

# TOWN OF BRIMFIELD

# GENERAL BYLAWS

Updated and current to June 2020

*This publication includes all town meeting actions up to and including June, 2020. The basic bylaws were adopted March 1957. This publication includes corrections and annotations by the Special Bylaw Review Committee, March and June 1986; revisions incorporated by review of The Bylaw Committee April 1988 and May 1989. The bylaws published in November 2009 represent a restructuring of the basic bylaws with new outline formatting and minor, non-substantive administrative changes.*

## **Chapter One: General Government**

### **1.0 Town Bylaws**

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

### **1.1 Adoption, Amendment and Repeal**

Any or all of these bylaws may be repealed or amended or other bylaws may be adopted at any town meeting, an article or articles for that purpose having been inserted in the warrant for such meeting by the Selectmen. The repeal of a bylaw shall not thereby have the effect of reviving any bylaw theretofore repealed.

### **1.2 Duties of Bylaw Committee**

The Bylaw Committee shall review all proposed bylaws, except zoning, by holding a public hearing at least five days before any town meeting or election at which bylaws will be voted. The hearing shall be posted in at least five public places in the town at least five days in advance of hearing. The Bylaw Committee shall make a recommendation to voters on every proposed bylaw, except zoning, prior to voter action. The Bylaw Committee may also review existing bylaws from time to time and propose amendments, additions, or corrections for voter action; submitting same to selectmen for inclusion in any town meeting warrant. The Bylaw Committee may also assist boards, committees, town officials, and citizens in the preparation of bylaws for voter action. (amended May 1986; amended June 1996 and May 2003)

*Note: for appointment of Bylaw Committee, see Ch 2, Sect 7.*

### **1.3 Lawful Successors**

Words and phrases specifying or naming any officer, board or committee of the Town, shall be construed as including the lawful successor or the person or persons having the powers and performing the duties of such officer, board or committee.

1.4 **Authority to grant licenses and permits**

When in a bylaw anything is prohibited from being done without the license or permission of a certain officer, board or committee, such officer, board or committee shall have the right to license or permit such thing to be done.

1.5 **Duties of Town Clerk**

The Town Clerk shall keep up-to-date Town By-Laws, including Zoning By-Laws, and shall publish these for the use of Town officials after each amendment, to be made available to any other person for a fee sufficient to defray printing costs. (adopted May 1980 and amended May 1986 and May 2003)

2.0 **Violation of Bylaws**

2.1 **Bylaw Enforcement**

Whoever violates any of the provisions of these bylaws whereby any act or thing is enjoined or prohibited, shall unless other provision is expressly made, forfeit and pay a fine not exceeding fifty dollars for each offense. (adopted March 1969)

2.1.2 **Criminal Complaint**

Whoever violates any provision of these Bylaws may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation, or offense, brought in such manner, shall be three hundred dollars.

2.1.3 **Non-criminal Disposition**

Whoever violates any provision of these Bylaws, the violation of which is subject to a specific penalty, may be penalized by a non-criminal disposition as provided in General Laws, Chapter 40, Section 21D. The non-criminal method of disposition may also be used for violations of any rule or regulation of any municipal officer, board, or department which is subject to a specific penalty. Without intending to limit the generality of the foregoing, it is the intention of this provision that the following Bylaws and sections of Bylaws are to be included within the scope of this subsection, that the specific penalties as listed here shall apply in such cases and that in addition to police officers, who shall in all cases be considered enforcing persons for the purpose of this provision, the municipal personnel listed for each section, if any, shall also be enforcing persons for such sections. Each day on which any violation exists shall be deemed to be a separate offense.

General Bylaws subject to non-criminal disposition:		FINE
Ch. 5, s.2,3,4	Flea Market Vendor Permits	\$250.00
Ch. 4, s.1.4	Unregistered Motor Vehicles	\$20.00
Ch. 4, s.9.3	Roadside Dumping	\$50-\$500.00
Ch. 4, s.4.2	Boating Regulations	\$20.00
Ch. 4, s.6	Consumption of Alcohol on Public Ways	\$20-\$50.00
Ch. 6, s.2.2	Illegal Plowing/Shoveling of Snow	\$250.00
[adopted May 1992; amended 1996, amended 2009]		

**2.1.4 Board of Health Regulations**

Board of Health Regulations affecting Smoking in Certain Places and Youth  
Access to Tobacco: for sale of tobacco products to a minor:

1<sup>st</sup> offense: \$100

2<sup>nd</sup> offense: \$200

3<sup>rd</sup> and subsequent offenses: \$300

For violations of Environmental Tobacco Smoke Regulations:

1<sup>st</sup> offense: \$100

2<sup>nd</sup> offense within 2 years \$200

3<sup>rd</sup> offense within 2 years \$300 (amended May 2002)

**2.1.5 Building and Zoning**

The non-criminal method of disposition may be used for building and zoning violations issued by the Brimfield Building Commissioner and Zoning Officer, or his agent, pursuant to state laws, codes and regulations to the full extent authorized by MGL Chapter 40, s.21D and this non-criminal fine for each such violation, if not otherwise specified, shall be:

1<sup>st</sup> offense: \$100

2<sup>nd</sup> offense \$200

3<sup>rd</sup> and subsequent offense \$300

**3.0 Town Meetings**

**3.1 Annual Town Meeting and Election Dates**

The Annual Town Business and Appropriation Meeting shall be held on the third Monday in May of each year, and shall begin at 7:00 pm. The Annual Town Election shall be held on the first Monday in June, in each year. The polls shall be opened at 12:00 noon and shall remain open until 8:00 in the evening. (adopted May 1975, amended May 1986, May 1994)

**3.2 Notice to Voters: Public Posting**

Notice of every Town Meeting shall be given by posting attested copies of the warrant therefore in at least five public places in the Town, not less than seven days before the day fixed for such meeting. Notice of every Special Town Meeting shall be given by posting attested copies of the warrant therefore in at least five public places in the Town, not less than fourteen days before the day fixed for such meeting. (adopted May 1980)

**3.3 Additional Notice Annual Meeting**

At least seven days before the day fixed in the warrant for the Annual Town Meeting, the Selectmen shall cause to be mailed to each occupied dwelling unit containing one or more registered voters in the Town, a postcard notification that copies of the Annual Town Meeting warrant are available at the Town Hall and posted on the Town's website. (adopted March 1977; amended May 1980, May 1986, May 2017)

### 3.4 **Additional Notice Special Meeting**

At least five (5) days before the day fixed in the warrant for any Special Town Meeting, the Selectmen shall cause an outline of the warrant to be mailed to each occupied dwelling house in the Town.

### 3.5 **Quorum**

The number of voters necessary to constitute a quorum at the Annual Town Meeting shall be fifty (50) voters and the number of voters necessary to constitute a quorum at the Special Town Meeting shall be twenty-five (25) voters; 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 officials. (adopted March 1975)

### 3.6 **Parliamentary Procedures**

3.6.1 Order of Action: Articles of the warrant shall be acted upon in the order in which they appear unless otherwise determined by vote at the meeting.

3.6.2 Division of Motions: If a motion is susceptible of division, it shall be divided and the question shall be put separately upon each part thereof, if ten voters so request.

3.6.3 Precedence of Motions: When a question is before the meeting, the following motions, namely: to adjourn; to lay on the table; for the previous question; to postpone to a time certain; to commit, recommit or refer; to amend; to postpone indefinitely; shall be received and shall have precedence in the foregoing order and the first three shall be decided without debate.

3.6.4 Amending Money Questions: On proposed amendments involving sums of money, the larger or largest amount shall be put to the question first and an affirmative vote thereon shall be a negative vote on any smaller amount. (adopted May 1978)

3.6.5 Moderator Declaration of Vote: When a question is put, the sense of the meeting shall be determined by the voices of the voters and the Moderator shall declare the vote as it appears to him. If the Moderator is unable to decide the vote by the sound of voices, or if his or her decision is immediately questioned by seven (7) or more voters rising in their places for that purpose, he/she shall determine the vote by ordering a show of hands and he/she may appoint tellers to make and return the count. On matters requiring 2/3 vote by statute, the Moderator may declare a 2/3 voice vote, in his/her discretion, providing the declaration of the Moderator may be challenged in the prescribed manner. (amended May 1998)

3.6.6 Reconsideration: No vote of the meeting shall be reconsidered unless notice of intention to ask for reconsideration shall be given one hour after the vote to which such notice relates, has been taken. When a motion for reconsideration is decided, that decision shall not be reconsidered and no question shall be reconsidered more

than once; nor shall any vote be reconsidered on a motion to adjourn, to lay on the table, or for the previous question.

