

BY-LAWS

TOWN OF NEW MARLBOROUGH

MASSACHUSETTS



First Settled	1739
Incorporated	June 15, 1759
Area	28,046 acres
Population (Town Census)	1301
Road Mileage	90
Elevation	1200 feet

SECTION 1

TOWN MEETINGS

- 1.1** All Town Meeting and Elections shall be called in the manner required by law and attested copies of the warrant for the same shall be posted in five (5) public places or more to include the Transfer Station and Town Website, within the Town, at least seven (7) days before the time of holding said meetings. (Adopted Town Meeting 03.15.1937, Approved AG 04.09.1937; Amended STM 10.09.07 Approved AG 11.14.07)
- 1.2** The Annual Town Meeting shall be held on the first Monday in May. The Annual Town Election shall be held on the second Monday in May, the polling hours to be set by the Selectmen. (Adopted Town Meeting 05.09&11.1977, Approved AG 08.08.1977)
- 1.3** All articles submitted to the Selectmen, by petition or otherwise, for insertion in the Annual Warrant, shall be presented to the Selectmen at least forty-five (45) days prior to the Annual Town Meeting. (Adopted Special Town Meeting 11.19.1973, Approved AG 12.06.1973)
- 1.4** The Moderator shall decide all votes. If a two-thirds (2/3) vote is required, the Moderator may declare and record the vote as meeting the requirements; providing however, that if a vote so declared is immediately questioned by three (3) or more voters, the Moderator shall verify the vote by polling the voters. (Adopted ATM 05.07.07; Amended and Approved by AG 09.05.07)

SECTION 2

TOWN REPORTS

- 2.1** The Selectmen shall cause their own report to the Town, together with the reports of all the other officers and committees, to be printed and left at the Town Office, at least seven (7) days before the Annual Town Meeting, where they can be obtained by any voter, resident taxpayer or distributed by the Town Clerk. (Adopted Town Meeting 03.15.1937, Approved AG 04.09.1937)

SECTION 3

PURCHASING MATERIALS

- 3.1**
 1. All purchases will be in compliance with MGL Chapter 30B as amended.
 2. All purchases less than \$5,000.00 will require the use of sound business practices.
 3. All purchases in excess of \$5,000.00 will require the signature of the Procurement Officer.
 4. All purchases in excess of \$5,000.00 will require written verbal quotes from a minimum of three (3) vendors.
 5. All purchases in excess of \$25,000.00 will be in the form of a sealed bid.

6. In an emergency such purchases may be made without bid, provided it is approved by the Board of Selectmen. (Amended ATM 05.07.07, Approved by AG 09.05.07)

SECTION 4 PROFESSIONAL SERVICES

- 4.1 In all cases where the Town votes one hundred (100) dollars or more for professional services, there shall be a written contract drawn stating in full all conditions relative thereto. (Adopted Town Meeting 03.15.1937, Approved AG 04.09.1937)

SECTION 5 CARE OF TOOLS

- 5.1 All small tools shall be stamped with name or initials to identify them as the property of the Town of New Marlborough.
- 5.2 All small tools, when not in use, shall be stored in a suitable place provided for such purpose.
- 5.3 No small tools that carry the Town stamp shall be sold or given to anyone to use, but may be sold by the Selectmen for junk purposes, provided their value for future use has been destroyed.
- 5.4 It shall be the duty of the Selectmen to see that all sections of this By-law are enforced (Adopted Town Meeting 03.15.1937, Approved AG 04.09.1937)

SECTION 6 LICENSING PEDDLERS

- 6.1 Non-residents, without State or County license, shall not be allowed to retail from a wagon, truck or other vehicle within this Town without obtaining a license from the Board of Selectmen. Non-residents engaged in the purpose of agriculture are exempt from the above licensing. (Adopted Town Meeting 03.15.1937, Approved AG 04.09.1937)

SECTION 7 CODIFICATION OF VOTES

- 7.1 All votes of the Town which have continuing force, year after year, shall be brought together in one code and all such future votes shall be added thereto. (Adopted 03.15.1937, Approved AG 04.09.1937)

SECTION 8 FINANCE COMMITTEE

- 8.1 That there be a Finance Committee consisting of seven (7) elected members, two to be elected annually for a term of three (3) years, two to be elected annually for a term of three (3) years and three to be elected annually for a term of three (3) years with terms to be staggered such that no more than three (3) members shall be elected in any year. (Approved AG 07.31.15)

