

Town of Cummington

General By-Laws

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By Town Clerk

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Town of Cummington
General By-Laws

I. ELECTED OFFICIALS

Officer Elected	Term		
1 Moderator	1 year		each year
1 Town Clerk	3 years		every 3 years
1 Town Treasurer	3 years		every 3 years
1 Tax Collector	3 years		every 3 years
3 Selectmen	3 years		one each year
3 Assessors	3 years		one each year
3 Vocational School Committee Member	3 years		one each year
3 Almoners of Charitable Funds	3 years		one each year
3 Commissioners of Trust Funds	3 years		one each year
3 Board of Health Members	3 years		one each year
3 Water Commissioners	3 years		one each year
6 Finance Committee Members	3 years		two each year
2 Constables	3 years		two every 3 years
5 Planning Board Members	5 years		one each year
5 Trustees of the Bryant Free Library	5 years		one each year
1 Representative to Hampshire County	2 years		every 2 years
9 Cummington Recreation and Pettingill Memorial Field Committee Members	3 years		3 every 3 years

II. TOWN ELECTIONS

A. Caucus

Town caucus for nomination of town officers to be elected shall be held in accordance with M.G.L. Chapter 53, Section 121.

B. Elections

The annual election of officers shall be held on the second Monday in May.

C. Polls

The polls for town elections shall open at one (1) o'clock in the afternoon and shall remain open until eight (8) o'clock in the evening.

D. Vacancies

Vacancies shall be filled in accordance with M.G.L. Chapter 41, Section 11.

III. TOWN MEETINGS

A. Notices.

Notices of town meetings shall be given to the voters by posting attested copies of the warrant therefore in at least three (3) public places in the Town of Cummington, not less than seven (7) days before the date fixed for the Annual Town Meeting and not less than fourteen (14) days before any special town meeting. At that time, said notice shall be delivered to the Town Moderator.

B. Rules of Order.

- 1) Town meeting shall be guided by the procedures set forth in Town Meeting Time. (Wadsworth, Trustman & Johnson Current Edition.)
- 2) The Annual Business Meeting shall open at seven (7) o'clock in the evening on the first (1st) Friday in May.
- 3) The number of voters necessary to constitute a quorum at any town meeting shall be fifteen (15) provided, however that a number less than a quorum may from time to time adjourn the same. This section shall not apply to such parts of meetings as are devoted exclusively to the election of town officers.
- 4) All motions shall be made in writing if requested by the moderator.
- 5) When two(2) or more motions are made with regard to the same subject relating to the sums of money, the questions shall first be put upon the largest sum.
- 6) All votes, unless otherwise provided for by law shall in the first instance, be taken by "ayes" and "noes" votes. If the moderator is in doubt as to the vote, or if at least seven (7) members immediately question it, the vote shall be taken by standing vote.

IV. TOWN OFFICIALS – DUTIES AND ADMINISTRATION

A. All Officials and Committees

- 1) All committees shall annually elect a chairman, vice chairman, secretary and other necessary officers within ten (10) days of their elections or appointment and report same to the Town Clerk. The Chairman of the previous year or the first named appointee shall call the organization meeting. Minutes of all committee meetings shall be recorded. Recorded minutes of special committee meetings shall be filed with the Town Clerk upon completion of their duties.
- 2) Every officer shall, each month, pay into the treasury of the town all amounts received by him/her on behalf of the town except as otherwise provided by law. All departments shall make a true return of such funds to the Town Treasurer, stating the accounts upon which said amounts were received and provide a copy to the Town Accountant.
- 3) Selectmen, Town Clerk, Treasurer, Tax Collector, Assessors, School Committee and other officers and committees as deemed necessary by the Selectmen shall report annually in the town report to be published no later than ninety (90) days after the close of the fiscal year. Expenditures that consist of labor, machinery and materials shall be itemized in the town report

and the Selectmen shall place on the warrant of the Annual Business Meeting a motion to accept said annual report as Article II.

B. Town clerk

- 1) The Town Clerk shall, as soon as possible, after every town meeting, notify in writing all members of committees who may be elected or appointed at such meeting stating the business on which they are to act and the names of other persons on the committee. The Town Clerk shall send minutes of articles of town meetings that pertain to extraordinary action to respective boards/officers/committees.

C. Town Treasurer

- 1) Except as otherwise provided by law, the treasurer shall have custody of bonds, deeds and other similar documents owned by the town.

D. Selectmen

- 1) The Selectmen shall appoint and notify the following annually unless otherwise specified:

Administrative Secretary

Local Cultural Council in accordance with M.G.L. Ch. 10, Sec. 35C

Board of Registrars – 1 each year for 3 years

Cemetery Committee – chairman to be one of the selectmen

Emergency Management Director

Community House Janitor

Community House Housekeeper

Conservation Commission (6) - 2 to be appointed annually for 3 years under M.G.L. Ch. 40 Sec. 8c.