**3.7 Article for Assessor's List**

The Selectmen shall insert an article in the Town Warrant every third year commencing with the Annual Town Meeting of 1981, to see if the Town will vote to provide the necessary funds and services to accomplish the publication of the currently used Assessor's valuation list. (adopted May 1980)

**3.8 Authority to Hold Annual Town Meeting or Special Town Meeting Outside Geographic Boundaries of the Town of Brimfield**

When the Board of Selectmen determine by a separate vote, that it is necessary or appropriate, the Town may hold annual or special town meetings outside the geographic Boundaries of the Town, at the Tantasqua Regional High School in Fiskdale, MA or other appropriate location. Reasons for holding a town meeting outside of the Town shall include, but not be limited to, extraordinary circumstances such as anticipated voter turnout, emergencies relating to commonly used Town Meeting locations or handicapped accessibility. (adopted May 2012)

**4.0 Election of Officials**

**4.1 Officers to be Elected, Terms**

The Officers of the Town to be elected at the Annual Town Election in the years in which the terms of the incumbents expire, with their terms of office, shall be as follows:

5 Selectmen for 3 years each, 2 be to elected annually.

One Moderator for the year, One Town Clerk for 3 years.

3 Assessors for 3 years each

5 members of the Board of Health for 3 years each, 1 elected annually

5 members of the Planning Board for 5 years each, 1 elected annually

One Highway Surveyor for 3 years

5 Members of the Town School Committee for 3 years each

5 Constables for 3 years each

One Tree Warden for one year

6 Library Trustees for 3 years each, 2 elected annually

3 members of the Cemetery Commission for 3 years each, 1 elected annually

3 members of the Harding Fund Trustees, for 3 years each, 1 elected annually

3 members of the James D. Lincoln Library Fund Trustees for 3 years each, 1 elected annually.

4 members of the Brimfield Housing Authority for 5 years each, one elected as terms expire in accordance with the laws of the Commonwealth.

Members of the Tantasqua Regional District School Committee for 3 years each, to be elected in accordance with the Regional District Agreement, annually and/or as incumbent terms expires.

**5.0 Contracts and Insurance**

**5.1 Limitation of Contracts**

No board of officer shall make any contract in behalf of the Town, the execution of which shall necessarily extend beyond one year from the date thereof, unless the contract contains the language, “subject to annual appropriation” except as otherwise provided by law, unless specific authority to do so has been given by vote of the Town. (amended May 2014)

**5.2 Custodian of Bonds, etc.**

Except as otherwise provided by law, the Selectmen shall have custody of bonds, deeds, contracts, insurance policies and other similar documents by the Town.

**6.0 Legal Affairs**

**6.1 Duties of Selectmen**

The Selectmen shall be agents of the Town to institute, prosecute, defend and settle any and all claims, actions and proceedings to which the Town is a party or in which interests of the Town are or may be involved.

**6.2 Legal Reports**

The Selectmen in their annual report, shall state what actions have been brought against and on behalf of the Town, what cases have been compromised or settled, and the current standing of all suits at law involving the Town or any of its interests.

**6.3 Appointment of Town Counsel**

The Selectmen shall annually in June after election of the Selectmen, appoint a member of the bar in good standing to serve as Town Counsel for the term of one year from the first day of July following and until his successor is appointed and enters upon the performance of his duties. They shall likewise fill any vacancy in said office for the unexpired term, and may employ Special Counsel to assist the said Town Counsel whenever, in their judgment, necessity therefore arises. [adopted May 1980]

**6.4 Duties of Town Counsel**

It shall be the duty of the Town Counsel to conduct the prosecution, defense or compromise of claims, actions and proceedings to which the Town is a party, and the prosecution of actions or proceedings by or on behalf of any town officer, board or committee as such; to conduct the defense of any action or proceedings, brought against any town officer, board or committee as such, when the Selectmen, having determined that any right or interests of the Town are or may be involved therein, shall so request to conduct proceedings brought by or against the Assessors before the Board of Tax Appeals; to assist in the prosecution of complaints for violation of any bylaw of the Town, when requested so to do by the board or officer enforcing the same; to examine and report upon titles to all land to be acquired by the Town; to prepare or approve contracts, bonds, deeds and other legal instruments in which the Town is a party or in which any right or interests of the Town is involved; to appear at any and all hearings on behalf of the Town whenever his services may be required; and generally to advise and

act for the town officers, boards and committees upon and in legal matters touching the duties of their respective offices.

**7.0 Records and Reports**

**7.1 Records to be Kept**

All officers, boards and committees of the Town, shall cause records of their doings and accounts to be kept in suitable books/files. Said books/files shall be kept in their perspective places in the town offices, or in their respective offices at home. Said books/files shall, unless otherwise provided by law, be available to public inspection at any reasonable time, but shall remain during such inspection under supervision of the officer, board or committee having custody thereof. (amended March 1969)

**7.2 Annual Reports**

All officers, boards, standing committees and special committees of the Town having charge of the expenditure of town money, shall annually report thereon in writing in such manner as to give the citizens a fair and full understanding of the objects and methods of such expenditures, referring, however, to the report of the Town Accountant for statements in details of receipts and payments, and may make therein such recommendations as they deem proper. Such reports shall be submitted to the Selectmen for inclusion in the Annual Town Report on or before the 31<sup>st</sup> day of January, for the calendar year preceding. Boards, departments, committees and officers that exceeded appropriations falling within their jurisdiction for the previous fiscal year will state the amounts overdrawn. All such reports from officers, boards, departments and committees shall include a list of all their employees, both salaried and hourly, with the total amount of annual compensation alongside each name, if the amount for any particular employee is -0-, that fact shall be included in the report. (amended May 1978, May 1986)

**7.2.1 Financial Reporting**

The annual report shall contain, in addition to the reports of officers, boards and committees as hereinbefore provided, a detailed report of all moneys received into and paid out of the Town Treasury in the financial year next preceding and from 1 July to 31 December of the current fiscal year, showing separately payments made from the proceeds of loans as capital outlays for permanent improvements; the report of the Treasurer/Collector, of receipts, payments and abatements; statements of funds belonging to the Town or held for the benefit of its inhabitants; a statement of transfers made to or from any appropriations; abstracts of the records of the meetings of the Town held since publication of the last Annual Report; and such other matters as the said report is required by law to contain, or as may be inserted by the Selectmen under discretion granted them by law. (amended May 1986)

**7.2.2 Standing Votes, Rules and Regulations**

The Selectmen, or the Town, may direct that the standing votes of the Town and the rules or regulations adopted by any officer, board of committee, be printed either separately or as part of the Annual Town Report.

7.3 **Distribution**

At least 20 days before the date fixed for the Annual Town Meeting, the Selectmen shall cause the published Annual Report to be available in sufficient quantities for every household in the Town, to be distributed at places of public gathering throughout the Town. (adopted May 1980, amended May 1986, May 2003)

## **Chapter Two: Appointed Officials, Boards and Committees**

*Note: Elected Officials are itemized in Chapter 1, s.4*

1.0 **Committees Appointed by Town Meeting**

1.1 **Duties of Town Clerk**

It shall be the duty of the Town Clerk immediately after every Town Meeting, to notify in writing, all members of the committees who may be elected or appointed at such meetings, and designate one member of the committee to be responsible for gathering all members of that committee for an initial meeting to be held within one month, and the Town Clerk shall state the business upon which they are to act and the names of the persons composing the committees, and also to notify all officers, boards and committees of all votes passed at such meeting in any way affecting them. [adopted March 1975]

1.2 **Duties of Committees**

All committees shall report as directed by the Town. If no report is made within a year after its appointment, a committee shall be discharged unless, in the meanwhile, the Town shall have granted an extension of time.

2.0 **Finance Committee**

2.1 **Membership**

There shall be a Finance Committee consisting of 9 legal voters of the Town who shall be appointed by the Selectmen. No elective or appointive town officers or town employee shall be eligible to serve on said committee. (amended May 2005)

2.2 The reduction in the number of members of the Finance Committee from 9 to 7, as approved by the 2005 Annual Town Meeting, shall take effect immediately upon approval of this bylaw amendment by the Attorney General, and compliance with the requirements of the G.L. c.40, s.32, if two vacancies exist on the Committee at that time, otherwise, the reduction in the number of members of the Committee shall take effect upon the expiration of the terms of the two members of the Committee or their sooner resignations. (amended May 2005)

2.3 **Appointment of Members**

Finance Committee members shall be appointed by the Selectmen at each Annual Town Meeting for alternation three-year terms so that as nearly as possible, the terms of one third of the members expire annually. The terms of office of said members shall

commence immediately upon qualification and shall expire at the close of the final adjournment of the Annual Town Meeting, at which their successors are appointed. Said committee shall choose its own officers and shall serve without pay, and it shall cause to be kept a true record of its proceedings. (amended May 2005)

**2.4 Vacancies**

The said committee shall fill any vacancy which may occur in its membership by vote, an attest copy of which shall be sent by the secretary to the Town Clerk. If any member is absent from five consecutive meetings of said committee, except in case of illness, his position shall be deemed to be vacant and shall be filled as herein provided. The term of office of any person so chosen to fill a vacancy shall expire at the final adjournment of the next succeeding Annual Town Meeting, and the Selectmen shall appoint his/her successor to complete the unexpired term of the member in whose office such vacancy originally occurred.

