

# TOWN OF UPTON

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*By Kelly A McElreath at 12:17 pm, Apr 22, 2015*



## TEXT OF WARRANT ARTICLES

**10, 11, 13, 14**

**ANNUAL TOWN MEETING  
MAY 7, 2015**

## **ARTICLE 10: NUISANCE BYLAW**

### **I. Authority and Purpose**

Pursuant to the general powers granted the Town by Article 89 of the Amendments to the Massachusetts Constitution, this bylaw is adopted to help protect the health, safety, and welfare of the citizens of Upton by preventing blight, protecting property values and neighborhood integrity, protecting the Town's resources, and ensuring the safety and sanitary maintenance of all buildings and structures. Inadequately maintained buildings are at an increased risk for fire, unlawful entry, or other public health and safety hazards. This bylaw will help secure the welfare of the Town's residents and neighborhoods by requiring all property owners and occupants to properly maintain their respective properties.

### **II. Definitions**

**Building** - A structure, whether portable or fixed, with exterior walls or firewalls and a roof, built, erected or framed, of a combination of any materials, to form shelter for persons, animals, or property. See "structure" below.

**Dilapidated** - A condition of decay or partial ruin by reason of neglect, misuse, or deterioration. The term includes, but is not limited to:

- Property having deteriorated or ineffective waterproofing of exterior walls, roofs, foundations or floors, including broken or inadequately secured windows or doors;
- Property having defective weather protection (such as paint, stain, siding or tarpaulin) for exterior wall covering; deleterious weathering due to lack of such weather protection or other protective covering.
- Personal property that is broken, rusted, worn, partially or wholly dismantled or that, due to deterioration, is unsuitable for the purpose for which designed.

**Occupant** - A person who occupies real property with the consent of the owner as a lessee, tenant at will, licensee or otherwise.

**Owner** - Every person who alone or jointly or severally with others:

- (1) has legal title to any dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park; or
- (2) has care, charge or control of any dwelling, dwelling unit, mobile dwelling unit or parcel of land, vacant or otherwise, including a mobile home park, in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or
- (3) is a mortgagee in possession of any such property; or

(4) is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or

(5) is an officer or trustee of the association of unit owners of a condominium. Each such person is bound to comply with the provisions of these minimum standards as if he were the owner. Owner also means every person who operates a rooming house.

**Person** - Any individual, corporation and any voluntary association of individuals, business entity, or organization whether incorporated or not.

**Structure** - A combination of materials, whether wholly or partially level with, above or below, the surface of the ground, whether permanent or temporary, assembled at a fixed location to give support, shelter or enclosure such as a building, (see above), framework, retaining wall, stand, platform, bin, fence (having a height at any point of six feet or greater above grade), parking area sign, flagpole, or mast for an antenna or the like.

### **III. Nuisances Prohibited**

All property located in the Town of Upton, whether occupied or vacant, shall be maintained in good repair and in a safe and sanitary condition so as not to contribute to the creation of a hazardous or blighted area or to adversely affect the public health and safety or property value of adjacent or surrounding property.

No owner or occupant of any real property in the Town of Upton shall create, permit or maintain a condition or activity on their property which constitutes a nuisance by causing substantial or unreasonable interference with the common interest of the general public in the maintenance of decent, safe and sanitary conditions so as to prevent hazardous and blighted conditions. The following is a non-exhaustive list of examples of conditions which may be considered nuisances for purposes of this bylaw:

- (a) burned structures not otherwise lawfully habitable or usable;
- (b) dilapidated real or personal property;
- (c) dangerous or unsafe structures or personal property;
- (d) overgrown vegetation which may harbor rats and vermin, conceal pools of stagnant water or other nuisances, or which is otherwise detrimental to neighboring properties or property values;
- (e) dead, decayed, diseased or hazardous trees, debris or trash that creates a hazard to life or safety;
- (f) vehicles, machinery or mechanical equipment or parts thereof that are located on soil, grass or other porous surfaces that may result in the destruction of vegetation or contamination of soil.
- (g) personal property which has been placed for collection as rubbish or refuse in violation of any rule or regulation of the Board of Health, or left in public view for more than three (3) days. The exterior storage or accumulation of junk, trash, litter, bottles, cans, rubbish, or refuse of any kind, except for domestic refuse stored in such a manner as not to create a nuisance for a period not to exceed fifteen (15) days. The term "junk" shall include parts of machinery or motor

vehicles, used stoves, refrigerators, or other cast off material of any kind whether or not the same could be put to any reasonable use.

