

DISTRICT BY-LAWS
CENTERVILLE-OSTERVILLE-MARSTONS MILLS
FIRE DISTRICT
MASSACHUSETTS

REVISED MAY 21, 2013

The Commonwealth of Massachusetts

CENTERVILLE-OSTERVILLE-MARSTONS MILLS FIRE DISTRICT BY-LAWS

I. ARTICLE I – OFFICERS, ELECTIONS AND PETITIONS

SECTION 1. Officers.

The officers of the District shall consist of a Prudential Committee comprised of three members, a Board of Fire Commissioners comprised of three members, a Board of Water Commissioners comprised of three members, and a Moderator, all of whom, at the time nominations papers are filed, shall be registered voters residing in the District, shall be elected by ballot and serve a three year term or until their successors are chosen and qualified. In addition there shall be appointed by the Prudential Committee, a Clerk and a Treasurer, upon such terms and conditions as shall be determined by the Prudential Committee under Article V, Section 3. The office of Clerk and Treasurer may be held by the same person. The Board of Fire Commissioners shall appoint a Fire Chief and Deputy Fire Chief, upon such terms and conditions as shall be determined under Article VII, Section 2. The Board of Water Commissioners shall appoint a Water Superintendent and Assistant Water Superintendent, under such terms and conditions as shall be determined by the Board of Water Commissioners pursuant to Article VIII Section 3. Whenever these By-Laws provide authority for, or direct, a Committee or Board of Commissioners to appoint a person to positions for which no specific procedure is set forth in these By-Laws, the process of selection and appointment shall, consistent with those By-Laws, be as and in the manner provided by the Rules and Regulations of such committee or board until such time as the District shall implement a District-wide Personnel Code incorporating provisions for such appointments.

Any employee of the Centerville-Osterville-Marstons Mills Fire District, full or part-time, may, if he or she chooses, seek election to the Prudential Committee, Board of Water Commissioners, Board of Fire Commissioners or Moderator provided, however, that such employee shall, upon being sworn, immediately resign the position of employment with said District.

SECTION 2. Compensation.

The elected officers of the District shall receive for their services such compensation as the District may determine at its annual District Meeting.

SECTION 3. Election and Nominations.

The election for District Officers shall take place one day prior to the Annual District Meeting. Nominations for District officers to be chosen by ballot shall be made by filing nomination papers with the Clerk, signed by at least fifty (50) persons qualified to vote in said District elections. Such nomination papers must be filed for certification of signatures with the Town Clerk, Town of Barnstable not later than fifty (50) days prior to the date set for the election, and must thereafter be filed by the nominee with the District Clerk, not later than thirty-five days (35) prior to such election, or such other date as may be prescribed by General Laws Chapter 53, Sec. 10, as from time to time amended.

SECTION 4. Drawing Petitions and Nominations Papers.

Wherever these by-laws require nomination papers or petitions to be filed with the Clerk of the District, such nomination papers or petitions shall only be accepted for filing with the District Clerk, if such papers or petitions shall have been drawn from the office of said Clerk, and shall have endorsed thereon by the Clerk, the date and time that such papers or petitions were first drawn from the Clerk's office.

II. ARTICLE II -- RECALL OF ELECTED DISTRICT OFFICIALS

SECTION 1. Procedure.

- (A) Upon receipt of petitions signed by seven hundred and fifty (750) registered voters of the District, enrolled at the time of the last District election, seeking the recall of an elected District official, the District Clerk shall, within fourteen (14) days, announce a date for a special recall election. Such election shall be held not less than forty-five (45) days and not more than sixty (60) days after the petitions have been validated by the District Clerk. The District Clerk shall be required to furnish appropriate petition forms for voters seeking the recall of an elected official. The petitioners shall have ninety (90) calendar days to obtain the requisite number of valid signatures. Candidates who seek to be elected in place of the individual who is the subject of such recall election, shall submit nomination papers signed by the same number of registered voters as required at an annual District election, within ten (10) days of the said announcement for such recall election.
- (B) No Recall Election shall be held within ninety (90) days prior to or subsequent to any Annual Meeting or any previously called Special Election. However, notwithstanding any provision to the contrary herein contained, if a duly qualified and validated Recall Petition is filed with the District Clerk which would, but for the provisions of this Section, require a Recall Election to be called within ninety (90) days prior to the Annual Meeting, such Recall Election shall be held upon the same dates as the Annual Election.

SECTION 2. Ballot Format.

The name of the incumbent elected official who is the subject of the recall petition shall appear at the top of the ballot. All other candidates shall be listed in alphabetical order.

SECTION 3. Submission to Recall.

An elected official shall be required to submit to recall if convicted of a felony, changes residence from the limits of the Centerville-Osterville-Marstons Mills Fire District, or is absent from the elected duties for a period of one (1) year. Whenever the Chairperson determines that cause exists to initiate a recall under this section, the Chairperson of the Appointing Authority (as defined in Article IX, Section 3) shall convene a meeting of the Appointing Authority for the purpose of determining whether cause exists to initiate a recall election under this Section 3. If the Appointing Authority determines such cause does exist, the Chairperson shall forthwith notify the Clerk who shall announce a recall election, which shall be conducted in the manner provided in Section 1 above.

SECTION 4. One Year Grace Period.

No elected official shall be subject to recall until at least one (1) year after he is sworn into office except under the provisions of Section 3 above. In the event that the elected official is re-elected, such grace period shall not apply.