- 8.2** That the Finance Committee meet annually at a public place, prior to the Annual Meeting of the Town, for the purpose of inquiring into the financial needs and requirements of the Town for its ensuing fiscal year. And the Selectmen shall furnish said committee with certified copies of all articles to be inserted in the warrant involving the raising and appropriation of monies, which the committee shall investigate the subject matters thereof, in the respect of the needs and amounts thereof, and report its recommendations to the Selectmen who shall cause the same to be published in the Town Report. Public notice of the time and place of such meeting shall be given.
- 8.3** That certified copies of all articles in warrants calling Special Town Meetings, involving the raising the raising and appropriation of monies, shall be submitted to the Finance Committee by the Selectmen, which said committee shall investigate the subject matters thereof in respect to the needs and amounts thereof and report its recommendations to the Town Clerk, who shall cause the same to be made available at such Town Meetings. (Adopted Town Meeting 03.15.1937, Approved AG 04.09.1937)

SECTION 9

UNREGISTERED AND DILAPIDATED MOTOR VEHICLES

- 9.1** Upon complaint, in writing, and signed by six (6) or more persons who own land in the Town of New Marlborough, to the Selectmen or Chief of Police the owner of the premises upon which unregistered and dilapidated motor vehicles and/or parts thereof has been allowed to stand thereon shall remove said unregistered and dilapidated motor vehicles and/or parts within four (4) weeks of being informed of said complaint by the Selectmen or the Chief of Police from any premises unlicensed under Chapter 140, Section 57, of the Massachusetts General Laws. The Selectmen's judgment shall be final as to determine whether or not a motor vehicle is junked or dilapidated.
- 9.2** Whoever violates any of the provisions of this By-law shall pay a fine not to exceed ten (10) dollars for each offense. Each dilapidated motor vehicle or part thereof that has been allowed to stay on the premises beyond the four (4) week period may constitute a separate offense for vehicle or part, and each continuing day of such violation may also be considered a separate offense. (Adopted Special Town Meeting 07.29.1966, Approved AG 09.08.1966)

SECTION 10

PROTECTIVE BY-LAW

(Separate booklet filed with the Town Clerk; Effective 10.07.1966; amended 12.14.1987; corrective amendment 06.30.1994; amended 05.05.03; amended 08.25.08; amended 05.14.15)

SECTION 11 ENTERTAINMENT LICENSE

11.1 No person shall offer to view, set up, set on foot, maintain or carry on a theatrical exhibition, public show, concert, dance hall exhibition of any description, or any entertain activity, or public amusement of any type, without first having obtained a license to do so from the Board of Selectmen, and without having complied with the provisions of Chapter 140 of the General Laws as amended, and that in all cases in which a crowd of one thousand (1000) or more persons is anticipated, and including in an application for such license information on traffic, security, parking, sanitation, food to be served, beverages to be served, and suitable provision for cleaning the area at the conclusion of its use and making suitable arrangements to pay the cost of any special Town services which will be needed in the opinion of said Board. The applicant shall also be required to obtain a policy of public liability insurance of at least twenty-five thousand (25,000) dollars to pay and judgments rendered against such license in favor of patrons or others to recover damages resulting from negligence of the licensee, together with a bond running to the Town for faithful performance of the conditions of such license. The applicant shall be subject to such penalties of non-compliance as provided by law. (Adopted Town Meeting 05.01.1978, Approved AG 1978)

SECTION 12 COUNCIL ON AGING

- 12.1** The Board of Selectmen shall annually appoint three (3) registered voters of the Town as a Council on Aging under the provisions of Section 8B of Chapter 40 of the General Laws. The members so appointed shall serve without compensation and shall designate by their vote a chairman and secretary who shall be members of the Council.
- 12.2** The purpose of the Council shall be to coordinate or carry out programs designed to meet the problems of the aging in coordination with the programs of the Department of Elder Affairs.
- 12.3** The Council shall submit an annual report to the Town and shall send a copy thereof to the Department of Elder Affairs. Said Department shall from time to time review and evaluate such reports and make recommendations as to any required or needed changes in said local programs.
- 12.4** The Council may appoint such clerks and other employees with the approval of the Board of Selectmen and as may be provided for by appropriation of the Town Meeting. (Adopted Town Meeting 05.02.1983, Approved AG 10.17.1983)

SECTION 13 RECYCLING

- 13.1** The Town, in order to recycle as much as possible of the solid waste generated within the Town, authorizes the Board of Selectmen to adopt rules and regulations to require everyone disposing of solid waste at a Town Facility to separate recyclable material from their solid waste and to dispose of such recyclable material in the designated areas so that it may be recycled.
- 13.2** For the purpose of this by-law the term “recyclable” shall mean: glass, paper and metal, as well as any other material the Selectmen may determine can be recycled. The Selectmen shall have the authority to add, alter or delete items to be separated as markets for recycled goods change.
- 13.3** The Selectmen may set a fine not to exceed \$50.00 (fifty dollars) for each violation of this by-law.
- 13.4** All by-laws, rules, regulations or other documents inconsistent with the provisions of this by-law are hereby repealed to the extent of such inconsistency.
- 13.5** This by-law and the various parts, sentences and clauses thereof are hereby declared to be severable. If any part, sentence or clause is adjudged invalid, it is hereby provided that the remainder of this by-law shall not be affected thereby. (Adopted STM 12.04.89; approved by AG)