(h) the storage of building materials upon residential properties unless there is in force a valid building permit issued by the building official for construction upon said property and said materials are intended for use in connection with said construction. Building materials shall include but shall not be limited to lumber, bricks, concrete or cinder blocks, plumbing materials, electrical wiring or equipment, heating ducts or equipment, shingles, mortar, concrete, nails, screws, steel, or any other materials commonly used in constructing any structure.

(i) gravel, rocks, and dirt piles stored by the owner for purposes of construction and/or landscaping and said item(s) remain stored for more than twelve months upon the owner's premises.

#### **IV. Vacant Buildings**

The owner of any real property in the Town of Upton which contains buildings or structures that are or will be unoccupied for a period of one hundred eighty (180) consecutive days or more shall take the following measures to prevent the creation of nuisance conditions:

- (a) comply with all applicable sanitary, building, and fire codes and orders issued pursuant thereto;
- (b) secure the premises to prevent unauthorized entry and exposure to the elements;
- (c) maintain the premises in a manner that ensures their external/visible maintenance, including but not limited to the maintenance of major systems, the removal of trash and debris, and the upkeep of lawns, shrubbery, and other landscape features;
- (d) repair or replace broken windows or doors within thirty (30) days. Boarding up any doors or windows is prohibited except as a temporary measure for no longer than thirty (30) days;
- (e) for properties vacant for six months or more, the utilities for which have been shut off, remove or cut and cap such utilities to prevent accidents;
- (f) compliance with this section shall not relieve the owner of any applicable obligations set forth in any other codes, regulations, covenant conditions or restrictions, and/or homeowner or condominium association rules and regulations.

#### **V. Enforcement**

If the Building Commissioner is informed of or has reason to believe that nuisance conditions exist on any real property in the Town, he may make or cause to be made an investigation of the facts, including an inspection of the property where the condition may exist. In making such inspection, the Building Commissioner shall have such right of access to premises that may be lawfully exercised by him under the laws and constitution of the Commonwealth and/or of the United States.

If, after inspection, the Building Commissioner confirms the existence of nuisance conditions, he may make such orders as he deems necessary to abate the nuisance. Said orders shall be in writing and shall be served upon all owners and occupants as can be determined after reasonable inquiry.

Any person aggrieved by an order of the Building Commissioner, 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 Building Commissioner's order. A copy of the hearing request shall also be delivered to the Building Commissioners, the complainant, if any, and the owners and occupants of any abutting property within three hundred (300) feet of the property line of the subject property. It shall be the responsibility of the person requesting the hearing to show that all interested parties have been notified of the request. If no such request is received within the time specified herein, the order of the Building Commissioner shall be final.

A request for hearing shall not constitute a stay of the Building Commissioner's order unless the Building Commissioner so orders.

Upon receipt of a timely request, the Board of Selectmen shall convene a public hearing, which shall include an examination of the any complainant, if any, under oath, to determine whether nuisance conditions exist. Based on the credible evidence and testimony presented at said public hearing, the Board of Selectmen may affirm the Building Commissioner's order, reverse and nullify the order, or issue any such order as it deems necessary to ensure the protection of public safety and/or eliminate a nuisance. The determination of the Board of Selectmen after a hearing shall be final.

## **VI.      Penalties**

This Bylaw may be enforced by the Building Commissioner, the Board of Health or its designee and/or the Board of Selectmen or its designee.