**2.5 Duties of Finance Committee**

**2.5.1 Consider All Articles:** All articles in any warrant for a town meeting shall be referred to the Finance Committee for its consideration. The Selectmen, after drawing any such warrant, shall transmit immediately a copy thereof to each member of the said committee. Said committee shall, after due consideration of the subject matter of such articles, report thereon to the Town Meeting, in writing, such recommendations as it deems best for the interest of the Town and its citizens.

**2.5.2 Consider All Expenditures (Budget)**

It shall be the duty of the Finance Committee annually to consider the expenditures in previous years and the estimated requirements for the ensuing year of the several boards, officers and committees of the Town, as prepared by them in such form and detail as may be prescribed by said committees. The said committees shall add to such statements of expenditures and estimates, another column giving the amounts which in its opinion should be appropriated for the ensuing year, and shall further add thereto such explanations and suggestions relating to the proposed appropriations as it may deem expedient, and report thereon as provided in section four.

**2.5.3 Access to Records and Accounts**

In the discharge of its duty, said committee shall have free access to all books of records and accounts, bills, and vouchers on which money has been or may be paid from the Town Treasury. Officers, boards and committees of the Town shall, upon request, furnish said committee with facts, figures and any other information pertaining to their several activities.

**2.5.4 Annual Report Required**

It shall be the duty of the Finance Committee to make an Annual Report of its doing, with recommendations relative to financial matters and the conduct of town business, to be contained in the Annual Town Report.

**3.0 Zoning Board of Appeals**

**3.1 Authorization and Appointment**

There is hereby established a Zoning Board of Appeals of three (3) members and two (2) associate members to be appointed by the Selectmen, as provided in the General Laws, which shall act on all matters within the jurisdiction under this bylaw in the manner prescribed in the General Laws.

**4.0 Treasurer-Collector**

**4.1 Authorization and Appointment**

It is hereby established that a Treasurer-Collector will be appointed by the Selectmen for a three-year term. [adopted June 2020]

**5.0 Council on Aging**

**5.1 Authorization and Appointment**

There shall be a Council on Aging consisting of five (5) legal voters of the town, who shall be appointed by the Selectmen to terms of three years each. In the first year, Selectmen shall appoint two persons to three-year terms, two persons to two-year terms and one person to a one-year term. After qualification, the Council on Aging may appoint up to five advisory members who shall have no voting privileges. [adopted May 1989]

**6.0 Flea Market Advisory Board**

**6.1 Authorization and Appointment**

Selectmen shall appoint a Flea Market Advisory Board to assist in the establishment of the administrative procedures and policies. Said Advisory Board shall have seven (7) members.

**6.2 Duties of the Flea Market Advisory Board**

The Flea Market Advisory Board shall research, report and make recommendations on such matters as the Board of Selectmen may direct, and shall summarize its doings in the Annual Report of the Town.

**7.0 Bylaw Committee**

**7.1 Authorization and Appointment**

A Bylaw Committee shall be appointed each June as follows: One member by the Board of the Selectmen, one member by the Moderator and one member by the appointees jointly. The Town Clerk shall serve as a non-voting member of the committee and shall serve as chairman until an organizational meeting of all members. Terms of appointment shall be one year, commencing July 1 of each year.

*Note: Duties of the Bylaw Committee are additionally noted in c.1, s.1.2*

## Chapter Three: Financial Affairs

### 1.0 **Providing for Audits**

#### 1.1 Annual Audit

An audit of the Town shall be made every year under the supervision of the state Division of Accounts, as provided in c.44, s.35 of the M.G.L (amended May 1997)

### 2.0 **Expenditure of Funds**

#### 2.1 **Unpaid Bills**

Each officer, board or committee authorized to spend money shall, on or before June 15<sup>th</sup> of each year, transmit to the Town Accountant all unpaid bills outstanding as of that date. [adopted May 1980]

### 3.0 **Receipt of Revenue**

3.1 Every officer shall pay into the Treasury of the Town, all amounts received by him on behalf of the Town, except as otherwise provided by law, and shall make a true return thereof to the Town Accountant, stating the accounts upon which such amounts were received.

### 4.0 **Compensation of Town Officers**

4.1 No Town Officer and no salaried employee of the Town or any agent of any such officer or employee, shall receive any compensation for his services to the Town except his official salary. Expense money is not to be allotted to the payment of compensation for services. All Town officers and employees, whether appointed or elected, shall pay all fees received by them by virtue of their office or position into the Town Treasury. [adopted May 1975, amended May 2014]

### 5.0 **Conservation Commission Fees**

5.1 Pursuant to MGL c.44, s.53G, the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists or other experts in order to aid in the review of proposed projects. Such funds shall be deposited with the Town Treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be required where the requisite review is more extensive than originally calculated or where new information requires additional consultant services.

Only costs relating to consultant work done in connection with a project for which a consultant fee has been collected, shall be paid from this account, and expenditures may be may at the sole discretion of the Commission. Any consultant hired under this provision shall be selected by, and report exclusively to, the Commission. The Commission shall provide applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. Notice shall be deemed to have been given on the date it is mailed or delivered. The applicant may withdraw the application or request within five (5) business days of the date notice is given, without any costs or expenses.

The entire fee must be received before the initiation of consulting services. Failure by the applicant to pay the requested consultant fee within ten (10) business days of the request for payment, shall be cause for the Commission to declare the applicant administratively incomplete and deny the permit without prejudice, except in the case of an appeal. The Commission shall inform the applicant and Department of Environmental Protection (DEP) of such a decision in writing. The applicant may appeal the selection of an outside consultant to the Selectmen, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue, or a related field. The applicant shall make such an appeal in writing, and must be received within ten (10) business days of the date that request for consultant fees was made by the Commission. Such an appeal shall extend the applicable time limits for action upon the application. [adopted May 2015]

**6.0 Brownfields Incentives**

**6.1 Purpose**

It is the intent of the Town to offer tax abatements to encourage the continued environmental cleanup and redevelopment of sites zoned for industrial and commercial use from or at which there has been a release of oil or hazardous material.

**6.2 Eligible Properties**

Property that may be the subject of a tax abatement agreement pursuant to this bylaw must:

6.2.1 Be a site or portion of a site from or at which has been a release of hazardous material;

6.2.2 Be owned by an eligible person, as that term is defined in G.L c.21E, s.2;

6.2.3 Be zoned for commercial or industrial use.

**6.3 Abatement Agreements**

The Treasurer-Collector is hereby authorized to negotiate agreements for the abatement of real estate taxes, interest and/or charges (hereinafter, "Abatement Agreements") with owners of eligible properties, the terms of which Abatements shall be subject to approval by the Board of Selectmen.

6.3.1 Abatement Agreements may allow for reductions in outstanding taxes, interest and/or charges.

6.3.2 Abatement Agreements shall include, but not be limited to, the following terms:

6.3.2.1 The amount of outstanding real estate taxes;

6.3.2.2 The percent of interest to accrue if determined applicable by the Treasurer-Collector and the property owner;

- 6.3.2.3 The description of quantifiable monthly payments;
  - 6.3.2.4 The inception date of monthly payments;
  - 6.3.2.5 The date of final payment;
  - 6.3.2.6 The late penalties to be imposed; and,
  - 6.3.2.7 Any and all other contractual terms as arranged between the Treasurer-Collector and the property owner.
- 6.3.3 All Abatement Agreements shall be executed by the Chairman of the Board of Selectmen and the property owner, whose signature shall be notarized and attested by the Town Clerk.
- 6.3.4 Copies of all Abatement Agreements shall be provided to the Massachusetts Department of Environmental Protection, The United States Environmental Protection Agency, The Massachusetts Commissioner of Revenue, The Board of Selectmen, and, the property owner. [adopted May 2007]

## **Chapter Four: Public Order and Safety**

### **1.0 Unregistered Motor Vehicles**

#### **1.1 Limitation on Unregistered Vehicles**

No more than one unregistered motor vehicle, assembled or disassembled, shall be kept, stored or allowed to remain on a parcel of land except by the person duly licensed under MGL c.140, s.59 and except as provided in s.1.2 of this bylaw.

#### **1.2 Permits by Selectmen**

The Board of Selectmen may issue a permit to keep, store, or allow two or more of such vehicles to remain on a parcel of land after said Board has held a public hearing thereon, first causing notice of the time, place and subject matter of such hearing to be given, at the expense of the applicant, by publication in a newspaper of general circulation, at least ten days in advance of the date of the hearing. Said Board shall not issue such a permit unless it finds that the presence of such vehicles on such parcel (1) will not nullify or substantially derogate from the intent or purpose of this bylaw, (2) will not constitute a nuisance and (3) will not adversely affect the neighborhood in which such parcel is situated.