III. ARTICLE III -- ANNUAL AND SPECIAL MEETINGS

SECTION 1. Warrant and Posting.

Meetings of the Centerville-Osterville-Marstons Mills Fire District shall be called in pursuance of a warrant issued under the hands of the Prudential Committee. Notice of a meeting shall be given by the District Clerk at least fourteen (14) days prior to such meeting by posting in two or more public places and advertising in a newspaper published within the Town of Barnstable and by making copies of the annual report and warrant available fourteen (14) days prior to said meeting. The annual meeting shall be held within the District on the third Tuesday in May of each year. All newly elected officers of the Centerville-Osterville-Marstons Mills Fire District shall be sworn to the faithful performance of their duties.

SECTION 2. Time, Place and Requested Articles.

The warrant for all District meetings shall state the time and place of the meeting and the subjects to be acted upon thereat. The Prudential Committee shall insert in the warrant for the annual meeting all articles with their recommendations thereon and all articles that have been requested of them by fifty (50) or more registered voters of the District. For any special District meeting the Prudential Committee shall insert in the warrant all articles with their recommendation thereon and, also, all articles that have been requested of them by fifty (50) or more registered voters of the District.

SECTION 3. Special District Meetings.

- (A) The Prudential Committee shall call a special District meeting upon the petition, in writing, by two hundred (200) registered voters of the District. Once a petition has been submitted to the Town Clerk for verification of signatures, it shall be closed and no further signatures shall be added. The special District meeting shall be held not later than thirty (30) days after the verification of such petition and the Prudential Committee shall insert in the warrant all articles that shall have been requested by such petition.

- (B) Notwithstanding anything to the contrary contained in these By-Laws, no Special Meeting of the District shall be required to be called if the commencement date thereof shall be fewer than ninety (90) days prior to or subsequent to the date of any annual or Special District meeting called by separate petition or by the initiative of the Prudential committee; provided, however, that nothing in these By-Laws shall be deemed or construed to prohibit or inhibit the authority of the Prudential Committee to call a Special Meeting at any time, if it shall by majority vote find that an emergency or other matter which the Committee deems to be a matter of sufficient urgency to warrant such action, in its sole judgment shall have arisen. In the event that the Prudential Committee shall initiate the call of a meeting in accordance with

the provisions of this section, the manner and method, and the time frames for convening shall be as are provided by these by-laws for the call of a Special Meeting in the ordinary course.

SECTION 4. Quorum.

Seventy-five (75) registered voters of the Centerville-Osterville-Marstons Mills Fire District shall constitute a quorum for the purposes of the annual meeting; provided however that such quorum shall not apply to such parts of any meeting which are devoted exclusively to the election of District officers and fifty (50) registered voters the District shall constitute a quorum for the purposes of a special meeting.

IV. ARTICLE IV -- THE MODERATOR

SECTION 1. Election and Term.

The District shall elect a Moderator for a three (3) year term. The Moderator shall have all powers of Moderators under Massachusetts General Laws, or as provided in these By-Laws and shall receive such compensation as said District may determine.

V. ARTICLE V -- PRUDENTIAL COMMITTEE

SECTION 1. Composition.

The voters shall elect by ballot three (3) members of the Prudential Committee for terms of three (3) years each. The term of one member shall expire each year.

SECTION 2. Powers and Duties.

- (A) The Prudential Committee shall be the chief executive officers of the District and shall exercise general management responsibility over District affairs.
- (B) The Prudential Committee shall, by issuance of warrants therefore, call the District meeting into session and determine the subjects to be acted upon at said District meeting.
- (C) The Prudential Committee shall, by the issuance of warrants therefore, call all elections, regular or special, to be held in the District.
- (D) The Prudential Committee shall expend for the purposes prescribed by the District, money raised or borrowed.
- (E) The Prudential Committee shall have jurisdiction and control of all property, real and personal, except as provided for in Chapter 169 of the Acts of 1937.
- (F) The Prudential Committee shall have all the other powers, duties and responsibilities that are given to the Prudential Committee by the Massachusetts General Laws, by the By-Laws or by the vote of the District.

- (G) The Prudential Committee shall have the power to determine the location and type of street lights within the District and to contract with the electric utility company, on a yearly basis, for same.
- (H) The Prudential Committee shall have responsibility for contract approval of purchased goods or services for the District and shall appoint a Chief Procurement Officer to accomplish same, in accordance with the General Laws and Procurement Regulations.
- (I) The Prudential Committee shall have the responsibility to ensure District compliance with federal, state and local regulations pertaining to equal employment opportunity, employment of handicapped, affirmative action, discrimination and other applicable laws, rules and regulations.
- (J) The Prudential Committee shall have the responsibility of determining the insurance coverage to meet the needs of the District and to contract for the same.
- (K) The Prudential Committee shall approve and sign all notes, bonds or script issued by the District and all warrants for payment of District funds. It shall establish policy, rules, regulations and procedures to ensure review, prior to issue, of all District agreements, contracts and other documents that will ultimately result in the expenditure of District funds.
- (L) The Prudential Committee shall establish policies, rules and regulations to ensure all contracts for goods or services are approved by District counsel as required by the General Laws and Procurement Regulations and that availability of funds is verified by the Treasurer.
- (M) The Prudential Committee shall establish policies, rules, regulations and procedures to ensure that an original copy of all District agreements and contracts are filed in the Treasurer's central file in accordance with the General Laws and procurement regulations.
- (N) The Prudential Committee shall appoint a By-Law Committee, on an annual basis, to review the By-Laws and make recommendations regarding the possible revisions or additions of the District By-Laws.
- (O) The Prudential Committee shall have the fiscal responsibility for the District. It shall establish annual spending recommendations for operational purposes and for long-term obligations. The issuance of bonds and notes may be phased to stabilize the tax rate to the maximum possible degree.
- (P) The Prudential Committee shall establish guidelines, rules, procedures and regulations to assist the operating departments' financial planning. It shall receive proposed budgets and articles from the District officers and departments for review and inclusion in the annual warrant. It shall make recommendations thereon at the annual meeting.