Any person who violates this bylaw may be penalized by non-criminal disposition as provided by Massachusetts General Laws, Chapter 40, Section 21D and the Town's Non-Criminal Disposition bylaw. If non-criminal disposition is elected, then any person who violates the provisions of this bylaw shall be subject to penalties as follows:

First Offense – twenty five dollars (\$25.00)  
Second Offense – fifty dollars (\$50.00)  
Third Offense – one hundred dollars (\$100.00)  
Fourth and Further Offenses – three hundred dollars (\$300.00)

Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

Whoever violates any provision of this bylaw may be penalized by indictment or on complaint brought in a court of competent jurisdiction. Except as may be otherwise provided by law and as the court may see fit to impose, the maximum penalty for each violation or offense shall be three hundred dollars (\$300). Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

The Town may enforce this bylaw or enjoin violations thereof through any lawful process, and the election of one remedy by the Town shall not preclude enforcement through any other lawful means.

#### **VII. Interaction with Other Laws**

This bylaw is intended to further the objectives of and to act in concert with any existing federal, state or local laws concerning the maintenance of property and the abatement of nuisances.

Nothing in this bylaw is intended to limit or restrict the authority of the Board of Selectmen, the Board of Health, the Building Commissioner, Conservation Commission, the Fire Chief, or any other board, commission or officer of the Town to act in accordance with federal, state and local laws within their jurisdiction, including but not limited to:

- (a) The authority of the Board of Selectmen to abate nuisances in accordance with Massachusetts General Laws, Chapter 139, Section 1;
- (b) The authority of the Board of Health to abate nuisances in accordance with Massachusetts General Laws, Chapter 111, Sections 122-125, to enact and enforce local regulations enacted in accordance with Massachusetts General Laws, Chapter 111, Section 31, or to enforce the State Sanitary Code; and
- (c) The authority of the Building Inspector to abate nuisances caused by dangerous buildings as set forth in Massachusetts General Laws, Chapter 143, Section 6, or the State Building Code.

#### **VIII. Administration**

The Building Commissioner shall file with the Board of Selectmen each month a report that shall include all complaints of nuisance made to him during the prior month; all proceedings begun by him under this Bylaw; all pending complaints and all investigations and enforcement actions taken by him or referred to the Board of Health or any other enforcement agency. The report shall state the location of the premises, a summary of the nature of the complaint, the name of the responsible party (ies), and the disposition or the status of the matter.

#### **IX. Severability**

The invalidity of any section, provision, paragraph, sentence, or clause of this bylaw shall not invalidate any other section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

## **ARTICLE 11: CANINE CONTROL BYLAW**

### **SECTION 1: PURPOSE**

The purpose of this bylaw is control of dogs to prevent injury to property, persons and animals.

### **SECTION 2: DEFINITIONS**

Massachusetts General Laws, Chapter 140, Section 136A shall be referenced to define terms used on this bylaw.

### **SECTION 3: ADMINISTRATION**

- a. The Board of Selectmen shall annually appoint an Animal Control Officer who shall be responsible for the enforcement of this bylaw and the General Laws relating to the regulation of animals.
- b. For purposes of this bylaw and Massachusetts General Laws, Chapter 140, section 157, the Board of Selectmen shall be the Hearing Authority.

### **SECTION 4: CONTROL OF ANIMALS**

Any person owning, keeping, or harboring a dog within the town is responsible for removing and properly disposing of any feces left by the dog whether on public or private property. Animal Control and your fellow residents appreciate you doing your part to keep our Town clean and enjoyable for all.

