

BY-LAWS
of the Town of
BERLIN
MASSACHUSETTS



as amended through May November 8, 2021
and approved by the Attorney General February 16, 2022

February 16, **2022** \$10.00

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Article I - General Provisions

SECTION 1. The following provisions shall constitute the Revised By-Laws of the Town of Berlin, which shall be in lieu of all By-Laws heretofore in force.

Adopted 3/12/1951 Approved by A.G. 8/8/1951

SECTION 2. The repeal of a By-law shall not thereby have the effect of reviving any By-law theretofore repealed.

Adopted 3/12/1951 Approved by A.G. 8/8/1951

SECTION 3. For purposes of these bylaws, and for all official business of the Town, the board previously referred to as the Board of Selectmen shall hereinafter be referred to as the Select Board, with individual members to be referred to as "select board members" or "members of the select board", and said Select Board shall have all the powers and duties of a board of selectmen as set forth in the General Laws or any special act applicable to the Town.

The select board members shall publish the By-laws of the town at least every five years.

Adopted 3/21/1951 Approved by A.G. 8/8/1951
Amended 6/22/2020 Approved by A.G. 10/16/2020

SECTION 4. Whoever violates any of the provisions of these By-laws whereby any act or thing is enjoined or prohibited shall, unless other provision is expressly made, forfeit and pay a fine not exceeding \$300.00 for each offense.

Adopted 2/7/1938 Approved by A.G. 3/11/1938
Revised 3/12/1951 Approved by A.G. 8/8/1951
Amended 5/5/2008 Approved by A.G. 5/20/2008

SECTION 5. No personal property equipment of the town shall be used for private purposes except for services offered by the Select Board to all of the inhabitants of the town.

Adopted as I, 10 3/12/1951 Approved by A.G. 8/8/1951
Redesignated 5/5/1986 Approved by A.G. 7/25/1986
Amended 6/22/2020 Approved by A.G. 10/16/2020

SECTION 6. Unregistered motor vehicles which are unfit for use, permanently disabled, or have been dismantled or otherwise inoperative, shall not be stored, parked or placed upon any land in town unless the same shall be within a building or in an area not exposed to the view of the public or abutters or are in an area properly approved for the keeping of the same by licensed junk dealers or automobile dealers. The fine for any violation of the provisions of this by-law shall not be less than ten dollars (\$10.00) nor more than twenty dollars (\$20.00) for each offense. Each day that any violation continues shall constitute a separate offense.

Adopted as I, 10 3/6/1967 Approved by A.G. 6/21/1967

Redesignated 5/5/1986

Approved by A.G. 7/25/1986

SECTION 7. Any by-law of the Town of Berlin, rule or regulation of its departments, boards, commissions and committees, the violation of which is subject to a specific penalty, may, in the discretion of the town official who is the appropriate enforcing person, be enforced in the method provided in section 21D of Chapter 40 of the Massachusetts General Laws 'Noncriminal Disposition Statue'. 'Enforcing person' as used in this by-law, shall mean Dog Officer, Health Agent, Building Inspector, and police officer, and such other officials as the Select Board may from time to time designate, each with respect to violation of by-laws and rules and regulations with their respective jurisdictions. If more than one official has jurisdiction in a given case, any such official may be an enforcing person with respect thereto."

Adopted 5/6/1996

Approved by A.G. 8/1/1996

Amended 6/22/2020

Approved by A.G. 10/16/2020

SECTION 8. The construction and site of any building or road upon land owned by the Town shall require the approval of Town Meeting by simple majority. Such approval at Town Meeting shall be effective for work substantially commenced within two years of the date on which approval is granted at Town Meeting. The Select Board shall prepare (or cause to be pre-pared) and shall make available to the public a complete description and plan of any proposed road or building not later than 30 calendar days before the Town Meeting at which approval for such proposal shall be sought.

For purposes of this by-law, the term "building" shall not include:

(1) Any temporary facility or structure which shall be completely removed within a period of two years from the time of its erection: and

(2) Any permanent building whose area does not exceed 100 square feet, and whose height shall not exceed 15 feet, and which is not plumbed for sewerage.

Adopted 5/5/1986

Approved by A.G. 7/25/1986

Amended 6/22/2020

Approved by A.G. 10/16/2020

Article II - Town Meetings, the Warrants and the Town Reports

SECTION 1. The annual town meeting for all business, except the election of such officers and the determination of such matters as are required by law to be elected or determined by ballot, shall be held on the first Monday of May of each year at 7:30 P.M.

Adopted as II, 2 3/12/1951

Approved by A.G. 8/8/1951

Amended 3/9/1959

Approved by A.G. 4/8/1959

Amended 3/6/1974

Approved by A.G. 5/1/1974

SECTION 2. Annual election of town officers shall be held on the second Monday of May.

Adopted as II, 1	3/12/1951	Approved by A.G.	8/8/1951
Amended	3/9/1959	Approved by A.G.	4/8/1959
Amended	3/6/1974	Approved by A.G.	5/1/1974
Amended	11/8/2021	Approved by A.G.	2/16/2022

SECTION 3. In accordance with Chapter 39, Section 10 of the General Laws, attested copies of the warrant for each town meeting shall be posted at the Town Hall, at the Town Offices, and at the Post Office in the Town at least seven days before the annual town meeting and at least fourteen days before any special town meeting. At least five days before the day fixed in the warrant for the annual town meeting, the select board members shall cause to be delivered or mailed to each voting household in the Town, a copy of the warrant for said meeting, the report of the Finance Committee and its recommended budget for the ensuing fiscal year. At least fourteen days before the day fixed in the warrant for each special town meeting, the select board members shall cause a copy of the articles in the warrant for said meeting to be mailed to each voting household in the town.

The select board members shall, not less than ten days before the date on which the warrant for the annual town meeting shall be closed for insertion of any additional articles, post a notice of said closing date at the Town Hall, at the Town Offices, and at the Post Office in the Town.

Adopted	3/12/1951	Approved by A.G.	8/8/1951
Amended	6/25/1956	Approved by A.G.	7/17/1956
Amended	3/2/1970		
Amended	5/12/1981	Approved by A.G.	8/24/1981
Amended	5/4/1987	Approved by A.G.	11/6/1987
Amended	5/1/1989	Approved by A.G.	10/17/1989
Revised	9/25/2000	Approved by A. G.	1/26/2001
Amended	6/22/2020	Approved by A.G.	10/16/2020
Amended	11/8/2021	Approved by A.G.	2/16/2022

SECTION 4. At any town meeting held for the transaction of town business, no person whose name is not on the list of voters shall be admitted to the floor of the hall, except press reporters and invited guests within the discretion of the Moderator. It shall be the special duty of the police and the town tellers to enforce this By-law by use of the check list; but the same shall not apply to the State election, primaries or meetings for the election of town officers. The Moderator shall determine the bounds of the floor of the hall.

Adopted	3/12/1951	Approved by A.G.	8/8/1951
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SECTION 5. Articles for the warrant shall be acted upon in the order in which they stand, except that the Moderator may upon request and for reasons stated, entertain the motion to take up an article out of this regular order.

Adopted 3/12/1951

Approved by A.G. 8/8/1951

SECTION 6. No motion, the effect of which would be to dissolve a town meeting, shall be in order until every article in the warrant has been acted upon, but this shall not preclude the postponement of action on, or consideration of, any article to an adjournment of the meeting to a stated time.

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.

Adopted 3/12/1951

Approved by A.G. 8/8/1951

SECTION 7. All votes on motions shall be taken in the first instance by a voice vote; if the Moderator be in doubt he may call for a standing vote; if the Moderator be still in doubt or if the vote as declared by the Moderator be immediately questioned by seven of the voters present, the vote shall be taken by a "yes" and "no" ballot. Nothing in this section shall be construed to prevent the taking of a vote by ballot in the first instance if a motion to that effect shall be duly made and carried by a majority of the voters present and voting thereon. The Moderator may call for a vote by show of hands or a standing vote in cases where a recorded vote is required by statute or the Attorney General of the Commonwealth.

All votes on the appropriation of money in excess of ten thousand dollars shall be taken in the first instance by ballot as above provided, unless said appropriation shall be recommended or approved by the Finance Committee.

All votes to rezone land shall be taken in the first instance by ballot as above provided.

The Moderator may declare a two-thirds vote of a town meeting without recording a count of all votes when the Moderator has no doubt of the two-thirds majority. Such a declaration of the Moderator shall be open to challenge by seven voters as provided in the first paragraph of this section.

Adopted 3/12/1951

Approved by A.G. 8/8/1951

Amended 6/25/1973

Approved by A.G. 9/13/1973

Amended thrice 5/1/1989

Approved by A.G. 10/17/1989

Amended 5/5/1997

Approved by A.G. 7/14/1997

SECTION 8. The Moderator may decline to put motions obviously frivolous or tending to disorder. A motion shall be presented in writing if the Moderator requests. The Moderator shall be governed in his rulings by the provisions of these articles.

Adopted 3/12/1951

Approved by A.G. 8/8/1951

SECTION 9. No person shall speak more than twice

upon any question, except to answer in inquiry or to give information requested, without first obtaining leave of the meeting and then not until others who have not spoken upon the question shall have spoken if they desire.

Adopted 3/12/1951

Approved by A.G. 8/8/1951

SECTION 10. All committees shall be appointed by the Moderator, unless otherwise specially directed by the meeting, and all committees so appointed shall be directed to report within a definite time. If a committee does not report within the time stated, or at the first annual town meeting held thereafter, it shall be considered discharged. The Moderator shall not be a member of any committee appointed by him.

Adopted 3/12/1951

Approved by A.G. 8/8/1951

SECTION 11. The annual town report shall contain, in addition to the reports of officers, boards and committees, a detailed report of all monies received into and paid out of the town treasury in the financial year next preceding, showing separately payments made from the proceeds of loans as capital outlays for permanent improvements; the report of the collector of taxes, of receipts, payments and abatements; statements of all funds belonging to the town or held for the benefit of its inhabitants; a statement of the liabilities of the town on bonds, notes, certificates of indebtedness or otherwise, and of indebtedness authorized but not incurred, and the purposes thereof; a statement of the transfers made to or from any appropriations; abstract of the records of the town meetings held since publication of the last annual report; and such other matters as the report is required by law to contain or as may be inserted by the select board members under the discretion granted them by law. The select board members in their annual reports shall state what actions have been brought against and on behalf of the town, what cases have been compromised or settled and the terms thereof, and the current standing of all suits of law involving the town or any of its interests; and they shall give a summary of their activities and decisions during the past year.

Adopted 3/12/1951

Approved by A.G. 8/8/1951

Amended 6/22/2020

Approved by A.G. 10/16/2020

SECTION 12. The Select Board shall cause a digital copy of the Annual Town Report to be made available on the Town of Berlin website, and hard copies to be made available at the Town Offices, Berlin Public Library and at the annual town meeting.

Adopted 5/12/1981

Approved by A.G. 8/24/1981

Amended 6/22/2020

Approved by A.G. 10/16/2020

Amended 11/8/2021

Approved by A.G. 2/16/2022

SECTION 13. At any session of a town meeting, on completion of action on any motions on the floor at 11:00 p.m., the Moderator shall call for a vote on whether or not to continue business.

Adopted 5/1/1989

Approved by A.G. 10/17/1989

SECTION 14: The select board members may call a town meeting, other than an election, at any location in the Town of Berlin, at the Tahanto Regional High School in Boylston, or at the Assabet Valley Regional Vocational School in Marlborough.

Adopted 5/5/1997

Approved by A.G. 7/14/1997

Amended 6/22/2020

Approved by A.G. 10/16/2020

Article III - Legal Affairs

SECTION 1. The select board members shall have the general direction and management of the property and affairs of the town in all matters not otherwise provided for by law or these By-laws.

Adopted 3/12/1951 Approved by A.G. 8/8/1951
Amended 6/22/2020 Approved by A.G. 10/16/2020

SECTION 2. The select board members shall be agents of the town to institute, prosecute and defend any claims, actions and proceedings to which the town is a party or in which the interests of the town are or may be involved.

Adopted 3/12/1951 Approved by A.G. 8/8/1951
Amended 6/22/2020 Approved by A.G. 10/16/2020

SECTION 3. The select board members may at their discretion compromise or settle any claim or suit to which the town is a party, which does not require the payment by the town of an amount in excess of five thousand dollars.

Adopted 3/12/1951 Approved by A.G. 8/8/1951
Amended 6/22/2020 Approved by A.G. 10/16/2020

SECTION 4. The select board members may annually in May, after final adjournment of the annual town meeting, appoint a person who is a member of the bar in good standing to serve as Town Counsel for the term of one year from the first of June 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 therefor arises.

Adopted 3/12/1951 Approved by A.G. 8/9/1951
Amended 3/6/1974 Approved by A.G. 5/1/1974
Amended 6/22/2020 Approved by A.G. 10/16/2020

SECTION 5. It shall be the duty of the Town Council to conduct the prosecution, defense or compromise of claims, actions and proceedings to which the town is a party, and the prosecution of actions and 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 select board members, 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 By-law of the town, when requested to do so by the Select Board; 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 interest 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 the town officers, boards and committees upon and in legal matters touching the duties of their respective offices.

Adopted 3/12/1951 Approved by A.G. 8/8/1951
Amended 6/22/2020 Approved by A.G. 10/16/2020

Article IV - Records And Reports

SECTION 1. Except as otherwise provided by law, the Town Treasurer shall have the custody of bonds, contracts and other similar documents owned by the town, except that the bonds given by the Treasurer and the Collector of Taxes to the town shall be in the custody of the Town Clerk,

The Treasurer shall be responsible for the custody of all insurance policies and their renewal subject to approval by the select board members.

Except as otherwise provided by law, the Town Clerk shall have the custody of all deeds owned by the town. A copy of all public building plans shall be filed with the Town Clerk.

Adopted 3/12/1951

Approved by A.G. 8/8/1951

Amended 3/6/1972

Approved by A.G. 6/30/1972

Amended 5/7/1990

Approved by A.G. 10/16/1990

Amended 6/22/2020

Approved by A.G. 10/16/2020

SECTION 2. All officers, boards and committees of the town, shall cause records of their doings and accounts to be kept in suitable books. Said books shall be kept in their respective place in the town offices and shall, unless otherwise specified by law, be open to public inspection by a citizen of the town at any reasonable time, but shall remain during such inspection under supervision of the officer, board or committee having custody thereof.

Adopted 3/12/1951

Approved by A.G. 8/08/1951

SECTION 3. Each officer, board or committee authorized to spend money shall, on or before June fifteenth of each year, transmit to the select board members all unpaid bills outstanding as of that date.