- (Q) The Prudential Committee shall establish and administer a Personnel Code and shall have the authority to amend the same upon majority vote of the Committee and the Commissioners of the affected department.
- (R) The Prudential Committee shall have the responsibility for final approval of all labor agreements, following negotiation for labor agreement conducted jointly by the Prudential Committee and the Commissioners of the Board of Water Commissioners or Fire Commissioners, whichever shall be appropriate, or a single member of each Board and the Prudential Committee, designated by such Board or Prudential Committee for such purpose. The approval of the Prudential Committee shall be given only following approval of the agreement by the appropriate Board, and not otherwise.
- (S) The Prudential Committee shall maintain its membership and participation in the Barnstable Districts Alliance and shall continue to provide the Alliance with its support and cooperation.
- (T) The Prudential Committee shall, at its next regular or special meeting after the annual election, elect a chairperson and vice chairperson. The vice chairperson shall discharge the duties of the chairperson in the event of the chairperson's absence by volition, expiration of term, death, resignation or removal.
- (U) The Prudential Committee shall have the sole authority to retain and employ the services of legal counsel to and for the District and each Department and Board within the District.
- (V) The Prudential Committee shall appoint a District Treasurer and District Clerk. The Committee shall consult with and solicit the recommendations of the District Treasurer and District Clerk before appointing an Assistant (or Temporary) Treasurer and/or Assistant (or Temporary) Clerk and such other Prudential Operation employees as may be provided by these By-Laws. The Committee shall have the authority to delegate its appointing authority to the District Treasurer or District Clerk upon and subject to such conditions not inconsistent with these By-laws or any General or Special law applicable thereto as the Commissioners shall determine, in writing, following a majority vote in favor of such delegation at a meeting duly called for such purpose. However, any such delegation of authority shall terminate at the will of the Commissioners by majority vote at any time at a meeting of the Commissioners duly called for such purpose and such delegation shall terminate in any event 30 days following the election of the Prudential Committee Chairman, as provided in Section 2(T), unless renewed by a majority vote of the Board at the meeting at which such election is held.

The Prudential Committee shall interpret and ensure the District Treasurer and District Clerk are fulfilling the powers and duties of the job descriptions contained in the personnel code.

SECTION 3. District Treasurer.

- (A) The Prudential Committee shall appoint a Treasurer whose qualifications and powers and duties shall be as delineated in the District Personnel Code and as provided in the Massachusetts General Laws. The Treasurer shall be appointed on the basis of merit and ability for an initial probationary term of one (1) year and during that probationary term may be removed without cause. Following completion of the one (1) year probationary period, the Treasurer may be appointed to a regular position by vote of the appointing authority. If so appointed, the appointee shall thereafter be given an annual review and may be removed at any time, but only for just cause and after a public hearing as set forth in Article X of these By-Laws. The Treasurer shall give bond as the Prudential Committee may require. The cost of this bond will be paid for by the District.
- (B) Upon appointment, the Treasurer shall be deemed qualified for all of the same benefits granted to other full-time employees of the Prudential Committee and any other benefits as the Prudential Committee may deem appropriate to the exercise of his duties.
- (C) Compensation for the Treasurer shall be as established by the Prudential Committee.

SECTION 4. District Clerk.

- (A) The Prudential Committee shall appoint a Clerk and an Assistant Clerk whose qualifications and powers and duties shall be as delineated in the District Personnel Code and as provided in the Massachusetts General Laws. The Clerk shall be appointed on the basis of merit and ability for an initial probationary term of one (1) year and during that probationary term may be removed without cause. Following completion of the one (1) year probationary period, the Clerk may be appointed to a regular position by vote of the appointing authority. If so appointed, the appointee shall thereafter be given an annual review and may be removed at any time, but only for just cause and after a public hearing as set forth in Article X of these By-Laws.
- (B) Upon appointment, the Clerk shall be deemed qualified for all of the same benefits granted to other full-time employees of the Prudential Committee and any other benefits as the Prudential Committee may deem appropriate to the exercise of his duties.
- (C) Compensation for the Clerk shall be as established by the Prudential Committee.

SECTION 5. Temporary Clerk or Treasurer.

If the Clerk or Treasurer is prevented from performing official duties, or if the office is vacant, the Prudential Committee shall in writing appoint a Temporary Clerk or Temporary Treasurer. The Temporary Treasurer shall give bond in like manner as the Treasurer and shall hold the office until a successor is chosen.

