Bylaw.

E) Actions by the Board of Health. The Board of Health may take any of the following actions as a result of an application for a Storm Water Management Permit as more specifically defined as part of Storm Water Regulations promulgated as a result of this Bylaw: Approval, Approval with Conditions, Disapproval, or Disapproval without Prejudice.

F) Appeals of Action by the Board of Health. A decision of the Board of Health shall be final.

G) Storm Water Credit System. The Board of Health may adopt, through the Regulations authorized by this Storm Water Management Bylaw, a Storm Water Credit System. This credit system will allow applicants the option, if approved by the Board of Health to take credit for the use of storm water better site design practices to reduce some of the requirements specified in

the criteria section of the Regulations. Failure by the Board of Health to promulgate such a credit system through its Regulations or a legal declaration of its invalidity by a court shall not act to suspend or invalidate the effect of this Bylaw.

5.0 APPLICABILITY

A) This Bylaw shall be applicable to all new development and redevelopment, including, but not limited to, site plan applications, subdivision applications, grading applications, land use conversion applications, any activity that will result in an increased amount of storm water runoff or pollutants flowing from the a parcel of land, or any activity that will alter the drainage characteristics of a parcel of land, unless exempt pursuant to Section 5.B) of this Bylaw. All new development and redevelopment under the jurisdiction of this Bylaw as prescribed in this Bylaw shall be required to obtain a Storm Water Management Permit.

B) Exemptions

Discharge or flow resulting from fire fighting activities.

The following non-storm water discharges or flows are exempt from the prohibition of non storm waters 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, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
9. Discharge from landscape irrigation or lawn watering;
10. Water from individual residential car washing;
11. Discharge from dechlorinated swimming pool water (less than one 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. Non-toxic dye testing, provided verbal notification is given to the Board of Health prior to the time of the test;
14. Non-storm water discharge permitted under an NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations;
15. Discharge for which advanced written approval is received from the Board of Health as necessary to protect public health, safety, welfare or the environment.

6.0 PROCEDURES

Permit Procedures and Requirements shall be defined and included as part of any rules and regulations promulgated as permitted under Section 4 of this Bylaw.

7.0 ENFORCEMENT

The Board of Health or an authorized agent of the Board of Health shall enforce this Bylaw, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations. Enforcement shall be further defined and included as part of any Storm water regulations promulgated as permitted under Section 4 of this Bylaw

8.0 NOTIFICATION OF SPILLS

Notwithstanding other requirements of local, state or federal law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into the storm water, the storm drainage system, or waters of the Commonwealth and United States, said person shall take all necessary steps to ensure containment and cleanup of such release. In the event of such a release of oil or hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall immediately notify the Board of Health, as the authorized enforcement agency, in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the Board of Health within three (3) business days of the in person or telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

9.0 SEVERABILITY

The invalidity of any section, provision, paragraph, sentence, or clause of this Bylaw shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

ARTICLE 33

PUBLIC CONSUMPTION OF MARIJUANA OR TETRAHYDROCANNABINOL

A. No person, whether in or upon a vehicle, motor vehicle, conveyance, or on foot, shall burn, smoke, ingest, or otherwise use or consume marijuana or tetrahydrocannabinol (as defined in M.G.L. c. 94C, Sec 1, as amended) while in or upon any area owned by or under the control of the Town, including, but not limited to, any street, sidewalk, public way, footway, passageway, stairs, bridge, park, playground, beach, recreation area, boat landing, public building, school, school grounds, cemetery, or parking lot; or in or upon any place to which the public has a right of access as invitees or licensees.

B. Any marijuana or tetrahydrocannabinol burned, smoked, ingested or otherwise used or consumed in violation of this bylaw shall be seized, held, and disposed of in accordance with G.L. c. 94C, Sec 47A.

C. Whoever is found in violation of this bylaw shall, when requested be an official authorized to enforce this bylaw, state his true name and address to said official.

D. This bylaw may be enforced through any lawful means in law or in equity including, but not limited to, enforcement by criminal indictment or complaint pursuant to G.L. c. 40, Sec 21, or by non-criminal disposition pursuant to G.L. c. 40, Sec 21D, by the Board of Selectmen, the Town Administrator, or their duly authorized agents, or any police officer.

E. The fine for a violation of this bylaw shall be three hundred dollars (\$300.00) for each offense. A penalty imposed under this bylaw shall be in addition to any civil penalty imposed under G.L. c. 94C, Sec 32L

ARTICLE 34

OPEN BURNING

All outdoor burning in the Town of Berkley shall be in accordance with the Rules & Regulations set by the Fire Chief of the Town of Berkley.