Council on Aging (9) – 3 to be appointed annually for 3 years under M.G.L. Ch. 40, Sec. 8b

Dog Officer

Fence Viewers and Field Drivers

Fire Chief – under M.G.L. Ch. 48, Sec. 42 & 43.

Historical Commission (7) 2 for three (3) years, 3 for three (3) years, 2 for three (3) years under M.G.L. Ch. 40 Sec. 8d

Inspector, Animal

Inspector, Building

Inspector, Gas Fittings

Inspector, Plumbing

Inspector, Wiring

Lower Pioneer Valley Planning Commission Member

Police Chief and police officers under M.G.L. Ch 41 Sec. 97A

Superintendent of Streets under M.G.L. Ch. 41 Sec. 21

Surveyors of Wood and Lumber
Town Accountant 3 years under M.G.L. Ch. 40 Sec. 55
Town Counsel
Tree Warden
Westfield River Watershed Representative
Zoning Board of Appeals (3) one each for 3 years
Zoning Board of Appeals Associate Members (2 or 3)

- 2) The Selectmen shall have supervision of all town affairs with the exception of those relating to other elected boards.
- 3) The Selectmen may sell personal property of the town to the amount of five hundred (\$500.00) dollars without vote of the town after one (1) notice in a local publication two (2) weeks in advance of the sale.

E. Assessors

- 1) Assessors shall receive additional compensation upon completion of certain courses of study as provided by M.G.L. Chapter 59, Section 21A.
- 2) Assessors shall publish valuations in the town report every five (5) years ending in 0 and 5.

F. Finance Committee

- 1) The Finance Committee shall, in addition to the six (6) members, consist of the moderator, an ex-officio non-voting member and the town treasurer, an ex-officio voting member. Ex-officio members shall not hold office on the committee.
- 2) The Finance Committee shall investigate all proposals in the articles of town meeting warrants which affect the finances of the town and recommend to the town, at the time of said meeting, a course of action thereof, and in general, to make recommendations to the town in regard to any financial business of the town.

G. Vocational School Committee

- 1) The Vocational School Committee shall have charge of the general education affairs of the town that are not under the jurisdiction of the Central Berkshire Regional School District.

H. Library Trustees

The Board of Library Trustees, in addition to the five (5) elected members, shall consist of a member of the Board of Selectmen, who shall be an ex-officio non-voting member. They shall have full control of the property connected with the library.

I. Water Commissioners

- 1) The town has established a water distributing system under M.G.L. Chapter 40, Section 39A. The town has voted the water commissioners to act in regard to the Water Department and water system under M.G.L. Chapter 41, Section 69B.

V. GENERAL BUSINESS

A. Posting

The most current Town General By-Laws, Zoning By-Laws, Sub-Division By-Laws, Voter's List and Street List shall be posted on the main bulletin board at the Community House at all times.

B. Audit

An audit of the accounts of the town shall be made as provided by M.G.L. Chapter 44, Section 35.

C. Bids

Bids shall be required on contracts for the purchase of equipment, supplies and materials the estimated cost of which amounts of \$50,000.00 or more except in cases of special emergency under M.G.L. Chapter 30B.

D. Liens-Water Accounts

Liens shall be placed on property with unpaid water accounts as provided by M.G.L. Chapter 40, Section 42A to 42F inclusive.

E. Liens-Property

Liens shall be placed on property for failure to pay municipal charges as provided by M.G.L. Chapter 40, Section 58.

F. Liens-Solid Waste

Liens shall be placed on property for failure to pay solid waste disposal charges as provided by M.G.L. Chapter 44, Section 28c(f).

G. Licenses & permits

The Town may refuse to issue or renew any license or permit to any individual or business with unpaid taxes or fees due to the town under M.G.L. Chapter 40, Section 57.

H. Towing

The Police Department may order vehicles towed as provided by M.G.L. Chapter 40, Section 22D.

I. Mutual Aid

The Selectmen may enter into Mutual Aid Agreements under M.G.L. Chapter 40, Section 8G.

VI. EMPLOYEE BENEFITS

A. Group Insurance

The Town of Cummington is authorized to provide group insurance to town employees under M.G.L. Chapter 32B.

B. Compensation Insurance

The Town of Cummington is authorized to provide compensation insurance to town employees under provisions of M.G.L. Chapter 40, Section 13A.

C. Vacation

The Town shall grant a vacation with pay in each fiscal year to any full time Town Highway employee according to the following schedule:

Two (2) weeks vacation after one (1) year of continuous service;

Three (3) weeks vacation after five (5) years of continuous service;

Four (4) weeks vacation after fifteen (15) years of continuous service;

Five (5) weeks vacation after twenty-five (25) years of continuous service.

Vacation time will not be cumulative.

D. Holidays

The Town shall grant ten (11) holidays per year, namely:

New Year's Day

Martin Luther King Day

President's Day

Patriot's Day

Memorial Day

July Fourth

Labor Day

Columbus Day

Veteran's Day

Thanksgiving Day

Christmas Day

These holidays shall be granted with pay to any town highway employee who has been a full time employee for thirty (30) calendar days preceding the holiday. If a holiday falls on a Saturday, it will be observed on the preceding Friday. If a holiday falls on a Sunday, it will be observed on the following Monday.