1.2.1 Each such permit shall (1) specify the maximum number of such vehicles that may be kept, stored or allowed to remain on such parcel, (2) be limited to a reasonable period of time and (3) be a personal privilege of the applicant and not a grant attached to and running with the land.

#### **1.3 Exceptions**

This bylaw shall not apply to vehicles which are (1) stores within an enclosed building, or (2) designed and used as vehicles for farming, agriculture or construction purposes. Any junk cars not visible from the road shall be exempt from the terms of this bylaw.

**1.4 Violations and Enforcement**

Any persons who continue to violate the provisions of this bylaw after 30 days following receipt by him of written notice of such violation from the Board of Selectmen, shall be liable to a penalty not exceeding twenty dollars for each offense. Each day that any violation is allowed to continue after said 30-day period, shall constitute a separate offense. [adopted March 1969]

**2.0 Application of Building Code and Zoning Enforcement**

2.1 The Selectmen shall provide for the appointment of a Building Inspector and Zoning Officer who shall act on all matters within the jurisdiction under this bylaw, in the manner prescribed in the General Bylaws and within the provisions of the Massachusetts State Building Code.

**3.0 River and Stream Protection**

**3.1 Definitions**

Waste water is defined as water that has been used in manufacturing, processing, cooling, servicing, washing or cleaning, or in any septic or sewerage works.

**3.2 Limitations on Discharge**

Except as hereinafter allowed no waste water shall be discharged directly into any river or stream or indirectly through a pond, lake, or storage or disposal works.

**3.3 Limitations on Diversion**

Except as hereinafter allowed water shall not be drawn or diverted from any river or stream.

**3.4 Exceptions**

3.4.1 Drawing in amounts not exceeding 250 gallons per day.

3.4.2 Drawing for fire department use.

3.4.3 Drawing, diversion or indirect discharge for agricultural use that would not be detrimental to a river or stream and associated wetlands.

3.4.4 Diversion for low head hydro-electric generation, that would not be detrimental to a river or stream and associated wetlands.

**3.5 Violations and Enforcement**

The fine for violation of this bylaw by individuals is not less than \$20 nor more than \$100 per day; by corporations not less than \$300 per day. Each day constitutes a separate violation. [adopted May 1981]

#### **4.0 Boating Safety**

- 4.1 No person shall operate a motor-powered boat of any type on any body of water in the Town of Brimfield unless said motor is equipped with an effective muffler of standard type and construction.
- 4.2 No person having control or direction of a boat on any body of water in the Town of Brimfield shall neglect or refuse to stop the same when directed to do so by a police officer who is uniformed or displays his badge of authority.
- 4.3 No person shall operate a powered boat within an area designated as a swimming area and enclosed by buoys.
- 4.4 No person shall operate a boat on any body of water in Brimfield during hours of darkness or dusk unless such boat is equipped with a light of either portable or fixed character sufficient in intensity to be visible from the shore at all times in fair weather.
- 4.5 No person shall operate a boat upon any body of water in Brimfield with a greater number of occupants than is reasonably safe, having in mind the weather, the number of available life preservers and the capacity of the boat as prescribed by the builder.
- 4.6 A power boat towing a water skier shall carry at least one person in addition to the operator who shall be capable of rendering assistance to the skier or the operator in the event of an emergency.
- 4.7 The following rules of the road shall be applicable to all operators of craft on bodies of water in the Town of Brimfield.
1. Unpowered craft have the right of way over powered craft.
  2. A craft being overtaken has the right of way over craft overtaking.
  3. Boats approaching approximately head on shall bear to the right and pass left to left or port to port.
  4. In a crossing situation, the boat on the right hand is privileged and has the right of way and the burdened craft shall give way.

#### **4.8 Violations and Enforcement**

Whoever violates any of the above rules and regulations shall forfeit and pay a fine not exceeding twenty dollars for each offense. [adopted March 1958]

#### **5.0 Consumption of Alcohol**

- 5.1 The consumption of alcoholic beverages on any public way or other town property in the Town of Brimfield is prohibited. Persons violating this section shall be liable to a fine of a minimum of \$20 and a maximum of \$50 for each offense. [adopted May 1989]

#### **6.0 Recycling of Domestic Rubbish**

- 6.1 In order to implement a program of recycling in conjunction with ordinary waste disposal, residents of every household shall separate waste material into the following categories before depositing same for disposal: 1) glass and cans, 2) paper, and 3) other

waster. The separated materials shall be disposed of at times and in places to be designated by the Board of Selectmen. If no separation takes place, waste material shall not be accepted at the disposal location. This bylaw to take effect upon completion of agreement between the Town of Brimfield and the Department of Environmental Quality Engineering, Materials Recovery Facility at Springfield. Residents shall be notified by advertisements in at least two newspapers forty-five days in advance of commencing the recycling program stipulated in this bylaw. [adopted May 1989]

## **7.0 Alarm System Registration**

### **7.1 Registration**

Every existing or newly installed burglar (intrusion) and/or fire alarm system must be registered with the respective department (Fire or Police). This is to include every externally audible device, whether or not it notifies the respective department by telephone dialer or central office monitoring. Failure to comply with this section may result in a lack of response by town emergency departments.

### **7.2 Service Fee**

A service fee may be assessed to the owner or tenant of a property for more than two false alarms annually that result in an emergency service response. Said service fee for each occurrence to be set at \$25.00 for a police response and \$50.00 for a fire department response. [adopted May 1991]

## **8.0 Roadside Rubbish**

### **8.1 Purpose**

The purpose of this bylaw is to discourage and eliminate the dumping of household rubbish and all trash from the roadsides in the Town of Brimfield.

### **8.2 Definitions**

For the purpose of this bylaw, rubbish is defined as any discarded material(s) including, but not limited to, household trash, appliances, automotive parts, commercial or industrial materials, fuels, chemicals, or brush and leaves.

### **8.3 Violations and Enforcement**

The Brimfield Police Department is authorized to investigate complaints under this bylaw and is authorized, with the consent of the Police Commission/Board of Selectmen, to prosecute when reasonable cause is shown.

## **9.0 Official House Numbering**

### **9.1 Purpose**

In accordance with Chapter 291 [Acts of 1990] of the laws of Massachusetts, the Town of Brimfield, in conjunction with the Statewide Emergency Telecommunications Board, has joined the Enhanced 9-1-1 service. For matters of personal and public safety, in order to assure the fastest response by emergency services personnel without undue delay, residents of the Town of Brimfield are required to post house numbers of sufficient height so they are visible and clearly readable from the street.

## 9.2 **Standards**

For purposes of this bylaw, sufficient height will be 3.5” and 2.5” width.

House numbers must be mounted on the front of a residence facing the roadway or on a post or on a mailbox at the front property line on the street adjacent to the driveway entrance to the residence. This will allow for location uniformity throughout the Town.

## 9.3 **Violation and Enforcement**

Any property owner who continues to violate the provisions of this bylaw after thirty (30) days following receipt by the property owner of joint, written notice of such violation from the Board of Selectmen and Chief of Police, shall be liable to a penalty of \$20.00 for each offense. Each day said violation is allowed to continue after said thirty (30) day period, shall constitute a separate offense.

*Note: This bylaw will be enforceable upon the implementation of E9-1-1 service in the Town of Brimfield [adopted June 1996]*

# **Chapter Five: Licensing and Permits**

## **1.0 Tax Status and Licensing**

- 1.1 The Treasurer-Collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as the tax collector, shall annually, and may periodically, furnish to each department, board, commission or division, hereinafter referred to as the licensing authority, that issues licenses or permits, including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges, and that such party has not filed in good faith, a pending application for an abatement of such tax or a pending petition before the appellate tax board.
- 1.2 The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers of any party whose name appears on said list furnished to the licensing authority from the tax collector or with respect to any activity, event or other matter which is the subject of such license or permit and which activity, event or matter is carried out or exercised or is to be carried out or exercised on or about real estate owned by any party whose name appears on said list furnished to the licensing authority from the tax collector; provided, however, that written notice is given to the party and the tax collector, as required by applicable provisions of law, and the party is given a hearing, to be held not earlier than fourteen days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party. The tax collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the licensing authority with respect to such license denial, revocation or suspension shall be made only for the purposes of such 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 license authority receives a certificate issued by the tax collector that the party is in good standing with respect to any and all local taxes, fees,

assessments, betterments or other municipal charges, payable to the municipality as the date of issuance of said certificate.

