

## **Chapter 1**

### **GENERAL PROVISIONS**

**[HISTORY: Adopted by the Town Meeting of the Town of Lee as indicated in article histories. Amendments noted where applicable.]**

#### **ARTICLE I**

##### **Adoption of Code**

**[Adopted 5-26-1971 STM by Art. 10]**

##### **§ 1-1. Code adopted.**

The Code of Bylaws, consisting of Chapters 1 to 16, each inclusive, is hereby adopted and enacted as the "Code of Bylaws, Town of Lee, Massachusetts."

##### **§ 1-2. When effective; repealer.**

All provisions of such Code shall be in full force and effect from and after the first day of April 1971, and all bylaws of a general and permanent nature effective on or before November 17, 1969, and not included in such Code or recognized and continued in force by reference therein or saved from repeal in this article are hereby repealed.

##### **§ 1-3. Exceptions to repealer.**

The repeal provided for in § 1-2 shall not affect any bylaw prescribing traffic regulations for the Town.

##### **§ 1-4. General penalty.**

Whenever in such Code an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor or whenever in such Code the doing of any act is required or the failure to do any act is declared to be unlawful and no specific penalty is provided therefor, the violation of any such provision of such Code shall be punishable by a fine of not more than \$50, as provided in § 1-16 of such Code.

##### **§ 1-5. Additions and amendments.**

Any and all additions and amendments to such Code, when passed in such form as to indicate the intention of the Town to make the same a part thereof, shall be deemed to be incorporated in such Code so that reference to the Code of Bylaws of the Town of Lee, Massachusetts, shall be understood and intended to include such additions and amendments.

##### **§ 1-6. Penalty for amended sections.**

In case of the amendment of any section of such Code for which a penalty is not provided, the

general penalty as provided in § 1-4 of this article and § 1-16 of such Code shall apply to the section as amended, or, in case such amendment contains provisions for which a penalty other than the aforementioned general penalty is provided in another section in the same chapter, the penalty so provided in such other section shall be held to relate to the section amended, unless such penalty is specifically repealed therein.

**§ 1-7. Copies to be kept on file and up-to-date.**

Three copies of such Code shall be kept on file in the office of the Town Clerk, preserved in loose-leaf form or in such other form as the Town may consider most expedient. It shall be the express duty of the Town Clerk or someone authorized by the Town Clerk to insert in such copies, in their designated places, all amendments or ordinances which indicate the intention of the Town to make the same a part of such Code, when the same have been printed or reprinted in page form, and to extract from such copies all provisions which may be from time to time repealed by the Town. Such copies of such Code shall be available for all persons desiring to examine the same.

**§ 1-8. Altering or tampering with Code.**

It shall be unlawful for any person to change or amend, by additions or deletions, any part or portion of such Code or to insert or delete pages or portions thereof or to alter or tamper with such Code in any manner whatsoever which will cause the law of the Town of Lee to be misrepresented thereby. Any person violating this section shall be punished as provided in § 1-4 of this article.

**§ 1-9. Inconsistent bylaws repealed.**

All bylaws or parts of bylaws in conflict herewith are, to the extent of such conflict, hereby repealed.

**§ 1-10. Effective date.**

This chapter shall become effective on the first day of April 1971 when approved by the Attorney General of the Commonwealth.

**ARTICLE II**

**Provisions Applicable to Entire Code**

**[Adopted 5-26-1971 STM by Art. 10 as Ch. 1 of the 1971 Code]**

**§ 1-11. Designation of Code.**

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

**§ 1-12. Effect of bylaw repeal.**

The repeal of a bylaw shall not thereby have the effect of reviving any bylaw theretofore repealed.

**§ 1-13. Word usage and definitions.**

- A. Words and phrases specifying or naming any officer, board or committee of the Town shall be construed as including the lawful successor or the person or persons having the powers and performing the duties of such officer, board or committee.
- B. As used in this Code, the following terms shall have the meanings indicated:

COUNTY — Berkshire County.

PERSON — Person, firm or corporation.

TOWN — Town of Lee.

**§ 1-14. Licenses and permits.**

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

**§ 1-15. Repeal, amendment and adoption of bylaws.**

Any or all of these bylaws may be repealed or amended or other bylaws may be adopted at any Town Meeting, if an article or articles for that purpose have been inserted in the warrant for such meeting by the Selectmen.

**§ 1-16. General penalty.**

Whoever violates any of the provisions of this Code of Bylaws whereby any act or thing is enjoined or prohibited shall, unless other provision is expressly made, forfeit and pay a fine not exceeding \$50 for each offense.

**§ 1-17. Noncriminal disposition procedure.** [Added 2-9-1995 STM by Art. 12]

- A. Any police officer taking cognizance of a violation of this Code or bylaw, as an alternative to initiating criminal proceedings, may give to the offender a written notice to appear before the Clerk of the District Court having jurisdiction thereof at any time during office hours not later than 21 days after the date of such notice. Such notice shall be in triplicate and shall contain the name and address, if known, of the offender, the specific offense charged and the time and place for his or her required appearance. Such notice shall be signed by the enforcing police officer and signed by the offender whenever practical in acknowledgment that such notice has been received.
- B. The police officer shall, if possible, deliver to the offender a copy of said notice at the time and place of the violation. If it is not possible to deliver a copy of said notice to the offender at the time and place of the violation, said copy shall be mailed or delivered by the police officer, or by his or her commanding officer or the head of his or her department or by any person authorized by such commanding officer, department or head, to the offender's last known address within 15 days after said violation. Such notice as so mailed shall be deemed a sufficient notice, and a certificate of the person so mailing such notice

that it has been mailed in accordance with this section shall be prima facie evidence thereof.