SECTION 6. Director of Information Systems

- (A) The Prudential Committee shall appoint a Director of Information Systems whose qualification and powers and duties shall be as delineated in the District Personnel

code and as provided in the Massachusetts General Laws. The Director of Information systems shall be appointed on the basis of merit and ability for an initial probationary term of one (1) year and during that probationary term may be removed without cause. Following completion of the one (1) year probationary period, the Director of Information systems may be appointed to a regular position by vote of the appointing authority. If so appointed, the appointee shall thereafter be given an annual review and may be removed at any time, but only for just cause and after a public hearing as set forth in Article X of these By-Laws.

- (B) Upon appointment, the Director on Information Systems shall be deemed qualified for all the same benefits granted to other employees of the Prudential Committee and any other benefits as the Prudential Committee may deem appropriate to the exercise of his duties.
- (C) Compensation for the Director of Information Systems shall be as established by the Prudential Committee.

VI. ARTICLE VI -- FINANCES

SECTION 1. Authorization.

- (A) No District notes, bonds or script shall be issued by the Treasurer unless authorized by vote of the District and all such notes, bonds or script shall be signed by the Treasurer of the District and countersigned by a majority of the Prudential Committee.
- (B) No money shall be paid from the treasury of the District except notes, bonds or script issued as above provided and interest thereon without the written approval or order of the majority of the Prudential Committee or by vote of the District according to its orders.

SECTION 2. Lapse of Appropriations.

Any appropriation or transfer of funds made under any special warrant article shall lapse at the expiration of five (5) years following the effective date of such vote unless otherwise provided for in the warrant article. The District, at an annual or special meeting may, prior to the expiration of any such term of years provide for an extension during which the funds shall continue to be available for the purpose specified. The Treasurer shall notify the Annual District Meeting as to which accounts are due to expire. The funds so affected shall be used to reduce that fiscal year's budget or used in any other manner as voted by the District.

VII. ARTICLE VII -- FIRE DEPARTMENT

SECTION 1. The Board of Fire Commissioners.

- (A) There shall be a Board of Fire Commissioners consisting of three (3) members elected for three (3) year terms. The term of one member shall expire each year. The Board of Fire Commissioners shall serve as the chief policy making agency of the Fire Department. Said board shall be responsible to the Prudential Committee

and the voters of the Centerville-Osterville-Marstons Mills Fire District as provided by the General Laws.

- (B) The Board of Fire Commissioners shall expend for the purposes prescribed by the District the funds so raised and borrowed for the use of the Fire Department. The Board of Fire Commissioners shall supervise the awarding of bids for the purpose of purchasing Fire Department equipment and shall make necessary rules to be followed in making and awarding of bids consistent with the Massachusetts General Laws; provided, however, that no such general law which affords the District the option of adopting it shall be deemed to have been adopted as a result of this section.
- (C) The Board of Fire Commissioners may direct the Fire Chief to make those purchases required for the routine operation of the Fire Department, which do not require being put out to bid by the Massachusetts General Laws.
- (D) The Board of Fire Commissioners shall receive the reports of the Fire Chief and make recommendations thereon to the District meeting.
- (E) The Commissioners shall ensure the Fire chief and Deputy Fire Chief are fulfilling the powers and duties of the job descriptions contained in the Personnel Code.
- (F) The Board of Fire Commissioners shall prepare and distribute proposed amendments to the job descriptions and qualifications for all positions of the Fire Department for submission to the Prudential Committee in accordance with the provisions of Article V, Section 2 (Q).
- (G) The Board of Fire Commissioners shall appoint the Fire Chief. Prior to making any other appointments, the Board shall consult with and solicit the recommendations of the Fire Chief before appointing the Deputy Chief and such other Fire Department employees as may be provided by these By-Laws or any General or Special Law. The Commissioners shall have the authority to delegate its appointing authority to the Fire chief upon and subject to such conditions not inconsistent with these By-Laws or any General or Special law applicable thereto as the commissioners shall determine, in writing, following a majority vote in favor of such delegation at a meeting duly called for such purpose. However, any such delegation of authority shall terminate at the will of the Commissioners by majority vote at any time at a meeting of the commissioners duly called for such purpose, and such delegation shall terminate in any event 30 days following the election of the Prudential committee chairman, as provided in Section2(T), unless renewed by a majority vote of the Board at the meeting at which such election is held.
- (H) The Board of Fire Commissioners shall have the authority, after due evaluation of costs and expenses, and with Prudential Committee approval, to set reasonable rates and fees, commensurate with the cost and expense of investigating and administering the issuance thereof, for permits issued by the Fire Department.

- (I) The Board of Fire Commissioners shall recognize the employees of the Fire Department or their authorized representative as a legal bargaining agent for all labor contractual agreements and shall, as a Board or through its delegated Commissioner, negotiate all labor contracts, union and non-union, in conjunction with the Prudential Committee or its representative as provided in Article V, Section 2, (R), above.
- (J) The Board of Fire Commissioners shall have the right to seek legal counsel from the District's appointed attorneys when the Board deems necessary for the department's daily operations.

SECTION 2. The Fire Chief.

- (A) **Appointment.** The Board of Fire Commissioners shall appoint a Fire Chief, who shall be a resident of the Centerville-Osterville-Marstons Mills Fire District upon appointment or within twelve (12) months thereof. The Fire Chief shall be appointed on the basis of merit and ability for an initial probationary term of one (1) year and, during that probationary term, may be removed without cause. Following completion of the one (1) year probationary period, said Fire Chief may be appointed to a regular position by vote of the appointing authority. If so appointed, the said Fire Chief shall thereafter be given an annual review and may be removed, at any time, for just cause and after a public hearing as set forth in Article X of these By-Laws.

