



# TOWN OF HAMILTON BY-LAWS

**May 1, 2024**

Approved STM 11-06-2023  
Approved by AGO 02-05-2024  
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(Previous update 08-07-2023)



**TOWN OF HAMILTON  
BY-LAW INDEX**

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# TOWN OF HAMILTON

## BY LAWS

BY LAWS OF THE TOWN OF HAMILTON ADOPTED UNDER ARTICLE 20 OF THE WARRANT FOR THE ANNUAL TOWN MEETING HELD MARCH 3, 1952, AND AS AMENDED ON THE FOLLOWING DATES:

| <b>DATE</b>       | <b>ARTICLE</b> | <b>CHAPTER</b> | <b>DESCRIPTION</b>                  | <b>SECTION</b> |
|-------------------|----------------|----------------|-------------------------------------|----------------|
| March 4, 1957     | Article 21     | I              | Set Town Meeting Date/Time          | 1              |
| March 2, 1959     | Article 29     | X              | Firing of Firearms                  | 7              |
| March 7, 1960     | Article 22     | VI             | Establish Board of Appeals          | 4              |
| July 25, 1960     | Article 6      | X              | Selling Door to Door                |                |
| March 6, 1961     | Article 30     | X              | Privacy                             |                |
| March 4, 1963     | Article 24     | III            | Inspector of Gas                    |                |
| March 4, 1963     | Article 25     | IX             | Horseback Riding Trails             | 7              |
| March 2, 1964     | Article 19     | III            | Removal of Gravel                   |                |
| March 1, 1965     | Article 27     | III            | Removal of Gravel                   |                |
| May 3, 1965       | Article 5      | IX             | Transportation cover for dirt       | 8              |
| March 7, 1966     | Article 20     | III            | Removal of Gravel                   | 5              |
| March 7, 1966     | Article 21     | X              | Non-operating Vehicles              | 10             |
| March 10, 1969    | Article 24     | III            | Board of Public Works               | 1              |
| November 18, 1969 | Article 7      | XIII           | Contract –Disposal of Refuse        |                |
| March 2, 1970     | Article 33     | V              | Finance Committee                   |                |
| March 2, 1970     | Article 32     | VIII           | Acceptance of Streets               |                |
| March 1, 1971     | Article 41     | VII            | Town Contracts                      | 3              |
| March 6, 1972     | Article 21     | II             | Ballot Vote/Capital Expenditures    | 8              |
| April 13, 1972    | Article 2      | X              | Alcoholic Beverages                 | 11             |
| May 7, 1974       | Article 36     | IX             | Winter Parking                      | 9              |
| May 5, 1975       | Article 24     | IX             | Snow / Leaves                       | 10             |
| June 30, 1975     | Article 2      | 1              | Set Annual Town Meeting – May       | 1              |
| May 10, 1976      | Article 19     | IX             | Parking Town Property               | 9              |
| May 19, 1977      | Article 12     | V              | Finance Committee                   |                |
| May 14, 1979      | Article 14     | XIV            | Open Container                      |                |
| May 14, 1979      | Article 28     | X              | Swimming Pool                       | 12             |
| May 12, 1980      | Article 32     | XI             | Street Numbering/Subdivision        | 11             |
| May 12, 1980      | Article 31     | III            | Town Property                       | 3              |
| May 12, 1980      | Article 33     | VIII           | Acceptance of Streets               |                |
| May 18, 1981      | Article 24     | XVII           | Dog By-law                          |                |
| May 17, 1982      | Article 36     | III            | Emergency Center Advisory Committee | 6              |
| May 14, 1984      | Article 12     | I              | Election Time                       | 1              |
| May 14, 1984      | Article 24     | III            | Alarms                              | 8              |

| <b>DATE</b>       | <b>ARTICLE</b> | <b>CHAPTER</b> | <b>DESCRIPTION</b>                  | <b>SECTION</b> |
|-------------------|----------------|----------------|-------------------------------------|----------------|
| May 13, 1985      | Article        | V              | Finance and Advisory Committee      |                |
| May 12, 1986      | Article 21     | I              | Reduce Quorum                       | 3              |
| May 19, 1987      | Article 12     | III            | Chairman/Clerk                      | 9              |
| May 19, 1987      | Article 34     | XVII           | Local Dog Program                   | 3,4,5,6        |
| May 16, 1988      | Article 18     | XIX            | Disability of Fire Fighters         |                |
| May 15, 1989      | Article 3      | III            | Executive Secretary                 | 10             |
| May 15, 1989      | Article 20     | IV             | Collection of Taxes                 | 2              |
| May 15, 1989      | Article 21     | XIX            | Building Permit Fees                |                |
| May 15, 1989      | Article 24     | XVIII          | Dog Licensing                       | 4              |
| May 15, 1989      | Article 26     | X              | Schedule of Fees                    |                |
| May 15, 1989      | Article 27     | I              | Annual Town Meeting                 | 1              |
| May 15, 1989      | Article 28     | III            | Selectmen* (Emergency Center)       | 8              |
| October 30,1989   | Article 5      | XI             | Depot Square Parking                | 9              |
| May 7, 1990       | Article 39     | XVIII          | Dog By-law                          | 2,4,7,8        |
| May 7, 1990       | Article 40     | XVIII          | Leash Law –DEFEATED                 | 9              |
| May 7, 1990       | Article 42     | XVI            | Disposal of Garbage                 |                |
| May 6, 1991       | Article 12     | XVIII          | Dog By-law                          |                |
| May 7, 1991       | Article 25     | XXII           | Fire Apparatus                      | 1-5            |
| October 15,1991   | Article 12     | III            | Salaries                            | 11             |
| May 5, 1992       | Article 19     | X              | Police Regulations – Business Hours | 11             |
| May 5, 1992       | Article 21     | X              | Police Regulations – Jet Ski        | 12             |
| May 3, 1993       | Article 24     | III            | Video                               | 6              |
| May 3, 1993       | Article 8      | II             | Rules and Procedures – DEFEATED     | 9              |
| May 9, 1994       | Article 27     | IV             | Public Works Engineer/Supervisor    | 1-2            |
| May 9, 1994       | Article 35     | X              | Ways                                | 11-12          |
| May 9, 1994       | Article 36     | XIV            | Disposal of Refuse and Garbage      | 1,2,3,4,5      |
| May 8, 1995       | Article 12     | III            | Number of Selectmen - NO ACTION     |                |
| May 8, 1995       | Article 13     | III            | Appoint Town Clerk                  |                |
| May 8, 1995       | Article 15     | III            | Appoint Treasurer/Collector         |                |
| February 13, 1996 | Article 2      | IV             | Director of Public Works            | 2              |
| May 6, 1996       | Article 3      | II             | Town Meeting                        | 9              |
| May 6, 1996       | Article 24     | X              | Billboard                           | 2              |
| May 6, 1996       | Article 34     | VII            | Legal Affairs                       | 5              |
| May 5, 1997       | Article 1-3    | II             | Rules and Procedures                | 10             |
| May 5, 1997       | Article 7-5    | III            | Adult Entertainment                 | 14             |
| May 5, 1997       | Article 7-4    | IV             | Board of Public Works               | 1,2            |
| May 5, 1997       | Article 7-2    | V              | Collector of Taxes                  | 3              |
| May 5, 1997       | Article 7-4    | X              | Ways                                | 4,11,12        |
| May 5, 1997       | Article 7-4    | XIV            | Disposal Refuge and Garbage         | Pre-1          |
| May 5, 1997       | Article 7-1    | XX             | Building                            | 1,2,3          |
|                   |                |                |                                     |                |

| DATE              | ARTICLE                             | CHAPTER | DESCRIPTION                                                                                                                                     | SECTION   |
|-------------------|-------------------------------------|---------|-------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| May 5, 1997       | Article 7-3                         | XXIV    | Trees                                                                                                                                           | 1-14      |
| May 5, 1997       | Article 4-2                         | XV      | Water Restrictions                                                                                                                              | 1-10      |
| May 4, 1998       | Article 4-3                         |         | Town Meeting - DEFEATED                                                                                                                         | 3         |
| May 4, 1998       | Article 4-2                         | I       | Town Meeting                                                                                                                                    | 1,2       |
| May 4, 1998       | Article 4-4                         | IV      | Interim Board of Public Works                                                                                                                   | 3         |
| May 4, 1998       | Article 4-4                         | XI      | Police Regulations                                                                                                                              | 5         |
| May 4, 1998       | Article 4-4                         | X       | Excavation/Backfilling                                                                                                                          | 11,12     |
| May 4, 1998       | Article 4-5                         | XIV     | Disposal of Refuse                                                                                                                              | 1,2,3,4,5 |
| May 4, 1998       | Article 4-6                         | X       | Plowing Sanding Private Ways                                                                                                                    | 12        |
| November 16, 1998 | Article 15                          | IX      | Director of Public Works                                                                                                                        |           |
| November 16, 1998 | Article 20                          | XVIII   | Dogs                                                                                                                                            | 4         |
| May 4, 1999       | Article 4-2                         | II      | Local Debt -DELETED                                                                                                                             | 8         |
| May 4, 1999       | Article 8-1                         | III     | Salaries                                                                                                                                        | 11        |
| May 4, 1999       | Article 4-4                         | III     | Financial Director                                                                                                                              | 15        |
| May 4, 1999       | Article 4-3                         | IX      | Street Acceptance                                                                                                                               |           |
| May 4, 1999       | Article 4-1                         | XVIII   | Kennels                                                                                                                                         | 4         |
| November 8, 1999  | Article 4-1                         | XI      | Noise                                                                                                                                           | 13        |
| November 8, 1999  | Article 4-3                         | III     | New Position Designation                                                                                                                        | 10        |
| May 15, 2000      | Article 3-3                         | XXV     | Water Ban Change                                                                                                                                | 4         |
| May 15, 2000      | Article 5-2                         | III     | Health Agent Contract                                                                                                                           | 10        |
| May 15, 2000      | Article 5-3                         | I       | Quorum                                                                                                                                          | 3         |
| May 15, 2000      | Article 5-4                         | VI      | Finance & Advisory Appointments                                                                                                                 | 1,2,3,4   |
| October 30, 2000  | Article 3-2                         | II      | Stabilization Appropriations Process                                                                                                            | 5         |
| May 7, 2001       | Article 2-1                         | III     | Strong Fire Chief                                                                                                                               | 10        |
| May 7, 2001       | Article 4-1                         | XVII    | Conservation                                                                                                                                    | Parag, 4  |
| May 7, 2001       | Article 2-3                         | III     | Intradepartmental Line Item Transfer<br><b>Not Accepted by Attorney General</b>                                                                 |           |
| May 3, 2004       | Article 4-2                         | XII     | Amendment to Street Number                                                                                                                      | 12        |
| May 3, 2004       | Article 3-3                         | XXVI    | Outside Irrigation/Outside Water By-law - Not Accepted by the Attorney General as written <b>Amended at Selectmen Meeting on Sept. 20, 2004</b> | New       |
| January 31, 2005  | Article 9<br>(Amended Article 4-1 ) | V       | Permit Denials<br>(Amended from ATM 5-3-04 Missing Text)                                                                                        | 3B        |
| May 2, 2005       | Article 3-1                         | XXV     | Water Use Restriction -- Amended Version - Amended                                                                                              | Amended   |
| May 2, 2005       | Article 4-5                         | XXVII   | Community Preservation Committee                                                                                                                | New       |
| October 17,2005   | Article 9                           | XXV     | Penalties                                                                                                                                       | 8         |
| May 1, 2006       | Article 3-1                         | III     | Selectmen*-ECO Sup & Rec                                                                                                                        | 10        |
| May 7, 2007       | Article 4-1                         | XXVIII  | Right to Farm                                                                                                                                   | New       |

| DATE             | ARTICLE         | CHAPTER             | DESCRIPTION                                                                            | SECTION                                                      |
|------------------|-----------------|---------------------|----------------------------------------------------------------------------------------|--------------------------------------------------------------|
| May 7, 2007      | Article 4-2     | I                   | Quorum Requirement Change                                                              | Sec. 3                                                       |
| May 7, 2007      | Article 4-3     | XIII<br>XIII<br>VII | Penalties for Violation<br>Criminal & Non-Criminal Disposition<br><u>Legal Affairs</u> | Delete<br>Replace<br>Delete Sec 5                            |
| October 22, 2007 | Art2007/10 2-1  | XXIX                | Stormwater Management                                                                  | New                                                          |
| October 22, 2007 | Art2007/10 2-2  | XXX                 | Illicit Discharge Detection and Elimination                                            | New                                                          |
| October 22, 2007 | Art2007/10 2-3  | XIV                 | Disposal of Refuse and Garbage<br>PAYT                                                 | Replace Sec 5                                                |
| October 22, 2007 | Art2007/10 2-4  | XIV                 | Disposal of Refuse and Garbage<br>Prohibited Materials                                 | Replace Sec 4                                                |
| October 22, 2007 | Art2007/10 2-5  | X                   | Ways (Parking Ban)                                                                     | Replace Sec 9                                                |
| October 22, 2007 | Art2007/10 2-6  | XVIII               | Dog By-law (fees)                                                                      | Replace Sec 4                                                |
| October 22, 2007 | Art2007/10 2-7  | XXI                 | Schedule of Fees (Increase-Births-Deaths-Marriages)                                    | Amend                                                        |
| May 4-5, 2009    | Art2009/5 4-1   | I                   | Time of Town Meeting                                                                   | Sec 2                                                        |
| May 4-5, 2009    | Art2009/5 4-3   | X                   | Simplify Excavation of Public Ways                                                     | Sec 11                                                       |
| May 4-5, 2009    | Art2009/5 4-4   | XXXI                | Historic District By-law                                                               | Add                                                          |
| May 4-5, 2009    | Art2009/5 4-5   | III                 | Revoke Acceptance of MGL 48 S57G                                                       | Delete <b>S57G</b>                                           |
| May 4-5, 2009    | Art2009/5 4-6   | XXI                 | Sealer of Weights & Measurers Fees                                                     | Add                                                          |
| May 4-5, 2009    | Art2009/5 4-7   | III                 | Increase Members BOS to 5<br><b>Not Accepted by Attorney General</b>                   | Amend Sec 1                                                  |
| October 21, 2009 | Art2009/10 4-1  | XXI                 | Sealer of Weights & Measurers Fees                                                     | Increase (some fees)                                         |
| October 21, 2009 | Art2009/10 4-2  | III                 | Selectmen*                                                                             | S15(b) replace w/Town Mgr                                    |
| October 21, 2009 |                 | XXIV                | Tree                                                                                   | S13 replace w/Town Mgr                                       |
| October 21, 2009 |                 | XXX                 | Illicit Discharge Detection & Elimination                                              | S8.B17 replace w/Town Mgr                                    |
| October 21, 2009 | Art2009/10 4-5  | XXV                 | Water By-law amendment to comply with DEP                                              | Delete XXV<br>Replace XXV<br><b>Delete XXVI not replaced</b> |
| October 21, 2009 | Art 2009/10 5-3 | IV                  | Board of Public Works<br>Water MGL C40,S42G-I                                          | Add Sec. 3                                                   |
| May 8, 2010      | Art 2010/5 4-5  | XX                  | Building Permit and Related Fees<br>Stretch Energy Code                                | Add Sec. 5                                                   |
| May 8, 2010      | Art 2010/5 4-6  | VI                  | Finance and Advisory Committee                                                         | Amend Sec 4                                                  |
| October 30, 2010 | Art 2010/10 4-2 | III                 | Selectmen*                                                                             | Amend Sec 4, 10 & 15 Delete Sec 12                           |