- 1.3 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 the suspension or revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.
- 1.4 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 G.L. c.268A, s.1 in the business or activity conducted on said property.
- 1.5 This bylaw shall not apply to the following licenses and permits: open burning, G.L. c.48, s.13; bicycle permits, G.L. c.85, s.8A; sales of articles for charitable purposes, G.L. c.101, s.33; children work permits, G.L. c.149, s.69; clubs, associations dispensing food or beverage licenses, G.L. c.140, s.21E; dog licenses, G.L. c.140, s.37; fishing, hunting, trapping license, G.L. c.131, s.12; marriage licenses, G.L. c.207, s.28; and theatrical events, public exhibition permits, G.L. c.140, s.108.
- 1.6 Holders or applicants for any license or owners of the real estate shall be considered delinquent if there is evidence of failure to adhere to Orders of Conditions or other legally imposed conditions or required actions set forth by Departments, Committees, or Boards of the Town or of the Commonwealth of Massachusetts.
- 1.7 Applications for local short term rental licenses, including without limitation, AirB&B, VRBO, Bed & Breakfast establishments,\* and all other short term rental platforms as defined by Chapter 337 of the Act of 2018, will be required to show that they are registered, carry pertinent insurance, and have inspection certificates ensuring compliance with local Town Bylaws. Definitions of short-term rental provisions will follow those outlined in Section 6 of Chapter 337 of the Acts of 2018, as it amends M.G.L. Chapter 64G. *\*(B&B home is 3 rooms and B&B establishment is 4 rooms)* [adopted June 2020]

## **2.0 Junk Dealers General Provisions**

- 2.1 The Selectmen may in their discretion, grant licenses to suitable persons to be collectors of, dealers in or keepers of establishments for the purchase, sale, or barter of junk, old metals or second hand articles and may make rules and regulations relative to their business, and may provide for the supervision thereof, and may make additional rules, regulations, and restrictions which shall be expressed in all licenses, all in accordance with the provisions of M.G.L. c.140, s. 54-55

2.2 Licenses for the above are granted each January for the ensuring year and are valid until December 31. The annual fee for said license is not less than \$25. Licenses granted under this section may be renewed and may not be transferred. (adopted on or before Dec 1957; amended May 1989)

## 2.3 **Flea Markets**

### 2.3.1 **Definitions**

Flea Market: For purposes of this bylaw, any of the following businesses, unless excepted in s.2.3.2 below, shall be considered a “Flea Market”.

A business which displays, sells, or offers for sale, any merchandise outdoors; or

A business which rents space outdoors to another merchant or merchants (hereinafter referred to as “Vendors”) for the purpose of displaying, selling or offering for sale any merchandise outdoors;

A business which displays, sells or offers for sale, any merchandise both indoors and outdoors, but such business shall be considered to be a Flea Market only to the extent that said business is conducted outdoors; and

A business which rents space both indoors and outdoors to another merchant or merchants (hereinafter referred to as “Vendors”) for the purpose of displaying, selling or offering for sale any merchandise, but such business shall be considered to be a Flea Market only to the extent that such business is conducted outdoors.

Owner/Operator: Any individual, corporation, trust, limited liability company, partnership or other legal entity having ownership or control of the premises upon which a flea market is being operated shall be considered to be an owner/operator for the purpose of this bylaw.

Vendor: A merchant who rents, contracts to use, or uses, any space outdoors for the purpose of displaying, selling or offering for sale any merchandise shall be considered to be a “vendor.” In the event that a merchant rents space which is partially indoors and partially outdoors, said merchant shall be considered to be a Vendor only with respect to that portion of the business conducted outdoors.

Outdoors: The term “outdoors” for the purpose of this bylaw, shall include the commonly understood definition which is “not enclosed” or “having no roof” but any merchandise displayed as follows, shall also be considered to be outdoors: in or under a tent, tarp, or similar temporary cover; in a truck, trailer, van, vehicle or other moveable conveyance; in or under a pavilion or other permanently roofed structure used seasonally for the temporary sale, display, or offer for sale, of merchandise.

### 2.3.2 **Exceptions**

Notwithstanding the foregoing, nothing in the Flea Market bylaw shall be construed to prohibit or regulate any of the following, which may or not be regulated by other town bylaws:

- 2.3.2.1 The outdoor sale or display of fruit, vegetables, flowers, cordwood, Christmas trees and wreaths, or any unprocessed agricultural products;
- 2.3.2.2 The short term non-commercial outdoor use of any residential property for the sale, by the owner of the property, of used personal items, which use is most commonly referred to as a “tag sale” or “yard sale;”
- 2.3.2.3 The sale of gasoline, diesel fuel, motor oil, propane or other petroleum products;
- 2.3.2.4 The outdoor sale or display of new or used automobiles;
- 2.3.2.5 The outdoor sale of ice or soft drinks not intended to be consumed on the premises;
- 2.3.2.6 The temporary, clearly incidental, short term, uncovered outdoor display of merchandise by a merchant whose permanent business is conducted indoors; and,
- 2.3.2.7 The outdoor sale of merchandise incidental to any outdoor activity for which a permit has been issued or for which a permit is not required such as, but not necessarily limited to, an auto show, civic or religious fundraiser, horse show, concert or circus. (section amended May 2006)
- 2.3.2.8 The outdoor use of any business or commercial property for the sale of used items of personal property which may be referred to as a “combined tag sale” or a “community wide tag sale” provided that such use shall not occur on any property within ten (10) days of any legal Flea Market period. (added May 2013)
- 2.3.2.9 The outdoor use of any business or commercial property for the conduct of what is commonly known as a “craft show” at which goods which are substantially made or crafted by the exhibitors, may be displayed and sold provided that such use shall not occur on any property within ten (10) days of any legal Flea Market period; or, take any other action thereon. (added May, 2013)

2.3.2.10 Such use shall not exceed three (3) days, twice per year on any such property. No such events may be scheduled simultaneously on more than one parcel of land. (added May 2013)

### 2.3.3 **Owner/Operator Licensing**

Owner/Operators of flea markets shall hold an annual license as provided in Chapter 5, Section 2.1 and 2.2. The Board of Selectmen may, in its discretion, refuse to issue a license to an owner/operator if, after a public hearing, it believes by the preponderance of the evidence, that the owner/operator has not or is not conforming with the requirements of this bylaw and the regulations of the Board of Selectmen. Said hearing shall be held within 90 days of the deadline.

Owners/operators seeking a new license for a flea market after the adoption of this bylaw, shall be licensed only after a public hearing conducted by the Board of Selectmen. The time, place, date and subject matter of all hearings held under this paragraph shall be posted in at least five public places in the Town, at least seven days in advance of said hearing.

In January of each year, licensed owners/operators shall provide information to Selectmen about number of vendors, days and dates of operation, and provisions for compliance with the health and safety bylaws. This information is subject to verification at any time by the Board of Selectmen or its appointed agent. Failure to provide correct information shall be considered a violation of this bylaw. [amended May 2010]

### 2.3.4 **Vendor Permitting**

2.3.4.1 **Cost of Vendor Permit:** The cost of each vendor permit shall be determined annually by the Selectmen in accordance with the law of the Commonwealth of Massachusetts.

2.3.4.2 **Distribution of Permits and Payment to Town:** Vendor permits may be distributed by owner/operators or by the Town. The total cost of permits issued by the owner/operator shall be remitted to the Town within ten (10) days after the last day of each flea market. The owner/operator shall be responsible for payment for any vendor permits it issues. [amended May 2011]

2.3.4.3 **Records of Vendor Permits Issued:** The owner/operator shall return all unused vendor permits. Each owner/operator shall maintain a record of each permit issued by it which shall include the vendor's name and address. A copy of this record shall accompany the owner/operator's remittance to the Town.

2.3.4.4 **Display of Vendor Permits:** Each vendor shall prominently display the Vendor Permit during the conduct of business.

2.3.4.5       **Subletting:** If it is determined by the Selectmen that a “vendor” is conducting business without a “vendor permit,” the owner/operator shall be assessed the cost of the vendor permit, and for purposes of allocating emergency services costs, the number of “vendor days” attributable to such owner/operator shall be adjusted accordingly. The purpose of this provision is to control “subletting” whereby multiple spaces rented to a single vendor are actually used for the conduct of business by several vendors. [entire section amended May 21, 2007]

2.3.5       **Regulations**

The Board of Selectmen may make additional rules, regulations and restrictions which shall be expressed in all licenses.

2.3.6       **Emergency Services**

Police, fire, and ambulance services incidental to the operation of flea markets may be required at the discretion of the Board of Selectmen and will be under the direction of the respective department heads or service providers. Costs of these services will be borne by the funds collected under Section 2.3.11 of this bylaw.

2.3.7       **Use of Town Common**

The Town Common during Flea Market will not be used for parking, business enterprises, camping, or drinking of alcoholic beverages. This section is enforceable under the Town’s Police powers (MGL Chapter 41 Section 96-98)

2.3.8       **Parking**

Parking is prohibited both day and night on Town streets during flea market operations; and nights at other times; enforceable under the Town’s police powers, and as otherwise provided in Section 2.3.9 below.

2.3.9       **Health and Safety**

2.3.9.1       Duties of the Board of Health: The Board of Health will be empowered to immediately close any flea market operation found to be violating the Sanitary Code of the Commonwealth of Massachusetts and thereby constituting a hazard to public health.