The qualifications and powers and duties of the Fire Chief shall be as delineated in the District Personnel Code. Upon appointment, said Fire Chief shall be deemed qualified for all of the same benefits granted to other firefighters under the Board of Fire Commissioners, and such other benefits as the Fire Commissioners may deem appropriate to the exercise of his duties.

- (B) **Vacancy.** A vacancy in the office of Fire Chief shall be filled as soon as possible by the Board of Fire Commissioners. Pending such appointment, the Board of Fire Commissioners shall designate a competent Fire Department officer or employee to perform the duties of Fire Chief on a temporary basis.
- (C) **Compensation.** Compensation for the Fire Chief shall be as established by the Board of Fire Commissioners.
- (D) **Job Description of Fire Chief**

SECTION 3. The Deputy Fire Chief.

- (A) **Appointment.** The Board of Fire Commissioners shall appoint a Deputy Fire Chief or Chiefs, who shall reside in the Centerville-Osterville-Marstons Mills Fire District upon appointment or within twelve (12) months thereof. Deputy Fire Chiefs shall be appointed on the basis of merit and ability for an initial probationary term of one (1) year and during that probationary term may be removed without cause. Following completion of the one (1) year probationary period, a Deputy Chief may be appointed to a regular position by vote of the appointing authority. If so appointed, the Deputy Fire Chief shall thereafter be given an annual review and may be removed, at any

time, for just cause and after a public hearing as set forth in Article X of these By-Laws.

The qualifications and powers and duties of Deputy Chiefs shall be as delineated in the District Personnel Code. Upon appointment, such Deputy Fire Chiefs shall be deemed qualified for all of the same benefits granted to firefighters under the Board of Fire Commissioners, and such other benefits, as the Fire Commissioners may deem appropriate to the exercise of his duties.

- (B) Vacancy. Any vacancy in the office of Deputy Fire Chief shall be filled as soon as possible by the Board of Fire Commissioners. Pending such permanent appointment, the Board of Fire Commissioners shall designate a competent officer or employee to perform the duties of Deputy Fire Chief on a temporary basis.
- (C) Compensation. Compensation for the Deputy Fire Chiefs shall be as established by the Board of Fire Commissioners.

SECTION 4. Mechanical and Electronic Fire Alarms; False Alarms; Penalty.

- (A) Any person maintaining, or permitting to be maintained, a mechanical or electronic fire alarm device that transmits an alarm stimulus indicating that it has detected a fire or a condition inherently characteristic of a fire in order to summons the Fire Department to the property, shall maintain the device, or cause the device to be maintained, in good operating condition.
- (B) Any false report of a fire made to the Fire Department as a result of the transmission of an alarm stimulus shall be reported to the occupant of the premises by the Fire Department. Notice to the person maintaining or permitting the device to be maintained shall be deemed delivered by the leaving of a written notification by Fire Department personnel at the premises where the mechanical or electronic fire alarm device is located.
- (C) Any person who maintains or permits to be maintained, any mechanical or electronic fire alarm device which transmits more than three (3) false reports of fire within any consecutive twelve (12) month period, after written notification by the Fire Department, shall be punished by a fine of fifty dollars (\$50.00) for each offense.
- (D) The Board of Fire Commissioners shall have the right to waive the penalty provisions of this section for cause upon satisfactory proof that the false alarm was not due to failure to maintain the system in good operating condition.

SECTION 5. Fire Hydrants; Obstruction.

To ensure fire safety for the inhabitants of the District, no fence, hedge, wall or other obstruction, and/or any obstruction, which will interfere with the operation of the hydrant, shall be located within three (3) feet to the sides and/or three (3) feet to the rear of a fire hydrant.

SECTION 6. Fire Hydrants; Obstruction; Penalty.

The owner of any property containing a fence, hedge, wall or other obstruction, and/or any other obstruction which will interfere with the operation of a fire hydrant belonging to the District, and who shall not have removed such obstruction within fourteen (14) days of the order of removal, shall be subject to a penalty in the amount of \$100.00 per day for each day that such obstruction exists following the expiration of such fourteen (14) day period.

VIII. ARTICLE VIII -- WATER DEPARTMENT

SECTION 1. Board of Water Commissioners

The voters shall elect by ballot three (3) members of the Board of Water Commissioners for terms of three (3) years each. The term of one member shall expire each year.

SECTION 2. Powers and Duties.

- (A) The Board of Water Commissioners shall supervise the operation of the Water Department pursuant to Chapter 169 of the Acts of 1937, and it shall record the happenings of the Water Department in the Annual Report.
- (B) The Board of Water Commissioners shall be responsible for management of all Water Department buildings, tanks, equipment and properties, as provided for in Chapter 169 of the Acts of 1937.
- (C) The Board of Water Commissioners shall certify all bills and warrants against the District contracted by its authority and shall cause the preparation of the annual budget and articles to be included in warrants for approval by District voters.
- (D) The Board of Water Commissioners shall appoint the Water Superintendent. Prior to making any other appointments, the Board shall consult with and solicit the recommendations of the Water Superintendent before appointing the Assistant Superintendent and such other Water Department employees as may be provided by these By-Laws. The Board shall have the authority to delegate its appointing authority to the Water Superintendent upon and subject to such conditions not inconsistent with these By-Laws or any General or Special law applicable thereto as the Commissioners shall determine, in writing, following a majority vote in favor of such delegation at a meeting duly called for such purpose. However, any such delegation of authority shall terminate at the will of the Commissioners by majority vote at any time at a meeting of the Commissioners duly called for such purpose, and such delegation shall terminate in any event 30 days following the election of the Prudential Committee Chairman, as provided in Section 2(T), unless renewed by a majority vote of the Board at the meeting at which such election is held.