| <b>DATE</b>      | <b>ARTICLE</b>  | <b>CHAPTER</b> | <b>DESCRIPTION</b>                          | <b>SECTION</b>                        |
|------------------|-----------------|----------------|---------------------------------------------|---------------------------------------|
| October 30, 2010 |                 | IV             | Board of Public Works                       | Amend Sec 2 & 3                       |
| October 30, 2010 |                 | V              | Collector of Taxes                          | Amend Sec 1                           |
| October 30, 2010 |                 | VII            | Legal Affairs                               | Amend Sec 1 & 3                       |
| October 30, 2010 |                 | VIII           | Town Contracts                              | Amend Sec 1                           |
| October 30, 2010 |                 | IX             | Acceptance of Streets                       | Amend                                 |
| October 30, 2010 |                 | X              | Ways                                        | Amend Sec 9                           |
| October 30, 2010 |                 | XVIII          | Animal Control By-law                       | Amend Sec 4                           |
| October 30, 2010 |                 | XIX            | Disability of Fire Fighters                 | Amend                                 |
| October 30, 2010 |                 | XXVIII         | Right to Farm                               | Amend Sec 5                           |
| October 30, 2010 |                 | XXX            | Illicit Discharge Detection and Elimination | Amend Sec 5 & 11                      |
| October 30, 2010 | Art 2010/10 4-3 | XXXII          | Hamilton Affordable Housing Trust           | New                                   |
| May 14, 2011     | Art 2011/5 4-1  | X              | Ways                                        | Delete Sec 9                          |
| May 14, 2011     | Art 2011/5 4-2  | XIV            | Disposal of Refuse and Garbage              | Replace                               |
| October 22, 2011 | Art 2011/10 4-1 | II             | Consent Motion group of articles            | Add to Sec 1                          |
| October 22, 2011 | Art 2011/10 4-2 | I              | Town Meeting                                | Replace Sec 2 b and c                 |
| October 13, 2012 | Art 2012/10 4-1 | VIII           | Town Contracts                              | Add Sec 4                             |
| April 6, 2013    | Art 2013/4 4-1  | XVIII          | Animal Control By-law                       | Delete Dog and replace Animal Control |
| November 4, 2013 | Art 2013/11 4-1 | XXXIII         | Council on Aging By-law                     | Added                                 |
| April 5, 2014    | Art 2014/4 4-1  | II             | Rules & Procedure of Town Meeting           | Amend Sec 5 & Sec 8                   |
| October 20, 2014 | Art 2014/10 4-1 | XXXIII         | Hamilton Council on Aging By-Law            | Amend                                 |
| April 11, 2015   | Art 2015/10 4-1 | XXXIV          | Personnel By-Law                            | Add                                   |
| April 11, 2015   | Art 2015/10 4-2 | XXXV           | Environmental Hazards: Reduction of Waste   | New                                   |
| April 11, 2015   | Art 2015/10 4-3 | X & XXX        | Ways                                        | New Sec 9 & Amend Ch XXX Sec 8b       |
| April 11, 2015   | Art 2015/10 4-4 | III            | Selectmen*                                  | Amend Sec 13                          |
| November 7, 2015 | Art 2015/11 4-1 | XI             | Amendment to Noise By-Law                   | Amend Sec 13                          |
| April 2, 2016    | Art 2016/4 4-1  | XXXIII         | Amend Council on Aging By-Law               | Replace                               |

| <b>DATE</b>       | <b>ARTICLE</b> | <b>CHAPTER</b>            | <b>DESCRIPTION</b>                                                                             | <b>SECTION</b>             |
|-------------------|----------------|---------------------------|------------------------------------------------------------------------------------------------|----------------------------|
| April 1, 2017     | Article 4-1    | XXXIV<br>*<br>Misnumbered | Departmental Revolving Fund                                                                    |                            |
| April 1, 2017     | Article 4-2    | VIII                      | Town Contracts                                                                                 |                            |
| November 4, 2017  | Article 4-1    | V                         | Denial or Revocation of License or Permit for Nonpayment of Local Taxes, Fees or Other Charges | Amend 3A                   |
| April 7, 2018     | Article 4-1    | XXXVII                    | Vacant /Unsafe/Dilapidated Building By-Law                                                     | Add                        |
| April 7, 2018     | Article 4-2    | XXXI                      | Demolition Delay By-Law                                                                        | Amend Sec 8                |
| April 7, 2018     | Article 4-3    | XXXVI                     | Departmental Revolving Fund                                                                    | ReNUMBER Chapter           |
| April 7, 2018     | Article 4-4    | XXIII                     | Solicitor/Canvasser By-Law                                                                     | Amend Sec 3j               |
| October 13, 2018  | Article 4-1    | XXXIV                     | Personnel By-Law                                                                               | Amend                      |
| April 6, 2019     | Article 4-1    | XXXII                     | Affordable Housing Trust                                                                       | Amend Sec 3, Sec 7         |
| November 14, 2020 | Article 3-1    | XXXIII                    | Council on Aging By-Law                                                                        | Amend Article 5 Membership |
| May 1, 2021       | Article 2-7    | XXXVI                     | Departmental Revolving Fund                                                                    | Amend Sec 5                |
| October 23, 2021  | Article 3-1    | All                       | Board of Selectmen Name Change to Select Board                                                 | Replace all references     |
| April 1, 2023     | Article 3-1    | XVII                      | General Wetlands Protection/ Conservation By-law                                               | Delete and Replace all     |
| November 6, 2023  | Article 3-1    | XXIX                      | Stormwater Management By-law                                                                   | Delete and Replace all     |
|                   |                |                           |                                                                                                |                            |

\* At the October 23, 2021 Special Town Meeting voters voted to amend the General Bylaws to replace “Selectmen” and “Board of Selectmen” with the words “Select Board.” The change was effective February 4, 2022.

STM 11-06-2023  
AG Approved

## CHAPTER I

### TOWN MEETING

#### **SECTION 1: Manner in which Town Meetings are to be called.**

- a. **WARRANTS:** Every town meeting shall be called pursuant to a warrant issued by the Select Board which shall state the time and place at which the meeting is to convene and the subjects which are to be acted upon.
- b. **NOTIFICATION:** The Select Board shall cause attested copies of the warrant for each town meeting to be posted, one at the Town Hall, one at each of the Post Offices, and one at the Police/Fire Station in Hamilton at least seven (7) days before the Annual Town Meeting in the Spring and fourteen (14) days before any special town meeting and the regularly scheduled Town Meeting in the Fall of each year;. Such posting shall be deemed to be the legal notification of such meeting, and the legal service of such warrant.

#### **SECTION 2: Time of Meetings**

- a. **GENERAL:** The town shall meet in regular meetings twice each calendar year, and in special meetings, at such times as the Select Board may direct, or as otherwise provided by law.
- b. **MEETING DATES:** “The Spring Town meeting, which shall be the Annual Town Meeting for purposes of General Laws, Chapter 39, Section 9, shall include the adoption of an annual budget and other warrant articles, and shall meet, except for the election of Town Officers, on the first Saturday of April in each year at 9:00 in the morning, unless the Select Board vote to establish another date in order to suit the public convenience for reasons the Select Board members shall determine including, but not limited to, conflicts with the observance of holidays. That date must be a Saturday. If the business of the Annual Town Meeting is not completed on the first day, it may be adjourned from time to time. A regular Fall Town Meeting shall meet at a time designated by the Select Board, usually the third Saturday in October.”
- c. **ELECTION OF TOWN OFFICERS:** The election of town officers shall be held on the first Thursday after the opening of the Annual Town Meeting. The Select Board may upon the recommendation of the Town Clerk change the date of the election to either of the next two succeeding Thursdays. The polls for the election of said town officers shall be opened at 7:00 o'clock a.m. and shall close at 8:00 o'clock p.m.

#### **SECTION 3. Quorum**

Seventy-five (75) legal voters shall constitute a quorum at the Annual Town Meeting. Seventy-five (75) legal voters shall constitute a quorum at all other Regular and Special Town Meetings.

## CHAPTER II

### RULES AND PROCEDURE OF TOWN MEETINGS

**SECTION 1.** All articles in the warrant shall be taken up in the order of their arrangement, unless otherwise decided by a two-thirds vote, except that unanimous consent shall be required for inclusion of an Article in a "Consent Motion" group of Articles that will be taken up by the meeting for voting on the group.

**SECTION 2.** In case of motions to amend, or to fill out blanks, the one expressing the largest sum of the longest time shall be put first, and an affirmative vote thereon shall be a negative vote on any smaller sum or shorter time.

**SECTION 3.** The report of a committee shall be deemed properly before a meeting if a request for its acceptance is included in an article of the warrant and a copy is published in the Annual Report or is filed with the Town Clerk fifteen days prior to the meeting. A vote to accept a final report shall discharge the committee but shall not be equivalent to a vote to carry out its recommendations. A vote on recommendations included in a committee report shall only be in order under an article to that effect in the warrant. A vote to accept a report of progress shall continue the committee under its original authority unless otherwise specified.

**SECTION 4.** If an article of the Warrant has once been acted upon and disposed of, it shall not be again considered at the meeting except by a two-thirds vote.

**SECTION 5.** No money shall be appropriated to or from the Stabilization Fund except by a 2/3 vote at a Town Meeting.

**SECTION 6.** Only registered voters of the Town shall be admitted and entitled to vote at any annual or special meeting provided that upon prior request the Moderator may admit to the meeting persons who are not registered voters and in his discretion may permit them to speak on a subject. Any person so permitted to speak at a meeting shall announce his full name and address to the meeting.

**SECTION 7.** Motions at Town Meeting shall be made orally, but the Moderator may require any motion also to be submitted in writing. Unless otherwise directed thereby the Moderator shall appoint all committees created by the vote of the Town.

**SECTION 8.** The conduct of all Town Meetings not prescribed by law or by the foregoing rules shall be determined by the rules of practice contained in the most current edition of **Town Meeting Time**, A Handbook of Parliamentary Law.

**SECTION 9.** On matters requiring a two-thirds vote, either by statute or these By-Laws, a count need not be taken and the vote need not be recorded unless the vote declared is immediately questioned by seven or more voters as provided in General Laws, Chapter 39, Section 15.

## **CHAPTER III**

### **SELECT BOARD**

**SECTION 1.** Except as otherwise provided by law and by these by-laws, the Select Board shall have and may exercise all the powers of the Town and shall have general direction and management of its property and affairs. Unless otherwise provided by law, the Select Board shall have the power to acquire and dispose of personal property for the Town.

**SECTION 2.** The Select Board shall determine that all elected boards and appointed committees are organized within a reasonable time and that notification thereof to the Town Clerk has been given. Copies of all contracts and other commitments of the funds of the Town shall be filed with the Town Accountant under Massachusetts General Laws, Chapter 41, Section 57. All town vehicles, and such other Town property as the Select Board designate, shall be marked with the words "Town of Hamilton" provided, however, that the Select Board may permit a police vehicle to be unmarked.

**SECTION 3.** The Select Board are authorized and empowered to sell at auction property taken by foreclosure, as provided in General Laws, Chapter 60, and to execute and deliver deeds therefore, after first giving notice of the time and place of such sale by placing an advertisement in a newspaper of general circulation in the Town at least fourteen (14) days before the sale. The Select Board or their appointee authorized to hold such auction may reject any and all such bids which they deem inadequate.

**SECTION 4.** Pursuant to Ch. 114 of the Acts of 2009, the Town Manager shall appoint each year an inspector of gas piping and gas appliances in buildings, whose qualifications and duties shall be those as set by and consistent with G.L. c. 143, § 30. The Select Board may by regulation establish fees therefore.

**SECTION 5.** No person shall remove any soil, loam sand or gravel from any parcel of land in the Town not in public use unless removal is authorized by a permit issued by the Select Board after a public hearing.