Adopted 3/12/1951

Approved by A.G. 8/8/1951

Amended 3/6/74

Approved by A.G. 5/1/1974

Amended 6/22/2020

Approved by A.G. 10/16/2020

Article V - Duties of the Finance Committee

SECTION 1. There shall be a Finance Committee, consisting of five voters of the town, no member of which shall hold an elective or appointive town office. The members of this committee shall be sworn to the faithful performance of their duties and shall serve without salary.

Adopted 3/12/1951

Approved by A.G. 8/8/1951

Amended 5/2/2000

Approved by A.G. 6/9/2000

SECTION 2. Following the annual town meeting each year, the Moderator shall, for each term expiring in that year, appoint a member to the Finance Committee to serve for the term of three years.

Adopted 3/12/1951

Approved by A.G. 8/8/1951

Amended 3/6/1974

Approved by A.G. 5/1/1974

Amended 6/27/1994

Approved by A.G. 1/17/1995

Amended 5/2/2000

Approved by A.G. 6/9/2000

SECTION 3. The term of office of said members shall commence on July first of the year of their appointment. All terms shall expire on June 30th of their respective years. Said committee shall meet at the call of the Moderator and choose its Chairman and Clerk. Thereafter the meetings shall be called by the Chairman or Clerk. The Moderator shall forthwith fill by appointment any vacancies which occur in its membership, and said appointee shall serve for the remainder of his predecessor's term of office. After 60 days of said vacancy, the remaining members shall give written notice of said vacancy to the moderator, who, with the remaining member or members shall, after one week's notice, fill such vacancy by roll call vote. A majority of the votes of the officers entitled to vote shall be necessary to such elections. If any member is absent from three 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.

Adopted 3/12/1951

Approved by A.G. 8/8/1951

Amended 3/6/1974

Approved by A.G. 5/1/1974

Amended 5/1/1989

Approved by A.G. 10/17/1989

Amended 6/27/1994

Approved by A.G. 1/17/1995

SECTION 4. The Finance Committee shall consider matters relating to the appropriation, the borrowing and the expenditure of money by the town, its indebtedness, the method of administration of its various offices and departments, property valuation and assessments, and other municipal affairs, and may make recommendations to the town or to any town board, officers or committee, relative to such matters.

Adopted 3/12/1951

Approved by A.G. 8/8/1951

SECTION 5. The various town boards, officers and committees charged with the expenditure of the town money, shall, before January first of each year, prepare detailed estimates of amounts deemed by them necessary for the administration of their respective offices or departments for the ensuing fiscal year, with explanatory statements of the reasons of any changes from the amounts appropriated for the same purpose for the current year. They shall also prepare estimates of all probable items of income which may be received by them during the ensuing year in connection with the administration of their departments or offices, and a statement of the amount of the appropriation requested by them for the ensuing fiscal year. Said estimates and statements shall be filed with the Town Accountant by the first day of January of said year. The Town Accountant shall compile and file with the clerk of the Finance Committee said requests by January 15th of said

year. In the discharge of its duty, said Finance Committee shall have free access to all books or 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.

Adopted 3/12/1951	Approved by A.G. 8/8/1951
Amended 3/9/1959	Approved by A.G. 4/8/1959
Amended 3/6/1974	Approved by A.G. 5/1/1974
Amended 5/7/1990	Approved by A.G. 10/16/1990

SECTION 6. The Finance Committee shall duly consider the same and may confer with said town boards, officers and committees, and may hold hearings if they deem it advisable. The Committee shall thereupon approve or disapprove the amount in whole or in part of the appropriation so requested. The Committee shall furnish to the select board members on or before March 20th of each year, a report of the matters so considered by it, with recommendations or suggestions relative thereto, and the same shall be printed and ready for distribution at the annual town meeting. The report of the Finance Committee as published in the town report shall contain a statement of the doings of the committee during the year with such recommendations and suggestions as it may deem advisable on any matter pertaining to the welfare of the town.

Adopted 3/12/1951	Approved by A.G. 8/8/1951
Amended 3/6/1974	Approved by A.G. 5/1/1974
Amended 6/22/2020	Approved by A.G. 10/16/2020

SECTION 7. Articles in town warrants involving the expenditure or appropriation of money shall be considered by the Finance Committee, who shall approve or disapprove the same in whole or in part, and shall make report to the voters with such recommendations or suggestions as the Finance Committee shall deem advisable.

Adopted 3/12/1951	Approved by A.G. 8/8/1951
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Article VI - Public Roads, Ways and Places

SECTION 1. No person shall place or cause to be placed in any public way or place in the town any obstruction or any ashes, papers, tin cans, garbage, carrion, filth, offal or any kind of rubbish. The penalty for violation of this section shall be twenty-five (\$25.00).

Adopted 2/7/1938	Approved by A.G. 3/11/1938
Revised as I,6 3/12/1951	Approved by A.G. 8/8/1951
Redesignated 5/5/1986	Approved by A.G. 7/25/1986
Amended 5/3/2010	Approved by A.G. 5/24/2010

SECTION 2. No person shall coast in any street or public way except such as are publicly designated for the purpose by the select board members.

Adopted 2/7/1938	Approved by A.G. 3/11/1938
Revised as I,7 3/12/1951	Approved by A.G. 8/8/1951
Redesignated 5/5/1986	Approved by A.G. 7/25/1986
Amended 6/22/2020	Approved by A.G. 10/16/2020

SECTION 3. No person shall throw stones, snowballs, sticks, or other missiles, nor kick at football, nor play at any game in which a ball is used, nor fly any kite, nor use a skateboard, nor shoot with or use a bow and arrow, gun, air-gun, or sling, in or across any of the public ways of the town; nor obstruct any street in the town.

Adopted 2/7/1938	Approved by A.G. 3/11/1938
Revised as I,8 3/12/1951	Approved by A.G. 8/8/1951
Redesignated 5/5/1986	Approved by A.G. 7/25/1986
Amended 5/1/1989	Approved by A.G. 10/17/1989

SECTION 4. No snow or ice shall be deposited on any public street or sidewalk from any parking lot, business or residential driveway at any time. The penalty for violation of this by-law shall be one hundred dollars (\$100.00).

Adopted 5/7/1984	Approved by A.G. 9/12/1984
Designated 5/5/1986	Approved by A.G. 7/25/1986
Amended 5/3/2010	Approved by A.G. 5/24/2010
Amended 6/22/2020	Approved by A.G. 10/16/2020

Article VI - Public Roads, Ways and Places cont'd

SECTION 5. Before any driveway opening is constructed onto or into a Town road, the owner of said property must obtain a permit from the Select Board or their designee. The design of the opening must be in accordance with the following standard:

1. The driveway shall not cause water to flow onto the Town highway.

2. The driveway shall not restrict the flow of water along the side ditches of the town highway.

3. There shall be safe sight distance for the car to enter the Town highway.

4. Driveway access to any approved building lot must originate from any frontage of that lot on a town way.

5. Driveway must be kept level for at least 20 feet (minimum) from the road and must be graded for ambulance and fire trucks.

Adopted 5/3/1977

Approved by A.G. 8/18/1977

Designated 5/5/1986

Approved by A.G. 7/25/1986

Amended 5/1/1989

Approved by A.G. 10/17/1989

Amended 6/22/2020

Approved by A.G. 10/16/2020

SECTION 6. Within the Town of Berlin, no person shall drink any alcoholic beverages as defined in Chapter 138, Section 1 of the Massachusetts General Laws, nor shall have in his possession any open containers, or containers of such beverages whose seal has been broken and recapped, while on, in, or upon any public way or sidewalk, or upon any way to which the public has a right of access as invitees or licensees, park or playground, or private land or place, without the consent of the owner or person in control thereof. The burden of proving such consent shall be on the defendant.

All alcoholic beverages being used in violation of the By-law shall be seized and safely held until final adjudication of the charge against the persons so arrested or summonsed before the court, at which time they shall be disposed of as directed by the court.

A Police Officer witnessing a violation of this By-law shall have the right to arrest such person without a warrant and shall bring the person so arrested, before the court within twenty-four hours, Sundays and Holidays excepted.

The penalty for violation of this by-law shall not exceed Fifty dollars (\$50.00) for the first offense, One Hundred dollars (\$100.00) for the second offense, and One Hundred Fifty dollars (\$150.00) for the third offense.

Adopted 5/7/1984

Approved by A.G. 9/12/1984

Designated 5/5/1986

Approved by A.G. 7/25/1986

Amended 5/4/1987

Approved by A.G. 11/6/1987

SECTION 7. In the course of excavation incidental to the opening of a public roadway, the Select Board, or their Agent, shall require the applicant to furnish a Cash Performance Bond which adequately covers the cost of the work which may be required to restore the roadway to its previous condition.

Adopted 5/2/1988

Approved by A.G. 7/8/1988

Amended 5/8/2001

Approved by A.G. 8/22/2001

Amended 6/22/2020

Approved by A.G. 10/16/2020

SECTION 8. Possession and/or Use of marijuana or Tetrahydrocannabinol. No person shall consume marijuana or tetrahydrocannabinol as defined by Massachusetts General Laws Chapter 94C, Section 1, within the limits of any park, playground, public building or any public land owned or under the control of the Town of Berlin nor shall any person consume marijuana or tetrahydrocannabinol on any public way or way to which the public has a right of access as invitees or licensees, including any person in a motor vehicle while it is in, on, or upon any public way or any way to which the public has a right of access as aforesaid, within the limits of the Town of Berlin. All marijuana or tetrahydrocannabinol being used in violation of this section may be seized and held until final adjudication of the charge against any such person or persons has been made by the court. Whoever violates the provisions of this section shall be punished by a fine not exceeding one hundred (\$100) dollars for the first offense, two hundred (\$200) dollars for the second offense, and three hundred (\$300) dollars for any third or subsequent offense.

Adopted 5/4/2009

Approved by A.G. 8/12/2009

Article VII - Private Ways

SECTION 1. Before a person may lay out and construct a private street, he shall submit to the Planning Board plans which show the dimensions and profile of the street, the drainage of the adjacent territory, the provisions made for road intersections, the parking, operation and turning around of vehicles, including fire fighting apparatus and standard trucks, and the provision for sewage disposal, water pipes, and electric cables. The Board may call a public hearing relative to the plan, and the Board shall, if deemed necessary, recommend changes in the plan as indicated by its studies.

Adopted 3/12/1951

Approved by A.G. 8/8/1951

SECTION 2. No private way shall be accepted by the town as a public way unless it is aligned or properly coordinated with existing public ways, as far as practicable, and provided that the minimum width of the street right of way shall be at least forty feet, the street lines and intersections shall be cut back to provide a curb radius of not less than twenty feet, the minimum center line radius of a curve shall be at least one hundred feet, the grade shall be a reasonable minimum and not more than twelve per cent, a dead end street shall have a substantially circular turn around at the end having a curb radius of not less than forty-five feet, the traveled part of the way shall be gravel surfaced for a width of at least twelve feet and so constructed that it is normally passable at all seasons, and there shall be adequate provision for the disposal of the surface drainage water, unless the town shall vote otherwise.

Adopted 3/12/1951

Approved by A.G. 8/8/1951

Article VIII – Personnel and Procedures

SECTION 1 - PURPOSE AND AUTHORIZATION

The purpose of the personnel bylaw is to establish fair and equitable personnel policies and to establish a system of personnel administration based on merit principles that ensures a uniform, fair and efficient application of personnel policies. This bylaw is adopted pursuant to the authority granted by Article LXXXIX of the Constitution of the Commonwealth and General Law, chapter 41, sections 108A and 108C.

SECTION 2 - APPLICATION

All Town departments and positions shall be subject to the provisions of this bylaw except employees with personal contracts, employees of the school department, and those employees covered by collective bargaining agreements unless otherwise requested.

SECTION 3 - PERSONNEL COMMITTEE

a) Composition, Mode of Selection, Term of Office, Qualifications.

The Select Board shall appoint a Personnel Committee consisting of three registered voters of the Town, to be appointed for three-year staggered terms. No members of the Personnel Committee may be an employee of the Town nor hold Town office, whether elected or appointed. Whenever possible, the select board members will appoint members possessing a professional personnel background. Members of the Personnel Committee shall serve without compensation. The Personnel Committee shall annually elect a Chairman and other officers as the Board so determines from its membership at the first meeting following the appointment of new members.

Any two members of the board shall constitute a quorum for the transaction of business. Action by a majority of those Board members present shall be binding.

b) Powers and Duties.

The board shall be responsible for establishment and maintenance of a personnel system based on merit principles, the classification and reclassification of positions, an annual compensation plan, and the development of personnel policies pursuant to section 5 of this bylaw.

The board shall be authorized to adopt reasonable rules and regulations for the proper administration of this By-law. The Personnel Committee shall meet with representative groups of employees at least once annually to discuss employee concerns about salary, fringe benefits and the administration of the Bylaw.

Amended 5/7/2019

A.G. approval not required

Article VIII - Personnel Policies and Procedures cont'd

SECTION 4 - PERSONNEL SYSTEM

A personnel system shall be established by promulgation of policies and rules and regulations pursuant to section 5. The personnel system shall make use of current concepts of personnel management and shall include but not be limited to the following elements:

- (a) **Method of Administration.** A system of administration which assigns specific responsibility for all elements of the personnel system, including: maintaining personnel records, implementing effective recruitment and selection processes, maintaining the classification and compensation plans, monitoring the application of personnel policies and periodic reviews, maintaining a problem resolution system, and evaluating the personnel system.
- (b) **Classification and Compensation.** A classification and compensation plan for all employees, subject to this bylaw and subject to appropriation, shall be established to include, but not be limited to the following parameters:
 - Fully qualified and performing employees should be compensated at a rate so to be able to attract and maintain qualified and competent employees.
 - As employees master their work, they should be rewarded for skill development and performance.
- (c) **A Recruitment and Selection Policy.** A recruitment, employment, promotion and transfer policy which ensures that reasonable effort is made to attract qualified persons and that selection criteria are job related.
- (d) **Personnel Records.** A centralized record keeping system which maintains essential personnel records.
- (e) **Personnel Policies.** A series of personnel policies, including rules and regulations, which establishes the rights, and benefits to which personnel employed by the Town are entitled and the obligations of said employees to the Town.
- (f) **Standards of Conduct.** A set of codes governing an employees standards of conduct.
- (g) **Other Elements.** Other elements of a person-nel system as deemed appropriate or required by law.

SECTION 5 - ADOPTION AND AMENDMENT OF PERSONNEL POLICIES

The Select Board shall promulgate personnel policies, including rules and regulations, defining the rights, benefits and obligations of employees subject to this bylaw. Policies shall be adopted or amended as follows:

- (a) **Preparation of Policies.** The Personnel Committee shall prepare policies or amendments to policies. Any member of the Select Board, Personnel Committee, the Administrative Assistant, or any three employees may suggest policies for consideration by the Personnel Committee. The Personnel Committee need not consider any proposal already considered in the

preceding twelve months.