E. Sick Leave

The Town shall grant to any full time highway employee after one (1) month of continuous service one (1) day (8 hours) per month of sick leave with pay each fiscal year, accumulative to a 720 hours (90 days). An employee will not be compensated for unused accumulative sick leave upon resignation, retirement, or dismissal.

F. Personal Time

The Town shall grant to any full time highway employee after one (1) year of continuous service two (2) paid personal days per fiscal year. Personal days will not be cumulative.

G. Direct Deposit

The Town has accepted M.G.L. Chapter 41, Section 41B allowing the Treasurer to pay salaries, wages, or other compensation to any person in the service of the town by means of deposits to a deposit account or accounts of such person as stated in the law.

H. Bereavement

After completion of the Probationary Period, a full time employee will be eligible for up to three (3) days with pay for the purpose of arranging and/or attending a funeral of a member of the employee's immediate family (includes parents, siblings, spouse or life partner, children (natural, step, pre-adoptive or foster child), grandparents, grandchildren, mother-in-law, and father-in-law). A funeral leave day is equivalent to eight (8) hours.

VII. DISTRICTS

A. CBRSD

The Town of Cummington is a member of the Central Berkshire Regional School District under the provisions of M.G.L. Chapter 71, Sections 16 through 161 inclusive.

B. LPVPC

The Town of Cummington is a member of the Lower Pioneer Valley Regional Planning District under the provision of M.G.L. Chapter 40B.

C. FRTA

The Town of Cummington is a member of the Franklin Regional Transit Authority pursuant to M.G.L. Chapter 161B Section 3.

VIII. REGULATIONS

A. Water Main Connections

No extension of the water mains shall be made without vote of the Town and money appropriated for that purpose. The property owner shall be responsible for any pipe

between the curb cock and the building. The curb cock shall be situated at or near highway boundary nearest the water main or if the house to be supplied is on the opposite side of the street, the curb cock shall be placed at or near the boundary of the highway on that side of the street.

B. Automatic Sprinkler System

- 1) The Town has adopted an Act Relative to the Installation of Automatic Sprinkler Systems under M.G.L. Chapter 148, Section 26G, 26H and 26I.
- 2) It is required that a RP Backflow Preventor Valve be installed along with all sprinkler systems installation covered in M.G.L. Chapter 148, Sections 26G, 26H and 26I. In addition, a Water Commission must inspect all such work prior to, during and after installation and will be paid at a rate to be set by the Commissioners.

C. Underground Storage Tanks

- 1) Authority
The Town of Cummington adopts the following measures under its home rule powers, its police powers to protect the public health and welfare, and its authority under M.G.L. Chapter 40, Section 21.
- 2) Definitions
Underground Storage: storage of petroleum products or other hazardous materials below ground level but not including storage in a free-standing container within a building.
- 3) Prohibitions
All new underground storage tanks with volumes less than 1,100 gallons are prohibited from the Water Supply Protection District.
- 4) Underground Storage Tanks of Volumes Greater Than 1,100 Gallons.
Every owner of an underground storage container for hazardous materials including petroleum products of volumes greater than 1,100 gallons shall comply with all applicable state regulations for such storage.
- 5) Permits For Existing and New Underground Storage Tanks of Volumes Less than 1,100 Gallons
 - a) Every owner of an existing underground storage container for hazardous materials including petroleum products whether in use or abandoned, shall apply to the Fire Department for a permit to have a storage facility. Application shall be made within sixty (60) days of the effective date of this bylaw and shall contain the following information:
 - (1) Name, address and telephone numbers of the owners and operator;
 - (2) The type of materials stored;
 - (3) Tank size and construction type for tank and piping;

- (4) Evidence of the date of installation warranty;
- (5) Plot plan of the site, including location of the tank, pumping components and any wells or water bodies;
- (6) Where the age of a tank is unknown, the tank shall be presumed to be 25 years old.

b) The head of the Cummington Fire Department is required to send to the Board of Health, the Water Department and the Conservation Commission a copy of every permit application for a new storage facility, with a request for a recommendation of the approval or disapproval within 30 days.

c) Subsequent to the effective date of this ordinance, no new or replacement underground storage containers shall be installed unless the owner shall have first obtained a permit from the Fire Department. If the Fire Department determines that the proposed storage container constitutes a danger to a water supply, water body, public health or safety, the Fire Department may deny the permit or may grant it subject to conditions which the Department determines are necessary. All new replacement underground storage tanks, regardless of size, shall meet the requirements of Massachusetts regulations 527 CMR 9.00 regarding tank design, construction and installation.