No person owning, harboring or having the custody or control of a dog shall permit such dog to enter or remain upon the following property at the time indicated, provided, however, that subsections a. through c. shall not apply to service animals as defined by the American with Disabilities Act or regulations promulgated thereunder:

- a. PUBLIC SCHOOL GROUNDS. No dog shall be allowed upon public school grounds between the hours of 7:30 a.m. and 4:30 p.m., local time, Monday through Friday, during the school year and any special sessions thereof. Dogs shall not be allowed on any school department property while schools in Upton are in session.
- b. BEACHES. No dog shall be allowed upon any public beach in Upton at any hour of the day, from May 15 through September 30.
- c. CEMETERY GROUNDS. No dog shall be allowed upon any cemetery grounds in Upton at any hour of the day, at all times of the year.

d. OTHER TOWN FACILITIES. All dogs shall be kept on a leash, while on Town's Athletic Fields, Town Parks, Town Common, Town Hall, and Risteen Building.

e. The restraint of dogs shall not apply for the purpose of training dogs or hunting. Nor shall it apply to a dog belonging to a law enforcement agency, acting in the line of duty. Nor shall it apply to a dog formally trained as a search and rescuer, acting in the line of duty.

#### **SECTION 5A: ROAMING AT LARGE**

a. No owner or keeper of any dog shall cause or permit such dog, whether licensed or unlicensed, to run at large within the Town of Upton, or permit such dog to wander unrestrained on public or private property other than the premises of the owner or keeper or the premises of another person with knowledge and permission of such other person. A dog is under restraint within the meaning of this bylaw if it is controlled by a leash or at heel beside a competent person and obedient to the commands of that person or within a vehicle being driven or parked.

b. Unrestrained or unlicensed dogs may be caught and confined by the Animal Control Officer or any police officer of the Town of Upton. A dog so confined may be held for not more than seven days. If the owner or keeper of the dog claims it and pays the sum of \$40 for each day that the dog has been held, the dog shall be returned to its owner or keeper. Any dog not claimed by the owner or keeper within said seven day period may be subject to euthanization or adoption as set forth in Massachusetts General Laws, Chapter 140, sections 151A and 167, as may be amended from time-to-time.

#### **SECTION 5B: NUISANCE AND DANGEROUS DOGS**

a. The Animal Control Officer shall investigate all complaints made to the Animal Control Officer, the Town of Upton Police Department, the Board of Selectmen, or the Town Manager, that any dog owned or kept within the Town of Upton 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.

b. The Animal Control 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.

c. Any person aggrieved by an order of the Animal Control 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 Animal Control Officer's order. A copy of the hearing request shall also be delivered to the Animal Control Officer. If no such request is filed within the time specified herein, the order of the Animal Control Officer shall be final.

d. Upon receipt of a timely request, the Board of Selectmen 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 Board of Selectmen may affirm the Animal Control Officer's order, reverse and nullify the Animal Control 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 Board of Selectmen after a hearing shall be final.

e. Nothing in this By-law is intended to limit or restrict the authority of the Board of Selectmen to act in accordance with Massachusetts General Laws, Chapter 140, section 157.

## **SECTION6: DOG TAGS**

All dogs shall wear a collar or similar device with the current dog tags (license) attached.

## **SECTION 7: LICENSING**

a. All dogs 6 months or over must be licensed and tagged. The registering, numbering, and licensing of dogs, if kept in the Town of Upton shall be conducted in the office of the Town Clerk.

b. The annual License Period shall run from January 1<sup>st</sup> to December 31<sup>st</sup> of each calendar year.

c. The annual fees to be charged by the Town of Upton for the issuance of licenses for dogs shall be:

- Males and Females: \$20
- Neutered Males and Spayed Females: \$10  
(A certificate of neutering or spaying is required)
- Dog Owners over the age of 70: no fee
- Service Animals as defined by the American with Disabilities Act or regulations promulgated thereunder: No fee.
- Dangerous Dog Relicensing fee: \$30
- Personal Kennels (subject to inspections):

Four dogs or less	\$45
Five to ten dogs	\$90
More than ten dogs	\$180
• Commercial Kennels (subject to inspections): \$250	

Further, the town will charge a *late fee of Ten Dollars (\$10.00)* to be paid by owners or keepers of record each year who license said dog or dogs on or after March 31st.

All money received from issuance of dog licenses by the Town of Upton, or recovered as fines or penalties by said Town under provisions of Chapter 140 relating to dogs, shall be paid into the General Fund of the Town.