2.3.9.2       Sanitation Facilities to be Provided: Flea Market owner/operators will provide toilet, hand washing and drinking water facilities in accordance with regulations provided by the Board of Health.

2.3.9.3       Emergency Access to be Provided: Flea Market owner/operators will provide fire and emergency access lanes at the discretion of the Fire Chief.

- 2.3.9.4 Proximity to Roads and Ways: No tents, booths, tables, wares, signs, vehicles or other temporary obstructions shall be permitted within 35' of the center line of the paved surface of Route 20 except where determined in writing by the Police Department or Fire Department not to be detrimental to the public safety provided however, that where a permanent guard rail has been erected by the Massachusetts Highway Department less than 35' from said center line, this provision shall not apply to land which immediately abuts and lies behind such guard rail.
- 2.3.9.4.1 Violations and Enforcement of This Section: Any owner/operator or other land owner who knowingly violates this section or who permits any violation to continue shall be subject to a fine of \$200, in the case of an owner/operator, loss or non-renewal of their annual license. [amended May 2007]
- 2.3.9.5 Overnights: Daily permitted flea market vendors at a licensed flea market shall be allowed to remain overnight in their vehicles on the grounds of a flea market owner/operator for the purpose of protecting their wares for a period not to exceed six consecutive nights and not more than three times per year. Any flea market owner/operator who allows vendors to remain overnight on his premises must maintain adequate sanitary facilities and septic dumping services under jurisdiction of the Board of Health.
- 2.3.9.6 Overnight Camping: Overnight camping is prohibited during flea market periods, with the following exceptions:
- 2.3.9.6.1 At a licensed Family Campground
- 2.3.9.6.2 By duly permitted flea market vendors at licensed flea markets as allowed under Chapter 5, section 2.3.9.5.
- 2.3.9.6.3 On any property that meets the standards set by the Board of Health, under 105 CMR 400, for temporary short-term camping during the three flea market periods specified in Chapter 5, section 2.3.10 of these bylaws.
- 2.3.9.6.4 Within a self-contained unit, as defined in 105 CMR 440.01 on any parcel with written permission of the landowner. No more than two such units may be occupied on any parcel that does not meet the standards of section 2.3.9.6.1 above.

2.3.9.6.5 Sanitation: Self-contained units shall dump their waste at an approved dumping station. Owners of said units may also arrange for the emptying their tanks with a sanitary pumping company. Owners of said units found to be dumping illegally shall be responsible for costs of cleanup.

2.3.9.7 Hazardous Materials Prohibited: The sale, bartering or offering for sale, of any chemicals that must be listed on Material Safety Data Sheets, as stated by the Occupational Safety and Health Administration, or may be so listed in the future, shall not be allowed for storage of these items, excepting those for immediate personal use (as determined by the Fire Chief) shall not be allowed within the areas of the flea markets, nor in any ancillary parking areas, and owners/operators shall provide a copy of this section of the Town Bylaws to permitted vendors in advance of each flea market.

2.3.9.8 Violations of Health and Safety Sections: Property owners and/or individuals found to be in violation of Chapter 5, Section 2.3.9.6 of these bylaws shall be subject to a fine of \$25.00 under Chapter 1, section 2.1.2.3 of these bylaws (non-criminal disposition). (amended May 2000)

### **2.3.10 Durations and Hours of Operations**

2.3.10.1 Legal Period: A flea market may be licensed and conducted for not more than six consecutive days and not more than three times per year. No licenses shall be issues for flea markets in any months except May, July and September.

2.3.10.2 Calendar Dates: The legal period shall begin on the second Tuesday in May, the second Tuesday in July and the first Tuesday after the Labor Day holiday in September. [amended May, 2007, May 2019]

2.3.10.3 Daily Hours: No vendor may display wares for sale or otherwise conduct business until sunrise on the first legal day, or after sunset on the last legal day. Daily business shall extend no longer than sunrise to sunset. [section adopted Nov 4, 1991]

2.3.10.4 Signs to be Posted: If, prior to the first legal day of operation, any Flea Market owner/operator allows a vendor to go upon its premises to prepare for the legal opening, then such Flea Market owner/operator shall prominently display a sign or signs to clearly indicate that the Flea Market is closed to the public. The owner/operator of such market shall take reasonable measures to

prevent the public from entering upon the premises except for the purpose of patronizing a full-time business, unrelated to the Flea Market, that may also be located on the premises.

2.3.10.5 Vendor Courtesy: In order to reduce public inconvenience, enhance public safety and minimize the necessity of police traffic management, each Flea Market should permit its vendors to go upon the premises sufficiently in advance of its opening to prevent lines of vendor vehicles on the public ways.

2.3.10.6 Exception: The Selectmen may, at their discretion, permit the sale of tent supplies and related items beginning on the Monday before the “legal period” as set forth in 2.3.10.1 above. Tent supply vendors must have a vendor’s permit. When doing business prior to the “legal period,” access to any tent supply vendor must be separated from the street and the tent supply dealer must be separated from the rest of the Flea Market by a fence. [sections added May 21, 2007]

#### **2.3.11 Emergency Service Fees**

2.3.11.1 Scope: Within no more than 30 days following each Flea Market, the Selectmen shall determine the “emergency service cost” by adding the reasonable and necessary cost reasonable attributed to the Flea Market of the following: Police wages; Fire Department wages; Ambulance services. [amended May 2009]

2.3.11.2 Vendor Days and Cost per Vendor Day: The Selectmen shall determine the number of vendor days for each owner/operator by adding the number of vendors set up for business on the owner/operator’s premises on each day of business. The Selectmen shall add the number of days for all of the flea markets to determine the “total vendor days.” The Selectmen shall then divide the “emergency service cost” by the “total vendor days” to determine the “cost per vendor day.”

2.3.11.3 Food Vendors: For purposes of this section of the Bylaw, Food Vendors shall be counted as Vendors for the purpose of determining the total number of vendor’s permits issues by an owner/operator.

2.3.11.4 Emergency Services Fee Formula: The Emergency Services Fee for any owner/operator shall be determined by multiplying the number of vendor days attributable to that owner/operator’s flea market by the cost per vendor day. The emergency services fee

shall be due and payable 21 days from the day of mailing by the Selectmen. [entire section amended May 21, 2007]

- 2.3.12 Violation and Enforcement: For failure to pay any license or emergency services fee under Chapter 5, section 2.3.10-11, or for knowingly allowing vendors without permits to display and/or sell wares at their Flea Market, or for knowingly allowing vendors to sell goods outside the permitted days of operation, a Flea Market owner/operator shall forfeit the right to renew a license for the ensuing year under the provisions of Chapter 140, sections 54 and 55 of MGL, and Town Bylaw Chapter 5, section 1.0. Additionally, the Flea Market owner/operator shall pay a fine of \$250 per day, per violation under this section. [entire section amended May 2007; May 2009]

## **Chapter Six: Roads and Highways**

### **1.0 Driveways**

#### **1.1 Duties of the Highway Surveyor and Building Inspector**

No alteration of any land within the boundaries of a public way shall be made for driveways, private ways, or otherwise, except by the Town of Brimfield upon authorization of the Highway Superintendent.

#### **1.2 Submission of Proposals**

Any owner or occupant of land abutting a public way who desires any alteration of land within a public way shall file with the Highway Superintendent, a written proposal specifying the location, dimensions, and purposes of the desired alteration. The Highway Superintendent shall within ten (10) days of such filing, deny same, request further information or approve same. The Highway Superintendent shall direct the Highway Department, land owner, or occupant filing to affect the alteration at the owner's or occupant's expense.

#### **1.3 Owner or Occupant Responsibility**

The owner or occupant shall be responsible for any debris or material that come from such access onto Town property. The Town shall not be responsible for any run-off of water or material that may be allowed to enter the owner or occupant's land because of such alteration.

In the event that the Highway Surveyor deems it necessary to remove and clean debris or material from Town property as a result of a violation of this bylaw, the owner or occupant of the residence will become responsible for payment or charges incurred for town labor, equipment, and material necessary to return the Town property back to its original condition.

- 1.4 The owner/builder shall construct the driveway entrance from a point along the property frontage and the owner/builder shall construct the driveway with a slope of zero percent to a maximum of ten percent (0%-10%) from the pavement edge of the traveled way for a distance of twenty (20) feet, then continue with a slope of zero percent to a maximum of twenty (20) percent (0%-20%) for a distance of twenty-five (25) feet.

Any new building permit will require the owner/builder to pave any driveway/roadway abutting any town roadway. The pavement will be for the width of the driveway/roadway and run for a distance of ten (10) feet. The pavement shall be bituminous concrete or concrete with a thickness of not less than two inches throughout its entirety.