**SECTION 6.** The Select Board is authorized and empowered after public notice and hearing to grant, suspend or revoke a license to keep and operate mechanical and electronic games and amusement devices including automatic amusement devices as defined in General Laws, Chapter 140, Section 177A. Each application for a license shall contain the following information: i) the identity of the applicant, ii) address and description of the premises, iii) location of the game or device on the premises, iv) identity of the person from whom the game or device is to be purchased, rented or otherwise obtained, v) description of the game or device including name of manufacturer, model and serial number, vi) terms of the agreement governing the acquisition and installation of the game or device on the premises, and vii) any other information which the Select Board deems necessary and proper for the full protection of the patrons and the public. The Select Board is authorized and empowered to impose conditions on the grant of any license hereunder. Licenses shall expire on December 31 of each year. The annual fee for a license for any game or device licensed hereunder, or for any renewal thereof, shall be \$100. The license fee may be prorated on the basis of the number of months in which the license is to be in force but shall not be refundable. No commercial establishment shall have more than two amusement devices of the type regulated by this section, except that this limit shall not apply to private clubs or organizations.

**SECTION 7.** The Select Board may make Rules and Orders for the regulation of parking by permit or otherwise on Chebacco Road in the vicinity of the town beach and may set penalties for violation thereof.

**SECTION 8.** The Emergency Communications Center Operations Board with the approval of the Select Board, or if such committee shall not be appointed, the Select Board, is authorized to establish rules, regulations, and schedules of fees for the installation, operation, and maintenance of fire and intrusion alarm systems, including medical alert systems. No person shall install, operate or maintain a fire, intrusion, or medical alert alarm system which is connected by direct line to the Emergency Center, or which incorporates a telephone dialing device programmed to dial a local police, fire, emergency, or private alarm service telephone number automatically, or which uses exterior audible signals at the alarm location, or which otherwise is intended to cause, directly or indirectly, the dispatch of emergency personnel, unless such person first obtains a permit from the Emergency Communications Center Operations Board, or the Select Board, and thereafter complies with applicable rules and regulations and pays any applicable fees. No person shall intentionally transmit any false fire, intrusion or medical alert alarm. Repeated transmission of false fire, intrusion or medical alert alarms after notice of a system malfunction from the Emergency Communications Center Operations Board, or the Select Board, shall constitute an intentional transmission of a false fire, intrusion or medical alert alarm. Violation of this by-law shall be punishable by a fine of up to but not more than one hundred dollars (\$100.00) for each offense.

**SECTION 9.** Annually following Town Elections, and following any election of a new member to the Board, the Select Board shall organize the Board by electing a member to serve as Chairman and a member to serve as Clerk. The Chairman shall preside over all meetings of the Board and oversee the general direction of the Board. The Clerk shall, on a day-to-day basis, and, in the absence of the Select Board, perform those functions that are deemed necessary for the orderly operation of the Town.

**SECTION 10.** The Select Board is authorized and empowered, in accordance with Ch. 114 of the Acts of 2009 to appoint a Town Manager; and execute a contract for employment therewith. The Town Manager is authorized and empowered to appoint and remove any of the following: a Town Accountant, Treasurer/Collector, Finance Director, Emergency Center Supervisor, Recreation Director, a Director of Public Works, a Chief of Police, and a Fire Chief, and to execute employment contracts with said officials, the terms of which may with the concurrence of the Select Board vary from the Personnel By-law and policies. All appointments and removals of department heads by the Town Manager shall be subject to confirmation by the Select Board. All other appointments shall be made by the Town Manager in consultation with the respective department head, board, commission or committee.

**SECTION 11.** The Town of Hamilton shall publish no later than April 1st of each year, all gross wages, salaries, and other compensations paid to all employees by the Town of Hamilton and by the Hamilton-Wenham Regional School District. Copies of the above information shall be made public and available at the Hamilton Town Hall.

**SECTION 12. (Deleted at Special Town Meeting on October 30, 2010 -- Article 2010/10 4-2)**

**SECTION 13.** The Planning Board of the Town shall consist of seven (7) members. **The term of office for Planning Board members is three (3) years.”**

**SECTION 14.** Adult Entertainment License - No person shall establish, maintain, or operate an adult entertainment use as defined below without a license issued by the Select Board after public hearing. The Select Board may establish the form and content of the application for such a license. The Selectmen may make rules and regulations for the conduct of such use and may establish conditions upon the grant of any license hereunder. An adult entertainment use shall mean: An establishment, a building or portion thereof, or a use of land having a substantial or significant portion of its business activity, stock in trade, or other matter or materials for sale, rental, distribution, or exhibition which is distinguished or characterized by sexual conduct or sexual excitement as defined in Section 31 of Chapter 272 of the General Laws, or a depiction, description or representation thereof, or emphasis thereon. For definition of the terms “substantial or significant portion”, “adult bookstore”, “adult cabaret”, “adult motion picture theater”, “adult paraphernalia store”, and “adult video store” see the Hamilton Zoning By-Law provision which are incorporated herein by reference.

**SECTION 15.** Pursuant to G.L. Ch. 43C, Sec. 11 as accepted by the Town Meeting, the Select Board may provide for a consolidated Department of Municipal Finance, to be organized as set forth in this Section.

- a) The Department of Municipal Finance may include the Offices and Functions of Town Accountant, Treasurer, Collector, Treasurer-Collector, Information Systems Coordinator, and Assessors, with all their related staff.
- b) The Finance Director shall report to the Town Manager.
- c) The Finance Director may serve ex-officio as the Accountant, Auditor, Comptroller, Treasurer, Collector, or Treasurer-Collector of the town, provided however, that no Finance Director shall serve ex-officio as both: 1) Accountant, Auditor, or Comptroller; and 2) Treasurer, Collector or Treasurer-Collector.
- d) The term of any employment contract with the Finance Director shall be for a term of not less than three or more than five years, subject to removal as provided in the employment contract. The position may be full time or part-time.
- e) The job descriptions and compensation of each position in the Department of Municipal Finance shall be set by the Town Manager in consultation with the Finance Director pursuant to the Hamilton Personnel By-law and policies.
- f) The Town Manager shall appoint all personnel under the Finance Director’s direction and control, other than those in elected positions, in consultation with the Finance Director.

- g) The Town Manager shall oversee and coordinate all financial functions and reporting of the Town performed by the various offices within the Department, including but not limited to:
- 1) Maintenance of all accounting records and other financial statements,
  - 2) payment of all obligations, including bills, payroll and benefits,
  - 3) receipt of all funds due, including tax and Town service billings,
  - 4) monitoring the expenditure of all funds in all Town Departments and programs, including periodic reporting to appropriate agencies on status of accounts, and preparation of tax recap,
  - 5) supervision of all data processing facilities and networks,
  - 6) preparation of the annual Town budget, and regional/joint program budgets, including coordination with all Town Departments and the Finance and Advisory Committee,
  - 7) management of independent audits,
  - 8) long range economic planning and projection,
  - 9) determination of long and short-term cash needs of the Town for operating and capital obligations, and borrowing as necessary.
  - 10) determination of investment strategies to maximize safety and yield for Town funds,
  - 11) administration of tax liens and tax-title takings,
  - 12) supervision of staff within the Department of Municipal Finance,
  - 13) and any other matters relating to municipal finance as may be determined necessary from time to time by the Select Board.

## **CHAPTER IV**

### **BOARD OF PUBLIC WORKS**

**SECTION 1.** The Select Board shall have and may exercise all the powers of the Town with respect to the construction, maintenance, and operation of the public works of the Town and shall, without limiting the generality of the foregoing, have all the powers and duties now or from time to time vested by general law or special act in the following boards, departments, and offices: road commissioners, surveyors of highways, water commissioners, street commissioners, park commissioners, cemetery commissioners, and tree warden.

**SECTION 2.** Subject to confirmation by the Select Board, the Town Manager is authorized and empowered to appoint, supervise, evaluate, and remove a Director of Public Works who shall direct public works operations of the Town.

**SECTION 3. Assessments for extension of water system.**

A. The Select Board, water commissioners or other officers in charge of the town water supply, shall levy special assessments to meet in whole or part of the cost, thereafter incurred, of laying pipes in public or private ways for the conveyance or distribution of water to inhabitants of the town; and the owners of land benefitted, by abutting or more remote means, shall pay a proportionate part of the cost not already assessed of extending water supply to their land.



B. The amount chargeable against each parcel of land benefitting shall include cost of pipes, material, labor and incidental expenses which amount shall be ascertained, assessed and certified by the Select Board, water commissioners or other officers in charge of water supply.

C. The assessment may be made by fixed uniform rate based on estimated average cost of all water pipes therein and laying thereof, according to frontage of such land on any way in which a water pipe is laid, according to the area of land within a fixed depth from such a way, according to valuation for tax purposes last annual assessment or according to two or all of such measures.

D. When the Select Board, water commissioners or other officers in charge of water supply determine to lay pipes in public or private ways and assessments may be made hereunder, they shall forthwith cause to be recorded at the Southern Essex Registry of Deeds, Salem, Massachusetts, a statement of their action, specifying ways in which the pipes are to be laid and shall describe such land as does not abut upon such way which is to be assessed for such improvement, and which shall designate as the owner of each parcel upon which a lien is to be imposed the person who was liable for assessment therefor on the preceding January first, under the provisions of M.G.L. Ch. 59.

E. All assessments imposed under this section on any land abutting or included in the description shall constitute a lien on such land from the time the statement is recorded. M.G.L. Ch. 80, providing for apportionment, reassessment, etc., of betterments shall be applicable.

F. The assessment shall not be in excess of benefit to the land assessed and, if found so, shall be abated.

G. The Select Board, water commissioners or other officers in charge of water supply shall, if the order for assessment is on land not built upon, extend the time of payment of assessment, with interest, until such land is built upon or for a fixed time. The assessment so extended and interest shall be paid within three months after land is built upon or at the expiration of such fixed period.

## **CHAPTER V**

### **COLLECTION OF TAXES**

**SECTION 1.** The Collector of Taxes shall collect, under the title of Town Collector, all accounts due the Town including the collection of water accounts, excepting interest on investments or sinking of trust funds. If it shall seem advisable to the Town Collector that suit or suits should be instituted and prosecuted in the name of the Town, in connection with the collection of any of said accounts due to the Town, he shall so advise the Town Manager, who shall recommend to the Select Board whether to institute and prosecute the same.

**SECTION 2.** Payments of municipal charges and bills shall be due thirty days after mailing, and if such charges and bills remain unpaid when due, interest shall accrue thereon at the rate then charged on tax bills under the provisions of Section 57 of Chapter 59.

**SECTION 3. Denial or Revocation of License or Permit for Nonpayment of Local Taxes, Fees or Other Charges:**

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

B. The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers of any party whose name appears on said list furnished to the licensing authority from the tax collector or with respect to any activity, event or other matter which is the subject of such license or permit and which activity, event or matter is carried out or exercised or is to be carried out or exercised on or about real estate owned by any party whose name appears on said list furnished to the licensing authority from the tax collector; provided, however, that written notice is given to the party and the tax collector, as required by applicable provisions of law, and the party is given a hearing, to be held not earlier than fourteen days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party. The tax collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the licensing authority with respect to such license denial, revocation or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license denial, revocation or suspension. Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the license authority receives a certificate issued by the tax collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges, payable to the municipality at the date of issuance of said certificate.

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

D. The Select Board may waive such denial suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its Officers or stockholders, if any, or members of his immediate family, as defined in Section one of Chapter 268 A, M.G.L. in the business or activity conducted in or on said property.

E. This By-law shall apply to the following licenses and permits only:

- 1) Variances
- 2) Special Permits
- 3) Building Permits
- 4) Occupancy Permits
- 5) Site Plan Reviews
- 6) Alterations to a Non-Conforming Use
- 7) Comprehensive Permits
- 8) Zoning Permits (required by the ZBA)
- 9) Flexible Subdivision Plans
- 10) Business Certificates
- 11) Alcohol Licenses
- 12) Board of Health Permits

## **CHAPTER VI**

### **FINANCE COMMITTEE**

**SECTION 1.** There shall be a Finance and Advisory Committee consisting of five registered voters. Members shall serve without compensation for a term described below. No member during service on the Committee shall be an officer or member of any other board of the Town, or a member of any other committee requesting or considering an appropriation or expenditure of money, or the disposition of any property of the Town.

**SECTION 2.** Member terms are three fiscal years except in the first year after this By-law amendment becomes effective, two members shall be appointed for one year, two for two years and one for three years. Member terms shall expire on the last day of the fiscal year. The members will be divided into groups having staggered terms so that the terms of two members will expire at the end of each fiscal year, except when the term of only one member expires. Any member may resign by written notice to the Town Clerk, and any member shall cease to be a member if he or she shall remove from the Town.

**SECTION 3.** The Moderator shall appoint the members of the Committee. Two of the members to be appointed to three-year terms shall be nominated by the Select Board. If the Select Board's nominee should decline appointment or resign before expiration of the term, or if the Moderator should decline to appoint a member from the Select Board's nominee(s), the Select Board shall provide the Moderator with additional nominee(s) until the vacancy has been filled. The Committee shall annually choose a chairman and such other officers, as it may deem appropriate.

**SECTION 4.** The duties of the Finance and Advisory Committee shall include the following:

- (a)** To review the annual budgets of each department and officer of the Town in such detail as the Finance and Advisory Committee may determine;
  - (i) At the start of the budget process and after consultation with the Select Board (BOS), Town Manager and Finance Director, the Finance Committee, in conjunction with the Town Manager, will develop expense and capital budget guidelines based on projected revenue and a calendar of events for the budgeting process.
  - (ii) In cooperation with the Town Manager and Finance Director, review and advise in the preparation of the annual budget.
  - (iii) After conferring with the Town Manager, recommend to the Select Board the allocation of the Levy Limit increase and the forecasted increase in revenue from new growth that will be divided between the Town operating budget and the Hamilton Wenham Regional School District (HWRSD) budget.
  - (iv) Review, analyze and recommend to the Select Board and at Town Meeting, budgets developed by the Town Manager for the town, HWRSD, and joint Hamilton/Wenham programs.
  