## **SECTION 8: LICENSING OF DANGEROUS DOGS**

- a. The Animal Control Officer shall notify the Town Clerk of all dogs that have been designated as Dangerous Dogs in accordance with Section 5B of this Bylaw and/or Massachusetts General Laws, Chapter 140, section 157.
- b. The Owner or keeper of any dog(s) designated as Dangerous Dogs in accordance with Section 5B of this Bylaw and/or Massachusetts General Laws, Chapter 140, section 157, which have not been ordered euthanized, shall relicense said dog(s) as “Dangerous” within thirty days of such determination. A unique licensing number shall be assigned to a Dangerous Dog by the Town Clerk. That number shall be noted on the town licensing files. The owner or keeper of such Dangerous dog shall pay a relicense fee in accordance with Section 7 of this Bylaw.
- c. The owner or keeper of a Dangerous Dog shall notify within 12 hours the Animal Control Officer if said dog is unconfined, has attacked, another dog or has attacked a human, or has died or has been sold or given away; the owner or keeper shall also provide the Animal Control Officer with the name, address and telephone number of the new owner of the Dangerous dog.

## **SECTION 9: ENFORCEMENT AND PENALTIES**

### **1. *Allowing Dog to Roam at Large***

- a. In addition to the remedy of impoundment as set forth therein, Section 5A of this Bylaw may be enforced by the Animal Control Officer or any police officer of the Town through any means available in law or equity, including but not limited to criminal indictment in accordance with G.L. c.40, §21, and noncriminal disposition in accordance with G.L. c. 40, §21D, and the Town Bylaws, “Non-Criminal Disposition.” When enforced in accordance with G.L. c.40, §21, the maximum penalty shall be \$300.00 and each day a violation exists shall constitute a separate violation.

b. When enforced through non-criminal disposition, the penalties shall be as follows:

First Offense:	Warning
Second Offense:	\$50 Fine
Third and subsequent Offense:	\$100 Fine

c. For purposes of enforcement through non-criminal disposition, any violation of the provisions of this by-law occurring more than 12 months after a first offense shall constitute a new and separate violation.

2. ***Violation of Order to Restrain Nuisance or Dangerous Dog***

a. In addition to the remedies set forth therein, Section 5B of this Bylaw may be enforced by the Animal Control Officer or any police officer of the Town through any means available in law or equity, including but not limited to criminal indictment in accordance with G.L. c.140, §157A as may be amended from time-to-time, and noncriminal disposition in accordance with G.L. c. 40, §21D, and the Town Bylaws, “Non-Criminal Disposition.” When enforced in accordance with G.L. c.140, §157A, an owner or keeper of a dog who fails to comply with an order of the selectmen or district court shall be punished, for a first offense, by a fine of not more than \$500 or imprisonment for not more than 60 days in a jail or house of correction, or both, and for a second or subsequent offense by a fine of not more than \$1,000 or imprisonment for not more than 90 days in a jail or house of correction.

b. When enforced through non-criminal disposition, the penalties shall be as follows:

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

For purposes of enforcement through non-criminal disposition, any violation of the provisions of this by-law occurring more than 12 months after a first offense shall constitute a new and separate violation. The Animal Control Officer or any Town of Upton police officer shall seize and impound any vicious dog found outside of its enclosure in violation of this Bylaw or any order issued by the Animal Control Officer, the Board of Selectmen or the Court.

3. ***Other***

The Upton Board of Selectmen may enforce this Bylaw or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Selectmen shall not preclude enforcement through any other lawful means.

## **SECTION 10: SEVERABILITY**

The invalidity of any section, provision, paragraph, sentence, or clause of this bylaw shall not invalidate any other section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

## **ARTICLE 13: DOMESTIC VIOLENCE LEAVE ACT POLICY**

### **I. PURPOSE**

This Policy describes the eligibility and procedural requirements relating to the administration of leave taken pursuant to the Massachusetts Domestic Violence Leave Act, G.L. c. 149, §52E (“DVLA” or “the Act”).