The Board shall ensure the Water Superintendent and Assistant Superintendent are fulfilling the powers and duties of the job descriptions contained in the Personnel Code.

The said board shall prepare and distribute proposed amendments to the job descriptions and qualifications for all positions of the Water Department for submittal to the Prudential Committee in accordance with the provisions of Article V, Section 2 (Q).

- (E) The Board of Water Commissioners shall establish just and equitable water rates and water service installation rates, consistent with the Water Department expenses.
- (F) The Board of Water Commissioners shall recognize the employees of the Water Department or their authorized representative as a legal bargaining agent for all labor contractual agreements and shall, as a Board or through its delegated Commissioner, negotiate all labor contracts, union and non-union, in conjunction with the Prudential Committee or its representative as provided in Article V, Section 2, (R), above.
- (G) Subject to such instructions, rules and regulations as the District may vote, the Board of Water Commissioners shall negotiate contracts for the Department for engineering assistance, the laying of water mains and their appurtenances thereto, the installation of pumping equipment and construction of buildings and tanks, in accordance with the appropriate General Laws.
- (H) Subject to vote by the District, the Board of Water Commissioners shall, from time to time, revise and update the Rules and Regulations of the Water Department as adopted on March 10, 1987.
- (I) The Board of Water Commissioners shall have the right to strictly enforce all General Laws pertaining to public water supply.
- (J) The Board of Water Commissioners shall, at its next regular or special meeting after the annual election, elect a chairperson, vice chairperson and a clerk. The vice chairperson shall discharge the duties of the chairperson in the event of the chairperson's absence by volition, expiration of term, death, resignation or removal.
- (K) The Board of Water Commissioners shall have the right to seek legal counsel from the District's appointed attorneys when the Board deems necessary for the department's daily operations.

SECTION 3. Water Superintendent.

- (A) The Board of Water Commissioners shall appoint a Water Superintendent whose qualifications, powers and duties shall be as delineated in the District Personnel Code. The Water Superintendent shall be appointed on the basis of merit and ability for an initial probationary term of one (1) year and, during that probationary term, may be removed without cause. Following completion of the one (1) year probationary period, said water superintendent may be appointed to a regular position by vote of the appointing authority. If so appointed, the appointee

shall thereafter be given an annual review and may be removed at any time, for just cause and after a public hearing as set forth in Article X of these By-Laws.

- (B) Upon appointment, the Water Superintendent shall be deemed qualified for the same benefits granted to other full-time Water Department employees and such other benefits as the Board of Water Commissioners deems appropriate to the exercise of his duties.
- (C) A vacancy in the office of Water Superintendent shall be filled as soon as possible by the Board of Water Commissioners. Pending such appointment, the Board shall designate a qualified employee to perform the duties of Water Superintendent on a temporary basis.
- (D) The salary of the Water Superintendent shall be as determined by the Board of Water Commissioners.

SECTION 4. Assistant Water Superintendent.

- (A) The Board of Water Commissioners shall appoint an Assistant Water Superintendent whose qualifications and powers and duties shall be as delineated in the District Personnel Code. The Assistant Water Superintendent shall be appointed on the basis of merit and ability for an initial probationary term of one (1) year and during that probationary term may be removed without cause. Following completion of the one (1) year probationary period, he may be appointed to a regular position by vote of the appointing authority. If so appointed, the appointee shall thereafter be given an annual review and may be removed at any time, but only for just cause and after a public hearing as set forth in Article X of these By-Laws.
- (B) Upon appointment, the Assistant Water Superintendent shall be deemed qualified for the same benefits granted to other full-time Water Department employees and such other benefits as the Board of Water Commissioners deems appropriate to the exercise of his duties.
- (C) A vacancy in the office of Assistant Water Superintendent shall be filled as soon as possible by the Board of Water Commissioners. Pending such appointment, the Board shall designate a qualified employee to perform the duties of Assistant Water Superintendent on a temporary basis.
- (D) The salary of the Assistant Water Superintendent shall be as determined by the Board of Water Commissioners.

SECTION 5. Water Conservation.

- (A) Authority. This By-Law is adopted by the COMM Fire District under its police powers to protect public health and welfare and its powers under the Massachusetts General Laws Chapter 40, Section 21 et seq., and implements the District's authority to regulate water use pursuant to Massachusetts General Laws Chapter 41, Section

69B. This By-Law also implements the District's authority under Massachusetts General Laws Chapter 40, Section 41A, conditioned upon a declaration of water supply emergency issued by the Department of Environmental Protection.

(B) Purpose. The purpose of this By-Law is to protect, preserve and maintain the public health, safety and welfare whenever there is, in force, a State of Water Supply Conservation or State of Water Supply Emergency by providing for enforcement of any duly imposed restrictions, requirements, provisions or conditions imposed by the District or by the Department of Environmental Protection.

(C) Definitions.