- (b)** To review at any time and from time to time during the year at the discretion of the Finance and Advisory Committee the operation of and the books, accounts and records of any department or officer of the Town;
  - (i) Review with the Town Manager all changes to revenues, borrowing and expenditures during the fiscal year and advise the Select Board according to the Finance Committee's statutory role to provide recommendations on all Town financial matters.
  - (ii) Approve Reserve Fund Transfers and recommend to the Town Manager and the Select Board the use of the Stabilization Fund and Municipal Relief transfers in the General Fund and Enterprise Fund(s).
  - (iii) Together with the Town Manager and Finance Director, meet annually with the Town's auditors to review the annual financial statements and Management Letter.
  - (iv) Review and recommend all financial policies and procedures.
  
- (c)** To report to all Town Meetings recommended action to be taken by the meeting on all Articles in the Warrant, except with respect to elections or appointments.
  - (i) Deliver an annual report to the Town Meeting of the Town's financial condition.
  
- (d)** In cooperation with the Town Manager, the Finance and Advisory Committee will coordinate financial relationships and agreements with the Wenham Finance and Advisory Committee, the Hamilton Wenham Regional School Committee, the Capital Management Committee, the Budget Process Committee and the Hamilton Board of Assessors.

## **CHAPTER VII**

### **LEGAL AFFAIRS**

**SECTION 1.** The Select Board shall have authority to prosecute, defend and compromise all litigation to which the Town is a party. The Town Manager shall coordinate with Town Counsel on all legal matters affecting town government, compliance, claims, litigation, and administrative proceedings and oversee prosecution, defense and settlement of all claims and actions.

The Town Counsel shall draft all bonds, deeds, leases, obligations, conveyances, and other legal instruments, and do every professional act which may be required of him, by vote of the Town or by any board of Town Officers. Also, when required by said boards or any committee of the Town and confirmed by Town Manager, he shall furnish a written opinion on any question that may be submitted to him, and he shall at all times furnish legal advice to any officer of the Town who may require his opinion upon any subject concerning the duties incumbent upon such officer by virtue of his office.

He shall prosecute all suits ordered to be brought by the Town or Select Board, and shall appear at any court in the Commonwealth in defense of all actions or suits brought against the Town or its officers in their official capacity and shall try and argue any and all causes in which the Town shall be a party, before any tribunal, whether in law or equity, in the Commonwealth, or before any board of referees or commission, and shall appear at any and all hearings on behalf of the Town whenever his services may be required.

**SECTION 2.** The Select Board shall consider all claims made against the Town and may authorize the payment of any amount not exceeding five hundred dollars (\$500) in settlement of any such claims, and to effect such settlement. The Select Board may authorize the necessary payment from the Town Treasury of any funds not otherwise appropriated.

**SECTION 3.** Subject to confirmation by the Select Board, the Town Manager shall annually appoint Town Counsel and appoint special counsel to assist the Town Counsel whenever in his or her judgment necessity therefore arises. The Town Counsel shall be paid such salary as the Town votes.

**SECTION 4.** There shall be established a Board of Appeals under the subdivision Control Law, so-called, as provided in section 81Z of Chapter 41 of the General Laws, such Board of appeals to be the existing Board of Appeals under the Protective (Zoning) By Law.

## **CHAPTER VIII**

### **TOWN CONTRACTS**

**SECTION 1.** No officer or Board of the Town shall make any contract on behalf of the Town in which such officer or any member of such board is directly or indirectly financially interested, except in competitive contracts.

**SECTION 2.** No Town Officer or Board of Town Officers having the power or authority to appoint any Town officer or agent shall appoint himself or any member of such board to any salaried office or position; but this shall not prevent any Town Officer from being chairman or clerk of the board of which he may be a member.

**SECTION 3.** No contract in the amount of \$10,000 or more with a contractor employing six or more persons, shall be entered into by the Town directly or through any agency of the Town unless the contractor certifies in writing to the Town that the contractor is in compliance with Massachusetts

General Laws, Chapter 151B, and sets forth affirmative action which the contractor provides for equal employment opportunities for all qualified persons without regard to race, color, religion, sex or national origin.

**SECTION 4.** The Town, by and through the Select Board in their capacity as Water Commissioners, is authorized to enter into contracts or extend aid to any other municipality or its water district with regard to the operation, administration, repair and maintenance of its water supply system, subject to such terms and conditions as are acceptable to the Select Board. Contracts under this section may not exceed twenty (20) years, or such maximum term as permitted under G.L. c. 40, § 39H. All other requirements of G.L. c. 40, § 39H shall apply to contracts or aid extended under this section. Article 2012/10 4-1 STM 10-13-2012

**SECTION 5.** Any town permit or license granting officer or board may promulgate rules for imposition of reasonable fees for the employment of outside consultants. The fees shall be deposited in a special account consistent with the requirement of G.L. C. 44, Section 53G. The rules shall include at a minimum the requirements set forth in G.L. C. 44 section 53G. Article 2017/4 4-2 ATM 4-1-2017

## **CHAPTER IX**

### **ACCEPTANCE OF STREETS**

No new street shall be accepted by the Town unless at least fifteen days prior thereto there shall have been filed with the Town Clerk a plan of survey of such street, satisfying the requirements for boundaries and measurements and otherwise in accordance with Section 23 of Chapter 82 of the General Laws. No new street shall be accepted without the prior approval of the Planning Board and the Director of Public Works, based on street acceptance procedures to be adopted and amended from time to time by the Select Board with the advice of the Director of Public Works, the Town Manager and the Planning Board.

## **CHAPTER X**

### **WAYS**

**SECTION 1.** No person except Officers of the Town in their lawful performance of their duties and those acting under their orders, shall obstruct any sidewalk or street or any part thereof, or break or dig the ground of same, without first obtaining a written license from the Select Board therefore.

**SECTION 2.** No persons shall throw, place or cause to be thrown or placed upon any street or sidewalk of the Town any dirt, ashes, stones or other object or obstruction or any rubbish or other noxious matter, except that garbage cans or other containers may be placed upon the sidewalk so as to obstruct the same for not more than one (1) hour or for not more than ten (10) minutes after being notified by a police officer or the Select Board to move it.

**SECTION 3.** No person shall ride a bicycle or horse on the sidewalk. No person shall coast on or across any sidewalk or street except as may be designated by the Select Board.

**SECTION 4.** The Select Board shall be entitled to remove or cause to be removed to a convenient public garage any vehicle interfering with removing or plowing snow, and the cost of such removal and storage charges, if any, resulting there from shall be paid by the owner of the vehicle.

**SECTION 5.** Any person desiring to erect or repair or take down any building on land abutting any street or way which the Town is required to keep in repair, and who desires to make use of any portion of a sidewalk or street for the purpose, shall petition the Select Board for authority. As a condition to granting such petition, Select Board may require petitioner to execute a satisfactory written agreement to indemnify and save harmless expense on account of the existence of any obstruction or excavation and make such reasonable regulation with respect to guards and the like as the Select Board may determine. If any obstruction or excavation is more than a temporary condition, the person petitioning shall place a good temporary walk around the obstruction or excavation, and at the completion of the work shall restore the street or sidewalk to its former condition as determined by the Surveyor of Highways.

**SECTION 6.** No way, which is open for public use but has not become a public way, shall be given a name unless the name is first approved by the Select Board.

**SECTION 7.** On Town ways riders of horses shall ride single file and keep to either portion of the traveled way, and so far as possible, on bridle paths and dirt shoulders if the same are provided along the way.

**SECTION 8.** No person shall operate upon any of the ways or streets in the Town a motor vehicle carrying sand, gravel, soil, loam, waste or other dust-emitting material without covering said material.

**SECTION 9.** No person shall, during the period from November 15 to April 15 inclusive, discharge or cause to be discharge any groundwater, including rising ground water, uncontaminated ground water infiltration (as defined at 40 CMR § 35.005(20)), and uncontaminated pumped ground water, onto a public way or sidewalk unless first obtaining a permit from the Select Board or designee. Such permit shall require that the permittee comply with all provisions of Chapter XXX.

**SECTION 10.** The removal of leaves or snow from private property onto a public way is prohibited.

**SECTION 11. Excavation and Back-filling on Public Ways and Sidewalks**

“No person shall excavate or fill a public way or sidewalk in the Town without first obtaining a permit from the Director of Public Works. The Director of Public Works shall issue regulations setting forth the procedures deemed necessary for the safe operation of any such work.”

## **SECTION 12. Plowing and Sanding of Private Ways**

1. The Town will not plow or sand a road with less than four (4) homes built thereon.
2. A road under the control of an Association must have a favorable vote of the majority of its members to ask the Town to plow and sand its roads. An Association must contact the Town in writing with a request. The Town shall be provided with the name and phone number of the contact person answerable for the Association. A road not controlled by an Association must have a signed petition from a majority of its property owners requesting plowing and sanding services from the Town.
3. There shall be no speed bumps or other such devices in place during the winter season. The road shall not be gated, blocked, or made inaccessible.
4. Dirt roads must be graded off before the winter season and maintained throughout the winter season so as not to make plowing dangerous to the driver or destructive to the Town's equipment. All dirt roads will be inspected by the Town prior to the winter and throughout the season. Potential problems will be addressed in writing. If these issues are not corrected in a timely manner, a second letter will be sent by certified mail to all affected property owners, terminating the Town's services until such time as corrections are made. The Town shall not be responsible for loss of gravel or loam or buildup from sand.
5. Paved roads will be clear of obstructions and defects. Catch basins and storm drains will be at road level. Large potholes will be filled and curbing left intact so as to not interfere with plowing. Lawn or property markers shall be installed if the boundary between the road and the lawn is not clearly identified.
6. The roads will be maintained under the standards, time frames and method as carried out on Town-accepted roads.
7. Brush, tree branches and trees will be properly pruned so as not to interfere with the driver or equipment while plowing.
8. A road must have a surveyed plan on file with the Town Clerk, Registry of Deeds or the Planning Board, and be laid out properly according to those plans.

## **CHAPTER XI**

### **POLICE REGULATIONS**

**SECTION 1.** No person shall distribute or display any posters, handbills, placards, pamphlets or other advertising matter or operate any sound truck or other noisy device or make any solicitation for the sale of goods in any public street or way or place of the Town or in any public building without first obtaining a permit therefore from the Select Board.

**SECTION 2.** No billboard, sign or other advertising device except signs affixed to stores, signs offering land for sale or rent and signs of professional establishments, and no roadside stands except for the sale of produce made or raised by the vendor shall be erected or maintained on public or private property within view of a public way without obtaining a permit therefore from the Select Board.



**SECTION 3.** No person shall be a collector of or a dealer in junk, old metals or secondhand articles, or a keeper of a shop for the purchase, sale or barter of junk, old metals or secondhand articles unless licensed therefore by the Select Board.

**SECTION 4.** The Select Board may issue appropriate regulations in accordance with the law for the operation of taxi cabs and other vehicles for hire and for stands therefore within the Town. No person shall operate taxi cabs or other vehicles for hire or establish a stand therefore in violation of such regulations.

**SECTION 5.** No person shall loaf or loiter upon any public way or in any alley or square or on any property of the Town after having been requested by a Police Officer to move. Three or more persons shall not stand together or near each other in any such public place or in any private area left open between the curbing and a building facing thereon so as to obstruct free passage for pedestrians, and any person so standing shall move on at the request of the Police Officer.

**SECTION 6.** No person shall fire or discharge any firearm or explosive of any kind within the limits of any highway, park or other public property, except with the written permission of the Select Board, or hunt or discharge any firearm on any private property except with the written permission of owner or legal occupant thereof; provided, however, that this by-law shall not apply to the lawful defense of life or property, nor to any law enforcement officer acting in the discharge of his duties. Any person violating this by-law shall be punished by a fine of not more than twenty (\$20.00) dollars for each offense.

**SECTION 7.** Unless otherwise licensed no persons shall sell or attempt to sell or solicit the sale of goods, subscriptions or contributions from door to door in the Town, except between the hours of 8:00 A.M. and 8:00 P.M., and then only after registration of the names of all solicitors with the Chief of Police and after the issuance of a written permit therefore by or on the order of the Chief of Police upon determination of the identity and character of the business or organization with which said person is connected. \*

**SECTION 8.** No person shall commit any wanton or malicious act on the premises of another or invade the privacy of any person on such premises by looking in the window of any house, or spying upon any person. Nothing contained in this section shall abridge or in any way limit the right of a Police Officer to enter upon private property in the performance of his official duties.

**SECTION 9.** No person in charge or control of any real estate within the Town, whether as owner, tenant, occupant, lessee or otherwise, shall allow any partially dismantled, non-operating, wrecked or junked motor vehicle to remain on such property longer than 60 days without a valid windshield sticker, so-called, issued and displayed in accordance with the requirements of Massachusetts General Laws, Chapter 90, Section 7A as amended, and the rules and regulations of the Register of Motor Vehicles, unless a permit therefore has been obtained from the Select Board. The Board shall not issue such a permit unless it finds that such vehicle on said premises will not constitute a hazard to the safety or welfare of the inhabitants of the Town, nor will otherwise nullify or substantially derogate from the intent or purpose of this by-law. No such permit shall be required, however, for a vehicle in an enclosed

building, nor for a vehicle on the property of a lawful business of farming enterprise necessary to such operation, nor for motor vehicles at the place of business of a holder of a class license under Sections 58 and 59 of Chapter 140 of said General Laws. Any person who continues to violate the provisions of this by-law after 30 days following receipt by him of notice of such violation from the Police Department, shall be liable for a penalty not exceeding twenty (\$20.00) dollars for each offense. Each day that any violation is allowed to continue after said 30 day period shall constitute a separate offense.