Any person proposing a new or amended policy shall provide the substance and the reason for the proposed policy to the Personnel Committee in writing. The Personnel Committee shall hold a public hearing on any proposed policies or amendments. Any proposed policies or amendments shall be posted at least five (5) days prior to the public hearing in prominent work locations, copies of all proposals shall be provided to representatives of each employee collective bargaining unit, and a copy shall be submitted to the Select Board.

(b) **Public Hearing.** The Personnel Committee shall present the proposed policy(ies) or amendment(s), the purpose of the proposal, and the implication of any proposed change at the public hearing. Any person may attend the hearing, speak and present information. Within thirty-one (31) days after such public hearing the Personnel Committee shall consider the proposed policies and may vote to recommend that the Select Board adopt the policies, (with or without modifications), reject the policies, or indicate that further study is necessary.

(c) **Recommended Policies.** The Personnel Committee shall transmit recommendations in writing to the Select Board within twenty (20) days of any vote on proposed personnel policies or amendments. The recommendations from the Personnel Committee shall contain the text of the proposed policy or amended policy, an explanation of the policy and the implications of the policy. The Select Board shall only consider proposals with a recommendation of the Personnel Committee, unless the Personnel Committee fails to provide a recommendation within twenty (20) days, and may adopt, reject or return recommendations for further action to the Personnel Committee. Policies shall become effective upon approval of the Select Board, unless some other date is specified.

(d) **Computation of Time.** In computing time (days) under this bylaw only Town Hall working days shall be counted.

Amended 5/7/2019

A.G. approval not required

SECTION 6 - EMPLOYEE BENEFITS

The benefits for covered by this By-law shall be based on the following elements supplemented by the development of policies pursuant to section 5 of this bylaw:

- (1) **Vacation** - Employees are entitled to vacation each year based on the amount of continuous service originating with date of hire using the following schedule:

1 year of service	1 week per year
2 years of service	2 weeks per year
7 years of service	3 weeks per year
15 years of service	4 weeks per year
20 years of service	5 weeks per year

Article VIII - Personnel Policies and Procedures cont'd

(2) Sick Days - The Town recognizes from time to time that an employee may be absent due to illness and therefore has established that an employee may accumulate sick leave at the rate of 10 days per year to provide economic security.

(3) Other Excused Absences - Absences with pay may be approved by supervisors without charge to vacation for Court Leave, Military Leave, Bereavement Leave (no more than 3 days), voting (when not practicable to vote otherwise), and Emergencies.

(4) Leave Without Pay - A temporary non-pay status and absence from work granted by the Town at the employee's request.

(5) Long-Term Disability - Employees will accrue ½ day per month for each month an employees works and can be accumulated to a maximum of ninety (90) days.

Employees are required to utilize their sick time first. A physicians certificate will be required.

(6) Holidays - The following shall be considered holidays: New Year's Day

Martin Luther King Day	Labor Day
Presidents' Day	Columbus Day
Patriots' Day	Veterans' Day
Memorial Day	Thanksgiving Day

Independence Day

Christmas Day

Juneteenth (June 19)

(7) Worker's Compensation - An employee who by reason of an industrial accident receives statutory compensation may receive in addition, the amount necessary to make up his regular weekly compensation only to the extent of the person's accumulated sick and vacation time applied on a pro rata basis.

Amended 11/8/2021 A.G. Approval Not Required

SECTION 7 - SEVERABILITY

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

SECTION 8 - EFFECTIVE DATE

This bylaw shall take effect on July 1, 1999. Personnel policies existing prior to said date will remain in effect for at least one hundred and eighty (180) days from said date and until promulgation of new policies in accordance with section 5 herein.

First adopted 5/7/1990

A.G. approval not required

Revised 5/4/1999

A.G. approval not required

Article IX - Council on Aging

There is hereby established a Council on Aging consisting of seven citizens of this Town, appointed by the select board members for terms not to exceed four years for any member. Said terms shall be staggered so that not more than three appointments shall be made in any calendar year. Members can be re-appointed for successive terms.

The duties of said Council on Aging shall be to:

(1) identify the total needs of the community's elderly population;

(2) educate the community and enlist support and participation of all citizens concerning these needs;

(3) design, promote or implement services to fill these needs, or coordinate present existing services in the community;

(4) promote and support any other programs which are designed to assist elderly programs in the community.

Said Council on Aging shall cooperate with the Commonwealth of Massachusetts Office of Elder Affairs and shall be cognizant of all State and Federal legislation concerning funding, information exchange, and program planning which exists for better community programming for the elderly.

Said Council on Aging shall give an annual report to the select board members with a copy of that report directed to the Commonwealth of Massachusetts, Office of Elder Affairs.

Adopted as Article VIII 3/06/1975 Approved by AG.
4/25/1975

Redesignated 5/1/1978 Approved by A.G. 8/29/1978
Amended 6/22/2020 Approved by A.G. 10/16/2020

Article X - Recreation Committee

SECTION 1. There is hereby established a Recreation Committee consisting of five citizens of the town. The members of said Committee shall be appointed by the select board members after the completion of the Annual Town Meeting each year. In the year following the adoption of this By-law, two members shall be appointed for three years, two members shall be appointed for two years, and one member shall be appointed for one year. Thereafter, all appointments shall be for three years, except when filling a vacancy in an unexpired term. If any member is absent from three consecutive regular meetings, except in case of illness, the position shall be deemed to be vacant and shall be filled as herein provided.

Adopted 5/6/1975
Amended 8/11/1986
Amended 5/6/2002
Amended 6/22/2020

Approved by A.G. 9/17/1975
Approved by A.G. 10/16/1986
Approved by A. G. 8/28/2002
Approved by A.G. 10/16/2020

SECTION 2. The Recreation Committee shall be responsible for planning and executing programs of recreation and leisure activity for people of all ages in the Town and shall cooperate with and coordinate activities of private organizations and individuals which are directed toward the same purposes.

Adopted 5/6/1975

Approved by A.G. 9/17/1975

SECTION 3. The Recreation Committee shall submit an annual report of its doings for the Annual Town Report and conduct its affairs in the manner of other official Town boards.

Adopted 5/6/1975

Approved by A.G. 9/17/1975

Art. X adopted as Art. IX 5/6/75 Approved by A.G. 9/17/1975
Redesignated 5/1/1978 Approved by A.G. 8/29/1978

Article XI – Dogs (Animal Control)

Article XI (B) authorizes the Select Board to annually appoint a Dog Officer to be sworn in by the Town Clerk. We construe that the Town's appointed Dog Officer is intended to be the "Animal Control Officer" as provided for in G.L. C. 140, § 136 A

Atty. General Comments, August 19, 2015

A. In addition to the requirements set forth in this bylaw, the licensing, keeping and control of animals shall be in accordance with all applicable provisions of the Massachusetts General Laws, including but not limited to the provisions of GL c. 140, §§136A to 174E, inclusive.

B. The Select Board shall annually appoint an Dog Officer who shall be sworn in by the Town Clerk. The Dog Officer and/or his assistants are not required to be a resident of the Town. The Dog Officer may be a salaried employee of the Town. The Dog Officer shall receive such compensation as agreed upon by the Dog Officer and the Select Board.

C. Annual dog and kennel licenses, as required by GL c. 140, §§137 and 137A, must be obtained from the Office of the Town Clerk by April 1 for a licensing period of April 1 through March 31. When licensing a dog for the first time, proof of spay or neutering should be presented in order to be eligible for neutered or spayed license fee. There will be a late fee per dog for licensing after April 1st.

Applications for kennel licenses shall include the name, breed, age, proof of fixing (if applicable), proof of rabies vaccinations, a photograph of each dog, and the telephone number where the licensee can be reached at all times.

In addition to meeting all of the requirements of GL c. 140, §§137A to 137C, any person who receives a kennel license shall maintain the premises in accordance with the following specifications:

- a. A minimum of four by eight (4x8) feet for each dog shall be provided.
- b. Locks on gates to prevent the escape of dogs and the entry of children shall be provided.
- c. Kennel shall be sixty (60) feet from the street and forty (40) feet from lot lines.

No kennel license shall be issued unless the applicant demonstrates that the use of the subject property as a kennel is permitted under the Town's Zoning bylaws.

The annual fee for individual and kennel licenses shall be as follows:

- a. Individual Dog, fixed \$7.00

- b. Individual Dog, intact \$11.00
- c. Kennel, 4 dogs or less \$30.00
- d. Kennel, 10 dogs or less. \$40.00
- e. Kennel, 11 dogs or more. \$50.00
- f. Late fee after April 1 \$5.00
- g. Late fee after May 1 \$25.00
- h. Replacement/Duplicate Tags. \$1.00
- i. Transfer of License. \$2.00

~~Annually 50 percent of all monies collected under this bylaw are to be placed in a special library account to be called "Library Dog Fund."~~ Said monies may be expended upon appropriation under GL c. 44, § 53

D. The Dog Officer or any police officer of the Town shall be empowered to enforce provisions of this Bylaw.

E. In addition to the remedies set forth herein and in GL c. 140, §§136A to 174E, inclusive, or any other applicable provision of law, this Bylaw may be enforced through any lawful means in law or in equity, including, but not limited to, non-criminal disposition pursuant to G.L. c. 40, §21D. If non-criminal disposition is elected, then any person who violates any provision of this by-law shall be subject to the following penalties:

First Offense:	\$50 fine
Second Offense:	\$100 fine
Third and subsequent Offense	\$200 fine

Subsequent offenses shall be determined as offenses occurring within two years of the date of the first noticed offense. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

F. The Dog Officer shall investigate all complaints made to the Dog Officer, the Police Department, or the Select Board, that any dog owned or kept within the Town is a Nuisance Dog or Dangerous Dog, as those terms are defined in Massachusetts General Laws, Chapter 140, Section 136A and 157, as may be amended from time-to-time.

The Dog Officer shall require that said complaints be in writing and is hereby empowered to make whatever inquiry is deemed necessary to determine the accuracy of said complaint ~~and may make such orders as he or she deems necessary to ensure the protection of public safety and/or to eliminate said nuisance~~, as provided in Massachusetts General Laws, Chapter 140, section 157, as may be amended from time-to-time.

~~Any person aggrieved by an order of the Dog Officer, may request a hearing before the Board of Selectmen. Said request shall be in writing and received by the Board of Selectmen within five (5) business days of issuance of the Dog Officer's order.~~

Article XI – Dogs (Animal Control) cont’d
~~A copy of the hearing request shall also be delivered to the Dog Officer. If no such request is filed within the time specified herein, the order of the Dog Officer shall be final.~~

Upon receipt of a timely request, the Select Board shall convene a public hearing, which shall include an examination of the complainant under oath, to determine whether the dog is a Nuisance Dog or Dangerous Dog. Based on the credible evidence and testimony presented at said public hearing, the Select Board may ~~affirm the Dog Officer’s order, reverse and nullify the Dog Officer’s order, or~~ issue any such order as it deems necessary to ensure the protection of public safety and/or eliminate a nuisance, as provided in Massachusetts General Laws, Chapter 140, section 157, as may be amended from time-to-time. The determination of the Select Board after a hearing shall be final.

Nothing in this By-law is intended to limit or restrict the authority of the Select Board to act in accordance with G.L. c. 140, § 157.

Adopted 05/04/2015

Approved by A.G. 08/19/2015

Amended 6/22/2020

Approved by A.G. 10/16/2020

Comments by the Attorney General, August 19, 2015

The Town must comply with G.L. c. 44, § 53 which provides that “Article XI (C) provides that 50% of the kennel license fee funds will be “placed in a special library account” but that the money will be expended “upon appropriation under G.L. c. 44, § 53.”

The Town must comply with G.L. c. 44, § 53 which provides that “All moneys received by a city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury

We disapprove and delete the text above in bold and underline because it is inconsistent with G.L. c. 140, § 157. **(Disapproval # 1 of 1)**. The Dog Officer is not authorized to issue an order finding that a dog is a nuisance dog or a dangerous dog; nor may the Dog Officer order any remedy as provided in G.L. c. 140, § 157 (a) through (c). Only the Hearing Authority may issue orders under G.L. c. 140, § 157 (a) through (c) after investigation, a hearing and a finding that a dog is a nuisance or dangerous dog. The Town should

consult with Town Counsel to ensure that Article XI (F) is applied in a manner consistent with G.L. c. 140, § 157.

In addition, although we approve the text “[t]he determination of the Select Board after a hearing shall be final,” this provision must be applied in a manner consistent with G.L. c. 140, § 157 (d) which provides:

Amended 6/22/2020

Approved by A.G. 10/16/2020

Within 10 days after an order issued under subsections (a) to (c), inclusive, the owner or keeper of a dog may bring a petition in the district court within the judicial district in which the order relative to the dog was issued or where the dog is owned or kept, addressed to the justice of the court, praying that the order be reviewed by the court or a magistrate of the court. After notice to all parties, the magistrate shall, under section 62C of chapter 221, review the order of the hearing authority, hear witnesses and affirm the order unless it shall appear that it was made without proper cause or in bad faith, in which case the order shall be reversed. A party shall have the right to request a de novo hearing on the complaint before a justice of the court.

The Town should consult with Town Counsel if it has any questions regarding this issue.

Article XII - Earth Removal and Import

SECTION 1 - Establishment of Earthwork Board

The Select Board shall serve as the Earthwork Board for the Town of Berlin

Amended 6/22/2020

Approved by A.G. 10/16/2020

SECTION 2 - Permit required

No person, firm or corporation shall remove or import in excess of one hundred (100) cubic yards of soil, loam, sand, gravel, stone or other earth material from or to any land not in public use without first obtaining a permit therefore from the Earthwork Board, as provided in the following sections. A permit shall be granted only by an affirmative vote of the majority of the Board,

SECTION 3 -Work for which permit required; exemptions

A. A permit shall be required under this by-law for the removal or importation of soil, loam, sand, gravel, stone or other earth material in the course of excavation incidental to the construction of a business, industrial, research or commercial building or facility of any kind, including apartment buildings of more than two (2) apartment units and/or developments of more than one (1) apartment building on any single parcel or lot of land. This requirement for an earth- work permit extends also to any material removed or imported for the installation of walks, driveways, parking lots and similar appurtenances to said commercial building or facility.

B. Exemptions.

(1) A permit shall not be required under this by-law for the removal or importation of soil, loam, sand, gravel, stone or other earth material in the course of excavation incidental to the construction of a residential building consisting of less than three (3) apartments on a single parcel or lot of land for which a permit has been issued and to the installation of walks, driveways and similar appurtenances to said building; provided, that the quantity of material removed does not exceed that displaced by the portion of building, walk, driveway or similar appurtenances below finished grade or in the course of customary use of land for farming as defined in Massachusetts General Laws Chapter 128, Section 1A or agricultural composting as defined in 330 CMR 25.00 and 310 CMR 16.00.