6) Registrations Tags

a) Upon registering with the Fire Department, the tank owner will receive a permanent metal or plastic tag, embossed with a registration number unique to that tank. This registration tag must be affixed to the fill pipe or in such locations as to be visible to any inspector authorized by the Town.

b) Every petroleum or other chemical distributor, when filling an underground storage tank, shall note on the invoice or bill for the product delivered, the registration number appearing on the tank. Every petroleum or other chemical distributor shall notify the Fire Department of the existence and location of any unregistered or untagged underground tank, or any tank which the distributor cannot clearly identify as being either above or below ground, which they are requested to fill. Such notification must be completed within two (2) working days of the time the distributor discovers that the tank registration tag is not present.

7) Tanks Over 30 Years Old or older

a) For any tank (under 1,100 gallons) 30 years or older the Town shall send a notice to the owner strongly recommending that the tank be drained and removed, or that a testing system, approved by the Fire Chief, be instituted to ensure that the tank is not leaking. The notice shall inform the owner of the potential hazards and liabilities of a leaking tank.

8) Abandoned Tanks

Tanks which are abandoned or temporarily out of service must comply with state regulations under 527 CMR 9.22-23.

9) Fees

These permits shall be in addition to any license or permit required by M.G.L. Chapter 148, as amended, or by any regulation issued thereunder. The fee for this permit, payable to the Town of Cummington, shall be established by the Board of Selectmen.

10) Transfer of Ownership

If the ownership of any underground storage tank is transferred, the new owner shall notify the Fire Department within ten 9100 working days. Any tanks (under 1,100 gallons) 30 years or older, without cathodic protection or other leak prevention devices, shall be removed under the supervision of the Fire Chief. This provisions may be waived if the tank owner can provide, through testing, to the satisfaction of the Fire Chief that the tank and piping are tight. If proof of date of installation is not known, the thank will be assumed to be 25 years old.

11) Report of Leaks or Spills

Any person who is aware of a spill, loss of product, or unaccounted for increase in consumption which may indicate a leak shall report such spill, loss or increase immediately to the head of the Fire Department and to the Board of Health.

12) Enforcement

Any violation of the provisions of this bylaw, the conditions of a permit granted under the bylaw, or any decisions rendered by the Fire Department under this bylaw, shall be liable to a fine of not more than one hundred dollars (\$100.00) for each violation. Each day such violation continues shall be deemed a separate offense.

D. Hazardous Materials

1) Authority

The Town of Cummington adopts the following measures under its home rule powers, its police powers to protect the public health and welfare and its authority under M.G.L. Chapter 40, Section 21.

2) Definitions

- a) Discharge, the spilling, leaking, pumping, emitting or dumping of toxic or hazardous materials upon or into any land or waters of the Town of Cummington.
- b) Hazardous Materials: any substance with such physical, chemical, or infectious characteristics as to pose a potential hazard to existing or potential water supplies or to human health. Hazardous materials include, but are not limited to, toxic chemicals, heavy metals, radioactive or infectious wastes, acids and alkalis, pesticides, petroleum products, herbicides, solvents and thinners.

3) Prohibitions

- a) The use of septic system cleaners within the Town of Cummington containing toxic or hazardous materials is prohibited.
- b) The discharge of hazardous materials within the Town of Cummington is prohibited with the following exceptions:
 - (1) Application of fertilizers and pesticides in accordance with label recommendations and with regulations of the Massachusetts Pesticide Control Board.
 - (2) Application of road salts or other de-icing chemicals provided that such use is minimized and consistent with public highway safety standards.
 - (3) Proper disposal of acceptable materials at a facility or site which has received and maintained all legal approvals as specified in the Massachusetts Hazardous Waste Management Act, M.G.L. Ch. 21C, Sec. 7.

4) Hazardous Materials Registration and Controls

- (a) Every owner, or operator of a commercial, industrial, or agricultural operation storing hazardous materials in quantities totaling more than 50 gallons liquid volume or 25 pounds dry weight shall registered with the Fire Department a description of the types and quantities of hazardous materials stored, and the location and method of storage. Registration required by this subsection shall be submitted within sixty (60) days of the effective date of this bylaw and annually thereafter.
- (b) The fire Department may require that an inventory of hazardous materials be maintained on the premises and be reconciled with purchase, use, sales and disposal records on a monthly basis.
- (c) Hazardous materials shall be stored in product-tight storage containers and shall be removed and disposed of in accordance with the Massachusetts Hazardous Waste management Act, M.G.L. Ch. 21C.
- (d) The Fire Department shall require that containers or hazardous material be stored on an impervious, chemical-resistant surface, that the storage area be enclosed with an impermeable dike or within an impermeable basement, and that the containers be protected from weather, vandalism, corrosion and leakage.

5) Enforcement

Any violation of the provisions of the bylaw, the conditions of a permit granted under this bylaw, or any decisions rendered by the Fire Department under this bylaw shall be liable to a fine or not more than one hundred dollars (\$100.00) for each violation. Each day such violation continues shall be deemed a separate offense.

E. Mandatory Recycling

In order to continue implementation of the Cummington mandatory program of recycling in conjunction with ordinary waste disposal, all residents and businesses shall separate certain recyclable materials from garbage in accordance with guidelines as specified by the Board of Health.