- C. At or before the completion of each tour of duty or at the beginning of the first subsequent tour of duty, the police officer shall give to his or her commanding officer or department head those copies of each notice of such a violation he or she has taken cognizance of during such tour which have not already been delivered or mailed by him or her as aforesaid. Said commanding officer or department head shall retain and safely preserve one copy and shall, at a time not later than the next court day after such delivery or mailing, deliver the other copy to the Clerk of the court before which the offender has been notified to appear. The Clerk of each District Court and of the Boston Municipal Court shall maintain a separate docket of such notices to appear.
- D. Any person notified to appear before the Clerk of a District Court as hereinbefore provided may so appear and confess the offense charged, either personally or through a duly authorized agent or by mailing to the City or Town Clerk of the municipality within which the violation occurred, together with the notice, such specific sum of money not exceeding \$300 as the Town shall fix as penalty for violation of the ordinance, bylaw, rule or regulation. Such payment shall, if mailed, be made only by postal note, money order or check. Upon receipt of such notice, the City or Town Clerk shall forthwith notify the District Court Clerk of such payment, and the receipt by the District Court Clerk of such notification shall operate as a final disposition of the case. An appearance under this subsection shall not be deemed to be a criminal proceeding. No person so notified to appear before the Clerk of a District Court shall be required to report to any probation officer, and no record of the case shall be entered in any probation records.
- E. If any person so notified to appear desires to contest the violation alleged in the notice to appear and also to avail himself or herself of the procedure established pursuant to this section, he or she may, within 21 days after the date of the notice, request a hearing, in writing. Such hearing shall be held before a District Court Judge, Clerk or Assistant Clerk, as the Court shall direct, and if the Judge, Clerk or Assistant Clerk shall, after hearing, find that the violation occurred and that it was committed by the person so notified to appear, the person so notified shall be permitted to dispose of the case by paying the specific sum of money fixed as a penalty as aforesaid, or such lesser amount as the Judge, Clerk or Assistant Clerk shall order, which payment shall operate as a final disposition of the case. If the Judge, Clerk or Assistant Clerk shall, after hearing, find that the violation alleged did not occur or was not committed by the person notified to appear, that finding shall be entered in the docket, which shall operate as a final disposition of the case. Proceedings held pursuant to this subsection shall not be deemed to be criminal proceedings. No person disposing of a case by payment of such a penalty shall be required to report to any probation office as a result of such violation, nor shall any record of the case be entered in the probation records.
- F. If any person so notified to appear before the Clerk of a District Court fails to pay the fine provided hereunder within the time specified or, having appeared, does not confess the offense before the Clerk or pay the sum of money fixed as a penalty after a hearing and finding as provided in the preceding subsection, the Clerk shall notify the police officer who issued the original notice, who shall determine whether to apply for the issuance of a

complaint for the violation of the appropriate ordinance, bylaw, rule or regulation.

- G. As used in this section, the term "District Court" shall include, within the limits of their jurisdiction, the Municipal Court of the City of Boston and the divisions of the Housing Court Department of the Trial Court.
- H. The notice to appear provided for herein shall be printed in such form as the Chief Justice of the Municipal Court of the City of Boston shall prescribe for said court and as the Chief Justice of the District Courts shall prescribe for the District Courts. Said notice may also include notice of violations pursuant to MGL c. 85, § 11C;<sup>1</sup> c. 90, § 18A; c. 140, § 173A; and c. 270, § 16A. Any fines imposed under the provisions of this section shall enure to the city or Town for such use as said city or Town may direct. This procedure shall not be used for the enforcement of municipal traffic rules and regulations. Chapter 90C of the Massachusetts General Laws shall be the exclusive method of enforcement of municipal traffic rules and regulations.

**§ 1-18. Copies to be kept on file.**

The Selectmen shall cause copies of these bylaws to be printed and to be kept in the Town offices, where copies may be had upon application.

**ARTICLE III**

**Adoption of Renumbered Code**

**[Article 46 of the 5-14-1998 ATM was adopted to accept and approve the codification of the bylaws of the Town of Lee in the format presented by General Code to renumber, recaption and reposition the present bylaws with no substantive changes. Such codification of the bylaws, along with the rules and regulations adopted by the Board of Selectmen, Planning Board, Board of Health or any other board or agency whose regulations appear in said codification, shall be known as the "Code of the Town of Lee." At the Special Town Meeting on 9-30-1999, the Town adopted an article to amend the bylaws of the Town of Lee, to adopt the chapter and section headings, and the page numbers of the bylaws, as set forth in the Code of the Town of Lee, published by General Code and dated 1997.]**

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<sup>1</sup>. Editor's Note: MGL c. 85, § 11C, regarding traffic violations committed by bicyclists, was repealed St. 2009, c. 65, § 5. See now MGL c. 85, § 11E.