### **II. APPLICATION**

This Policy applies to all employees of the Town of Upton (“Town”). Employees whose employment is governed by a collective bargaining agreement are subject only to those provisions of this Policy not specifically regulated by law or agreement.

### **III. POLICY**

The Town is committed to complying with the DVLA, as it may be amended from time to time. In the event of any conflict between the Town’s DVLA policy and the state law and any applicable regulations, the state law/regulations applicable to the Town and its employees shall prevail.

### **IV. PROCEDURES**

#### ***A. Eligibility***

To qualify for domestic violence leave under the DVLA, an employee or a covered family member must be the victim of *“abusive behavior.”* *“Abusive behavior”* includes any of the following behaviors: domestic violence, stalking, sexual assault or kidnapping.

*Domestic violence* is abuse against an employee or a covered family member by a current or former spouse, a person with whom the victim shares a child, a person cohabitating with or who has cohabitated with the victim in the past, a relative by blood or marriage, or a person with whom the employee or family member has or had a dating or engagement relationship.

A *Covered family member* includes a spouse, parent, step-parent, child, step-child, sibling, grandparent, grandchild, persons in a substantive dating relationship or who reside together, persons having a child in common, or persons in a guardian

relationship. In the case of abuse of a family member, the employee is not entitled to leave if he or she is the alleged perpetrator.

*B. Duration of Leave*

If an employee or a covered family member of the employee is a victim of abusive behavior, he/she may take up to fifteen (15) days of unpaid leave in any 12-month period.

Employees may substitute paid leave before taking leave under the DVLA.

*C. Reasons for Requesting Leave*

Employees may request leave to address issues directly related to the abusive behavior. This includes seeking medical attention, counseling or victim services. Leave may also be taken to obtain legal assistance, to attend or appear in court proceedings, or to meet with a district attorney or law enforcement personnel. It is not a requirement of the Act that the employee maintain contact with the alleged abuser before being eligible for leave.

*D. Notice*

Employees must provide sufficient advance notice of the decision to use domestic violence leave, unless there is a threat of imminent danger to the health or safety of the employee or a member of the employee's family. An employee who does not give advance notice must notify the employer within three (3) work days that leave is being taken pursuant to the DVLA. The notice may be provided by certain specified individuals other than the employee.

If an unscheduled absence occurs, the employee has 30 calendar days to produce documentation of the need for leave, in accordance with paragraph E, below.

*E. Documentation*

Employees taking leave pursuant to the DVLA may be required to provide documentation evidencing that the employee or employee's family member has been a victim of abusive behavior. If requested, an employee is required to provide such documentation within a reasonable period after the request is made. An employee can satisfy this requirement by providing any one of the following documents:

- A protective order issued by a court as a result of abusive behavior against the employee or employee's family member;
- A document under the letterhead of the court, provider or public agency which the employee attended for the purposes of acquiring assistance as it relates to the abusive behavior;
- A police report or statement of a victim or witness provided to police,

- including a police incident report, documenting the abusive behavior;
- Documentation that the perpetrator of the abusive behavior against the employee or family member of the employee has admitted to sufficient facts in court, or has been convicted of any offense constituting abusive behavior;
- Medical documentation of treatment as a result of the abusive behavior;
- A sworn statement provided by a counselor, social worker, or health care worker who has assisted the employee or the employee's family member; or
- A sworn statement from the employee attesting that the employee has been the victim of abusive behavior.

*F. Return to Work*

Employees who take leave pursuant to the DVLA will be restored to their original or equivalent position upon return from leave unless circumstances unrelated to the employee's use of leave would have caused a change in employment status. The Town shall not retaliate against an employee for exercising his/her rights under the DVLA.

*G. Confidentiality*

With limited exceptions set forth by law, information related to the employee's leave shall remain confidential.