The Board of Health can and will from time to time amend the types of materials to be separated and accepted for recycling at the transfer station.

The materials include, but shall not be limited to, the following:

- Glass bottles
- Aluminum cans and foils, tin cans
- Newspaper and inserts
- Magazine and catalogues
- Office paper
- Brown paper bags
- Corrugated cardboard
- Plastic containers (HDPE & PETE)

The Board of Health or its designated agent shall periodically issue guidelines for the preparation of recyclables.

Provisions:

Recyclables shall not be placed in plastic garbage bags for collection, removal or disposal, unless specified by Board of Health issued guidelines.

Recyclables shall not be placed in the same container as or otherwise mixed with, other forms of solid waste for collection, removal or disposal.

If no separation of recyclables takes place, or if degree of separation of recyclables does not meet Board of Health issued guidelines, none of the rubbish or garbage shall be accepted from the household or business for disposal at the Cummington Transfer Station.

Any recyclables placed at the transfer station shall be transported to and disposed of at the designated Materials Recovery Facility, except as may be otherwise authorized by the Board of Health or Board of Selectmen.

Any violation of this section or any part thereof shall be punished by a fine not to exceed three hundred (\$300.00) dollars and the violator shall make restitution to the town.

F. Street Numbering

All dwellings and business shall be assigned a street number. The street numbering committee shall maintain the numbering system in a uniform manner. Multiple buildings at the same street number shall be further designated with a letter starting with "A". Apartment buildings shall have each unit further designated with a number by the landlord, who will furnish the numbering committee with a list of units and designations. The Building Inspector shall furnish the numbering committee with a plot plan showing the driveway on all new permits.

Property owners(s) shall post the street number on the side of the building facing the street. Numbers not clearly visible from the street shall be further posted at the beginning of the driveway. The numbers shall be a minimum of six (6) inches in size and be plainly visible from the road side.

These regulations may be amended at any time by vote of a majority of the numbering committee following a public hearing.

G. Dog By-Law

- 1) Definitions
 - a) ACO - Animal Control Officer
 - b) Owner or Keeper - Any person or persons owning, keeping, harboring or having custody of a dog in the Town of Cummington
 - c) Kennel - Four or more dogs four months old or over on a single premises irrespective of the purpose for which they are maintained. ([MGL 140, Sec 136A](#))
 - d) Humane Manner - Care of an animal to include, but not limited to, adequate heat, ventilation, sanitary shelter, food and water, consistent with the normal requirements and feeding habits of the animal's size, species and breed
 - e) Abusive Treatment - Inhumane care or treatment that might cause injury to the dog
 - f) Stray - A dog roaming loose
- 2) Animal Control Personnel
 - a) Animal Control Officer
 - (1) Appointment

The Select Board shall annually appoint an ACO who will also serve as an Assistant Animal Inspector.

- (2) Compensation
The rate of compensation shall be set annually by the Select Board.
Compensation shall come out of the ACO's account.

- (3) Authority
The ACO shall have the full power and authority to investigate possible violations and to enforce dog laws under Massachusetts General Laws, [Chapter 140, Sections 136A](#) through [174D](#) and Chapter 277, Sections 77 through 80B, and under the bylaws of the Town of Cummington. The ACO shall also have authority to impound and dispose of abandoned cats and kittens, and other non-livestock animals.

- b) Licensing Appointee
 - (1) Appointment
The Select Board shall annually appoint a Licensing Appointee.

 - (2) Compensation
The rate of compensation shall be set annually by the Select Board.

 - (3) Duties
The Licensing Appointee shall process dog and kennel licenses.

- c) Setting of Fees and Fines
The Town of Cummington Select Board shall annually set fees and fines relating to dogs and to the enforcement of these Bylaws.

- d) Licensing of Dogs
 - (1) License Requirement
Owners or keepers of dogs must annually obtain a license for each dog four months old or over; within one month of acquiring a dog; within one month of moving into the Town of Cummington. Licenses expire annually on March 31 and may be renewed beginning March 1.

 - (2) License and Rabies Tags
A current rabies certificate, issued by a licensed veterinarian or anti-rabies clinic, and payment of licensing fee is required to purchase a dog license and tag.
The license and rabies tags must be worn when off the premises of the owner or keeper and worn only by the dog for which it is issued.

 - (3) Duplicate License Tags

A duplicate license tag shall be issued by the licensing appointee upon payment of a replacement fee equal to half the original fee.

(4) Nonrefundable Fee

No license fee shall be refunded or prorated.

(5) Penalties

Owners who fail to obtain licenses when required shall be subject to a daily fine, and, ten (10) days after the required time, the dog or dogs may be impounded.

e) Licensing of Kennels

(1) License Requirement

Owners or keepers of four or more dogs four months old or older must obtain a kennel license in accordance with Massachusetts General Law [Chapter 140, Sections 136A](#) and [137 A](#). Owners of fewer than four dogs may also apply for a kennel license. A current rabies certificate for each dog included in the kennel, issued by a licensed veterinarian or anti-rabies clinic along with the appropriate kennel fee is required to obtain the kennel license. Kennel licenses expire annually on March 31 and may be renewed beginning March 1.