(2) The exemptions in paragraph (1) do not cover removal or importation of earth from the premises involving topographical changes or soil-stripping or

loam-stripping activities, nor shall tentative or final approval of a subdivision plan be construed as authorizing the removal or importation of earth material from streets shown on the subdivision plan.

SECTION 4 - Application procedure

A. An application for an earthwork permit shall be in writing and, among other documents required by the Earthwork Board, shall contain an accurate description of the portion of land from which earth is to be removed or to which earth is to be imported, shall state fully the purpose for the removal or importation thereof and shall include plans of the land involved in such form as the Earthwork Board may require. The Earthwork Board may charge reasonable fees for filing an application for earthwork. Upon receipt of an application for a permit for removal or importation of earth from or to any land, the Earthwork Board shall appoint a time and place for a public hearing, notice of which shall be given to the applicant and shall be published at least twenty-one (21) days before such hearing in a newspaper of general circulation in town.

B. Fees.

New permit: five hundred dollars (\$500.00).

Renewal permit: two hundred fifty dollars (\$250.00).

SECTION 5 - Conditions for granting of permit

A permit for removal or importation of soil, loam, sand, gravel, stone or other earth material shall be granted only if the Earthwork Board determines that such removal or importation is neither detrimental to the neighborhood nor injurious to the recharge of the water table or the condition of surface water. The exercise of any permit granted under provisions of this by-law shall be subject to conditions, limitations and safeguards to be set forth therein by the Earthwork Board to protect the groundwater supply, health, welfare, convenience and safety of the public and to promote the best interests of the neighborhood and of the town. These conditions may include but are not limited to: method of removal; type and location of temporary structures; hours of operation; routes for transporting the material through the town; area and depth of excavation; distance of excavation from street and lot lines; steepness of slopes excavated; reestablishment of ground levels and grades; provisions for permanent and temporary drainage; disposition of boulders and tree stumps; replacement of loam over the area of removal; planting of the area to suitable cover; and inspection of the premises as permitted by law by the Earthwork Board or its representative.

Article XII – Earth Removal and Import continued

SECTION 6 - Performance bond; duration of permit; public hearing

The Earthwork Board may require, as a condition to the granting of a permit for the removal or importation of soil, loam, sand, gravel, stone or other earth material, that the permittee furnish cash, a certified check or a surety company bond to the town as obligee in a penal sum to be fixed by said Earthwork Board as it shall deem sufficient to cover the cost of the performance of all labor and material as shall be required to carry out all the conditions, limitations and safeguards as may be imposed by said Earthwork Board in connection with the removal or importation of the particular substances for which the permit is issued. No permit shall be issued under provisions of this by-law for a period of more than one (1) year, although permits may be renewed. Prior to issuing or renewing any permit, the Earthwork Board shall appoint a time and place for a public hearing, notice of which shall be given to the applicant and all abutters and shall be published at least twenty-one (21) days before such hearing in a newspaper having a circulation in the town.

SECTION 7 - Investigation of violations; suspension or revocation of permit

If the Earthwork Board shall be informed or shall have reason to believe that any provision of this by-law or any permit or condition thereunder has been, is being or is about to be violated, the Earthwork Board shall make or cause to be made an investigation of the facts, and if the Earthwork Board finds any violation, the Earthwork Board shall send a notice ordering cessation of the improper activities to the owner of the premises in question or his duly authorized agent and to the occupant of the premises. If, after such notice, the violation continues, the Earthwork Board may suspend any permit it has issued or take such other action as is necessary to enforce the provisions of the chapter and/or seek penalties as provided in MGL C. 40, § 21, Clause 17. violation of this bylaw shall be punishable by a fine of fifty dollars (\$50.00) for a first offense; one hundred dollars (\$100.00) for a second offense and for each subsequent offence, two hundred dollars (\$200.00) . Each day of violation shall constitute a separate offense. If any permit is suspended, an early date shall be set by the Earthwork Board for a public hearing, notice of which shall be given to the permittee and shall be published at least seven (7) days before such hearing in a newspaper of general circulation in town. Any permit granted by the Earthwork Board may be revoked for cause shown, after such public hearing. The suspension or revocation of a permit shall not relieve the permittee of his obligations thereunder, except at the discretion of the Earthwork Board.

SECTION 8 - Record of proceedings and decisions

The Earthwork Board shall record all proceedings brought under this by-law in a book to be kept for that purpose and shall file in the office of the Town Clerk a copy of all decisions, and the said Town Clerk shall keep a proper index thereof.

SECTION 9 - When effective

This chapter shall take effect upon its approval by the Attorney General and publication as provided by law; provided, however, that any continuous earthwork activities in actual legal working operation on the date of enactment, may continue unaffected by this chapter until the termination date specified in said permit. Permits for operation of the latter activities will be required from this Board upon the termination of their existing permits.

SECTION 10 - Severability

If any provision of this by-law shall be held invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed to affect the validity or constitutionality of any of the remaining provisions.
Adopted 5/7/2012 Approved by A.G. 7/19/2012

Article XIII - Regulation of Business

SECTION 1. Regulation of Junk and Secondhand Dealers

1. Definitions

Secondhand dealer - any person conducting the business of buying, obtaining, acquiring, receiving, selling, exchanging, dealing in or dealing with secondhand personal property (hereinafter also referred to as an "article"), including, but not limited to jewelry; diamonds; precious or semi-precious stones or gems; precious or semiprecious metals; watches; musical instruments and equipment; cameras; furs; figurines; home and motor vehicle stereo equipment; cellular phones; televisions; radios; video players and recorders; tools; computers and computer equipment; electronic devices and equipment; and motor vehicle accessories, but not including motor vehicles; second hand clothing other than furs; sporting goods; antiques, other than jewelry, watches, diamonds, precious or semi-precious stones or gems, precious or semiprecious metals and figurines, which are at least ten (10) years old; and articles which are part of an estate or administrative sale or an auction. The Select Board may add from the list of articles listed herein by regulation adopted pursuant to Chapter 140, Section 54 of the General Laws.

Article XIII - Regulation of Business *continued*

Junk dealer - any person conducting the business of buying, obtaining, acquiring, receiving, selling, exchanging, dealing in or dealing with junk. "Junk" includes, but is not limited to, used or scrap materials or salvage not otherwise included in the materials listed in

the definition of secondhand or old metal dealer.

Old metal dealer - any person conducting the business of buying, obtaining, acquiring, receiving, selling, exchanging, dealing in or dealing with old metals.

Person - an individual, firm, partnership, corporation, business trust, estate, partnership association, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

2. License Requirements (Dealers and Shopkeepers)

(a) All dealers in and keepers of shops for the purchase, sale or barter of secondhand articles, junk and/or old metals shall be licensed by the Select Board prior to engaging in said activity and shall comply with these bylaws and any rules and regulations promulgated by the Select Board.

(b) Applications for new licenses and renewal licenses shall be made in writing to the Select Board, with a copy provided to the Berlin Police Department, on forms provided for this purpose by the Town. Each application shall state the specific place or location of business at which the licensed activity shall take place. Each license granted shall be issued on a location specific basis. No license shall be granted without a specific place of business which is in compliance with applicable zoning bylaws, however the grant of a license shall not be evidence or proof of zoning compliance.

(c) Upon approval, a license shall be issued and shall continue in effect, unless sooner revoked by the Select Board, until May 1st of the next following year. No license may be transferred or assigned.

(d) The license shall be clearly and prominently displayed in a suitable and conspicuous place within the shop.

3. Records of Purchases -Transaction Records

(a) Every secondhand dealer, junk dealer and old metal

dealer upon the acquisition, regardless of the manner of acquisition, of any article, good or item subject to licensing hereunder shall prepare a transaction record upon a form approved by the Select Board or its designee, stating:

- i. The full name, current address, date of birth and driver's license number of the seller;
- ii. The date and time of transaction;
- iii. A full, detailed and accurate description of each article;
- iv. The amount paid for each article, and;
- v. The name of the employee or person receiving the item.

(b) Each seller shall sign their name on the transaction record.

(c) The secondhand dealer, junk dealer and old metal dealer shall attach a photograph of the seller, and the seller's identification, which shall be photo identification issued by a government agency (i.e. driver's license, liquor identification card, passport, etc.) to the transaction record.

(d) All articles shall be photographed in reasonable detail. Said photograph shall accurately and clearly represent the article, and photos shall be attached to the transaction record.

(e) Every secondhand dealer, junk dealer and old metal dealer shall maintain the original transaction record and all photographs for a minimum of three (3) years)

(f) One clear copy of the previous week's transaction record and photographs shall be delivered to the Berlin Police Department by 12:00 noon every Monday, unless otherwise directed in writing by the Chief of Police. Copies of records and photographs may be submitted electronically.

(g) All transaction records shall be open to inspection by the Chief of Police or any officer or person duly authorized by him, or any other person authorized under law.

4. Record of Purchases – Log

(a) Every secondhand dealer, junk dealer and old metal dealer shall also record each transaction, with the information required pursuant to Section 3 in a bound

Article XIII - Regulation of Business continued

book with consecutively numbered pages. The book shall be of a size and style approved by the Chief of Police or his designee. All entries shall be in ink, legible, written in English and assigned a number. The corresponding number shall be attached to the item. No entry in the book shall be erased, obliterated, altered or defaced.

(b) The transaction book shall at all reasonable times be open to the inspection by the Chief of Police or any officer or person duly authorized by him, or any other person authorized under law. The transaction books shall be kept for a minimum of three (3) years after the secondhand dealer last does business in the Town of Berlin.

5. Notification to police

Secondhand article, junk and old metal dealers shall immediately notify the Berlin Police Department upon receiving an article which is questionable as to its status of being stolen or not, and shall make such article available for identification by an officer of the Police Department.

6. Receipt of articles from minors

No secondhand, junk or old metal dealer or any employee or agent of such a dealer shall directly or indirectly purchase or receive by way of barter or exchange any article secondhand articles, junk or old metals from a minor.

7. Holding period

(a) No article shall be sold, encumbered by sales contract, or otherwise disposed of, or altered in its appearance, within thirty (30) days of purchase, unless the dealer is granted permission, in writing, from the Chief of Police or his designee. With respect to any secondhand article for which permission is granted by the Chief of Police pursuant to this subparagraph, the person buying or otherwise receiving said article shall complete a transaction record upon a form approved by the Select Board or its designee which provides the information required pursuant to Section 3(a) above as applicable to a person buying or receiving a secondhand article.

(b) All articles purchased shall remain on the premises during the waiting period; items shall not be placed on the sales floor until the waiting period has expired, unless the item is clearly marked with the corresponding transaction number and the sales release date based on the time frame as specified in subparagraph (a), above. based on the time frame as specified in subparagraph (a), above.

(c) The following are exempt from the holding period requirement of this Section 7: auction purchases, estate purchases from an executor/executrix or administrator/administratrix where the purchase is

accompanied by written proof of said position.

8. Examination of articles and shop

Any shop described or governed by Section 2 and all secondhand goods, old metals and/or junk therein may at all times be examined by a person authorized in writing by the Chief of Police to make such examination.

9. Removal of articles by police officers

(a) If the Berlin Police Department determines that a secondhand good, old metal or junk article(s) is needed for evidence in a criminal investigation, a Berlin Police officer may seize that evidence, subject to applicable criminal procedures, if any. The secondhand dealer, old metal dealer or junk dealer shall be issued a receipt for the article(s).

(b) The Berlin Police Department may keep seized articles, subject to a courts direction, if any, as long as necessary to permit the article to be used as evidence and for such reasonable time thereafter as needed to best determine, if possible, the person(s), if any, lawfully entitled to said property.

10. License Suspension and/or revocation

Any license issued under Article XIII Section 1 of the By-laws and governed by these rules and regulations may be suspended or revoked, after a hearing for cause or violation of these rules and regulations.

11. This Bylaw shall not apply to second hand dealers, junk dealers, old metal dealers, who have been in continuous operation in the Town of Berlin since 2000 and who are otherwise in good standing as a holder of a "Junk Dealer's License" as a dealer in, or keeper of a shop for the purchase, sale or barter in junk, old metals and second hand articles.

Adopted 2/7/1938 Approved by A.G. 3/11/1938

Revised as I,5 3/12/1951

Approved by A.G. 8/8/1951

Redesignated 5/5/1986

Approved by A.G. 7/25/1986

Entire new section 5/5/2014

Approved by A. G. 6/27/2014

Amended 6/22/2020

Approved by A.G. 10/16/2020

SECTION 2. No person or corporation, resident or non-resident of the town, shall keep or cause to be kept or pastured in said town more than twenty-five swine, without a special permit from the Board of Health.

Adopted as I,9 3/12/1951

Approved by A.G. 8/8/1951

Redesignated 5/5/1986

Approved by A.G. 7/25/1986

SECTION 3. Before any aerial spraying will be permitted within the geographical confines of the Town of Berlin, the petitioners must first obtain written permission from the Select Board, after he has submitted the following listed items:

1. Technical name (trade name) of the spray, and any and all ingredients that are part of the compound.

2. Either the party who does the spraying, or the owner of the land that is to be sprayed, must post a

bond in the amount of \$10,000.00 (ten thousand) ensuring financial responsibility, in case of damage caused by the spray drifting onto the hay and crops of the abutting owner.

Adopted 3/1/1963	Approved by A.G. 5/9/1963
Designated 5/5/1986	Approved by A.G. 7/25/1986
Amended 6/22/2020	Approved by A.G. 10/16/2020

SECTION 4. It shall be unlawful for any solicitor or canvasser, as defined in this By-law to engage in such business within the Town of Berlin without first obtaining a license therefore in compliance with the provisions of this By-law. The provisions of the By-law shall not apply to any person residing within the Town of Berlin and engaged in the pursuit of soliciting for charitable, benevolent, fraternal, religious or political activities, nor to any person exempted by any General Law, nor shall this by-law be construed to prevent persons having established customers to whom they make periodic deliveries, from calling upon such prospective customers to solicit an order for future periodic deliveries.

A solicitor or canvasser is defined as any person who, for himself or for another person, firm or corporation travels by foot, automobile, or any other type of conveyance from place to place, from house to house, taking or attempting to lease or to take orders for the sale of goods, wares, merchandise or services or taking or attempting to take contributions for any purpose including, books, periodicals or other articles of a commercial nature, the contracting of all home improvements or for services to be performed in the future, whether or not such individual has, carries or exposes for retail sale a sample of the subject of such sale, whether or not he is collecting advance payment on such retail sales.