SECTION 14

HUNTING

- 14.1** No person shall hunt on any Town owned or private property in the Town of New Marlborough without written permission of the owner of the land upon which hunting will take place. The written permission must be carried while hunting and renewed on an annual basis.
- 14.2** Fine for the first offense will be \$100.00, second-time offenders will be fined a minimum of \$100.00 up to \$300.00. This by-law shall be enforced by all State and Local law enforcement officials and shall be administered by Massachusetts General Laws, Chapter 40, Section 21d, on a non-criminal disposition

SECTION 15

RIGHT TO FARM

15.1 Purpose and intent

The Town of New Marlborough finds that farming is an essential and valued activity, which provides fresh food, clean-air, economic diversity, local employment, and open spaces to all the citizens of our town. This by-law is intended to encourage the pursuit of agriculture, promote agricultural-based economic and employment opportunities, and protect farmland within the Town of New Marlborough. The purpose is to allow agricultural uses and related activities to function in harmony with the community, town agencies and others. This by-

law shall apply to all jurisdictional areas with the Town.

15.2 Definitions

“Farm” shall include any parcel or contiguous parcels of and or water bodies used for the primary purpose of commercial agriculture, or accessory thereto. Commercial shall be defined by the minimum acreage requirement or the gross sales and program payment requirement specified in Massachusetts General Law Chapter 61A Section 3, as amended. **“Farm”** shall include, any agricultural use as defined by the Town of New Marlborough Protective Bylaw, Section 2.2 and any youth related agricultural activities, such as but not limited to 4-H, irrespective of minimum acreage or gross sales and program payment requirements.

“Farming” or **“agriculture”** shall include, but not be limited to the following:

- Farming in all its branches and the cultivation and tillage of the soil
- dairying;
- orchards

- production, cultivation, growing, and harvesting of any agricultural, aquaculture, floricultural, viticulture, 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, goats 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 agro-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;
- on-farm relocation of earth and the clearing of ground for farming operations;
- revitalizing drainage or irrigation ditches, picking stone, erecting, repairing or maintaining fences, and clearing, rejuvenation and maintaining pastures; and
- herding of livestock from area to area, including along roads.

15.3 Right to Farm Declaration

The Right to Farm is hereby recognized to exist within the Town of New Marlborough. The above-described agricultural activities may occur on holidays, weekday, and weekends by night or day and shall include the attendant incidental noise, odors, dust, and flumes 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. For any agricultural practice, in determining the reasonableness of the time, place, and methodology of such practice, consideration shall be given to both traditional customs and procedures as well as to new practices and innovations. Moreover, nothing in this Right to Farm By-law shall be deemed as acquiring any interest in land. The protections contained in this by-law do not replace any applicable zoning or legal restrictions associated with agricultural operations.

15.4 Notification to Real Estate Buyers

In order to allow prospective purchasers to make informed decisions prior to a real estate transaction and to promote harmony between farmers and their new neighbors after a transaction, the Town of New Marlborough requests selling landholders and/or their agents (and assigns) provide written notice to prospective purchasers substantially as follows:

“It is the policy of the Town of New Marlborough 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 that the property they are about to acquire 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. Purchasing, and henceforth occupying land within New Marlborough means that one should expect and accept such conditions as a norm and necessary aspect of living in New Marlborough.”

Written notification may occur in one of several ways including but not limited to a disclosure form, addendum to a Purchase and Sale Agreement and should include an acknowledgement by the buyer that they have received notification.

Within 30 days after this by-law becomes effective the Board of Selectmen shall make available for use by selling landowners or their agents (and assigns) copies of exemplified written notifications.

Within 30 days after this by-law becomes effective the Board of Selectmen shall prominently place in the Town Hall the above disclosure.

Within 30 days after this becomes effective the Tax Collector shall include a copy of the above disclosure with responses to request for Municipal Lien Certificates.

15.5 Resolution of Complaints

Any person having a complaint about a farm activity or practice is encouraged to seek an amicable resolution to the complaint, including talking directly with the involved farmer. Such person may, notwithstanding pursuing any other available remedy, request resolution assistance from the Board of Selectmen. Such a request does not suspend the time within which to pursue any other available remedies. The Board of Selectmen may appoint a panel of at least three (3) individuals, to include representation from farmers, or refer such request to a New Marlborough Agricultural Commission, should one exist. Said panel or Agricultural Commission shall review and facilitate the resolution of such a request and report its recommendations to the Board of Selectmen within the agreed upon time frame.