(2) Kennel Records

Kennel owners shall provide the ACO with an up-to-date copy of kennel records documenting the dogs in the kennel.

(3) Kennel Inspection

According to Massachusetts General Law [Chapter 140, Section 137C](#), the owner or keeper of a kennel may be subject to a kennel inspection at the discretion of the ACO. Failure to permit such an inspection will result in a fine and the immediate revocation of the kennel license and impounding of the dogs.

(4) Revocation of License

If an inspection of the kennel finds dogs are being abused or not treated in a humane manner, the owner will be given fourteen (14) days to correct the shortcomings. If the corrections are not made within this time to the satisfaction of the ACO, the kennel license will be revoked and the dogs impounded.

(5) Nonrefundable Fee

No license fee shall be refunded or prorated.

(6) Penalties

Kennel owners who fail to obtain a kennel license when required shall be subject to a daily fine, and, after ten (10) days, their dog or dogs may be impounded.

3) Control of Dogs

a) Off the Owner's Premises

(1) Restraint

No dog shall be off the premises of the owner or keeper unless properly restrained by a leash and/or supervised by a person controlling the dog at all times, except for such purposes as working, hunting or field trials.

(2) Permission Required for Private Property

A dog that is not working, hunting, or in field trials may be on private property other than the owner's only with the property owner's permission.

(3) Public Property Exclusions

Dogs are excluded from public property during public events or when otherwise posted.

(4) Cemetery Exclusion

Dogs are not permitted in cemeteries.

(5) Penalties

Dogs that are not restrained as defined above shall be considered strays subject to impounding and the owner may be fined.

b) Public Nuisance Behavior

(1) Examples

Public nuisance behavior includes, but is not limited to, excessive barking, defecation on maintained public property or maintained private property other than its owner's when the dog's owner has not cleaned up and removed the defecation, straying, or demonstrating threatening behavior toward a person or animal while off the dog owner's property even though contact was not made.

(2) Penalties

A dog's public nuisance behavior will result in a fine for the owner and may result in the restraint, muzzling, or impounding of the do

c) Vicious Behavior

(1) Examples

Vicious behavior includes but is not limited to attacking, biting, or mauling a person or animal.

- (2) Penalties

A dog's vicious behavior will result in a fine and may result in the immediate muzzling, impounding, or disposal of the dog.

- 4) Complaints
 - a) Public Nuisance Complaint
 - (1) Complaint Procedure

A complaint that a dog is a public nuisance may be made to the ACO who will discuss the nature of the complaint with the dog's owner or keeper, and if it appears warranted, ask the owner or keeper to control his or her dog. If the complainant makes a second complaint, it must be in writing and signed by the complainant. The ACO will then investigate the complaint and, if it appears justified, issue a citation to the owner or keeper, fining him or her and ordering the restraint, muzzling, or impounding of the dog as may be deemed appropriate.

 - (2) Third Citation

If the public nuisance behavior continues after the issuance of a third citation, removal of the dog may result.

 - (3) Inter-neighbor Issues

If after investigating the complaint, the ACO determines that the complaint arises from inter-neighbor issues that go beyond the dog's actions, and if no other witness to the complaint comes forward, the ACO may discontinue further investigation.

 - b) Vicious Behavior Complaint
 - (1) Complaint Procedure

A complaint that a dog has demonstrated vicious behavior by attacking, biting, or mauling a person or animal shall be made to and investigated by the ACO. If the ACO finds the complaint is justified, he or she may fine the owner or keeper of the dog and order the muzzling, impounding or disposal of the dog. A second offense shall result in automatic impounding and disposal of the dog.

 - (2) Exemptions

If the person attacked was seven years old or older, and was committing trespass on the property of the dog's owner or keeper, or was teasing, tormenting or abusing the dog, the owner or keeper of the dog shall not be held liable in accordance with Massachusetts General Laws [Chapter 140, Section 155](#).

- 5) Control of Rabies
 - a) Bites Must Be Reported

Domestic animals bitten by another domestic animal or unknown animal shall be reported to the ACO immediately in case the bite came from a rabid animal. The

owners or keeper of a domestic animal that bites a person or animal shall report the incident immediately to the ACO.

b) Penalties

Failure to report a bite will result in a fine.

6) Muzzling Dogs

a) Muzzling Order

The ACO may order the muzzling of a dog when out of its enclosure if the dog has bitten or injured a person or other animal.

b) Penalties

Failure to muzzle a dog when ordered will result in a fine.

c) Third Offense

A third offense shall result in automatic impounding and disposal of the dog.

7) Citations for Succeeding Offenses

Citations for succeeding offenses may not be made until the previous citation has been served.