1. "Person" shall mean any individual, corporation trust, partnership or association, or other entity.
2. "State of Water Supply Emergency" shall mean a State of Water Supply Emergency declared by the Department of Environmental Protection under Massachusetts General Laws Chapter 21G, Sections 15-17.
3. "State of Water Supply Conservation" shall mean a State of Water Supply Conservation declared by the District pursuant to Section (D) of this By-Law.
4. "Water Users or Water Consumers" shall mean all public and private users of the District's public water supply system, irrespective of any person's responsibility for billing purposes for water used at any particular facility.

(D) Declaration of a State of Water Supply Conservation. The District, through its Board of Water Commissioners, may declare a State of Water Supply Conservation upon a determination by a majority vote of the Board that a shortage of water exists and conservation measures are appropriate to ensure an adequate supply of water to all water consumers. Public notice of a State of Water Conservation shall be given under Section (E) of this By-Law before it may be enforced.

(E) Restricted Water Uses.

1. Declaration of a State of Water Supply Conservation shall include one or more of the following restrictions, conditions, or requirements limiting the use of water as necessary to protect the water supply. The applicable restrictions, conditions or requirements shall be included in the public notice required under Section (F).

2. Odd/Even Day Outdoor Watering. Outdoor watering by water users with odd numbered addresses is restricted to odd numbered days. Outdoor watering by water users with even numbered addresses is restricted to even numbered days. Commercial, condominium and other multiple properties held under common ownership or management will be assigned an odd or even designation in writing by the Water Department.
 3. Outdoor Watering Ban. Outdoor watering is prohibited.
 4. Outdoor Watering Hours. Outdoor watering is permitted only during daily periods of low demand, to be specified in the declaration of a State of Water Supply Conservation and public notice thereof.
 5. Filling Swimming Pools. Filling of swimming pools is prohibited.
 6. Automatic Sprinkler Use. The use of automatic sprinkler systems is prohibited.
- (F) Public Notification of a State of Water Supply Conservation; Notification of DEP - Notification of any provision, restriction, requirement or condition imposed by the District as part of a State of Water Supply Conservation shall be published in a newspaper of general circulation within the District, or by such other means reasonably calculated to reach and inform all users of water of the State of Water Supply Conservation. Any restriction imposed under Section (E) shall not be effective until such notification is provided. Notification of the State of Water Supply Conservation shall also be simultaneously provided to the Massachusetts Department of Environmental Protection.
- (G) Termination of a State of Water Supply Conservation; Notice - A State of Water Supply conservation may be terminated by a majority vote of the Board of Water Commissioners, upon a determination that the water supply shortage no longer exists. Public notification of the termination of a State of Water Supply Conservation shall be given in the same manner required by Section (F).
- (H) State of Water Supply Emergency; Compliance with DEP Orders - Upon notification to the public that a declaration of a State of Water Supply Emergency has been issued by the Department of Environmental Protection, no person shall violate any provision, restriction, requirement, condition of any order approved or issued by the Department intended to bring about an end to the State of Emergency.
- (I) Penalties - This By-Law shall be enforced by the Superintendent of the Water Department and the members of the Board of Water Commissioners, or any delegate thereof duly designated by the Board of Water Commissioners at a public meeting and whose name is duly recorded on the Minutes of such meeting. If the Department shall determine that the use of water on any premises is occurring in violation of this By-Law, then the enforcement authority shall cause a written notice of such violation, constituting a warning, to be given to the owner of such premises. Notice shall be deemed given upon mailing a copy thereof, postage prepaid, certified first

class United States mail, return receipt requested, to the owner of record appearing in the tax assessing records of the Town of Barnstable as shown on the final bill for the most recent fiscal year and by delivering a copy thereof to the premises, but notice shall be deemed complete upon such mailing. Any premises which are determined by the Board of Water Commissioners to be in violation of this By-Law after the giving of such warning notice shall be subject to restriction of water supply (including total shutoff) to the extent deemed necessary by the enforcement authority to achieve compliance. Notwithstanding anything to the contrary herein contained, no action shall be taken to shut off or restrict the supply of water to any premises in violation of any other lawful statute, rule or regulation applicable to such premises or the occupants thereof.

- (J) Severability - The invalidity of any portion or provision of this By-Law shall not invalidate any other portion or provision thereof.

IX. ARTICLE IX – VACANCY AND APPOINTMENT OF ELECTED OFFICIALS

SECTION 1. Vacancy in Office; Appointment.

- (A) Notwithstanding the provisions of Article I, Section 1 of these by-laws, in the event that a vacancy shall arise in any elective office as a result of the death or resignation of an elected official, then the position of such deceased or resigned official may be served by an individual qualified to vote in District elections, appointed by a majority vote at a joint meeting of the then members of the Prudential Committee, Board of Water Commissioners and Board of Fire Commissioners, (collectively, the “Appointing Authority”) and duly sworn, who shall serve as though duly elected by the District, until the next annual meeting of the District; and if the term of the deceased or resigned official shall extend beyond the date of the next annual meeting, then at such annual meeting the District shall elect an individual so qualified, to serve the remainder of the term of such deceased or resigned official. A majority in aggregate of the members of said Appointing Authority shall constitute a quorum for the purposes of such meeting. Such meeting may be called by the Appointing Authority and shall not be held sooner than ten (10) days following the first day of posting as provided in Section 3.