15.6 Severability Clause

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

- 16.1** The tax collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other charges, hereinafter referred to as the tax collector, shall annually furnish to each department, board, commission or division, hereinafter referred to as the licensing authority, that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as a party, that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than a twelve month period, and that such party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the appellate tax board.
- 16.2** 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.
- 16.3** 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.

- 16.4** The board of selectmen may waive such denial, suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined in section one of chapter two hundred and sixty-eight A in the business or activity conducted in or on said property.
- 16.5** This section shall not apply to the following licenses and permits: open burning; section thirteen of chapter forty-eight; bicycle permits; section eleven A of chapter eighty-five; sales of articles for charitable purposes, section thirty-three of chapter one hundred and one; children work permits, section sixty-nine of chapter one hundred and forty-nine; clubs, associations dispensing food or beverage licenses, section twenty-one E of chapter one hundred and forty; dog licenses, section one hundred and thirty-seven of chapter one hundred and forty; fishing, hunting, trapping license, section twelve of chapter one hundred and thirty-one; marriage licenses, section twenty-eight of chapter two hundred and seven and theatrical events, public exhibition permits, section one hundred and eighty-one of chapter one hundred and forty. (Adopted STM 3.21.11; Approved AG 4.7.11)

SECTION 17

DOG CONTROL

- 17.1** No owner or keeper of a dog shall permit such dog, whether licensed or unlicensed, to run-to run-at-large within the town. No person shall permit such dog beyond the confines of the property of the owner or keeper unless such dog is on a leash and under physical control of said owner or keeper.

This bylaw shall not apply to private property for which the owner or keeper of a dog has permission to have such dog off-leash, provided the dog is under the direct supervision of a person who has the ability to properly control the dog's actions.

A dog that is working, hunting or at such events as field trails or training is exempt from this bylaw for the period of time the dog is engaged in the work, hunting or event, provided the dog is under the direct supervision of a person who has the ability to properly control the dog's action.

This bylaw shall not apply to property owned and/or controlled by the Commonwealth of Massachusetts where a separate set of rules regulations apply.

- 17.2** The Animal Control Officer shall enforce the provisions of this bylaw. Violators of the bylaw shall be fined Twenty-Five Dollars (\$25) for the first offense and Thirty-Five (\$35) for the second and each subsequent offense. (Adopted AMT 05.04.15; Approved AG 07.31.15)

SECTION 18:

REVOLVING FUNDS

- 18.1** There are hereby established in the Town of New Marlborough pursuant to the provisions of General Law chapter 44, §53E½, the following Revolving Funds, from which the specified department head, board, committee, or officer may incur liabilities against and spend monies from without appropriation in accordance with the limitations set forth in this by-law.
- 18.2** Fringe benefits of full-time employees whose salaries or wages are paid from the fund shall also be paid from the fund.
- 18.3** No liability shall be incurred in excess of the available balance of the fund.
- 18.4** The total amount spent during a fiscal year shall not exceed the amount authorized by Annual Town Meeting or any increase therein as may later be authorized by the Board of Selectmen and Finance Committee in accordance with G.L. c.44, §53E½.
- 18.5** Interest earned on monies credited to a revolving fund established by this by-law shall be credited to the General Fund.

18.6 Authorized Revolving Funds

REVOLVING FUND PROGRAM OR PURPOSE	DEPARTMENT RECEIPTS TO BE CREDITED TO FUND	REPRESENTATIVE OR BOARD ENTITY AUTHORIZED TO SPEND
<i>Plumbing Inspector</i> to pay costs of plan review, engineering services and related expenses for permitting and inspection of plumbing systems and installations	Fees for permits and inspections	Town Treasurer
<i>Gas Inspector</i> to pay costs of plan review, engineering services and related expenses for permitting and inspection of gas systems and installations	Fees for permits and inspections	Town Treasurer
<i>Electrical Inspector</i> to pay costs of plan review, engineering services and related expenses for permitting and inspection of electrical systems and installations	Fees for permits and inspections	Town Treasurer
<i>Board of Health</i> to pay costs of plan review, engineering services and related expenses for inspection and permitting of septic systems, food establishments, housing, and other properties and establishments subject to Board of Health jurisdiction	Fees for reviews, permits, and inspections	Town Treasurer
<i>Tax Title Fees</i> to pay for costs arising from title review registry recording, attorney fees, and related expenses	Fees and other receipts collected in connection with tax title processing	Tax Collector/Treasurer

18.7 Procedures and Reports. Except as provided in General Laws Chapter 44, §53E½ and this by-law, all applicable state and local laws and regulations that govern the receipt, custody, expenditure and payment of town funds shall apply to the use of revolving funds established and authorized by this by-law. (Adopted ATM 05.01.17; Approved AG 05.18.17)