**SECTION 10.** No person shall have any alcoholic beverage in his possession within the limits of any Town Park or recreation area or any other Town or School area except public way. Any person violating this by-law shall be punished by a fine of not more than twenty (\$20.00) dollars for each offense.

**SECTION 11.** No retail or commercial establishment, except automatic tellers and restaurants, shall be open to the public between the hours of 11:00 P.M. and 5:00 A.M.

**SECTION 12.** The operation of jet skis, surf skis, wet bikes, or other so-called 'personal watercraft' in or upon that portion of Chebacco Lake which is situated in the Town of Hamilton is prohibited. Violation of this by-law shall be punishable by a fine of not more than one hundred (\$100.00) dollars for each offense.

**ITEM 4.** Severability: If any provision of this by-law is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the by-law shall not be invalidated.

### **SECTION 13. Noise By-Law**

A. Definitions. As used by this by-law, the following terms shall have the meanings indicated:

“Noise”- a sound that is plainly audible at a distance of 150 feet from its source and which disturbs the reasonable quiet, comfort, repose, or health of others.

“Plainly Audible” - Any sound from a source regulated by this by-law that can be detected above routine or normal ambient background sound by unaided human hearing.

“Sound Amplification System” - Any fixed or portable system to operate or amplify sound, including, but not limited to, phonograph, radio, television, stereo, record player, tape player, cassette player, compact disk player, digital music player, "boom box," or loud speaker.

B. It shall be unlawful for any person or persons to cause or allow any Noise that emanates from any building, boat, structure, vehicle, premises, or any Sound Amplification System, which is plainly audible at a distance of 150 feet from its source. The fact that the Noise is plainly audible at a distance of 150

feet from the building, structure, vehicle, boat, premises or Sound Amplification System in which or from which it originates shall constitute prima facie evidence of a violation of this by-law.

C. Sounding horns excessively. It shall be unlawful to sound or use automobile, truck or other motor vehicle horns or similar signaling devices upon the public streets, parking lots, or thoroughfares of the Town in excess of those signals necessary for the preservation of safety.

D. For the purposes of this by-law, Noise shall include loading or unloading activities, use of power tools and equipment, use of lawn or landscaping equipment, loud outcries, and other loud or boisterous sounds which are not specifically exempted by subsection F and which occur outside of 7:00 a.m. and 9:00 p.m.

E. Penalties for violation. Whoever violates this by-law shall be subject to enforcement action by non-criminal disposition as provided in M.G.L. c. 40, Sec. 21D and Chapter XIII of the Town By-laws. The first violation of this by-law may be punished by a verbal warning or a fine of one hundred dollars (\$100.00). The second violation of this by-law within 12 months after the first violation shall be punished by a fine of two hundred dollars (\$200.00). Further violations within 12 months after the last violation shall be punished by a fine of three hundred dollars (\$300.00). Each such act, which either continues or is repeated more than one-half (1/2) hour after issuance of a verbal warning or fine for violation of this by-law, shall be a separate offense and shall be prosecuted as a separate offense.

This By-law shall be enforced by the Hamilton Police Department. Any person aggrieved by the imposition of a fine under this by-law may, within twenty (20) days of the imposition of the fine, request a hearing before the Town Manager, who may set aside the fine.

(1) If the person or persons responsible for violation(s) of this by-law cannot be determined, then the person in lawful custody and/or control of the premises where the violation(s) occurred, including but not limited to the owner, lessee, manager, or occupant of the property, may be held responsible for the violation(s).

F. Exemptions. The following uses and activities shall be exempt from this by-law:

(1) Any Public Safety motor vehicle using any communication or signaling device necessary in the performance of its operator's duties.

- (2) Any highway maintenance, water department, or public utilities activities and/or vehicles, while engaged in necessary emergency business.
- (3) Announcing systems at sanctioned sporting or other authorized public events between the hours of 7:00 a.m. and 9:00 p.m.
- (4) Noises of safety signals, warning devices and emergency pressure relief valves.
- (5) Noises resulting from activities of a temporary duration permitted by law and/or for which a license or permit has been granted by the Town.
- (6) Parades, music festivals, public gatherings, and events for which the Select Board have issued a permit.
- (7) Bells, chimes, carillons, or other call to prayer, or amplified, recorded, or other electronic substitution while being used for religious purposes, in conjunction with religious services, between 7:00 a.m. and 9:00 p.m.
- (8) Snow removal/road sanding from private parking lots, drives, roadways, and other vehicle- or pedestrian-traveled surfaces.
- (9) Noises for which the Select Board has granted a special permit pursuant to section G, below.
- (10) Noise resulting from activities of any agricultural operation between the hours of 7:00 a.m. and 9:00 p.m.
- (11) Noise generated by animals.
- (12) Noise resulting from the operation of boats for recreation.

G. Application for permit for relief.

- (1) Application for a permit for relief from this by-law on the basis of undue hardship may be made to the Select Board.
- (2) Any permit granted by the Select Board shall set forth all conditions pertaining to the specified noise and a reasonable time limit for its abatement.

(3) The holders of licenses to provide alcoholic beverages and/or entertainment shall comply with any noise allowances and/or restrictions imposed upon such licenses, and in the case of a conflict between individual license allowances or restrictions and this by-law, the terms of the license shall apply, and a violation of any such allowances or restrictions shall also constitute a violation of this by-law.

H. Severability clause. If any part of this by-law is deemed to be contrary to state or federal law, that part can be severed without affecting any other part of this by-law. \*See Chapter XXIII  
Solicitor/Canvasser

## **CHAPTER XII**

### **STREET NUMBERING**

**SECTION 1.** All principal buildings in the Town shall be numbered as provided in the following regulations:

**SECTION 2.** The numbering shall correspond with the numbering on the street (or one of the streets, if more than one) on which the lot with the building thereon abuts.

**SECTION 3.** The numbering shall begin at the end of the street as may be determined by the Select Board.

**SECTION 4.** On all streets the numbers shall run in consecutive order alternating from one side to the other, the odd numbers being on the right hand side of the street, the street running in the direction of increasing numbers.

**SECTION 5.** Each 40 feet of street frontage in residential type districts, each 10 feet frontage in business type districts, and each 20 feet of frontage in camp type districts shall be given a number, which shall be the number belonging to the buildings included in or embracing the frontage.

**SECTION 6.** All measurements of frontage shall be made on the center line of the street; no allowances are to be made for entering or intersecting streets, parks, cemeteries or other areas.

**SECTION 7.** Where two or more residences or establishments have their principal entrances within the same 40 foot frontage, the number shall be determined by the Select Board.

**SECTION 8.** In the case of incomplete streets, no numbers shall be assigned to the buildings until such time as the completion of the street will permit the assignment of permanent numbers conforming to these regulations.

**SECTION 9.** All principal buildings or establishments now existing or hereafter erected to which a number has been assigned shall have the number conspicuously placed in such manner that it will be visible from the street, using figures at least three inches in height. Whenever the building stands back more than seventy-five (75) feet from the street line, the number shall be conspicuously placed at or near the street upon a post, or in some appropriate manner and location so as to be easily legible from the street.

**SECTION 10.** It shall be unlawful for any person to remove, alter, or deface any number assigned and displayed as aforesaid, or to retain an improper number, or to substitute and display any number other than the one designated by virtue of these regulations.

**SECTION 11.** The Planning Board shall assign numbers in accordance with this Chapter upon approval of a subdivision plan.

**SECTION 12.** No permit, certificate, or license from the Town or any of its departments shall be issued to any building or establishment unless the same has a street number conspicuously placed in accordance with Section 9 of this by-law.

## **CHAPTER XIII**

### **CRIMINAL AND NON-CRIMINAL DISPOSITION**

#### **Section 1: Criminal Complaint**

Whoever violates any provision of these by-laws may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense brought in such manner shall be three hundred dollars (\$300.00).

#### **Section 2: Non-criminal Disposition**

Whoever violates any provision of these by-laws may alternatively be subject to enforcement action by a non-criminal disposition as provided in M.G.L. Ch. 40, Sec. 21D. The non-criminal method of disposition may also be used for violations of any rule or regulation of any municipal officer, board or department.

In addition to police officers, who shall in all cases be considered enforcing persons for the purpose of this provision, a municipal official or board identified as an enforcing person in any specific by-law shall also be enforcing person with regard to this section. Each day on which any violation exists shall be deemed to be a separate offense.

#### **Section 3: Penalties Enumerated**

In the absence of a specific schedule of penalties as provided for in a specific by-law, all violations to be enforced by the procedures of M.G.L. Ch. 40, Sec. 21D shall be subject to the following penalty:

General Schedule of Non-criminal Penalties:

First Offense – Fifty Dollars (\$50.00)

Second Offense - One Hundred and Fifty Dollars (\$150.00)

Third and Each Succeeding Offense - Three Hundred Dollars (\$300.00)

## **CHAPTER XIV**

### **DISPOSAL OF REFUSE AND GARBAGE**

The Select Board, acting as the Board of Public Works, (the Board) shall be responsible for the collection and disposal of all refuse, recycling, organic waste and garbage.

**Section 1:** Except as otherwise provided by law and these By-laws, through the issuance of regulations, the Board shall have and may exercise all the powers of the town with respect to the collection and disposal of all refuse, recycling, organic waste and garbage, including the collection from time to time of such solid waste materials as metal goods, leaves and yard waste and household hazardous wastes.

**Section 2:** The Board shall establish policies and procedures for the management of solid waste, recyclables, and other materials in a manner that conforms with all federal, state, and local regulations. Information about all waste management policies and procedures and a listing of materials prohibited from collection at street side by the town's regular refuse collection contractor may be obtained from the Town Website or the Department of Public Works. Costs for such services shall be established in accordance with Section 3.

**Section 3:** The Select Board may establish and amend charges for any services provided under this Chapter. Such charge shall be limited to the costs associated with such collection and/or disposal services.

## **CHAPTER XV**

### **SWIMMING POOL FENCING**

Every outdoor pool intended or used for swimming or bathing, having a depth at any point of more than 18 inches, shall be enclosed by a fence or wall not less than four feet in height above grade level with a self-latching and self-closing gate. All gates shall be securely closed when not in actual use. The enclosure shall be constructed with openings no larger than two inches horizontally by four inches vertically.

If a picket fence is constructed, the space between the pickets shall not exceed four inches. A side wall of an above ground swimming pool not less than four feet in height above grade level shall be deemed to comply with the height and gate requirements of this by-law provided the pool is equipped with a retractable ladder. The Building Inspector may permit substitute devices, structures or terrain so long as the degree of protection afforded is not less than the protection afforded by the wall, fence, gate and latch described herein. A building or structure may form a part of such enclosure. The Building Inspector may allow temporary fencing and gates during construction of a pool. A decision of the Building Inspector may be rescinded, amended or modified on appeal to the Select Board. Violation of this by-law shall be punishable by a fine not to exceed fifty (\$50.00) dollars for each violation. Each day in which there continues to be a violation of this by-law shall constitute a separate violation of the by-law.

## **CHAPTER XVI**

### **OPEN CONTAINER LAW**

Unless granted a permit by the Select Board, no person shall drink any alcoholic beverage as defined in Chapter 138, Section 1 of the Massachusetts General Laws, or possess any open container containing any alcoholic beverage, while in or on any public way or way to which the public has the right of access, public parking area, public beach or land, public park or playground, school grounds, or any public place or place to which members of the public have access as invitees or licensees. In the event of a violation of this by-law, the alcoholic beverage shall be seized and safely held until final adjudication of the charge at which time it shall be returned to the person entitled to its lawful possession. Whoever violates this by-law shall be subject to a fine of fifty (\$50.00) dollars.

## **CHAPTER XVII**

### **GENERAL WETLANDS PROTECTION/CONSERVATION BYLAW**

#### **SECTION 1: Purpose**

The purpose of this Bylaw is to protect the wetlands, water resources, flood prone areas and adjoining upland areas in the Town of Hamilton by controlling activities deemed by the Hamilton Conservation Commission [hereafter referred to as “the Commission”] as likely to have a significant or cumulative effect on Resource Area values, including but not limited to the following: public or private water supply, groundwater supply, flood control, erosion and sedimentation control, storm damage prevention, water quality, prevention and control of pollution, fisheries, freshwater shellfisheries, wildlife habitat, rare species habitat including rare plant and animal species, agriculture, aquaculture, and recreation values, deemed important to the Town of Hamilton (collectively, the “resource area values protected by this bylaw”).

In order to protect these Resource Area Values, the Commission shall take into account any loss,



degradation, isolation, and replacement or replication of such protected resource areas elsewhere in the Town of Hamilton and the watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities.

This Bylaw is intended to utilize the Home Rule authority of the Town of Hamilton to confer authority on the Commission to adopt its own Regulations so as to protect the resource areas in Hamilton under the Wetlands Protection Act (G.L. Ch. 131 s. 40; "the Act") to a greater degree; to protect additional resource areas beyond the Act recognized by the Town as significant; to protect all resource areas for additional values beyond those recognized in the Act; to impose in local regulations and permits additional standards and procedures stricter than those of the Act and Regulations (310 CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth and other relevant bylaws of the Town of Hamilton.

## SECTION 2: Definitions

Terms defined by Massachusetts Constitution Amendments Article XCVII (97); Massachusetts General Laws, Chapter 40 Section 8C and Chapter 131, Section 40 (hereafter referred to as the "Act"), as well as 310 CMR 10.00 Wetlands Regulations are hereby incorporated by reference and made a part hereof, except as otherwise modified by this Hamilton Conservation Bylaw, its promulgated Regulations, and any subsequent amendments. References to government bodies shall be taken as references to those government bodies or to their successors in the relevant governmental role (e.g. references to the USDA Soil Conservation Service currently apply to the US Natural Resources Conservation Service, or to the Department of Environmental Quality Engineering apply to the Department of Environmental Protection.