Applicants for a license shall file with the Chief of Police on a form issued by him, a written application signed under the penalties of perjury, containing the following information:

- a) Name of applicant;
- b) Address of applicant (both local and permanent address);
- c) Applicant's height, weight, eye and hair color;
- d) Applicant's social security number;
- e) Applicant's date of birth;
- f) A brief description of the nature of the business and the goods to be sold;
- g) A photograph of the applicant which picture shall be submitted by the applicant and by 2"x2" showing head and shoulders of the applicant in a clear and distinguishing manner;
- h) A statement as to whether or not the applicant has

been convicted of any crime or misdemeanor within ten years of the date of application, except violations of the motor vehicle law, and the nature of the offense;

i) If operating a motor vehicle; the year, make, color, model, motor number, registration number, state of registration, vehicle's owner and address.

At the time of filing the application, each applicant shall pay a fee of \$10.00 to the Town of Berlin. Said application fee shall be non-refundable.

Upon receipt of the application, the Chief of Police shall investigate the applicant's reputation as to morals and integrity.

After an investigation of the applicant's morals and integrity, the Chief of Police shall approve or disapprove the application and notify the applicant of the decision. In the event that the application is approved, a license shall be issued. Any applicant shall have the right of appeal to the Select Board.

Such license, when issued, shall contain the signature of the issuing Officer and shall show the name, address and photograph of said licensee, the date of issuance and the length of time the same shall be operative, as well as the license number. The Chief of Police shall keep a record of all licenses issued for a period of six (6) years.

(Solicitors and canvassers, when engaged in the business of soliciting or canvassing are required to display an identifying badge issued by the Chief of Police, by wearing said badge on an outer garment.)

Each licensee is required to possess an individual license. The Police Officers of the Town of Berlin shall enforce this By-law. No license shall be transferred.

Each license issued shall be revocable for just cause by the Chief of Police. Any licensee whose license is so revoked shall have a right to appeal such revocation to the Select Board.

Each license issued under the provisions of this By-law shall continue in force for one year from the date of its issue unless sooner revoked.

All licenses issued under this By-law shall state the hours during which the licensee shall be able to do business. In no event shall a licensee be permitted to do business under the license before the hour of 9:00 A.M. and later than the hour of 7:00 P.M.

An applicant requesting a renewal of a license must apply in person for such license renewal, and provide such material as required by the Chief of Police.

Whoever violates any provision of the foregoing By-law shall be punished by a fine not exceeding One hundred (\$100.00) Dollars for each offense.

Adopted 5/7/1984	Approved by A.G. 9/12/1984
Designated 5/5/1986	Approved by A.G. 7/25/1986
Amended 6/22/2020	Approved by A.G. 10/16/2020

Article XIII - Regulation of Business continued

SECTION 5. (a) The Tax Collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as 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 of an abatement of such tax or a pending petition before the appellate tax board.

(b) The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers of any party whose name appears on said list furnished to the licensing authority from the tax collector; provided, however, that written notice is given to the party and the tax collector, as required by applicable provisions of law, and the party is given a hearing, to be held not earlier than fourteen days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party. The tax collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the licensing authority with respect to such license denial, revocation or suspension shall be made only for the purposes of such 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 received 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 of the date of issuance of said certificate.

(c) Any party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitations to the license or permit and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.

(d) The Select Board 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 in the business or activity conducted in or on said property.

This section shall not apply to the following licenses and permits:

- i. open burning (MGL Ch. 48, S13)
- ii. bicycle permits (MGL Ch 85, S 11A)
- iii. sale of articles for charitable purposes (MGL Ch 101, S 33)
- iv. children work permits (MGL Ch. 149, S69)
- v. clubs, associations dispensing food or beverage licenses (MGL Ch. 140, S 21E)
- vi. dog licenses (MGL Ch. 140, S 137)
- vii. fishing, hunting, trapping licenses (MGL Ch. 131, S12)
- viii. marriage licenses (MGL Ch. 207, S 28)
- ix. theatrical events, public exhibition permits (MGL Ch. 140, S 181)

Adopted 5/2/1988

Approved by A.G. 7/28/1988

Revised 10/15/2018

Approved by A.G. 5/8/2019

SECTION 6. 1. The following requirements shall be met when installing and operating an alarm system in the Town of Berlin, when system calls for automatic response from the Fire and/or Police Department:

A. No person shall install, operate or maintain any such system unless the system has been registered with the Fire and/or Police Department;

B. All such alarm systems which are installed after July 1, 1990 must be equipped with a device which will shut off or re-set itself after 15 minutes of activation;

C. No person shall install, cause to be installed, or permit to be installed any alarm device which automatically selects a telephone line dedicated to the Police and/or Fire Department for the purpose of playing a recorded message to report any emergency.

2. Owners and users of alarm systems which call for automatic response from the Fire and/or Police Department shall pay to the Town of Berlin a fine, according to the following schedule, for false alarms in a twelve (12) month period:

Number of Alarms	Fire	Police/Burglar
3	\$ 50.00	0.00
4	75.00	\$ 25.00
5	90.00	50.00
6 and thereafter	100.00	100.00

3. Any owner or user of an alarm system who accidentally activates a Police burglar alarm and notifies the Police Department within 4 minutes after activation will not be charged a false alarm call. **THIS GRACE PERIOD DOES NOT APPLY TO FIRE ALARM ACTIVATIONS!**

Adopted 6/25/1990

Approved by A.G. 10/16/1990

Amended 6/22/2020

Approved by A.G. 10/16/2020

SECTION 7.

Effective December 1, 2018, all fees collected and accrued by the Tax Collector pursuant to MGL Chapter 60 Section 15 shall be deposited in the General Fund, provided, however, that any fees collected by the Tax Collector under said statute since July 1, 2018 through November 30, 2018 and any fees collected and turned over to the Treasurer from Dec 1, 2018 forward shall not be reimbursed or credited to the Collector.

Adopted 10/15/2018

Approved by A.G. 5/8/2019

Article XIV - Demolition Delay

SECTION 1. Intent and Purposes - The Purpose of this by-law is to preserve and protect significant buildings in Berlin, which constitute or reflect distinctive features of the architectural, cultural, political, economic or social history of the town, by establishing a procedure for reviewing requests to demolish buildings.

Adopted 6/28/1999

Approved by A.G. 10/5/1999

SECTION 2. Definitions

Building - a structure capable of being used to shelter persons, animals, materials or equipment.

Commission - the Berlin Historical Commission

Demolish - to perform any act of demolition.

Demolition - any voluntary act of pulling down, destroying, burning, removing, or razing of a building in whole or in part; commencing the work of destruction; or allowing the same to be done by others.

Applicant - person or persons filing an application for demolition. If the person submitting the application is not the owner, the owner will be required to indicate his/her assent to the filing of the notice or application.

Significant building - any building which is historical by reason of its age (in whole or in part fifty (50) or more years) and is determined by the Commission to be either (1) associated with a person or event contributing to the cultural, political, economic, social or architectural history of the town, Commonwealth, or the United States of America; or (2) historically or architecturally important (in terms of period, style, construction, or association with an architect or builder), either by itself or in the context of a group of buildings.

Preferably preserved significant building - any significant building for which it is determined, after public hearing, to be in the public's interest to preserve or rehabilitate rather than demolish under this by-law.

Demolition permit - any permit (demolition, alteration, building) issued by the Building Inspector, as required by the State Building Code, which authorizes the demolition of a building (excluding interior demolition).

Building Inspector - Berlin Building Inspector or person(s) otherwise authorized to issue demolition permits.

Day - any calendar day, including Saturdays, Sundays and holidays.

Adopted 6/28/1999

Approved by A.G. 10/5/1999

SECTION 3. Procedure

a) No demolition permit shall be issued for a significant building without first fully complying with the provisions of this by-law.

b) The Building Inspector shall forward a copy of each application for a permit to demolish a building (or a part of a building) to the Commission upon receipt.

c) If the demolition permit application is for a building which is fifty or more years old, the building's historical significance will be determined by the Commission within fourteen (14) days of the Commission's receipt of the application. The Commission will notify the Building Inspector, Town Clerk and applicant in writing of this initial determination. If the building is not determined to be significant, the Building Inspector may issue a permit to demolish in accordance with all applicable procedures.

d) If the building is determined to be significant, the Commission shall hold a public hearing within thirty (30) days of this initial determination to further determine whether the demolition of the building will be detrimental to the historical, cultural or architectural heritage of the town. Notice of the time, place and purpose of the hearing shall be given twice in a local newspaper, the first notice at least fourteen (14) days before and the second notice at least seven (7) days before such hearing, by posting notices at the Town Hall and the Town Offices for a period of at least fourteen (14) days before such hearing, and by mailing a notice of hearing to the applicant at least seven (7) days before the hearing.

e) A determination shall be made by the Commission within ten (10) days of the close of the public hearing. The applicant, Building Inspector and the Town Clerk shall be provided with a copy of the determination.

f) If the Commission determines the demolition of the building in question is not detrimental to the historical, cultural or architectural heritage of the town, or if the Building Inspector does not receive notification within fifteen (15) days of the closing of the public hearing, the Building Inspector may, subject to the requirements of the State Building Code or any other applicable laws, by-laws, rules and regulations, issue the demolition permit.

g) If the Commission determines the demolition of the building in question is detrimental to the historical, cultural or architectural heritage of the town, the building shall be designated a preferably preserved significant building and no demolition permits may be applied for or issued for a period of six (6) months from the date of such determination.

Article XIV - Demolition Delay *continued*

h) During the six (6) month period, the Commission will invite the applicant (and owner of record, if different from applicant) to participate in an investigation of alternatives to demolition. If acceptable alternatives are agreed upon by the Commission and the applicant, the Commission will file a copy of said agreement with the Building Inspector and Town Clerk and the applicant may apply for necessary permits to begin work. Work the Building Inspector may issue a permit to demolish in accordance with all applicable procedures.

SECTION 4. Emergency Demolition

Nothing in this by-law restricts the demolition of a significant building determined by the Building Inspector to present a danger to public safety which only demolition can prevent. Such a determination shall be made in accordance with the applicable provisions of the State Building Code and after consultation with the Commission Chair or designee. Whenever an emergency demolition permit is issued under the provisions of this section, a written report must be filed with the Commission describing the condition of the building and the basis for the determination.

SECTION 5. Enforcement and Remedies

- a) The Commission and the Building Inspector are each authorized to enforce the provisions of this by-law.
- b) The Building Inspector shall not issue a permit pertaining to any property on which a significant building has been demolished voluntarily in whole or in part without first fully complying with the provisions of this by-law for a period of two (2) years from the date of the completion of such demolition.
- c) The fine for ordering or carrying out an act of demolition without complying substantially with the provisions of this by-law will be \$300.00.
- d) Upon determination that a building is a preferably preserved building, the owner shall be responsible for properly securing the building, if vacant, to the satisfaction of the Building Inspector. Should the owner fail to secure the building, the loss of such building through fire or other cause shall be considered voluntary demolition for the purposes of Section 5b.

SECTION 6. Administration

- a) The Commission may adopt such rules and regulations as are necessary to administer the terms of this by-law.
- b) The Commission is authorized to adopt a schedule of fees to cover the costs associated with the administration and review of any application which is filed under this by-law.

SECTION 7. Severability

If any provision of this by-law is determined to be

shall only be done in accordance with the terms of the agreement unless and until new permit applications are filed and processed hereunder.

- i) If the Commission is satisfied that there is no feasible alternative to demolition, the Commission may so advise the applicant, Building Inspector and Town Clerk in writing at any time during this six (6) month period, and

invalid or unconstitutional by any court, every other section shall continue in full force and effect.

Adopted 6/28/1999

Approved by A.G. 10/5/1999

3d Amended 9/25/2000

Approved by A.G. 1/26/2001

Article XV – Berlin Fire and EMS Department

Section 1. Establishment

This hereby establishes the Berlin Fire and EMS Department (hereinafter referred to as “Department”).

Section 2 - Function

It shall be the function of the Department to provide fire, rescue and emergency medical services to the Town and carry out the rescue services prescribed by the general laws, State regulations, and these by-laws.

With such amendment to take effect on February 1, 2016, and after compliance with the provisions of G.L. C 40, §32.

Adopted 9/25/2000
Amended 12/14/2015

Approved by A.G. 1/26/2001
Approved by A.G. 3/7/2016

Article XVI – Supplemental Water Supply

SECTION 1- History

As a rural community, the Town of Berlin must rely upon static water supplies for fire protection. To date, this has been in the form of water holes fitted with dry hydrants. With the last several years of drought, there have been all too many times that these sources have been insufficient to provide the needed protection. As the town grows, especially with multiple dwelling developments, there is a need for fast response which can be supplied by the installation of residential sprinklers.

SECTION 2-Definitions

For the purpose of this by-law, the following terms, phases, words and their derivations shall have the meanings herein given. The word “shall” is always mandatory and not discretionary.

Acceptance Testing & Installation - A test & inspection of the system will be conducted by the Berlin Fire Department. The purpose of this requirement is to ensure proper operation and installation.

NFPA- The National Fire Protection Association 2017 Edition

NFPA 13- The current edition of installation of Sprinkler Systems

NFPA13D- The current edition of Sprinkler Systems in One and Two Family Dwellings and Mobile Homes.

NFPA13R- The current edition of Sprinkler Systems in Residential Occupancies up to and including Four Stories.

NFPA 1- General Storage.

NFPA 1- Rack Storage of Materials.

NFPA1142 – The current edition of Water Supplies for Suburban and Rural Fire Fighting.

Cisterns- NFPA – 1142

NFPA – 22 Water Tanks

SECTION 3- General Regulations

- A. This by-law applies whenever an Individual or Developer creates a subdivision or lots with three or more residential, multifamily units, or Industrial or Commercial buildings to be built regardless of ownership. If all buildings under this section have to be outfitted with sprinklers, they will be installed as defined in accordance with NFPA 13, 13D, 13R, and NFPA 1.
- B. Farm and Agricultural uses will be exempt from these requirements for accessory use.
- C. A Cistern may need to be added to the project in addition to the buildings having sprinklers installed as defined by the Fire Chief. This shall be installed for the exclusive utilization of essential fire and maintenance personnel.
- D. Prior to the issuance of a Building Permit for the project, the cistern will be constructed. An Installation Permit from the fire department is required and the cistern will need to be tested, excepted and fully operational. After completion, final as-built drawings must be submitted to the Fire Department.
- E. The capacity of any cistern or dry hydrant shall be in conformance with the current requirements of NFPA 1142 Annex B.4.3 (3) and to have a minimum capacity of thirty thousand (30,000) gallons for residential areas. Commercial and Industrial structures will have to be designed and calculated by a Fire Protection Engineer.
- F. The developer must also file and receive approval from the Conservation Commission prior to construction.
- G. All cisterns are to be designed in accordance with the current edition of NFPA 1142 and comply with the operations and standards of the Fire Department. Prior to construction, the location and design plans, will be drawn, stamped and submitted by a Fire Protection Engineer for review. This will be based on approval by the Fire Chief.
 - a. The Suction side will have a six (6) inch National Standard Thread (NST) female swivel with long handles and strainer, six (6) inch male by four and one half (4 ½) NST male adapter , and a four and one half (4 ½) inch NST female cap with chain or cable. The height needs to be thirty-six (36) inches: from finish grade to the center of the connection and located within fifteen (15) feet of maintained vehicle access.
 - b. A minimum of two lockable thirty-two (32) inch manholes are required for access.
 - c. A five (5) inch Stortz Fill connection shall be provided with cap, chain or cable. The height of the fill pipe shall be thirty-six (36) inches from finish grade to the center of the connection.