SECTION 2. Limitation; Authority of Appointing Authority

No appointment shall be made within 90 days prior to any Annual Meeting, provided, however, that nothing in these By-Laws shall be deemed or construed to prohibit the authority of the Appointing Authority to initiate the appointment process or make the appointment, if it shall by majority vote find that an emergency or other matter which the Appointing Authority deems to be a matter of sufficient urgency to warrant such action, in its sole judgment shall have arisen.

SECTION 3. Notice of Vacancies.

Whenever a vacancy occurs in any District office other than in the ordinary course at the conclusion of a term, or when by reason of disability or retirement or other such cause a

vacancy can be anticipated, and an interim appointment is to be made pursuant to the By-Laws, the Chairperson of the Appointing Authority shall cause public notice of the vacancy or impending vacancy and of the Appointing Authority's intention to effect an interim appointment pending the next regular election, such notice to be published at least once in one local newspaper of general circulation within the District, so as to appear not less than ten (10) days, nor more than thirty (30) days prior to the public meeting at which the Appointing Authority shall first consider an interim appointment; and such notice shall be posted on the official bulletin board at the District Headquarters Building, 1875 Falmouth Road, Centerville, Massachusetts, continually for a period of not less than (10) days nor more than thirty (30) days prior to the date of such meeting. The posted and published notice shall contain a description of the duties of office sought to be filled on an interim basis, together with a job description and any necessary qualifications prescribed by the By-Laws or laws of the Commonwealth. The person desiring to seek appointment to the vacant office may, at any time within the first ten (10) days following the date that notice is first published as aforesaid, file with the Clerk of the District a written statement setting forth the candidate's qualifications for such office. The Appointing Authority may meet at any time or from time to time upon the initiative of the Chairperson of the Appointing Authority, who for the purpose of this Section 1 and this section of Article IX, shall be the Chairperson of the Prudential Committee, or in the absence of the Chairperson, the Vice Chairperson of the Prudential Committee, to consider any additional measures that may be deemed appropriate to publicize the vacancy and solicit the submission of statements of qualification, but no such statements shall be considered in a deliberative forum and no appointment shall be considered by the Appointing Authority assembled as such until at least ten (10) days after the first day that posting and publishing have occurred as provided herein. The provisions of this section shall not apply to positions in conflict with the terms of any collective bargaining agreement of which the District or any of its Boards or Departments are a party.

X. ARTICLE X – DISMISSAL OF APPOINTED OFFICIAL

SECTION 1. Required Vote.

No vote to terminate employment of any appointed official, specifically the Clerk, Treasurer, Fire Chief, Deputy Fire Chiefs, Water Superintendent, or Assistant Water Superintendent, shall be effective unless it carries a majority vote of the appointing authority of such appointed official.

SECTION 2. Dismissal Procedures and Right to a Hearing.

- (A) A written notice of the vote of the appointing authority of such appointed official to remove or suspend and a statement of the cause or causes thereof, shall be delivered via registered or certified mail, return receipt requested, to the affected appointed official at that official's last known address.

- (B) Within five (5) days following delivery of said notice, the official involved may request a public hearing by submitting, in writing, a request therefore to the appropriate appointing authority, and by filing a copy of said request with the District Clerk.

- (C) A public hearing, at a time and place designated by and presided over by the District Moderator, shall be held by the appointing authority and the Prudential Committee not fewer than seven (7) and not more than fourteen (14) days following the date of receipt of a request therefore. If the appointing authority of the official involved is the Prudential Committee, then the Prudential Committee and either the Board of Water Commissioners or the Board of Fire Commissioners, as designated by the District Moderator, shall jointly hold the hearing.
- (D) The person involved shall be given not less than five (5) days written notice of such public hearing, and shall have the right to be represented by counsel at such hearing, to call witnesses, to examine witnesses and to introduce evidence.
- (E) Not more than fourteen (14) days following the public hearing, those holding the hearing shall take final action on the removal or suspension and shall, forthwith, notify the official involved.
- (F) If no public hearing has been requested within five (5) days, the removal or suspension shall be deemed effective forthwith upon expiration of the five (5) day period referred to in Subsection 3 (B).
- (G) The preceding Sections (A) through (F) are applicable only with respect to removal for cause.
- (H) Nothing in this Section 3 shall entitle or require a hearing, or a showing of cause for removal during a probationary period, or in the event of non-appointment, following the expiration of a probationary period.

SECTION 3. Probationary Appointees.

A probationary appointee may be removed without cause. For the purposes of this section these by-laws, a “probationary appointee” shall mean an appointee occupying a position during a probationary period.

During the period of time that any appointed official is occupying a position on a probationary basis, such appointee may be removed without cause upon notice from the appointing authority and nothing herein shall be construed to require a hearing or a showing of cause prior to removal or, in the event of non-appointment, following a probationary period.

XI. ARTICLE XI -- AMENDMENTS

SECTION 1.

These By-Laws may be amended by majority vote of the District at any annual or special meeting called in whole or in part for such purpose, or by ballot in any annual or special District election.

HISTORY

Originally voted May 17, 1993; passed by Legislature and signed by Governor Weld, November 24, 1993, as Chapter 259 of the Acts of 1993.

Article VII, Sections 5 and 6, added by amendment of voters on May 17, 1994.

Article I, Section 3A, added by amendment of voters on May 16, 1995

Article VIII, Section 5, added by amendment of voters on June 12, 2000.

Amendments made by voters at Annual District Meeting on June 8, 2004, as per annual warrant book.

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NOTE: Article and Section headings and captions are included for convenience only and do not constitute substantive provisions of these By-Laws.