## **DOMESTIC VIOLENCE LEAVE ACT POLICY**

This acknowledges that I have received and reviewed the Town of Upton Domestic Violence Leave Policy ("Policy"). By signing this form, I agree to abide by the Policy and any Guidelines promulgated thereunder, and I agree to review periodically any changes or modifications. I recognize that the law and associated Policy regarding use of Domestic Violence Leave are continually evolving. Therefore, I understand that my regular review of this Policy, as it may be amended, is required.

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

*To be included in employee's personnel file.*

## **ARTICLE 14: VOLUNTARY WAIVER OF HEALTH INSURANCE For Enrollment in Health Insurance Opt-Out Program**

In return for the agreement to waive Town health insurance coverage, the Town agrees to pay an eligible employee one of the following amounts:

- (1) \$1,500.00 for waiving individual health insurance plan coverage

or

- (2) \$3,000.00 for waiving family health insurance plan coverage

The Town will make the above payment at a rate of \$125.00/month (individual plan) or \$250.00/month (family plan) on or about the last pay period in each month that the employee deferred coverage from the Town. The opt-out payments will be subject Federal, State, and Medicare taxes.

To be eligible an employee must not have an outstanding court order or agreement requiring the employee to provide health insurance coverage for the employee's spouse, ex-spouse, or dependent children, if any.

To be eligible, an employee must completely remove themselves as either a subscriber or dependent on the Town's health plan. A Town employee is not eligible for the opt-out payment where the employee opts-out of their individual health plan and becomes a dependent on their spouse's plan, when their spouse is also a subscriber on the Town's plan.

To be eligible, an employee must have been a subscriber to the Town's health plan in the immediate twelve (12) month period of the fiscal year prior to agreeing to opt-out of the Town's health plan.

Retirees on the Town's health plan are not eligible for this Opt-Out Program.

If an employee is eligible and elects to opt-out of the Town's health insurance plan, the Town is not responsible for medical coverage effective on July 1, 2015 (except for medical coverage for injuries and illnesses covered by G.L. c. 41, Sec. 111F or G.L. c. 152) and for each fiscal year thereafter that the employee voluntarily agrees to waive health insurance coverage through the Town.

An employee is only eligible to re-enroll in the Town's health insurance plan during the Annual Open Enrollment Period or due to a loss of coverage from the source other than the Town, i.e. a qualifying event under COBRA, such as:

1. the death of a covered employee;

2. the termination (other than by reason of the employee's gross misconduct), or reduction of hours, of a covered employee's employment;
3. the divorce or legal separation of a covered employee from the employee's spouse;
4. a covered employee becoming entitled to Medicare benefits under Title XVIII of the Social Security Act; or
5. a dependent child ceasing to be a dependent child of the covered employee under the generally applicable requirements of the plan and a loss of coverage occurs.

To re-enroll, the employee must complete the required paperwork during the Open Enrollment Period or, for a loss of coverage, notify the Town Manager's Office and complete the re-enrollment process within thirty (30) days of the date of loss of coverage.

If an employee does re-enroll in the Town's group health insurance or the employee's employment with the Town ends (termination, resignation, retirement, reduction of hours, layoff, or death) during the fiscal year, the employee will only be eligible for a pro-rated payment.

Each employee agreeing to opt-out of the Town's health insurance plan must acknowledge that they have read and agree to comply with the terms and conditions of the Town's Opt-Out Program on the attached Acknowledgement Form, a copy of which will be placed in the employee's personnel file.

#### **ACKNOWLEDGEMENT**

I, \_\_\_\_\_, hereby acknowledge that I have read and understand the terms of the Town's Health Insurance Opt-Out Program, which I have had the opportunity to ask questions to the Town regarding the Opt-Out Program and inquire of attorneys of my own choosing, and that I am agreeing to waive my right to health insurance coverage through the Town effective July 1, 2015. I understand that I will only be allowed to re-enroll in the Town's health insurance plan during the Annual Open Enrollment Period or if a qualifying event occurs.

I also attest to the fact that will be receiving health insurance coverage from another health insurance provider.

Employee Name

Date

Employee Signature