- d. All Suction and Fill piping must be ASTM International Schedule 40 steel
- e. Suction piping inside the tank shall be of size to deliver the required fire flow and shall have a listed strainer installed vertically at the bottom of the cistern at a height of six inches off the bottom of the cistern attached to a four foot by four foot (4x4) by ¼ inch anti-vortex plate. Suction piping shall be painted red. All other exposed piping shall be painted black.
- f. An eight (8) inch vent will be constructed out of ASTM Schedule 40 PVC piping.
- g. The entire cistern must be completed and inspected before any backfilling is done. The base and the backfill material must meet NFPA 1142 annex B.4.3
- h. All Fire Department Suction and Fill connections shall be protected from damage by supports, posts, or bollards.
- i. Suction support is required to support the suction hose four feet from the connection. Said support may be six-by-six (6x6) posts placed four (4) feet apart with a double two-by-eight (2x8) horizontal support anchored to the posts. The top of the support needs to be six (6) inches lower than the height of the suction pipe.
- j. The tank itself shall be constructed of steel, fiberglass, or concrete with an approved plastic liner or rubber membrane or other approved method of waterproofing.
- k. A minimum of a six (6) inch diameter drilled well is required with a minimum twenty-five (25) casing and drive shoe, equipped with a minimum one-half (1/2) horsepower well pump to provide a five-to-ten (5-10) GPM constant flow.
- l. A lighted control panel is required with green LED power indicating light –emitting diode and low-level flashing red indicator and an orange pump running indicator. These indicators shall be appropriately labeled. The developer must construct a mounting panel and have metered power connected to the cistern after obtaining all necessary electrical permits. All electrical controls, boxes, manholes shall be locked with “keyed alike padlocks”. A Knox-Box is to be installed at the panel location with all the required keys.
- m. A sign is required which has a minimum one (1) inch white reflective letters on a red reflective background. The sign shall be a minimum six (6) inches in height. The sign shall state: 1: Fire Dept. Water supply, 2: The storage capacity, and 3: The Fire Dept. ID Number or address.
- n. A minimum of a twelve (12) foot wide off-road access to cistern is required and shall be maintained year round. A maximum sustained grade shall not exceed eight (8) percent. The access

road to cistern must have a minimum of twelve (12) inches of a gravel base suitable for adequate drainage.

SECTION 4- Maintenance

- A. The developer/builder shall provide a five-year performance bond which will be utilized in case of major failure of the system. The amount of the bond will be equal to the replacement cost, as determined by the Fire Chief.
- B. Prior to construction, the developer/builder will provide the Fire Department’s water supply account with funds to cover all costs of maintenance for five (5) years after completion and acceptance. This amount will be determined by the Fire Chief. Should the full amount not be utilized, the remaining balance will be returned to the developer/builder by the Town at the end of the five year period.
- C. The association or individual will be required to maintain the system and functionality on an annual basis. The annual testing will need to be conducted by certified/licensed company with the report to be filled with the AHJ.

Adopted 5/1/2018

Approved by A. G. 8/27/2018

Article XVII - Farm Preservation

Section 1 Legislative Purpose and Intent

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

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

Section 2 Definitions

The word "farm" shall include any parcel or contiguous parcels of land, or water bodies used for the primary purpose of commercial agriculture, or accessory thereof. The words "farming" or "agriculture" or their derivatives shall include, but not be limited to the following:

- farming in all its branches and the cultivation and tillage of the soil;
- dairying;
- production, cultivation, growing, and harvesting of any agricultural, aquacultural, floricultural, viticultural, or horticultural commodities;
- growing and harvesting of forest products upon forest land, and any other forestry or lumbering operations;
- raising of livestock including horses;
- keeping of horses as a commercial enterprise; and

keeping and raising of poultry, swine, cattle, ratites (such as emus, ostriches and rheas) and camelids (such as llamas and alpacas), and other domesticated animals for food and other agricultural purposes, including bees.

Article XVII – Farm Preservation *continued*
“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 organisms of plants and animals;
- application of manure, fertilizers, and pesticides which are registered with the Department of Agricultural Resources.
- composting, which the resulting compost is to be used on site;
- conducting agriculture-related educational and farm based recreational activities, including agri-tourism, provided that the activities are related to marketing the agricultural output or services of the farm;
- processing and packaging of agricultural output of the farm and the operation of a farmer’s market or farm stand including signage thereto;
- maintenance, repair, or storage of seasonal equipment, or apparatus owned or leased by the farm owner or manager used expressly for the purpose of propagation, processing, management, or sale of the agricultural products; and
- on farm relocation of earth and the clearing of ground for farming operations.

Section 3 Right to Farm Declaration

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

Section 4 Disclosure Notification

Not later than 21 days after the purchase and sale contract is entered into, or prior to the sale or exchange of real property if no purchase and sale agreement exists, for the purchase of real property, or prior to the acquisition of a leaseholder interest or other possessory interest in real property, located in the Town of Berlin, the landowner shall present the buyer or occupant with a

disclosure notification which states the following:

“It is the policy of this community to conserve, protect and encourage the maintenance and improvement of agricultural land for the production of food, and other agricultural products, and also for its natural and ecological value. This disclosure notification is to inform buyers or occupants that the property they are about to acquire or occupy lies within a town where farming activities occur. Such farming activities may include, but are not limited to, activities that cause noise, dust and odors. Buyers or occupants are also informed that the buyers’ property within the Town may be impacted by commercial agricultural operations.”

A copy of the disclosure notification shall be given on a form prepared by the Town and shall be signed by the landowner prior to the sale, purchase, exchange or occupancy of such real property. A copy of the disclosure notification must be filed with the Select Board or its designee prior to the sale, purchase, exchange or occupancy of such real property.

Amended 6/22/2020

Approved by A.G. 10/16/2020

Section 5 Precedence

In the event of conflict between this By-law and federal or state law, federal or state law shall take precedence respectively.

Section 6 Resolution of Disputes

Any person who seeks to complain about the operation of a farm may, notwithstanding pursuing any other available remedy, file a grievance with the Select Board, the Zoning Enforcement Officer, or Board of Health, depending upon the nature of the grievance. The filing of the grievance does not suspend the time within which to pursue any other available remedies that the aggrieved may have. The Zoning Enforcement Officer or Select Board may forward a copy of the grievance to the Agricultural Commission or its agent which shall review and facilitate the resolution of the grievance, and report its recommendations to the referring Town authority within an agreed upon time frame.

The Board of Health, except in cases of imminent danger or public health risk, may forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance, and report its recommendation to the Board of Health within an agreed upon time frame.

Amended 6/22/2020

Approved by A.G. 10/16/2020

Section 7 Severability Clause

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

Adopted 5/5/2008

Approved by A.G. 5/20/2008

Article XVIII - Stretch Energy Code

SECTION 1 – Definitions

International Energy Conservation Code (IECC) 2009 – The International Energy Conservation Code (IECC) is a building code created by the International Code Council. It is a model code adopted by many state and municipal governments in the United States for the establishment of minimum design and construction requirements for energy efficiency. Commencing July 1, 2010, the baseline energy conservation requirements of the MA State Building Code will default to IECC 2009 and MA amendments.

Stretch Energy Code – Codified by the Board of Building Regulations and Standards as 780 CMR Appendix 120 AA, the Stretch Energy Code is the International Energy Conservation Code (IECC) 2009 with amendments contained herein.

SECTION 2 – Purpose

The purpose of 780 CMR 120 AA is to provide a more energy efficient alternative to the base energy code applicable to the relevant sections of the building code for both new construction and existing buildings.

SECTION 3 – Applicability

The code applies to residential and commercial buildings. Buildings not included in this scope shall comply with 780 CMR 13, 34, 61, or 93, as applicable.

SECTION 4 – Authority

A municipality seeking to ensure that construction within its boundaries is designed and built above the energy efficiency requirements of 780 CMR may mandate adherence to this appendix.

780 CMR 120 AA may be adopted or rescinded by any municipality in the Commonwealth in the manner prescribed by law.

SECTION 5 – Stretch Code

The Stretch Code, as codified by the Board of Building Regulations and Standards as 780 CMR Appendix 120 AA, including any amendments or modifications, is herein incorporated by reference into the Town of Berlin General Bylaws, Article XVIII.

The Stretch Code is enforceable by the Inspector of Buildings or Building Commissioner.

Adopted 5/2/2011

Approved A. G. 8/15/2011

XIX - Like Kind Soil

A. Purpose

This bylaw is intended to provide reasonable local regulation of the importation into the Town of soils or fill that shall herein be known as “Like Kind Soils” in the interests of protecting the health, welfare and safety of the inhabitants and natural resources of the Town. Like Kind Soils shall be those soils described in 310 CMR 40.0032(3).

B. Permit Required

The Select Board shall be the permit granting authority for this bylaw. No Like Kind Soil may be imported into the Town except upon the grant by the Select Board of a Like Kind Soil permit (“Like Kind Soil Permit”). If the Select Board grants such a permit, it shall have the authority to impose reasonable conditions. A permit may be granted only if the Select Board determines that such activity may be undertaken, subject to imposed conditions, in a manner that protects the health, safety and welfare of the inhabitants as well as local natural resources. If a permit issues, specific proposed deliveries may be rejected as set forth below; an issued permit does not serve to pre-approve all deliveries of Like Kind Soil.

C. Limitation on Like Kind Soil Importation

1. The importation of Like Kind Soil may be done only if it is accessory, subordinate and incidental to the ongoing use of a property or proposed development or redevelopment project (“Project”). The importation of Like Kind Soil is “accessory, subordinate and incidental” when the scale of the fill activity represents no more than that limited by the following standards:
 - a. Construction Projects: There shall be a one to one relationship between square feet of building area of the Project and the cubic feet of such fill. For example, if fill is required to support and enable the construction or reconstruction of several buildings with a combined total of 20,000 square feet of finished area, a maximum of 20,000 cubic feet of fill may be imported to the site.
 - b. Re-Grading: The applicant shall be required to demonstrate that the re-grading is necessary to achieve a specific objective for the use of the Property, rather than being done to provide a reason to import large quantities of Like Kind Soils.

D. Not Allowed in Areas under Conservation Commission Jurisdiction

1. No Like Kind Soil may be imported into any areas that fall within the jurisdiction of the Conservation Commission in any manner, for example due to the

Article XIX – Like Kind Soil *continued*

presence of wetlands, riverfront areas or the Buffer Zones it is charged with regulating.

E. Prohibited Contents

1. For the purposes of this by-law, Like Kind Soils may not contain debris, rebar, concrete, other building materials, clay, seashells, asphalt, glass or any solid waste of any kind. Like Kind Soil must be soil.

F. Application

1. The Select Board may adopt an application form and determine the submission materials required for a comprehensive review of a Like Kind Soil Permit Application. At a minimum, any such Application shall include:

- a. An existing conditions plan prepared by a registered land surveyor or civil engineer showing all man-made features, property lines, names and addresses of all abutters, existing topography at 5 foot contour intervals of the site and all land within 100 feet of the site, proposed 5 foot contours after the proposed filling is completed, the presence of wetlands and other resources including buffer zones that would trigger Conservation Commission jurisdiction, as well as existing driveways, septic systems, and vegetation. Where wetlands and other such resources are present, these must be established by an engineer's delineation approved by the Conservation Commission if located closer than 250 feet from the proposed fill activity.
- b. Documents prepared by a Licensed Site Professional ("LSP") indicating the existing Like Kind Soil present on the Receiving site, and the full lab analysis of such determination. Such analysis shall include the location of all test borings taken on site and a delineation of the areas in which the Like Kind Soil is considered to exist.
- c. A list of proposed Generating Sites, i.e., the sites from which soil has been removed, if known at the time of the Application. If not known at that time, such information shall be provided prior to any deliveries from a previously undisclosed Generating Site, which may or may not be approved by the Select Board once disclosed. Deliveries from any proposed Generating Site shall be reviewed and approved by the Select Board only upon a certification by the LSP that the proposed Like Kind Soil is a match to the Like Kind Soil at the Receiving Site.
- d. The quantity in cubic feet of Like Kind Soil to be imported under the permit, including a calculation thereof prepared by a licensed engineer.

G. Generating Site/Soil Information

Prior to the commencement of any fill deliveries, or any individual phase of deliveries if there are to be several, the Applicant must provide to the Board full documentation of the Like Kind Soil to be imported to the Receiving Site. This material must include the name and address of those responsible for the removal of the Like Kind Soil from the Generating Site and a full analysis of the composition of such soil, including lab reports establishing the nature of the substances contained within the soil. In addition, the Applicant must provide the Board with full documentation of those who will undertake the transportation of such materials. The Select Board has the authority to reject any proposed delivery based on the materials submitted pursuant to this sub-paragraph if it finds that the soils do not match sufficiently, or it finds that any such delivery will violate this Bylaw in any material respect. The rejection of a proposed delivery is not inconsistent with the issuance of a Like Kind Soil Permit; as this Bylaw specifically contemplates delivery by delivery analysis, review and approval.

H. Local Transportation Plan

The Applicant must submit to the Select Board a fill transportation plan ("Transportation Plan") showing routes through the Town to the Receiving Site; dates and times of day of expected deliveries; measures for protecting Town roads, bridges, and vegetation within the Town's road rights of way; protection of property owned by others that might be affected by truck movement; and all other relevant logistics related to the transport of the Like Kind Soil within the Town. The Select Board may condition any Like Kind Soil Permit with limitations on the volume of deliveries during specified time periods, times of deliveries, dust and fumes control, the location of any truck queuing, requirements of engine shut down during queuing and any other reasonable restriction aimed at protecting the health, safety and welfare of the residents of the Town, its property and the property of others. A Like Kind Soil Permit may be denied by the Select Board if it makes a finding that any of the above considerations are unlikely to be properly mitigated to its satisfaction regardless of conditions it might impose on the permit.

I. Run Off, Stabilization and Other Site Considerations

The Select Board, in granting a Like Kind Soil Permit, may impose conditions aimed at insuring against undue water runoff, destabilization, contamination or harm to any resource under the jurisdiction of the Conservation Commission or to private property, and/or damage to water supplies or wells. Such conditions may include soil stabilization, run-off protective barriers and other measures.