1. The term **"Alter"** shall include without limitation, the following actions when undertaken in areas subject to this Bylaw:
  - A. changing of pre-existing drainage characteristics, sedimentation patterns, flow patterns or flood retention characteristics;
  - B. placement of fill, excavation or re-grading;
  - C. destruction of vegetation, including cutting and removing of ground cover, shrubs or live or dead trees; without regard to whether such vegetation might be defined as invasive.
  - D. changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water, including but not limited to the application of herbicides, pesticides, deicing agents, fertilizers, or oils for insect control;
  - E. any activities, changes or work which pollute or cause displacement of any body of water or groundwater;
  - F. any activities, changes or work which cause alteration of wildlife habitat.
2. The term **"Associated Upland Resource Area"** (**"AURA"** hereafter) means that area of land extending 100 feet horizontally outward from the boundary of any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, springs, banks, reservoirs, lakes, ponds of any size, and lands under water bodies. The area known as Riverfront and defined at 310 CMR 10.58(2) shall not have an AURA. The AURA is a Resource Area under this Bylaw. The AURA serves to protect the following interests established in Section 1 of this Bylaw, including but not limited to the following: public or private water supply, groundwater supply, flood control, erosion and sedimentation control, storm damage prevention, water quality, prevention and control of pollution, fisheries, shellfisheries, wildlife habitat, rare species habitat including rare plant and animal species, agriculture, aquaculture, and recreation values.
3. The term **"burden of proof"** means the applicant shall have the burden of proving by a preponderance of credible evidence that the work proposed in the application taking place anywhere within a resource area (including AURA) shall not have an unacceptable significant and/or

cumulative effect upon the wetland values protected by this Bylaw. Failure to provide adequate evidence that the work proposed in the application shall not have an unacceptable significant and/or cumulative effect upon the wetland values protected by this Bylaw shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

4. **Freshwater Wetlands:** Certain land may not meet the definition of a bordering vegetated wetland under the Act but still provide identified, important wetland functions and values. Such areas are significant to all of the interests of this Bylaw.
  - A. The term "freshwater wetland" under this Bylaw shall mean:

An isolated or previously disturbed area that meets the criteria of the currently applicable procedures under 310 CMR 10.00 or meets at least 2 of the following 3 criteria:

    - i. the vegetative community consists of at least 50% wetland plant species (listed as OBL, FACW, FAC by US Fish and Wildlife Service)
    - ii. hydric soils as listed by the US Natural Resources Conservation Service are present
    - iii. hydrology or field indicators of hydrology according to the procedures of the 1987 Federal Method for Wetlands Delineation (US Environmental Protection Agency) are present
  - B. A "freshwater wetland" as described in this bylaw that does not meet the definition of a bordering vegetated wetland under the Act must be a minimum of 1000 sq. ft. in surface area to be protected.
5. One "**growing season**" is considered the entire period from approximately March 15 to October 15.
6. The terms "**land subject to storm flowage**" and "**land subject to inundation**" can include vernal pools.
7. The term "**permits**" shall collectively refer to Orders of Conditions and/or Determinations of Applicability.
8. The term "**person**" shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town by-laws, administrative agencies, public or quasi-public corporations or bodies, the Town of Hamilton, and any other legal entity, its legal representatives, agents or assigns. All other terms and definitions shall be understood and applies in the manner set forth in General Laws, Chapter 131, Section 40, in applicable regulations promulgated by the Department of Environmental Protection, and as further defined by the Commission by regulation or amendment."
9. The term "**pond**" shall mean any open body of fresh water, either natural occurring or man-made, with a surface area observed or recorded within the last ten (10) years of at least 5,000 square feet, and which is never without standing water due to natural causes, except during periods of extended drought. For purposes of this definition, extended drought shall mean any period of four (4) or more months during which the average rainfall for each month is 50 % or less of the (10) year average for that same month. Basins or lagoons which are part of waste water treatment plants shall not be considered ponds, nor shall swimming pools or other impervious man-made retention basins.
10. The term "**stream**" shall mean a body of flowing water, including brooks and creeks, which moves in a channel in the ground due to a hydraulic gradient, and which flows within, into, or out of an area subject to protection under the Act or Bylaw. A portion of a stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year (i.e., which is intermittent) is also considered a stream unless it is up-gradient of all freshwater wetlands.
11. **Vernal Pools:** Such areas are presumed to be significant to the 'wildlife' and 'wildlife habitat' interests of this Bylaw. This presumption of significance can exist in the absence of Certification by the MA Division of Fisheries and Wildlife and whether or not the vernal pool is located outside wetlands. The commission's jurisdiction is limited to the 100-foot AURA surrounding vernal pools. Such areas can be regulated by this Bylaw since these areas protect the public interests identified in this Bylaw.

Vernal Pools are defined as follows:

- A. They are freshwater bodies,
- B. They contain NO predatory fish populations,
- C. They are confined depressions that may dry up during the summer,
- D. They hold water for a minimum of two (2) consecutive months, usually in spring to summer but may include autumn to winter,
- E. They must contain a minimum of two hundred (200) square feet in surface area as defined by the greatest limit of flooding observed or determined by field indicators of hydrology,
- F. They must contain evidence of endangered, rare, or threatened wildlife, “species of special concern” or obligate vernal pool breeders; OR they must contain evidence sufficient to meet the criteria listed by the Massachusetts Division of Fisheries and Wildlife’s Natural Heritage and Endangered Species Program.

12. ***"Wetland Resource Areas", "Resource Areas" or "Wetlands"*** are those areas subject to protection under this Bylaw and Regulations, as stated in this Bylaw.

### **SECTION 3: Jurisdiction**

Except as permitted by the Conservation Commission, and in accordance with the definition of terms contained within this Bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, springs, banks ( of rivers, streams, brooks and creeks whether perennial or intermittent), reservoirs, lakes, ponds of any size, and lands under water bodies; lands adjoining these resource areas out to a distance of 100 feet, known as the Associated Upland Resource Area (AURA); lands adjoining perennial rivers, streams, brooks and creeks out to a distance of 200 feet as outlined by the Wetlands Protection Act known as the riverfront area; lands subject to flooding or inundation by groundwater or surface water (collectively the “resource areas protected by this bylaw”). Said resource areas shall be protected whether or not they border surface waters.

The areas subject to protection under this Bylaw differ from those protected by the Act in that additional areas are protected by this Bylaw. The additional areas subject to protection under this Bylaw include smaller ponds, vernal pools and certain freshwater wetlands that may not meet the definition of bordering vegetated wetland under the Act and including Associated Upland Resource Areas (AURA’s) as defined herein.

The jurisdiction of this bylaw shall not extend to uses and structures of agriculture that enjoy the rights and privileges of laws and regulations of the Commonwealth governing agriculture, including work performed for normal maintenance or improvement of land in agricultural or aquacultural uses as defined by the Wetlands Protection Act regulations, found at 310 CMR 10.04.

### **SECTION 4: Exemptions and Exceptions**

The applications and permits required by this Bylaw shall not be required for work performed for normal maintenance or improvement of land in agricultural and aquaculture use as defined by the Wetlands Protection Act regulations at 310 CMR 10.04.

The applications and permits required by this bylaw shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Conservation Commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.

The applications and permits required by this Bylaw shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; that advance notice, oral or written, has been given to the Commission prior to commencement of the work or within 24 hours after commencement; the Commission or its agent certifies the work as an emergency project; the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and that within 21 days of commencement a permit application shall be filed with the Commission for review. Upon failure to meet these and other requirements of the commission the Commission may, after notice and a public hearing revoke or modify an emergency project approval and order restoration and mitigation measures.

Other than as stated in this Bylaw, the exceptions provided in the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations thereunder (310 CMR 10.00) shall not apply under this Bylaw.

## **SECTION 5: Applications and Fees**

Written application shall be filed with the Conservation Commission to perform activities affecting resource areas protected by this bylaw. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

The Commission in an appropriate case may accept as the application and plans under this bylaw any application and plans filed under the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00), but the Commission is not obliged to do so.

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may in writing request a determination from the Commission. Such a Request for Determination of Applicability (RDA) or Abbreviated Notice of Resource Area Delineation (ANRAD) filed under the Act shall include information and plans as are deemed necessary by the Commission.

At the time of an application, the applicant shall pay a filing fee specified in regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act and regulations. Pursuant to G.L. Ch. 44 §53G and regulations promulgated by the Commission, the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists or other experts in order to aid in the review of proposed projects. Such funds shall be deposited with the town treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.

Only costs relating to consultant work done in connection with a project for which a consultant fee has been collected shall be paid from this account, and expenditures may be made at the sole discretion of the Commission. Any consultant hired under this provision shall be selected by, and report exclusively to, the Commission. The Commission shall provide applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. Notice shall be deemed to have been given on the date it is mailed or delivered. The applicant may withdraw the application or request within five (5) business days of the date notice is given without incurring any costs or expenses.

The entire fee must be received before the initiation of consulting services. Failure by the applicant to pay the requested consultant fee within ten (10) business days of the request for payment shall be cause for the Commission to declare the application administratively incomplete and deny the permit without prejudice. The Commission shall inform the applicant and Department of Environmental Protection (DEP) of such a decision in writing.

The applicant may appeal the selection of an outside consultant to the Selectboard, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue, or a related field. The applicant shall make such an appeal in writing, and must be received within ten (10) business days of the date that request for consultant fees was made by the Commission. Such appeal shall extend the applicable time limits for action upon the application.

## **SECTION 6: Notice and Hearings**

### **A. Written notice to abutters**

Any person filing a permit or other application or RDA or ANRAD or other request with the Commission shall, at the same time, give written notice thereof (by certified mail with return receipt requested or by personal delivery in hand) to all abutters according to the most recent tax records of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water. The applicant shall obtain a certified list of names and addresses of all persons required to be notified from the Hamilton Board of Assessor's Office. The notice shall state a brief description of the project or other proposal and the date of any Commission hearing date. In addition, copies of such notice shall be sent at the time of filing, by certified mail, to the Hamilton Select Board, the Planning Board, and the Hamilton Board of Health.

The notice to abutters shall include a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When a person filing an application is other than the owner, the application, the notice of the hearing, and the determination itself shall be sent to the owner by the person making the request.

### **B. Public hearings**

The Commission shall conduct a public hearing for any person filing a permit or other application or RDA or ANRAD with the Commission, with written notice given at the expense of the applicant, at least five business days prior to the hearing, in a newspaper of general circulation in the Town. The Commission shall commence the public hearing within 21 days from the receipt of a completed permit application, RDA or ANRAD unless an extension is authorized in writing by the applicant.

The Commission may combine its hearing under this Bylaw with the hearing conducted under the Wetlands Protection Act (M.G.L., Ch. 131, Sec. 40) and regulations (310 CMR 10.00).

The Commission shall have the authority to continue the hearing to a date and time certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant deemed necessary by the Commission in its discretion, or comments and recommendations of Town boards and officials. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

The Commission shall issue its permit, other order or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.

## **SECTION 7: Permits and Conditions**

### **A. Project Evaluation**

If the Conservation Commission, after a public hearing, determines that the activities which are subject to the permit application, or the land and water uses which will result therefrom, are likely to have a significant individual or cumulative effect on the resource area values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. The Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any such effect.

In the proceedings pursuant to any notice of intent filed with the Conservation Commission, the Commission may require the Applicant to demonstrate that the land development purpose of the project proposed cannot be reasonably met by a project design which can be expected to cause less disruption of wetlands resource area and /or AURA function than the design initially proposed by the Applicant.

### **B. Resource Area Alteration and Replication**

To prevent resource area loss, the Commission shall require applicants to avoid alteration wherever feasible; to minimize alteration; and, where alteration is unavoidable and has been minimized, to provide full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, because of the high likelihood of failure of replication.

The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, based upon the Commission's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife "corridors" in the area, or actual or possible presence of rare plant or animal species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60).

### **C. AURA**

In reviewing activities within the AURA, the Commission shall presume the AURA is important in its own right, and is important to the protection of other resource areas because activities undertaken in close proximity have a high likelihood of adverse impact, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. Beyond those provided by this Bylaw, the Commission may establish, in its regulations, design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, and other work limits for protection of such lands, including without limitation strips of continuous, undisturbed vegetative cover, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by this Bylaw.

### **D. No Disturbance and No-Build Zones**

When proposing alterations of land within 100 feet of a wetland, the applicant must overcome a strong presumption of adverse impact on the adjacent wetlands and their functions and values. Within the AURA, the commission will require a no-disturbance zone extending from the edge of all wetland resource areas and a no-build zone extending from the no disturbance zone to a certain distance from the wetlands resource

area as determined below. Building construction of any kind is prohibited in the no-building zone. The Commission will also require a 100 Foot No Disturb Zone constituting the entire AURA adjacent to any vernal pool. Building construction means any construction that requires a permit from the building department under the regulations and bylaws of the Town in effect at the time of the filing of the project. This includes, but is not limited to, home construction, porches, decks, additions, and sheds. Driveways and fences may be allowed after a consideration of the interests sought to be protected by this Bylaw.

No construction activity or removal of vegetative cover is allowed in the no-disturbance zone, and, with the exception of contained organic composting areas, there shall be no dumping of leaves, grass clippings, trash or any kind of refuse, within the resource area or the no disturbance zone.

1. The no disturbance zone shall be bounded by the edge of the wetlands resource area and a line 25 feet away from the wetlands resource area; and the no build zone shall extend from the no disturbance zone to a line 50 feet from the edge of the wetlands resource area for Residential lots actually occupied on December 31, 2007; Residential lots for which a building permit for a residential structure has been issued not later than December 31, 2007;
2. In all other cases, the no disturbance zone shall be bounded by the edge of the wetlands resource area and a line 50 feet away from the wetlands resource area; and the no build zone shall extend from the no disturbance zone to a line 75 feet from the edge of the wetlands resource area.