8) Seizing and Impounding, Release and Disposal of Dogs

a) Strays

The ACO may seize and impound a stray dog. The owner or keeper will be notified by the ACO within two (2) days of the impounding either in person, by telephone or by registered mail. If the owner or keeper cannot be reached within two (2) days, or is unknown, written notice shall be posted for eight (8) consecutive days in the Cummington Community House and other appropriate places, which notice will include a description or picture of the dog and the place and time of taking.

b) Unlicensed Dogs and Dogs in Violation of Muzzling Order

The ACO may seize and impound a dog that has not been licensed within ten (10) days of the required date as set forth in Section D or E and a dog in violation of a muzzling order as provided for in Section I. If the owner is not aware of the seizure, he or she will be informed as provided for in Section K.1.

c) Notice of Intent to Impound for Other Reasons

When a complaint is made and, after having been investigated and found justified by the ACO, that a dog is living in unsanitary and inhumane conditions, or is being abused, or that a dog has threatened, injured or physically molested a person or animal, or when the owner or keeper is otherwise unavailable, unwilling or physically unable to stop a dog from causing a public nuisance, the ACO will deliver a citation

for the offense to the owner or keeper stating that the dog is to be seized and impounded. If the owner or keeper fails to turn over the dog and does not appeal the citation to the Select Board within ten (10) days, the Select Board will issue an order for the ACO to seize the dog from the property of the owner or keeper in accordance with Massachusetts General Laws [Chapter 140, Section 157](#).

d) Incapacity of Owner

If a dog or cat is left alone and uncared for due to the incapacity of its owner, the Select Board may issue an immediate order to impound and care for the animal until the owner, or a third party who is willing and able, makes provision for the animal's care.

e) Release of Dog

Release of the dog to the owner may be made when the reason for impounding has been corrected, fines paid if any, and impounding cost paid.

f) Impoundment Exceeding Ten (10) Days

Any dog impounded for ten (10) days may be placed by the ACO with a new owner or disposed of in accordance with Massachusetts General Laws [Chapter 140, Section 151A](#).

9) Liability of Owner or Keeper

a) Liability for Damage

The owner or keeper of a dog which has done damage to a person, their property or other animals shall be liable for such damage, except as provided for in Sec. G.2.b., and the Select Board may order the owner or keeper to pay such damages after an investigation as set forth in Massachusetts General Laws [Chapter 140, Sections 155](#) and [165](#).

b) Liability for Costs Incurred by Vehicle Injury

The owner or keeper of a dog injured or killed by a vehicle shall be responsible for the cost of all rescue response, emergency care, treatment and/or disposal of said dog.

10) Animal Control Committee

a) Membership

The Select Board shall appoint three (3) people to serve on the Animal Control Committee. At the creation of the committee one member will be appointed for one year, one for two years and one for three years. A member will be appointed annually to replace the person leaving the committee and will serve for a period of three years.

b) Duties

The Committee will serve as an investigative body for the Select Board when the owner or keeper of a dog or kennel contests a violation as provided for in Sec. N.2. The committee will take sworn statements from the parties to the contest, including the ACO, and from witnesses to the dispute, review all matters relating to the dispute, including mitigation, and prepare a brief that is forwarded to the Select Board for their judgment. The Committee may also recommend revisions of the Dog Bylaws.

11) Options for People Receiving a Citation for Violation of Animal Control Bylaws

a) Option 1

A person may pay the fine(s) by either appearing in person or by mailing a check, money order or postal note, made out to the Town of Cummington, to

Town of Cummington Animal Control Officer
Community House, Main Street

Cummington, MA 01026

and postmarked within twenty-one (21) calendar days from the date of the citation.

b) Option 2

A person may contest the violation by contacting the Select Board secretary within the same twenty-one (21) day period to schedule a hearing before the town's Animal Control Committee. The committee will perform the tasks outlined in Section M.2., and prepare a brief which will be forwarded to The Select Board for their review. The Select Board will then render a judgment within fourteen (14) days after the close of the hearing.

c) Appeals

If option 2 is selected, and the person is not satisfied with the Select Board's decision, he or she may, within twenty-one (21) days, appeal for a non-criminal proceeding by making a written request to the

Northampton District Court Clerk's Office

15 Gothic Street

Northampton, MA 01060

Attn: Non-criminal hearings

d) Failure to Pay

If a person fails to pay the fine(s) and/or damages, or fails to request a hearing within twenty-one (21) days of the date of the citation, or fails to appear for any scheduled hearing, or fails to appeal for a non-criminal hearing within twenty-one days of the Board's judgment, or fails to pay any fine(s) and/or damages determined at the hearing, a criminal complaint will be issued against that person.

12) Unaddressed Issues Referred to Massachusetts General Laws

All issues pertaining to the control and well-being of dogs not addressed by these Bylaws will be referred to Massachusetts General Laws [Chapter 140, Sections 136A through 174d](#).

13) Previous Dog Bylaws Superseded

These Bylaws supersede and replace all Town of Cummington Dog Bylaws.