J. Later Added Conditions Based on Project Performance

As Like Kind Soil importation is implemented under an issued permit, the Select Board, which retains *Article XIX – Like Kind Soil* continued jurisdiction over the issued Like Kind Soil Permit throughout the fill operation, may, following notice and a hearing, impose additional reasonable conditions relative to the Transportation Plan, runoff, stabilization and other site considerations at any time, including new conditions not previously attached to the issued permit, to the extent the Board determines that such further reasonable conditions are justified and prudent given the Town’s experience with the fill operation as it has proceeded.

K. Bonding

The Select Board may impose, as a condition of any Like Kind Soil Permit, the posting of reasonable bonds to insure all aspects of the Transportation Plan, including repairs to road surfaces, drainage systems, and vegetation along the transportation route and protection against destabilization and/or water runoff, and potential harm to resources. In addition, the Select Board may impose a bond that would provide sufficient funds to cover all costs of removal of fill found to contain materials not permitted under this Bylaw. The Select Board may also impose a Cease and Desist Order bond to insure that if it issues a Cease and Desist Order at any time related to the fill activity (see below), and if such order is disobeyed, such bond shall be forfeited (in addition to other remedies for a disregarded Cease and Desist Order the Town may have under the law).

L. Site Control and Monitoring

The Board or its designee(s) shall be allowed access to the Receiving Site as permitted by law throughout the entire fill operation. The Select Board may order at any time reasonable inspections and testing of fill materials and their impacts, the costs of which shall be paid by the Applicant.

M. Cease and Desist

Upon a finding that the provisions of this regulation are being violated in any material respect, the Select Board or its designee may order an immediate Cease and Desist of all fill importation operations. Upon any such order the Applicant shall immediately cease all fill importation operations. Any such order shall remain in effect until: (1) the Applicant has addressed the violation to the satisfaction of the Board, and (2) the Board modifies or terminates the order, or (3) a Court of competent jurisdiction orders the lifting of the Cease and Desist Order. While any such Cease and Desist order remains in effect, the Town may order remedial work, further stabilization, and/or runoff controls, temporary grading or regrading, and other remedies aimed at the protection of property and resources.

N. Manifests

The Applicant shall provide to the Board or its designee a manifest of every truck delivery to the Receiving Site. This must be provided by 1:00pm on the next day during which the Town offices are open. The Applicant may either hand deliver all such Manifests to the LSP or its designated agent, or deliver such Manifests to the office of the Town Clerk. All such manifests, in addition to providing customary information on the materials delivered, shall identify the Generating Site, the names and addresses of those responsible for removal of the materials from the Generating Site, and full identifying information of the party which made the delivery, including vehicle license number of the truck, the name of the truck driver, and the name of the company responsible for such transportation.

O. Severability

The provisions of this bylaw are severable, and the invalidity of any section, subdivision, paragraph, or other part of this bylaw shall not affect the validity or effectiveness of the remainder of the bylaw.

Adopted 5/7/2012
Amended 6/22/2020

Approved by A.G. 7/19/2012
Approved by A.G. 10/16/2020

Article XX - Revolving Funds

SECTION 1. There are hereby established in the Town of Berlin pursuant to the provisions of M.G.L. Ch. 44, Sec. 53E1/2, the following Revolving Funds:

TITLE	SOURCE OF RECEIPTS AND USE OF FUNDS	AUTHORITY TO EXPEND
Dog Licensing	Receipts: 50% of dog fees collected. Uses: Cost of licensing and purchase of dog tags.	Town Clerk
Library Video Fines	Receipts: Video fines, photocopier fees, fax fees and fees for lost materials. Uses: Purchase of new and replacement material.	Library Trustees/Director of Library
Assessors Maps	Receipts: Planning Board fees charged for map updates, monies collected for the sale of maps, deeds, and reports. Uses: The cost of updating Town maps.	Board of Assessors
Recreation	Receipts: Facility rental fees, contributions and other funds. Uses: Purchase services or supplies which are part of Recreation programs.	Recreation Committee
Town Hall	Receipts: Contributions, donations, user fees and fundraising activity receipts. Uses: Supplies, part time wages and related benefits, maintenance, general operating expenses & expenses related to fundraisers.	Select Board
Permitting Software	Receipts: 3% atop Building, Plumbing/Gas, and Electrical permit fees. Use: Payment to GeoTMS, Inc. for support for, training on, and right to use its permitting software.	Select Board

SECTION 2. Expenditures from each revolving fund set forth herein shall be subject to the limitation established annually by Town Meeting or any increase therein as may be authorized in accordance with M.G.L. Ch. 44, Sec. 53E1/2.

Adopted 5/1/2017
Amended 6/22/2020

Approved by AG 8/10/2017
Approved by A.G. 10/16/2020

Article XXI – Capital Planning Committee

SECTION 1. A Capital Planning Committee is hereby established (hereinafter “the Committee”). Its purpose will be to develop a Capital Improvement Plan (CIP), evaluate the financial effect of proposed expenditures and make recommendations for the priority and funding of items submitted for consideration. The Committee will consider capital expenditures, and extraordinary expenses. For purposes of this bylaw, capital expenditures are defined as the request for town funding of an item(s) that will be bonded over multiple years. For the purposes of this by-law, extraordinary expenses are defined as any request for town funding of capital or expense items submitted outside of the entity’s operating budget in the form of an independent town meeting article(s).

SECTION 2. Membership, Appointment and Term. The Committee shall be composed of five members appointed as follows:

A. One member shall be appointed by the Moderator, one member shall be a member of the Finance Committee (ex officio), two members shall be appointed by the Select Board and one member shall be appointed by the Planning Board. Excepting for the Finance Committee member, these appointees may be, but need not be, members of their respective boards.

B. Terms of appointed members shall be two year terms. These terms shall end on June 30 of the second year excepting for the first terms of the Select Board appointees which shall initially be one year terms with two year terms thereafter.

Amended 6/22/2020

Approved by A.G. 10/16/2020

SECTION 3. Duties of the Committee. The Committee is charged with the responsibility of reviewing all proposed capital and extraordinary expense items and to submit an annual CIP to the Select Board and the Finance Committee which shall include a) a recommended capital and extraordinary expense for the coming year and b)

a capital and extraordinary expense budget for the following four (4) years of anticipated and continuing capital and extraordinary expenditures.

To this end:

- A. All officers, department heads, boards and committees, and inter/intra-municipal entities shall, by November 1 of each year, give to the Committee, requests concerning all capital expenditures or extraordinary expenses they anticipate proposing for the next five (5) years. The Committee shall act on emergency requests as deemed necessary.
- B. The Committee shall consider all such requests and, in doing so, may confer with any town officer, department, board or committee or request additional information it determines is needed in order to evaluate and prioritize submitted items.
- C. The Committee shall consider the relative need, impact, timing and cost of proposed capital expenditures or extraordinary expenses and the effect each will have on the financial position of the Town. In evaluating and scheduling the requests, the Committee will consider the following criteria:
 - 1. Risks to public safety or health;
 - 2. Deterioration of Town facilities;
 - 3. Educational, historic, cultural or community value;
 - 4. Coordination with other Capital requests;
 - 5. Requirement of state or federal law or regulation;
 - 6. Improvement of operating efficiency;
 - 7. Systematic replacement;
 - 8. Equitable provision of services and facilities; and
 - 9. Protection and conservation of resource.
- D. Each year by January 31, the Committee shall submit the CIP to the Select Board and the Finance Committee.
- E. The Committee shall meet when necessary and at a minimum of semi-monthly in the months of November, December and January and it shall meet annually upon submission of the CIP with Select Board and the Finance Committee to facilitate the funding recommendations and other consideration of the capital items at Town Meeting.

Amended 6/22/2020

Approved by A.G. 10/16/2020

SECTION 4. The Select Board shall not place on the warrant any capital or extraordinary expense without prior review by the Committee unless the Select Board deems the item to be of an emergency nature subject to standards similar to those applying to reserve fund transfers.

Amended 6/22/2020

Approved by A.G. 10/16/2020

SECTION 5. The Committee shall elect a Chairman, Vice Chairman and Clerk at the beginning of each fiscal year.

Adopted 05/01/2017. A.G. Approved 08/10/2017

Comments from the Attorney General, August 10, 2017:

Article 35 - Article 35 amends the Town's general by-laws to add a new Article XXI, "Capital Planning Committee." Section 4 provides that the Select Board "shall not place on the warrant any capital or extraordinary expense without prior review by the Committee unless the Select Board deems the item to be of an emergency nature subject to standards similar to those applying to reserve fund transfers." Section 4 must be applied consistent with G.L. c. 39, § 10, pertaining to citizen petition warrant articles. *A citizens petition properly submitted under G.L. c. 39, § 10, must be included on the warrant even if the requirements of Section 4 of the Capital Planning Committee by-law have not been met.* The Town should consult with Town Counsel with any questions on this issue.

Amended 6/22/2020

Approved by A.G. 10/16/2020

Article XXII – Payment Agreements for Overdue Taxes

Section 1. Pursuant to M.G.L. Chapter 60, Section 62A the Treasurer is hereby authorized to enter into a written payment agreement ("Agreement") with those person(s) entitled to redeem ownership of parcels of real estate ("Redeemer") which have been taken by the Town as a result of nonpayment of real estate taxes.

Section 2. Such Agreements may be authorized for all categories of real property subject to all other terms and conditions in this bylaw.

Section 3. The Treasurer may enter into an Agreement only upon the existence of the following conditions:

- All real estate taxes due for the current fiscal year assessed against the parcel, as well as any other fees and charges owed to the Town, are paid to date; and
- The Redeemer, at the time of execution of said Agreement, pays to the Town a minimum of 25% of the total amount required to redeem the parcel, including all principal, interest, fees, costs, and other charges, in the form of certified funds or cash. Any exceptions (lower) would require select board members' approval.
- The Treasurer will freeze Land Court action during the dates the payment agreement is in effect and the Redeemer remains in compliance with all the terms of the agreement.

Amended 6/22/2020

Approved by A.G. 10/16/2020

Section 4. The term of the payment Agreement shall be up to sixty (60) months as per the request of the Redeemer. All payments shall be monthly based on the Town's fiscal year and in the amounts and at the time provided in a payment schedule prepared by the Treasurer that is and shall be a part of said payment Agreement.

Section 5. The Redeemer shall be in breach of the payment Agreement by failing to make any payment(s) under the Agreement as provided in the schedule or if a check for any payment is returned, or by failing to stay up to date on current fiscal year taxes and/or other charges that are a lien on the same parcel(s). In the event of such breach, the full amount of the overdue tax, including all interest, charges and fees, will immediately become due and the Treasurer may bring or continue an action to foreclose the tax title on such parcel(s). The Treasurer is under no obligation to accept late payments but may do so at his or her discretion. In the event that the Redeemer breaches a payment Agreement a subsequent payment Agreement shall not be made available for the same parcel(s). During the term of the Agreement, the Treasurer may not bring an action to foreclose on the tax title of the

Redeemer unless there is a breach of the Agreement.

Section 6. The Redeemer shall be entitled to a credit equal to fifty (50%) percent of the accrued interest on the balance owed on the tax title account after the 25% payment required to redeem the parcel as provided for in this bylaw. Interest shall continue to accrue, pursuant to the rate established by state law for tax title accounts, during the term of the payment Agreement but shall be subject to the fifty (50%) percent credit provided for herein. The Treasurer shall calculate the credit at the time of the execution of the Agreement and the credit shall be reflected in the payment schedule so as to be deducted from the last payment(s).

Section 7. The Agreement shall not be assignable by the Redeemer. The Agreement does not change or alter in any way the priority of the Town's lien on the parcel(s). In the event of any sale or other transfer of any kind of the parcel(s) subject to an Agreement or any interest therein, in whole or part, all amounts owed to the Town, including the full amount of interest, fees and costs, shall become immediately due and payable before any such transaction may take place.

Section 8. The Treasurer and the Redeemer shall execute an Agreement that sets forth terms and conditions for payment that are consistent with this bylaw. No extensions or amendments to the Agreement or to the terms and conditions as set forth in this bylaw shall be allowed, except that the Treasurer is authorized to agree to accept accelerated payments ~~and reduce the down-payment~~ if also approved by the select board members. In the event of any discrepancy between the Agreement and the bylaw, the bylaw shall control, or take any action thereto.

Adopted 12/11/2017
Amended 6/22/2020

Approved by AG 5/6/2018
Approved by AG 10/16/2020

Article XXIII – Single Use Bag Ban

SECTION 1. Purpose and Intent

The production and use of thin-film single-use plastic checkout bags have significant impacts on the environment, including, but not limited to: contributing to the potential death of marine animals through ingestion and entanglement; contributing to pollution of the land environment; creating a burden to solid waste collection and recycling facilities; clogging storm drainage systems; and requiring the use of millions of barrels of crude oil nationally for their manufacture. The purpose of this bylaw is to eliminate the usage of thin-film single-use plastic bags by all retail establishments in the Town Berlin by November 1, 2020.

SECTION 2. Definitions

- 2.1 Checkout bag: A carryout bag provided by a store to a consumer at the point of sale. Checkout bags shall not include bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or checkout area of the store.
- 2.2 Retail Establishment: Any commercial enterprise, that sells goods and/or services to the public including but not limited to grocery stores, pharmacies, bars, restaurants, markets, liquor stores, retail stores, and convenience stores., jewelry stores, and household goods stores; however, this does not include bazaars operated by nonprofit organizations or religious institutions.
- 2.1 Reusable checkout bag: A bag, with handles, made of, cloth, fabric or other durable machine-washable fabric materials, other than Polyethylene or Polyvinyl chloride that is specifically designed for multiple uses. It shall also be specifically designed and manufactured for a minimum of 175 uses and can carry 25 pounds over a distance of 300 feet.
- 2.2 Thin-film single-use plastic bags: Typically with plastic handles, these are bags with a thickness of 2.5 mils or less and are intended for single-use transport of purchased products.

SECTION 3. Use Regulations

- 3.1 Thin-film single-use plastic bags shall not be distributed, used, or sold for checkout or other purposes at any retail establishments within the Town of Berlin.
- 3.2 Customers are encouraged to bring their own reusable or biodegradable shopping bags to stores. Retail or grocery stores are strongly encouraged to make reusable checkout bags available for sale to customers at a reasonable price.
- 3.3 Thin-filmed plastic bags used to contain dry cleaning, newspapers, produce, meat, bulk foods, wet items and other similar merchandise, typically without handles, are still permissible.

SECTION 4. Enforcement Process

This bylaw shall be enforced by the Select Board, Town Administrator or their designee(s). The Select Board shall determine the inspection process to be followed, incorporating the process into other town duties as appropriate.