The imposition of these additional zones is established since alteration of land immediately adjacent to a wetland invariably results in the alteration of the wetland itself. Such wetland alterations have been observed during construction such as siltation, over grading, or depositing construction debris. Such alterations have been observed after construction from improper land use such as unregulated filling, cutting of vegetation, extension of lawns, and the depositing of yard waste. Such alterations have been observed resulting in increased runoff, siltation and temperature or nutrient loading resulting from the change in land use immediately adjacent to the wetlands. These subsequent alterations cannot be regulated without the imposition of the restricted zones detailed above. Since the commission cannot allow unregulated alterations of wetlands, these restricted zones will likely be imposed on all projects.

#### **E. Riverfront Area**

In reviewing activities within the riverfront area, the Commission shall presume the riverfront area is important to all the resource area values unless demonstrated otherwise, and no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this bylaw, has proved by a preponderance of the evidence that (1) there is no practicable alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.

#### **F. Vernal Pools**

The Commission shall presume that all areas meeting the definition of “vernal pools” under §II of this bylaw, including the adjacent area, perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression does not provide essential habitat functions. Any formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Wetlands Protection Act regulations.

## **G. Issuance of Conditions**

If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect said resource area values, and all activities shall be done in accordance with those conditions. Where no conditions are adequate to protect said Resource Area values, the Commission is empowered to deny a permit for failure to meet the requirements of this Bylaw. It may also deny a permit for:

- failure to submit necessary information and plans requested by the Commission;
- failure to abide by requirements associated with the AURA;
- failure to comply with the procedures, design specifications, performance standards, and other requirements in the Regulations of the Commission;
- or for failure to avoid, minimize or mitigate significant or cumulative effects upon the Resource Area values protected by this Bylaw

Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing. The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, provided that: the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that such waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

The Commission, at its discretion in an appropriate case such as when the decision made under this Bylaw will be exactly the same as the decision made under the Wetlands Protection Act, may combine the decision issued under this Bylaw with the permit, DOA, ORAD, or Certificate of Compliance (COC) or other action issued under the Wetlands Protections Act and regulations thereunder. For decisions issued in this manner, the permit(s) issued under the Wetlands Protection Act shall be considered to represent this Bylaw as well, and it will be noted as such on the permit, DOA, ORAD, or Certificate of Compliance (COC) or other action.

## **H. Term/Duration of Permit Validity**

A permit, Determination of Applicability (DOA), or Order of Resource Area Delineation (ORAD) shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit, determination or order expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one-year period, provided that a request for renewal is received in writing by the Commission prior to expiration. Notwithstanding the above, a permit may identify requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and which shall apply to all present and future owners of the land.

No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the Registry of Deeds or, if the land affected is registered land, in the Registry section of the Land Court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the permit has been recorded. If the applicant fails to perform such recording, the Commission may record the documents itself and require the Applicant to furnish the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of a COC.

## **I. Amendments to Permits**

For good cause the Commission may revoke or modify any permit, DOA or ORAD or any other order,



determination or other decision issued under this Bylaw after notice to the holder and owner of the property, after a public hearing.

Amendments to permits, DOAs, or ORADs shall be processed and handled in the manner set out in the Wetlands Protection Act regulations and policies thereunder.

## **SECTION 8: Regulations**

After public notice and public hearing, the Commission may promulgate regulations to effectuate the purposes of this Bylaw, effective when voted and filed with the Town Clerk. The Commission may establish, in its regulations, additional definition of terms, design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, and other work limits for protection of such lands, including without limitation strips of continuous, undisturbed vegetative cover, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by this Bylaw. The Commission may also establish, in its regulations, building materials, utilities, or other materials needed to successfully complete a proposed project which the commission will not otherwise approve in accordance with Section 1. The Commission may also establish, in its regulations, those projects which the Commission feels are best handled through an administrative approval process overseen by the Conservation Administrator. Failure by the Commission to promulgate such regulations or legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw. At a minimum these regulations may reiterate the terms defined in this Bylaw, define additional terms not inconsistent with this Bylaw, and establish filing and consultant fees, as well as specifying the forms it will accept and issue under this Bylaw.

All waiver requests must be in writing and no waiver request will be considered unless it is part of a complete Notice of Intent application. The waiver request will be denied unless the applicant shows that there is no alternative proposal which meets the requirements of these regulations, and the applicant must show that the granting of the waiver is consistent with the intent and purpose of this Bylaw and its Regulations. In addition, the applicant must demonstrate that a waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation. Applicants shall present documented evidence that site specific conditions of slope, vegetation, soil type, and water sources taken together with the applicant's proposed plan are fully and entirely consistent with maintaining resource area quality and function. The Commission shall act on the request and shall provide to the applicant, either by certified mail or hand delivery, its written decision. A Waiver Request Form shall be promulgated as part of the Regulations to be developed under this Bylaw.

## **SECTION 9: Burden of Proof**

The applicant shall have the burden of proving by a preponderance of credible evidence that the activity proposed in the Request for Determination of Applicability or the Notice of Intent will not have a significant or cumulatively detrimental effect upon the interests and values protected by this Bylaw. Failure to provide to the Commission adequate evidence for it to determine that the proposed activity will not cause such impacts shall be sufficient cause for the Commission to deny permission or to grant permission with such conditions as it deems reasonable, necessary, or desirable to carry out the purposes of this Bylaw; or to postpone or continue the hearing or public meeting to another date certain to enable the applicant and others to present additional evidence, upon such terms and conditions as deemed by the Commission to be reasonable.

Due consideration shall be given to possible effects of the proposal on all interests and values protected under this Bylaw.

## **SECTION 10: Security**

As part of a permit issued under this Bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Commission shall require that the performance and observance of the conditions imposed hereunder (including conditions requiring mitigation work) be secured wholly or in part by one or more of the methods described below:

- A. By a proper bond, deposit money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility, sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a COC for work performed pursuant to the permit. Such bond or money or negotiable securities must be approved as to form and manner of execution by the Town Counsel or counsel to the Commission;
- B. By a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town whereby the permit conditions shall be performed and observed before any work authorized by the Commission commences and before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

## **SECTION 11: Enforcement**

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this Bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this Bylaw.

The Commission, its agents, officers, and employees, shall have authority to enter upon privately owned land for the purpose of performing their duties under this Bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.

The Commission shall have authority to enforce this Bylaw, its regulations, and permits issued thereunder, by letters, phone calls, electronic communication and other informal methods, violation notices, non-criminal citations under G.L. Ch. 40 §21D, and file civil and criminal court actions. Any person who violates any provision of this Bylaw may be ordered to restore the subject property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

Upon request of the Commission, the Select Board and the Town Counsel (counsel to the Commission) may take legal action for enforcement under civil law. Upon request of the Commission, the chief of police may take legal action for enforcement under criminal law.

Municipal boards and officers, including any police officer or other officer having police powers, may have authority to assist the Commission in enforcement.

Any person who violates any provision of this Bylaw, regulations thereunder, or permits or administrative orders issued thereunder, shall be punished by a fine of not more than three hundred dollars (\$300.00). Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of this Bylaw, regulations, permits or administrative orders violated shall constitute a separate offense.

**SECTION 12: Appeals**

A decision of the Commission under this Bylaw shall be reviewable in the Superior Court in accordance with G.L. Ch. 249, Section 4.

**SECTION 13: Relation to the Wetlands Protection Act**

This Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, General Laws, Chapter 131, Section 40, and regulations (310 CMR 10.00) thereunder. It is the intention of this Bylaw that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the Wetlands Protection Act and regulations thereunder.

**SECTION 14: Severability**

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

**CHAPTER XVIII**

**ANIMAL CONTROL BY-LAW**

**SECTION 1.**

1.1 No person owning, harboring, or otherwise having custody or control of a dog, shall permit such dog to be at large in the Town of Hamilton at any time, except that it be on the premises of another person with their consent. Any owner, harborer, or person having custody or control of a dog which is not on either premises of the owner or the premises of another person with their consent shall control and restrain such dog by a leash of appropriate length.

1.2 The final disposition of each complaint within a calendar year shall be in accordance with the schedule set forth in General Laws, Chapter 140, Section 173A.

THE ABOVE FINES ARE IN ADDITION TO ALL REMEDIES AVAILABLE TO THE HEARING AUTHORITY UPON A FINDING THAT AN ANIMAL IS A NUISANCE DOG OR DANGEROUS DOG.

A PUBLIC HEARING SHALL BE HELD BY THE HEARING AUTHORITY ON EACH COMPLAINT RECEIVED IN WRITING OR EACH APPEAL OF A FINE.

1.3 The Hearing Authority under this Chapter is the Town Manager or his designee.

1.4 The owner or keeper of any dog picked up in the Town of Hamilton shall be charged a pick-up fee of \$15.00 in addition to applicable boarding or treatment fees.

**SECTION 2.**

If the Animal Control Officer determines that a female animal in heat (even when confined to the property of the owner or keeper) is attracting other animals to the area, which condition causes disturbance or damage to neighboring property or public areas, he may require the owner or keeper to place and keep said animal while in heat in a kennel or to remove it from the area so that the nuisance is abated.

**SECTION 3.**

The registering, numbering, describing and licensing of dogs, if kept in the Town of Hamilton, shall be conducted in the office of the Town Clerk of said Town.

**SECTION 4.**

The dog license period shall commence on April 1 and terminate March 31 of the following year. The annual fees to be charged by the Town of Hamilton for the issuance of licenses for dogs shall be:

|                                                                                         |                        |
|-----------------------------------------------------------------------------------------|------------------------|
| <b>Males and Females</b>                                                                | <b>Twenty Dollars</b>  |
| <b>Neutered Males and Spayed Females</b>                                                | <b>Fifteen Dollars</b> |
|                                                                                         |                        |
| <b>A dog owned by a person aged 70 or more as of January 1 of the Year of Licensure</b> | <b>No Fee</b>          |
| <b>Service Dogs</b>                                                                     | <b>No Fee</b>          |
|                                                                                         |                        |
| <b>Replacement Tags</b>                                                                 | <b>Ten Dollars</b>     |
|                                                                                         |                        |
| <b>Transfer License</b>                                                                 | <b>Five Dollars</b>    |
|                                                                                         |                        |

For Previously licensed dogs, the Town will charge a late fee, in addition to the license fee, as follows:

On or after June 1, a late fee of \$25

On or after August 1, a late fee of \$50

For kennels, if not more than four dogs are kept in said kennel, Fifty Dollars; if more than four but not more than ten dogs are kept in said kennel, One Hundred Dollars; and if more than ten dogs are kept in said kennel, One Hundred Fifty Dollars, said kennels to require Special Permit as per the Hamilton Zoning By-Laws, Section V.A. 11d. There is no charge for a kennel license to a domestic charitable

corporation that operates exclusively to protect animals from cruelty, neglect, abuse, or for relief from suffering.

The owner, or keeper, of a dog registered in Hamilton shall cause it to wear around its neck or body, a collar or harness to which shall be securely attached a tag in a form as prescribed by the Town Clerk and available at the Town Clerk's Office.

**SECTION 5.**

All money received from the issuance of dog licenses by the Town of Hamilton, or recovered as fines or penalties by said Town under the provisions of Chapter 140 or this Chapter relating to animals, shall be paid into the treasury of said Town.

**SECTION 6. DUTIES AND POWERS OF ANIMAL CONTROL OFFICER**

The Animal Control Officer shall attend to all complaints, and other matters pertaining to dogs, and shall take whatever legal action is authorized by law or included in any annual warrant issued by the Select Board.

**SECTION 7. ABANDONED AND ABUSED DOGS**

The Animal Control Officer shall confine any animal found to be without adequate care, or found in unsanitary or unsafe conditions, or that has been abused, abandoned, or neglected. After 7 days, the Animal Control Officer may make the animal available for adoption for a sum of \$25. If the Animal Control Officer has custody of a detained dog or cat pursuant to this section, the Officer will be entitled to the sum of \$5.00 per day for the care of the animal, payable by the owner or keeper, if known, otherwise by the Town.

**SECTION 8. NON-WAIVER OF STATUTORY REMEDIES**

The provision of this Chapter are intended to be in addition to those contained in G.L. Ch. 140, §§ 136A-174D, as amended. Nothing contained in this Chapter shall deprive the Town from employing the remedies provided in those sections, including but not limited to disposition of a dog found to be a dangerous dog or nuisance dog, as defined therein. To the maximum extent possible, the provisions of this Chapter shall be deemed to be consistent with or supplemental to those contained in G.L. c. 140, §§ 136A-174D, with local option as provided by the statute.

## **CHAPTER XIX**

### **DISABILITY OF FIRE FIGHTERS**

Whenever a call fire fighter is disabled because of injury or incapacity arising out of and in the course of his employment as a call fire fighter and is thereby unable to perform the usual duties of his regular occupation at the time such injury or incapacity was incurred, he shall receive from the town for the period of such injury or incapacity compensation at the rate payable to a permanent member of the police force for the first year of service therein, provided that no such compensation shall be payable for any period after such fire fighter has been retired or pensioned in accordance with law or for any period after a physician designated by the Town Manager determines that such incapacity no longer exists, and provided further that no such compensation shall be payable if, and to the extent that, any insurance which is in effect provides coverage for such compensation and unless and until all rights under such insurance in favor of the insured shall have been exercised, determined and satisfied.

## **CHAPTER XX**

### **BUILDING PERMIT AND RELATED FEES**

**SECTION 1.** The Massachusetts Building code, as from time to time amended, is adopted as a By-law of the Town.

**SECTION 2.** The BOCA National Building Code and the CABO One & Two Family Dwelling Code, as from time to time amended, are adopted as By-Laws of the Town as provisions subsidiary to the Massachusetts Building Code. To the extent there is conflict between these subsidiary codes and the Massachusetts Building Code, the later shall have application.