PROHIBITED ACTS. All outdoor burning of any materials, with the exception of fires used in the preparation of food or outdoor fire pits or authorized by a permit issued by the Fire Department is hereby prohibited.

VIOLATIONS & PENALTIES. Violations of this Bylaw shall be punishable by a fine of \$25.00 for the first offense, \$50.00 for the second offense, and \$100 for each subsequent offense

ARTICLE 35

REVOLVING FUNDS

SECTION 1. PURPOSE

This by-law establishes and authorizes revolving funds for use by Town departments, boards, committees, agencies or officers in connection with the operation of programs or activities that generate fees, charges or other receipts to support all or some of the expenses of those programs or activities. These revolving funds are established under and governed by General Laws Chapter 44, § 53E½.

SECTION 2. EXPENDITURE LIMITATIONS

A. A department or agency head, board, committee or officer may incur liabilities against and spend monies from a revolving fund established and authorized by this by-law without appropriation subject to the following limitations:

1. Fringe benefits of full-time employees whose salaries or wages are paid from the fund shall also be paid from the fund.
2. No liability shall be incurred in excess of the available balance of the fund.
3. The total amount spent during a fiscal year shall not exceed the amount authorized by Town meeting on or before July 1 of that fiscal year, or any increased amount of that authorization that is later approved during that fiscal year by the select board and finance committee.

SECTION 3. INTEREST

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

SECTION 4. PROCEDURES AND REPORTS

Except as provided in General Laws Chapter 44, § 53E½ and this by-law, the laws, charter provisions, by-laws, rules, regulations, policies or procedures that govern the receipt and custody of Town monies and the expenditure and payment of Town funds shall apply to the use of a revolving fund established and authorized by this by-law. The Town accountant shall include a statement on the collections credited to each fund, the encumbrances and expenditures charged to the fund and the balance available for expenditure in the regular report the Town accountant provides the department, board, committee, agency or officer on appropriations made for its use.

SECTION 5. AUTHORIZED REVOLVING FUNDS

A. the Table establishes:

1. Each revolving fund authorized for use by a town department, board, committee, agency or officer,
2. The department or agency head, board, committee or officer authorized to spend from each fund,
3. The fees, charges and other monies charged and received by the department, board, committee, agency or officer in connection with the program or activity for which the fund is established that shall be credited to each fund by the town accountant,
4. The expenses of the program or activity for which each fund may be used,
5. Any restrictions or conditions on expenditures from each fund,
6. Any reporting or other requirements that apply to each fund, and
7. The fiscal years each fund shall operate under this by-law.

FUND	REVENUE SOURCE	AUTHORITY TO SPEND FUNDS	USE OF FUNDS	FISCAL YEARS
<i>Wiring Inspector</i>	Monies paid for fees	Building Inspector	Salaries/advertising Postage/general office/equipment	Fiscal Year 2018 and subsequent years
<i>Gas / Plumbing Inspector</i>	Monies paid for fees	Building Inspector	Salaries/advertising Postage/general office/equipment	Fiscal Year 2018 and subsequent years
<i>Board of Appeals</i>	Monies paid for fees	Board of Appeals	Salaries/advertising postage/general office/and equipment	Fiscal Year 2018 and subsequent years

Planning Board	Monies paid for fees	Planning Board	Salaries/advertising/postage/general office expense/and equipment	Fiscal Year 2018 and subsequent years
Soil Conservation Board	Monies paid for fees	Board of Selectmen	Salaries/advertising/postage/general office expense/and equipment	Fiscal Year 2018 and subsequent years
Board of Health	Monies paid for fees and charges received for any inspection	Board of Health	Salaries/advertising/postage/general office expense/and equipment /professional services including all inspections	Fiscal Year 2018 and subsequent years
Police Department	Monies paid for details	Police Chief	Salaries for police details	Fiscal Year 2018 and subsequent years
School Department	Somerset Berkley regional school district	Berkley School Committee	Reimbursement for expenses incurred for transporting special needs students to Somerset Berkley regional High School	Fiscal Year 2018 and subsequent years

FUND	SPENDING LIMIT
Wiring Inspector	10,000.00
Gas/Plumbing Inspector	10,000.00
Board of Appeals	5,000.00
Planning Board	10,000.00
Soil Conservation Board	5,000.00
Board of Health	48,300.00
Police Department	60,000.00
School Department	60,000.00

A TRUE COPY OF RECORD:
 ATTEST:

Deborah Pereira, Town Clerk

Date October 2, 2018