The owner/builder will install or cause to be installed, a proper swale at the end of the driveway, nearest the town road for the purpose and control of water to eliminate water discharge on the town road.

- 1.5 Issuance of Occupancy Permits  
No occupancy permit will be issued until the above is accomplished and approved by the Building Inspector and the Highway Superintendent. (adopted May 1986; amended June 1996; amended May 2005]

## **2.0 Snow and Ice on Roads**

### **2.1 Restrictions on Private Snow Removal**

No persons other than an employee in the service of the Commonwealth of the Town, or an employee in the service of an independent contractor acting for the Commonwealth or the Town, shall shovel, snow blow, pile, push or plow snow or ice onto and/or across a town road or way so as to impede the flow of traffic on such road or way.

### **2.2 Violation and Enforcement**

Any property owner found in violation of the provisions of this bylaw as determined by a police officer shall be liable to a penalty of \$250.00 for each offense. (adopted June 1996)

## **3.0 Temporary Repair of Private Ways**

- 3.1 The Town of Brimfield is hereby authorized to make temporary repairs to private ways solely for the purpose of facilitation snow plowing of such ways, and, excluding all drainage repairs, as may be authorized by the Selectmen as set forth in section 3.2.

- 3.2 No repair may be made to a private way under authority of this bylaw without the prior approval of the Board of Selectmen with regard to the location and scope of repair.

- 3.3 In order to be eligible for repair under this bylaw, a particular private way shall have been open to the public use for a term of at least one year, unless such repair is otherwise determined by the Board of Selectmen to serve a public purpose.

- 3.4 It shall not be necessary that any such repair be deemed to be “required by public necessity” or that any abutters petition for such repair. No betterments shall be assessed for such repairs and no cash deposit shall be required.
- 3.5 The Town of Brimfield shall not be liable for bodily injury, death or damage to personal property caused by reason of a defect of want of repair in any private way, on account of any repair made under the authority of this bylaw. Temporary repairs undertaken pursuant to the authority set forth herein, shall not constitute “maintenance” of such way so as to give the way the status of a way “maintained and used as a public way” under the Massachusetts Subdivision control Law. [section adopted May 2011]

## Chapter Seven: Animal Control

### 1.0 Definitions

For purposes of this bylaw only, the following definitions shall apply:

**Animal Control Officer (ACO)** - any person(s) appointed under M.G.L. c. 140, Section 151, who is designated by the Board of Selectmen to enforce this bylaw and M.G.L. c. 140 Sections 136A to 174E. Animal control officers shall also be nominated under M.G.L. c. 129, Section 15 for the purpose of rabies quarantines. Animal Control Officers are non-sworn members of the Brimfield Police Department.

**A. Dog**- any animal of domestic canine species

**B. Dangerous Dog** - any dog which is defined under M.G.L. c. 140, Section 136.

**C. Domestic Animal** any dog, cat, ferret or domestic animal as defined in 321 CMR 9.02

**D. Kennel** - a pack or collection of five (5) or more dogs, six (6) months of age or older, which are kept on a single premise

1. **Personal Kennel** - a pack or collection of five (5) or more dogs kept on a single premise for private personal use
2. **Commercial Breeder Kennel** - an establishment, other than a personal kennel, engaged in the business of breeding animals for sale or exchange to wholesalers, brokers or pet shops in return for consideration.
3. **Veterinary Kennel** - a veterinary hospital or clinic that boards dogs for reasons in addition to medical treatment or care; provided, however, that veterinary kennel shall not include a hospital or clinic used solely to house dogs that have undergone veterinary treatment or observation or will do so only for the period of time necessary to accomplish that veterinary care.
4. **Domestic Charitable Corporation Kennel** - a facility operated, owned or maintained by a domestic charitable corporation registered with the Department of Agriculture or an animal welfare society or other nonprofit organization incorporated for the purpose of providing for and promoting the welfare, protection and humane treatment of animals, including a veterinary

hospital or clinic operated by a licensed veterinarian, which operates consistent with such purposes while providing veterinary treatment and care.

5. **Commercial Boarding or Training Kennel** an establishment used for boarding, holding, day care, overnight stays or training of animals that are not the property of the owner of the establishment, at which such services are rendered in exchange for consideration and in the absence of the owner of any such animal.

**E. Keeper** any person(s), firm, farm, corporation, or organization, owning, keeping, harboring, or having interest in or care, custody, or control of one (1) or more dogs or domestic animals.

**F. Generally Accepted Agricultural Practice** as used herein shall be determined by members of the Agricultural Commission for the town on a case by case basis.

**G. Public Nuisance** any domestic animal or dog is be deemed a public nuisance if:

1. Such domestic animal or dog is free of restraint and permitted on public or private property other than that belonging to the keeper or others' private property who has knowledge and has expressed permission to be on said private property except if it is a generally accepted agricultural practice or if such domestic animal or dog is being used in a so-called hunting/sporting event, as a "working dog", or in a competition/showing trial and is being supervised as such by a person competent to prevent the domestic animal or dog from being a threat to public safety; provided, however, that this section shall apply only while such domestic animal or dog is being used for the above mentioned events, trials, work, or training for such purposes;
2. Such dog shall be permitted to defecate on public or private property and the keeper of the dog does not immediately clean up and remove such defecation;
3. A dog that: (a) by excessive barking or other disturbance, is a source of annoyance to a sick person residing in the vicinity; or (b) by excessive barking, causing damage or other interference, a reasonable person would find such behavior disruptive to one's quiet and peaceful enjoyment; or (c) has threatened or attacked livestock, a domestic animal or a person, but such threat or attack was not a grossly disproportionate reaction under all the circumstances.

**H. Unprovoked** Means that the domestic animal or dog was not hit, kicked or struck by the person with any object or part of the person's body, nor was any part of the animal's body pulled, pinched or squeezed by a person to cause pain or discomfort to the animal, nor was the animal verbally or physically taunted, in any way, whether there be physical contact or not.

- I. Animal Shelter (shelter)** A facility operated, owned, or maintained by an Animal Rescue Organization that exists for the purposes of receiving, maintaining, caring for, transporting, or transferring ownership of a domestic animal, but not a foster home.

**2.0 Registration and License of Dogs**

- 2.1 The keeper of one (1) to four (4) dogs more than six (6) months old shall annually complete complete an application for a dog license for each dog and file the same with the Town Clerk on or before March 31<sup>st</sup> of any given year. Upon presenting said application and a valid certificate of rabies vaccination (along with proof of neutering and spaying, if applicable) for the dog and the appropriate fee, the Clerk shall issue said license and tag. The applicant shall keep the tag securely affixed to the dog with a collar or harness at all times.
- 2.2 All initial kennel licenses, other than those for a Personal Kennel, are subject to approval as outlined in the Zoning Bylaws of the Town of Brimfield.
- 2.3 All kennel licenses, both initial and annual renewals, may not be issued by the Town Clerk until the kennel has passed an inspection by the Animal Control Officer. The ACO shall determine if said premises are safe, secure, and if the animals will be kept in a sanitary area that is adequate to house the number of dogs. Upon a positive finding the ACO shall notify the Town Clerk to issue a license. Once issued, the applicant shall keep all tags securely affixed to each dog with a collar or harness at all times.
- 2.4 **Personal Kennel** - an application form for a kennel license for five (5) to ten (10) dogs, six months of age or older, shall be submitted annually to the Town Clerk. A valid certificate of rabies vaccination with proof of neutering and spaying, if applicable, for each dog must be on file in the Town Clerk office. The inspection fee and license fee for each dog must accompany the application. A second kennel license is required for more than ten (10) dogs.
- 2.5 **Commercial Breeder Kennel** - a renewal application for the number of dogs approved in the initial application must be submitted annually to the Town Clerk along with the required fee. A license will be issued following an inspection with positive results by the ACO. Current rabies certificates for each dog are required to be on file in the Clerk's office for any dog over 6 months of age. The inspection fee and license fee for each dog must accompany the application.
- 2.6 **Veterinary Kennel** - a renewal application must be submitted annually to the Town Clerk along with the required fee. A license will be issued following an inspection with positive results by the ACO.
- 2.7 **Domestic Charitable Corporation Kennel**- a renewal application must be submitted annually to the Town Clerk. A license will be issued following an inspection with positive results by the ACO. An inspection fee will apply. Current rabies certificates must be on file in the Clerk's office for each dog. Individual tags will be provided at no cost.

2.8 **Commercial Boarding or Training Kennel** - a renewal application must be submitted annually to the Town Clerk along with the appropriate fee. A license will be issued following an inspection with positive results from the ACO.

2.9 If an inspection results in a negative finding, the owner will have ten (10) days to rectify the situation before additional action will be taken by the Animal Control Officer.

2.10 All License Periods shall be from April 1 in any year to March 31 the following year.

2.11 **Violation and Enforcement**

A. Fees. All fees relating to this bylaw shall be as determined by the Board of Selectmen. A list of all fees and fines shall be kept on file by the Board of Selectmen and be posted in a conspicuous place at the Town Clerk's office and the Public Safety Building.