14) Severability of Parts of this Bylaw

If any part of these bylaws shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of these bylaws.

H. Right to Farm By-Law

1) Legislative Purpose and Intent

The purpose and Intent of this By-law is to state with emphasis **the Right to Farm** accorded to all citizens of the Commonwealth under Article 97 of the Constitution, and all state statutes and regulations thereunder including but not limited to Massachusetts General Laws Chapter 40A, Section 3, Paragraph 1; Chapter 90, Section 9, Chapter 111, Section 125A and Chapter 128 Section 1A. We the citizens of Cummington restate and republish these rights pursuant to the Town's authority conferred by Article 89 of the Articles of Amendment of the Massachusetts Constitution ("Home Rule Amendment").

This General By-law encourages the pursuit of agriculture, promotes agriculture-based economic opportunities, and protects farmlands within the Town of Cummington by allowing agricultural uses and related activities to function with minimal conflict with abutters and Town committees and officials. This By-law shall apply to all jurisdictional areas within the Town.

2) Definitions

The words "farm" shall include any parcel or contiguous parcels of land, or water bodies used for the primary purpose of agriculture, or accessory thereto.

The words "farming" or "agriculture" or their derivatives shall include, but not be limited to the following: farming in all its branches and the cultivation and tillage of the soil; dairying; production, cultivation, growing, and harvesting of any agricultural, aquacultural, floricultural, viticultural, or horticultural commodities; growing and harvesting of forest products upon forest land, and any other forestry or lumbering operations; raising of livestock including horses; keeping of horses as a commercial enterprise; and keeping and raising of poultry, sheep, swine, cattle, ratites (such as emus, ostriches and rheas) and camelids (such as llamas and camels), and other domesticated animals for food and other agricultural purposes, including bees and fur-bearing animals.

"Farming" shall encompass activities including, but not limited to, the following: operation and transportation of slow-moving farm equipment over roads within the Town; control of pests, including, but not limited to, insects, weeds, predators and disease organism of plants and animals; application of manure, fertilizers and

pesticides; conducting agriculture-related educational and farm-based recreational activities, including agri-tourism, provided that the activities are related to marketing the agricultural output or services of the farm; processing and packaging of the agricultural output of the farm and the operation of a farmer's market or farm stand including signage thereto; maintenance, repair, or storage of seasonal equipment, or apparatus owned or leased by the farm owner or manager used expressly for the purpose of propagation, processing, management, or sale of the agricultural products; and on-farm relocation of earth and the clearing of ground for farming operations.

3) Right To Farm Declaration

The Right to Farm is hereby recognized to exist within the Town of Cummington. The above-described agricultural activities may occur on holidays, weekdays, and weekends by night or day and shall include the attendant incidental noise, odors, dust, and fumes associated with normally accepted agricultural practices. It is hereby determined that whatever impact may be caused to others through the normal practice of agriculture is more than offset by the benefits of farming to the neighborhood, community and society in general. The benefits and protections of this By-law are intended to apply exclusively to those agricultural and farming operations and activities conducted in accordance with generally accepted agricultural practices. Moreover, nothing in this Right to Farm By-law shall be deemed as acquiring any interest in land, or as imposing any land use regulation, which is properly the subject of state statute, regulation, or local zoning law.

4) Disclosure Notification

Upon passage of this By-law, the Agricultural Commission shall be responsible for providing a copy of the following notice to Cummington property owners. Moreover, the Town will post a copy of this notice prominently at the Community House, and will include the notice and a copy of this Bylaw on the Town's official website (currently at <http://www.cummington-ma.gov>)

“It is the policy of this community to conserve, protect and encourage the maintenance and improvement of agricultural land for the production of food, and other agricultural products, and also for its natural and ecological value. This disclosure notification is to inform buyers or occupants that the property they are about to acquire or occupy lies within a town where farming activities occur. Such farming activities may include, but are not limited to, activities that cause noise, dust and odors, for example, manure on roadways, noise associated with forestry equipment such as sawmills or chainsaws, and stray livestock. Concerns or complaints regarding agricultural practices in Cummington shall be presented in writing to the Selectboard, which shall forward them to the appropriate town authorities and the Agricultural Commission for resolution.”

Furthermore, the Agricultural Commission will review deed transfers in Cummington on an annual basis, and provide a copy of this notice to new property owners.

5) Resolution of Disputes

Any person who seeks to complain about the operation of a farm may, notwithstanding pursuing any other available remedy, file a written grievance with the Selectboard. The filing of the grievance does not suspend the time within which to pursue any other available remedies that the aggrieved may have. The Selectboard shall forward a copy of the grievance to the appropriate town authorities, including but not limited to the Board of Health and /or Zoning Board of Appeals. The Selectboard shall also forward a copy of the grievance to the Agricultural Commission, which shall review and facilitate the resolution of the grievance, and report its recommendations to the Selectboard within an agreed upon time frame.

6) Severability Clause

If any part of this By-law is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this By-law. The Town of Cummington hereby declares the provisions of this By-law to be severable.