Any retail establishments distributing thin-film, single-use plastic bags in violation of this bylaw shall be subject to a non-criminal disposition fine as specified in Appendix A of the Regulations for Enforcement of Town Bylaws under Massachusetts General Laws Chapter 40, 21D and the Bylaw for Non-Criminal Disposition of Violations. Each day or portion thereof shall constitute a separate offense.

Any such fines shall be paid to the Town of Berlin.

Bylaw	1st Offense	2nd Offense	3rd & Subsequent
Plastic Bag Reduction Bylaw	Warning	\$50.00	\$200.00

Adopted 6/22/2020

Amended 6/22/2020

Approved by A.G. 10/16/2020

Approved by A.G. 10/16/2020

Acts and General Laws Accepted by the Town of Berlin

Accepted	Acts & General Laws	Subject
3/1/1886	C. 309, Acts of 1885	Picnic Groves
3/1/1886	C. 158, Acts of 1871	Road Commissioners
3/1/1891	C. 431, Acts of 1888	School Superintendents
3/2/1891	C. 347, Acts of 1890	Public Library
3/2/1902	C. 548, § 332, Acts of 1898	Elections
11/4/13	C. 807, Acts of 1913	Compensating Laborers
3/2/1914	C. 835, Acts of 1913	Paper Ballots for elections
1914		Abolition of party enrollment
11/4/1919	C. 311G, Acts of 1919	Continuation Schools
11/5/1926	C. 371, Acts of 1926	Railroad securities
1/11/1928		Establish Fire Department. Select board members appointed Fire Engineers in 1928.
2/3/1936	C. 53, § 121	Town Caucus (voted to discontinue 3/3/1969)
2/1/1937		Voted to join Nashoba Boards of Health for one year
2/7/1944	C. 152, § 69	Workmen's Compensation Act
2/5/1945	C. 332, § 4, Acts of 1943	Slaughtering Animals
2/4/1946	C. 723, Acts of 1945	Establish Veterans' Service Department
7/30/1946		Establish Playground Commission (abolished 5/5/76)
11/5/1946	C. 166, Acts of 1946	Establish Contributory Retirement System
6/2/1947	C. 136, § 21-25	Sports on Lord's Day
3/12/1951	C. 820, Acts of 1950	Increased Public Employees' pensions \$100
3/12/1951	C. 41, § 38A	Collector of Taxes also Town Collector
3/10/1952	C. 781, Acts of 1951	Pension increases to retired public employees
12/15/52	C. 624, Acts of 1952	Pension increases public employees
10/12/53	C. 41, § 81A	Establish Planning Board
6/17/1954	C. 71, § 16-16I	Establish Regional School District (rescinded 7/8/54)
3/12/1956	C. 670, Acts of 1955	Pensions-increases to full time employees, retired prior to 4/1/51
11/16/59	C. 71, § 16-16I	Establish Berlin-Boylston Regional School District
3/5/1962	C. 40, § 8A	Establish Development & Industrial Commission
3/5/1962	C. 40, § 8C	Establish Conservation Commission
3/4/1963	C. 139, § 1-20	Common Nuisance Statute
3/4/1963	C. 166, § 32	Inspector of Wires
3/11/1968	C. 32B	Provide contributory group insurance
5/4/1968	C.513, Acts of 1966	Approved Assabet Valley Vocational School District
3/2/1970	C.143, § 3	Inspector of Buildings
3/3/1971	C.41, § 108L	Police Career Incentive Pay
3/5/1973		Establish Berlin-Bolton Communication Center (dissolved 3/22/82)
3/6/1973	C. 344, Acts of 1970	Private individuals must pay Town to hire Police Officer for off-duty work details. Created revolving fund for same
3/6/1973	C. 40, § 8D	Establish Historical Commission
3/6/1973	C. 40, § 5, Clause 56	Support of Historical Commission
3/4/1974	C. 149, § 33D	Leave of absence for blood donations for municipal employees
3/4/1974	C. 40D	Appoint Industrial Development Finance Authority
3/4/1974	C. 40, § 15C	Scenic Roads
3/4/1974		Increase Conservation Commission from 5 to 7 members
2/3/1975	C. 40, § 8G	Law Enforcement Mutual Aid
5/12/1980	C. 258, § 13 (Ballot)	Indemnification of Municipal Officials
10/9/1980	C. 41, § 41B	Direct deposit of paychecks
5/12/1981		Separate Account for transportation of Special Needs Students
3/22/1982		Establish Berlin Communication Center
6/21/1982	C. 59. § 5, Clause 17C	Statutory tax exemptions for qualifying widows, minors, and

		elderly
5/2/1983	C. 296, Acts of 1982	Authorize School Committee salaries, 1st annual vote
	C. 40D (compliance)	Authorize entering trash contract for not more than 20 years
5/7/1984	C. 41, § 55	Establish Town Accountant position
5/7/1984	C. 59, § 5, Clause 41B	Exempt qualifying persons 70 or older
5/6/1985	C. 59, § 5, Clause 37A	\$500 real estate tax exemption for qualifying blind persons
5/6/1985	C. 44, § 53E	Establish Building and Electrical Inspectors' offset receipts accounts
5/6/1985	C. 41, § 25A	Establish Assistant Assessor position
5/5/1986	C. 44, § 53F	Compensating Bank Balance Agreements for Treasurer and Collector (initial acceptance)
5/4/1987	C. 59, § 5, Clause 17D	Permits a higher maximum income to surviving spouses, aged persons or minors qualifying for property tax exemption
5/4/1987	C. 59, § 5, Clause 41C	Excludes value of owner occupied domicile, up to three units, and allows greater income of qualified elderly
5/4/1987	C. 40, § 131	Establish fees for hearing, Conservation Commission
5/2/1988	C. 262, § 34, Clause 1-79	Town Clerk's fee schedule
5/2/1988	C. 40, § 57	Allows Town to deny, revoke or suspend certain permits, applications, or licenses for non payment of taxes
5/5/1997		Town Clerk's term increased from 1 to 3 years
5/1/1989		Increase Industrial Development Commission from five to seven
5/1/1989		Voted to discontinue office of Auditor
5/7/1990		Enhanced 9-1-1 system
5/6/1991	C. 291, Acts of 1990	Joined the Worcester Regional Transit Authority
5/6/1991	C. 161B, § 3	Board of Health fees and revolving account for disposal of solid waste
6/24/1991	C. 44, § 28C (f)	Board of Health to appoint Animal Inspector and Asst. Animal Insp.
5/4/1992		Establish revolving accounts - Council on Aging & Cable Access Com.
5/4/1992	C. 44, § 53E½	Change assessment date for new growth
5/4/1992	C. 653, § 40	Teachers' Early Retirement Incentive Program
5/2/1994	C. 71, § 83, Acts of 1993	Municipal boards and officers to fix fees
6/27/1994	C. 40, § 22F	Allowed part-time building inspector to work in town
6/27/1994	C. 143, § 3Z	Approved Administrative Assistant position
5/1/1995		Joint Judicial district between Berlin & Marlborough
6/20/1995	Home Rule petition	Adopted a town flag with the town seal centered on a white field
6/20/1995		Enact by-laws and set and collect fees regulating dogs
5/6/1996	C. 140, § 147A	Additional compensation for assessors if certified Mass. assessors
6/19/1996	C. 59, § 21A½	Town Treasurer's term increased from one to three years
5/5/1997		Acc't & committee - funding for historic bldgs, recreation, open space
5/6/1998		Fire inspection fees to offset fire inspection wage account (see 5/4/98)
5/3/1999	C. 44, § 53E	Injury leave and accidental disability retirement for fire fighters
6/2/2000	C. 32, § 85H½	Money received from adult & community education programs held separately for use by the school committee for such programs
9/25/2000	C. 71, § 71E	minimum value of \$2,000 for personal property accounts to be taxed
5/8/2001	C. 59, §5, Clause 54	Additional real estate tax exemptions to qualifying persons for FY2002. These sections were accepted as amended by C. 126 of Acts of 1988.
5/8/2001	C. 59, §5, Cl's 17,17C, 17C½, 17D, 22, 22A, 22B, 22C, 22E, 37, 37A, 41, 41B, 41C	5/6/2002 for FY2003. 5/5/2003 for FY2004. 5/3/2004 for FY2005. 5/2/2005 for FY2006. 5/1/2006 for FY2007. 5/7/2007 for FY2008. 5/5/2008 for FY2009. 5/4/2009 for FY2010. 5/3/2010 for FY2011. 5/2/2011 for FY 2012. 5/7/2012 for FY 2013. 5/6/2013 for FY 2014. 5/5/2014 for FY2015

5/6/2002		Collector of Taxes term increased from one to three years
5/6/2003	Ch. 41, §108P	Additional compensation for Collector or Treasurer with certification
5/2/2005	C. 32, §89B	Annuities to dependents of police officers or fire fighters killed in performance of duty.
5/2/2005		Establish Agricultural Commission
5/7/2007	C. 39, §23D	Adjudicatory hearings conducted by boards, committees, commissions
5/5/2008	C. 44, §53I	Special fund to deposit funds and revenues from sale items and admissions for bicentennial celebration
5/4/2009	C. 71, §14(e)(3)	Election of Assabet Valley School Comm. (not approved by other towns)
		Reduce number of Library Trustees from 6 to 3
5/4/2009	C. 60, §15	Charge of \$10 for each demand issued by Collector of Taxes <i>Re-accepted on 5/6/2019 to increase the fee to \$15 – see 5/6/2019</i>
5/4/2009	C. 82A §2	Select board members to appoint Officer to issue trench excavation permits
5/4/2009	C. 310, Acts of 2008	Voted not to impose excise tax on farm machinery, equipment & animals
5/4/2009	C. 40, §4A	Board of Health authorized to enter into inter municipal agreement
5/2/2011	C. 32B, §2	Member of call fire dept. or volunteer emergency service agency may participate in Town insurance program at charge of 100% premium
5/2/2011	C. 61, §2A; C. 61A, §4A, C. Art. 44 61B, §2A	Place classified land in Class two, open space category for tax classification purposes
5/5/2014	C. 64G, §3A	6% tax on occupancy of rooms in hotel or lodging place
5/5/2014	C. 64L, §2	0.75% tax on sale of restaurant meals
5/5/2014	C. 59, §5K	Senior Work-Off Program, over 60,
5/5/2014	C. 59, §5N	Veteran Work-Off Program
12/8/2014	C. 59, §5K	Max. of \$1,000 at MA minimum wage rate
12/8/2014	C. 59, §5N	Max. of \$1,000 at MA minimum wage rate
5/4/2015	C 184, § 31-33 (Special Town Meeting)	Perpetual conservation restriction on westerly side of Crosby Road shown on Assessors' Map 6/Block7/Lot 0, being part of Tri-Town state grant project
9/28/2015	C. 59, §5K	Adopting the 125 hour maximum limit
9/28/2015	C. 59, §5N	Adopting the 125 hour maximum limit
12/14/2015	C. 48, § 32	Adopted Strong Fire Chief statue
5/2/2016	C. 44, §53F ^{3/4}	Appropriate from PEG Access and Cable revolving fund
5/2/2016		Establish Economic Development Committee, Art. 37
5/1/2017		Merge the elected treasurer and tax collector offices and appoint position up to three years
5/1/2017	C 200A, §9A	Alternative disposal procedure for abandoned funds
5/1/2017	C 138, §33B	Permit alcohol serving on Sundays and certain holidays between 10 am and 12 noon
5/1/2017		Town Management Study Committee, consist 5 qualified residents
5/7/2018		Supplemental Water Supply
5/7/2018		Increased size of settlement for suit or claim Select Board are able to make at their discretion from \$1,000 to \$5,000
5/7/2018	C 44B §3-7	Accepted the Massachusetts Community Preservation Act
10/15/2018		Approved Special Legislation for Town Administrator
10/15/2018	C200A, §9A	Disposition of Abandoned Funds
10/15/2018	C44, §20	Borrowing Premiums
10/15/2018		Updated Permits/Licenses, Non-Payment of Taxes

10/15/2018	C64N, §3	Impose local sales tax upon the sale of recreational marijuana originating within the Town by a vendor at a rate of three percent (3%)
5/6/2019	C50, §13E	Special Education Reserve Fund and Berlin-Boylston Regional School District
5/6/2019	C40, §5B	Energy Stabilization Fund
5/6/2019	C60, §15	Charge of \$15 for each demand issued by Collector of Taxes (Effective July 1, 2019)
5/6/2019	C40, §8C	Peach Hill Acquisition by Conservation Commission
5/6/2019	C59, §38H(b) & C164, §1	Potas Solar Pilot Agreement – 44 Randall Rd.
5/15/2021	C60, §15B	Establishing a Tax Title Collection Revolving Fund for Treasurer/Collector
5/15/2021	C40, §5B	Allow Dedication of All Municipal Energy Aggregation Adder Receipts to Energy Committee Special Purpose Stabilization Fund
5/15/2021	C90, §20A	Parking Enforcement
5/15/2021	C90, §22D	Parking Enforcement - Removal

Articles Repealed

Article I, Section 11 - Earth Removal

Adopted 3/12/1951 Approved by A.G. 8/8/1951
Repealed 3/2/1970 Approved by A.G. 7/8/1970

Article VI - Civic Board

Adopted 3/12/1951 Approved by A.G. 8/8/1951
Deleted 6/25/1956 Approved by A.G. 7/17/1956

Building Bylaws

Adopted 3/02/1971 Approved by A.G. 3/22/1971
Superseded by State Building Code

Article VIII - School Committee

Indemnification under M.G.L. Chap. 41, Sec. 100E.
Adopted 3/6/1972 Approved by A.G. 6/30/1972
Chap. 41, Section 100E of the M.G.L. was repealed by
Chapter 512, Section 10 of the Acts of 1978.
Repealed 5/1/1989 Approved by A.G. 10/17/1989

Article XI - Inspectors and Inspections

Gas Inspector
Adopted 3/2/1964 Approved by A.G. 4/15/1964
Designated 5/5/1986 Approved by A.G. 7/25/1986
Section 12H, Chapter 25, of the M.G.L. was repealed by
Chapter 843, Section 2 of the Acts of 1977.
Repealed 5/1/1989 Approved by A.G. 10/17/1989

Article XII – Earth Removal

Adopted 3/2/1970 Approved by A.G. 7/8/1970
Section 2. Amended 3/6/1972
Approved by A.G. 6/30/1972
Revised 5/15/1984 Approved by A.G. 9/12/1984
Article designated 5/5/1986 Approved by A.G. 7/25/1986
Replaced by Earth Removal and Import 5/7/2012
Approved by A.G. 7/19/2012

Article XVII – Wetlands Protection By-law

Adopted 10/21/2003 Approved by A.G. 1/30/2004
Repealed 1/5/2004 Approved by A.G. 2/2/2004