B. Enforcement. Whoever violates Chapter 7 Section 2.1 shall be subject to a non-criminal disposition as follows:

1<sup>st</sup> Offense: Warning with 7-day notice to register

2<sup>nd</sup> Offense: \$25.00 non-criminal disposition

3<sup>rd</sup> and Subsequent Offenses: \$50.00 non-criminal disposition.

C. Whoever violates Chapter 7 Sections 2.2 through 2.8 shall be subject to a non-criminal disposition as follows:

1<sup>st</sup> Offense: Warning or \$50.00 non-criminal disposition

2<sup>nd</sup> Offense: \$75.00 non-criminal disposition

3<sup>rd</sup> or Subsequent Offenses: \$100.00 non-criminal disposition

3.0 **Licensing of Animal Shelters**

3.1 All initial animal shelter licenses are subject to approval as outlined in the Zoning Bylaws of the Town of Brimfield.

3.2 A copy of the state license for a shelter shall be provided to the town clerk within 30 days of receipt of the shelter and annually thereafter so long as the shelter operates within the town.

4.0 **Rabies Vaccination Requirement for Dogs and Cats**

4.1 In accordance with M.G.L c. 140, Section 145B, whoever in the Town of Brimfield is the owner or keeper of a dog or cat six months of age or older shall cause such dog or cat to be vaccinated against rabies by a licensed veterinarian using a licensed vaccine according to the manufacturer's directions and shall cause such dog or cat to be revaccinated at intervals recommended by the manufacturer.

4.2 The rabies vaccination tag, issued by the vaccinating veterinarian, shall be secured by the owner or keeper of such dog or cat to a collar or harness made of suitable material to be worn by the dog or cat; provided, however, that the owner of a cat may choose not to

affix a tag to his cat, but shall have the tag or certificate of vaccination available for inspection by authorized persons.

4.3 **Violation and Enforcement:** Whoever violates Chapter 7 Section 4 shall be punishable by a fine as defined in M.G.L. c. 140 Section 145B(f). Each day of a violation is considered a separate offense.

5.0 **Prohibition of Permitting a Domestic Animal or Dog to Become a Public Nuisance**

5.1 No keeper of any domestic animal or dog in the Town of Brimfield, whether licensed or unlicensed, shall allow their domestic animal or dog to become a public nuisance as defined in Section 1.H of this Bylaw unless it is a generally accepted agricultural practice.

5.2 **Violation and Enforcement**

A domestic animal or dog found to be a public nuisance as defined in Section 1.H. of this Bylaw may be picked up and held by the ACO for safe keeping until the owner or keeper can be located and such owner or keeper may be fined at the discretion of the ACO or any police officer as listed below:

- A. 1<sup>st</sup> Offense: Written Warning or \$25.00 non-criminal bylaw violation
- B. 2<sup>nd</sup> Offense: \$75.00 non-criminal bylaw violation
- C. 3<sup>rd</sup> Offense and Subsequent offense thereafter: \$100.00 non-criminal bylaw violation.

5.3 Keepers of domestic animals or dogs who receive a notice of violation of the public nuisance portion of this Bylaw shall be subject to a hearing before the Board of Selectmen under the provisions of M.G.L. c. 140, Section 157.

6.0 **Dangerous Dogs**

6.1 No keeper of a dangerous dog as defined in Section 1.C. shall fail to safeguard human beings or other domestic animals from said dog.

6.2 In accordance with M.G.L. c. 140, Section 157, upon receipt of a letter of complaint regarding a dog, the Board of Selectmen shall notify the keeper of the animal of the complaint with a copy thereof, shall schedule a hearing in accordance with said statute and shall notify the owner/keeper of such hearing by regular and certified mail. A hearing can also be requested by the ACO if the ACO or the police department feels there are significant safety issues. Prior to the hearing the ACO shall investigate any claims of a dangerous dog to determine whether such a finding is warranted.

6.3 In accordance with M.G.L. c. 140, Section 157, if the circumstances support such a finding, the ACO shall notify, in writing, the Chief of Police and the Board of Selectmen of such findings. Where appropriate, the ACO shall submit to the Select Board a list of recommendations as to how the owner/keeper can safely control the dog so that its behavior will not put humans or domestic animals in danger. The Board at its sole discretion may accept the recommendations of the ACO or order other appropriate

remedies. Such remedies may include but are not limited to those described in M.G.L. c. 140, Section 157.

#### 6.4 **Violation and Enforcement**

Failure to comply with Section 6.1 or an order issued by the Board of Selectmen pursuant to M.G.L. c. 140, Section 157 will result in the following:

- A. The dog being picked up by the ACO and held in the designated pound at the keeper's expense as defined in Chapter 7 Section 8 of the General Bylaws, until another Board of Selectmen hearing is held to determine any additional finding(s) and additional restriction(s);
- B. Failure to comply may result in fines or other penalties as listed below:
  - 1<sup>st</sup> Offense: \$50.00 non-criminal disposition
  - 2<sup>nd</sup> Offense: \$75.00 non-criminal disposition
  - 3<sup>rd</sup> Offense: \$100.00 non-criminal disposition

#### 7.0 **Minimum Care of Animals**

- 7.1 An owner or guardian of any animal must provide proper nourishment and access to adequate water at a drinkable temperature, quality and quantity as required by the species, breed, size and age of said animal, which will allow and foster normal growth and maintenance of body weight.
- 7.2 An owner or guardian of any animal must maintain a sanitary environment, which is dry and free of accumulated feces, and free of debris and garbage that may clutter the environment so as not to inhibit comfortable rest, normal posture and range of movement or pose a danger to or entangle an animal.
- 7.3 An owner or guardian of any animal must maintain said animal's health with minimum veterinary care, and a healthy physical condition.
- 7.4 It shall be the responsibility of the animal control officer, the animal inspector, barn inspector, or any other town employee to refer to the appropriate educating authority or organization suspected violations of this section.

#### 8.0 **Disposition of Confined Domestic Animals and Dogs**

- 8.1 Domestic animals and dogs confined under the authority of this bylaw shall be confined by the animal control officer in a place suitable for the detention and care of said animal and kept in a sanitary condition.
- 8.2 There shall be a base boarding fee of \$10.00 per day for any domestic animal or dog confined by the ACO together with the fee covering actual costs for food, shelter use, and ACO time spent caring for the animal per day. Said sum is to be paid to the Town of Brimfield before the animal is released from the custody of the ACO.

- 8.3 No dog may be released until the ACO has been provided proof that the licensing and all other provisions of Chapter 7 Sections 2 and 4 of the General Bylaws have been met by the owner or keeper.
- 8.4 At the end of a seven-day period, the ACO shall take the appropriate action listed under MGL 140, Section 151A.
- 9.0 **Restraint of Dogs Required**
- 9.1 No owner or keeper of a dog in the Town of Brimfield shall allow such dog to roam with the knowledge, and permission of such person. All dogs not on the premises of the owner or the keeper, or upon the premises of another person, with the knowledge and permission of such person, shall be restrained by a chain or leash.
- 9.2 **Violation and Enforcement**  
Any person to be found in violation of Chapter 7, Section 9.1 shall be punishable by a non-criminal disposition fine of \$20.00. If the owner of said dog is not able to be immediately located or identified, then the dog will be confined by the ACO in accordance with Chapter 7 Section 8 of the General Bylaws.
- 10.0 **Emergency Treatment of Dogs and Cats Injured on a Public Way**
- 10.1 Upon notification of any domestic animal being injured on a public way, the ACO shall immediately contact the owner or keeper, if known, and require the owner or keeper to care for said animal. Any cost incurred by the ACO for emergency response, care, transportation, treatment, and/or disposal of an animal shall be the responsibility of the owner or keeper subject to M.G.L. c. 140, Section 151B.
- 11.0 **Severability**
- 11.1 Should any portion, section or provision of this Bylaw be found invalid for any reason, that finding shall not affect the validity and force of any other section, portion or provision of this bylaw.
- 12.0 **Right to Farm**
- 12.1 In the event of a dispute between a resident's or property owner's right to farm and the enforcement of this bylaw, the Brimfield Agricultural Commission shall be consulted to determine generally accepted agricultural practices. Said determination shall be binding upon the ACO.
- 13.0 **Enforcement**
- 13.1 The provisions of this By-law and/or any regulation of the Board of Selectmen adopted hereunder, may be enforced by the ACO and/or any police officer of the Town of Brimfield by any available means in the law or equity, including but not limited to enforcement by non-criminal disposition pursuant to the provisions of M.G.L. Chapter 40 s. 21D. Each day a violation exists shall constitute a separate violation; when no fine is specifically set forth, violations of this bylaw may be punishable by a fine of \$50 for the first violation, \$100 for a second violation, or \$150 for a third violation; or, take any other action thereon.