**SECTION 3.** The Inspector of Buildings may require that a certified plot plan be submitted to the Inspector of Buildings upon completion of the foundation of any structure in the Town. The plan shall be 1”-20’ scale or in the case of a subdivision, shall mirror the site plan scale previously approved. The plan shall show lot dimensions, foundation location, front, rear and side yard dimensions. Each plan shall have the following certification endorsed thereon: “I hereby certify that the location of the foundation is shown as constructed and complies with the Zoning By-laws and applicable building codes of the Town.” The plan shall be certified by and bear the seal of a land surveyor registered in the Commonwealth.

**SECTION 4.** Local building Permit fees shall be as set by the Hamilton Building Inspector with the approval of the Select Board. A schedule of current fees shall be available in the Building Inspector’s Office.

#### **SECTION 5. Stretch Energy Code**

The Stretch Energy Code, Appendix 120.AA of the Massachusetts Building Code, 780 CMR, including amendments or modifications thereto, is adopted as a By-law of the Town.’ a copy of which is on file with the Town Clerk

## CHAPTER XXI

### SCHEDULE OF FEES

| <u>DESCRIPTION</u>                                                                                                                                                                                                               | <u>FEE</u> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| For filing & indexing assignment for the benefit of creditors.                                                                                                                                                                   | \$10.00    |
| For entering amendment of a record of the birth of a child born out of wedlock subsequently legitimized.                                                                                                                         | \$10.00    |
| For correcting errors in a record of birth.                                                                                                                                                                                      | \$10.00    |
| For furnishing certificate of a birth.                                                                                                                                                                                           | \$10.00    |
| For furnishing an abstract copy of a record of birth                                                                                                                                                                             | \$ 4.00    |
| For entering delayed record of birth.                                                                                                                                                                                            | \$10.00    |
| For filing certificate of a person conducting business under any title other than his real name.                                                                                                                                 | \$25.00    |
| For filing by a person conducting business under any title other than his real name of a statement of change of his residence. Or of his discontinuance, retirement or withdrawal from, or change of location of, such business. | \$10.00    |
| For furnishing certified copy of certificate of person conducting business under any title other than his real name or a statement by such person of his discontinuance, retirement or withdrawal from such business.            | \$ 5.00    |
| For recording the name and address, the date and number of the certificate issued to a person registered for the practice of podiatry in the Commonwealth.                                                                       | \$20.00    |
| For correcting errors in a record of death.                                                                                                                                                                                      | \$10.00    |
| For furnishing a certificate of death.                                                                                                                                                                                           | \$ 10.00   |
| For entering notice of intention of marriage and issuing certificates thereof.                                                                                                                                                   | \$25.00    |
| For entering certificate of marriage filed by persons married out of the Commonwealth.                                                                                                                                           | \$ 5.00    |
| For issuing certificate of marriage.                                                                                                                                                                                             | \$10.00    |
| For correcting errors in a record of marriage.                                                                                                                                                                                   | \$10.00    |
| For recording power of attorney.                                                                                                                                                                                                 | \$10.00    |

|                                                                                                                                                                                                                             |                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| For recording certificate of registration granted to a person to be engaged in the practice of optometry, or issuing a certified copy thereof.                                                                              | \$20.00                                 |
| For recording the name of the owner of a certificate of registration as a physician or an osteopath in the Commonwealth.                                                                                                    | \$10.00                                 |
| For recording order granting locations of poles, piers, abutments or conduits, alterations or transfers thereof, and increase in number or wires and cable or attachments under the provisions of Section 2 of Chapter 166. | Flat \$40.00 rate<br>add'l \$10.00 sts  |
| For examining records or papers relating to birth, marriage or deaths upon the application of any person, the actual expense thereof, but not less than.                                                                    | \$ 5.00                                 |
| For copying any manuscript or record pertaining to a birth, marriage or death.                                                                                                                                              | \$ 5.00                                 |
| For receiving and filing a complete inventory of all items to be included in a "closing out sale", etc.,                                                                                                                    | \$10.00 1st page<br>\$ 2.00 add'l pages |
| For filing a copy of written instrument or declaration of trust by trustees of an association or trust, or any amendment thereof as provided by Section 2, Chapter 182.                                                     | \$20.00                                 |
| For recording deed of lot or plot in a public place of cemetery.                                                                                                                                                            | \$10.00                                 |
| Recording any other documents.                                                                                                                                                                                              | \$10.00 1st page<br>\$ 2.00 add'l pages |
| Voter's Certificate.                                                                                                                                                                                                        | \$ 5.00                                 |

**FY 10 Sealer Of Weights and Measures Fees**

Fees and Adjusting Charges authorized by Section 56, G.L., Chapter 98 as amended

|  | Type of Device | Unit | Number of Devices | Fee Charged per Device |
|--|----------------|------|-------------------|------------------------|
|--|----------------|------|-------------------|------------------------|

|                   |                       |     |  |      |
|-------------------|-----------------------|-----|--|------|
| Balances & Scales | Scales, 0 - 10        | lbs |  |      |
|                   | RX Balance            | lbs |  | \$25 |
|                   | Scales, 11-100        | lbs |  | \$35 |
|                   | Scales, 100 – 1000    | lbs |  | \$45 |
|                   | Scales, 1,000 - 5,000 | lbs |  | \$50 |



|  |                        |     |  |       |
|--|------------------------|-----|--|-------|
|  | Scales, 5,000 - 10,000 | lbs |  | \$100 |
|  | Scales, Over 10,000    | lbs |  | \$145 |

|         |             |      |  |      |
|---------|-------------|------|--|------|
| Weights | Avoirdupois | each |  | \$25 |
|         | Metric      | each |  | \$25 |
|         | Apothecary  | each |  | \$25 |
|         | Troy        | each |  | \$25 |

|                         |                                                                 |  |  |       |
|-------------------------|-----------------------------------------------------------------|--|--|-------|
| Liquid Measuring Meters | Inlet 1/2" or less<br>Oil, grease                               |  |  |       |
|                         | Inlet 1/2" to 1"<br>Gasoline                                    |  |  | \$35  |
|                         | Inlet more than 1"<br>Vehicle Tank Pump<br>Vehicle Tank Gravity |  |  | \$65  |
|                         | Bulk Storage                                                    |  |  | \$145 |
|                         | Company Supplies<br>Provider                                    |  |  |       |

|       |                   |  |  |  |
|-------|-------------------|--|--|--|
| Pumps | Each Stop on Pump |  |  |  |
|-------|-------------------|--|--|--|

|               |                           |  |  |       |
|---------------|---------------------------|--|--|-------|
| Other Devices | Scanners                  |  |  | \$250 |
|               | Taxi Meters               |  |  |       |
|               | Odometer -<br>Hubodometer |  |  |       |
|               | Fabric Measuring          |  |  |       |
|               | Wire - Rope - Cordage     |  |  |       |

|                |             |  |  |  |
|----------------|-------------|--|--|--|
| Linear Measure | Yard Sticks |  |  |  |
|                | Tapes       |  |  |  |

|       |                                                                               |  |  |                               |
|-------|-------------------------------------------------------------------------------|--|--|-------------------------------|
| Misc. | Propane meters                                                                |  |  | \$50                          |
|       | Milk tanks                                                                    |  |  |                               |
|       | Coin operated<br>amusement<br>devices                                         |  |  | \$10                          |
|       | Reverse vending<br>machines<br>used for recycling soft<br>drink<br>containers |  |  | \$10                          |
|       | Price scanning systems                                                        |  |  | 3 or <3 \$150<br>4 or > \$250 |

\* List is not all inclusive

## **CHAPTER XXII**

### **FIRE APPARATUS ACCESS**

**SECTION 1.** It shall be unlawful to obstruct or block a private way with a vehicle or other means as to prevent access by fire apparatus or equipment to any building.

**SECTION 2.** It shall be unlawful to obstruct or park any vehicle in any fire lane to be designated by the Chief of the Hamilton Fire Department and posted and marked as such. Said fire lanes shall be a distance of twelve (12) feet from the curbing at a sidewalk for a mall, shopping center, nursing home or school. Where no sidewalks with curbing exist, the distance shall be eighteen (18) feet from the building.

**SECTION 3.** The building owner of record shall provide, install and maintain signs and/or markings as provided in Section Two of this by-law.

**SECTION 4.** This by-law shall be enforced by the Police Department of the Town of Hamilton in accordance with the provisions of M.G.L. Chapter. 90 Sec. 20A1/2, except where uniformed security Officers are employed by the owner of said building or buildings, in which case said security Officers may be charged with enforcement of this by-law.

**SECTION 5.** This by-law shall pertain to all buildings in the Town of Hamilton except for buildings used for residential use, but limited to four units or less.

## **CHAPTER XXIII**

### **SOLICITOR/CANVASSER**

#### **SECTION 1. License Required**

It shall be unlawful for any solicitor or canvasser as defined in this by-law to engage in such business within the Town of Hamilton without first obtaining a license therefore in compliance with the provisions of this by-law. The provisions of this by-law shall not apply to any person exempted under Chapter 101 of the General Laws, or to any person exempted by any other General Law, nor shall this by-law be construed to prevent route salesmen or other persons having established customers to whom they make periodic deliveries from calling upon such customers or from making calls upon prospective customers to solicit an order for future periodic route deliveries.

#### **SECTION 2. Definition**

A solicitor or canvasser is defined as any person who, for himself, or for any other person, firm or corporation travels by foot, automobile or any other type of conveyance from place to place, from house to house, or from street to street, taking or attempting to lease or take orders for retail sale of goods, ware merchandise, or services, including without limiting, the selling, distributing, exposing for sale or soliciting orders for magazines, books, periodicals or other articles of a commercial nature, the

contracting of all house improvements, or for services to be performed in the future whether or not such individual has, carries or exposes for retail sale a sample of the subject of such sale or whether he is collecting advance payment on such retail sale.

**SECTION 3. Application**

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

- a. Name of applicant.
- b. Address of applicant (local and permanent home address).
- c. Applicant's height, weight, eye and hair color.
- d. Applicant's social security number.
- e. The length of time for the right to do business is desired.
- f. A brief description of the nature of the business and the goods to be sold.
- g. The name and home office address of the applicant's employer. If self-employed it shall so state.
- h. A photograph of the applicant which picture shall be submitted by the applicant and be 2" X 2" showing the head and shoulders of the applicant in a clear and distinguishing manner.
- i. If operating a motor vehicle: the year, make, model, motor number, registration number, state of registration, vehicle's owner and address.
- j. At the time of filing the application, each applicant shall pay a fee. The fee shall be set annually by the Town Manager.

**SECTION 4. Investigation and Issuance**

- 1. Upon receipt of the application, The Chief of Police shall investigate the applicant's reputation as to morals and integrity.
- 2. After an investigation of the applicant's morals and integrity, but within 7 business days of the filing of the applicant, the Chief of Police shall endorse on such application his approval or disapproval. Failure of the Police Chief to act on said permit within 7 business days of the applicant's filing shall constitute approval. If disapproved, the applicant shall have the right of appeal to the Select Board in writing within 7 days of the denial by the Chief of Police. The Select Board must act upon the appeal at one of their next two regularly scheduled meetings. Failure to so act shall be deemed approval.

3. Such license when issued shall contain the signature of the Chief of Police or the Select Board and shall show the name, address, and photograph of said licensee, the date of issuance and the length of time the same shall be operative, as well as the license number. The Police Department shall keep a record of all licenses issued for a period of six (6) years. Solicitors and canvassers when engaged in the business of soliciting or canvassing are required to display an identifying badge issued by the Police Department, by wearing said badge on an outer garment. Each licensee is required to possess an individual license.

**SECTION 5. Duty Police to Enforce/Transfer**

The police Officers of the Town of Hamilton shall enforce this by-law. No license shall be transferred.

**SECTION 6. Revocation of License**

The Chief of Police is hereby vested with jurisdiction over the revoking of licenses. Any person aggrieved by such revocation may appeal to the Select Board within 7 business days, and a hearing will be scheduled for one of the next two regularly scheduled meetings of the Select Board.

**SECTION 7. Expiration of License**

Each license issued under the provisions of this by-law shall continue in force from the date of its issue until the thirty-first day of December following, unless sooner revoked.

**SECTION 8. Renewal of License**

A license issued under the provisions of this by-law may be renewed by the Chief of Police. An applicant requesting a renewal of a license must apply in person for such license renewal, and provide such information as is required to obtain an initial license.

**SECTION 9. Misrepresentation**

1. No solicitor or canvasser, licensed or exempted from license, may misrepresent, in any manner, the buyer's right to cancel as stipulated by Chapters 93, 93A and 255D of the General Laws.

2. No solicitor or canvasser, licensed or exempted from license, may use any plan, scheme or ruse which misrepresents the true status or mission of the person making the call in order to gain admission to a prospective buyer's home, office, or other establishment with the purpose of making a sale of consumer goods or services.

**SECTION 10. Trespassing**

It shall be unlawful for any canvasser or solicitor to enter the premises of a resident or business who has displayed a "no trespassing" or "no soliciting" sign or poster. Further, it shall be unlawful for canvassers or solicitors to ignore a resident or business person's no solicitation directive or remain on private property after its owner has indicated that the canvasser or solicitor is not welcome.

**SECTION 11. Penalty**

Any person violating any provision of this by-law shall, upon conviction thereof, be punished by a fine not to exceed Fifty (\$50.00) Dollars for each and every offense.

## CHAPTER XXIV

### TREE BY-LAW

#### SECTION 1. PURPOSE

The purpose of this By-law is to establish regulations regarding the planting, maintenance and removal of trees, shrubs and other plants on public property and trees on private property that may cause a hazard to the public in the town right of way.

#### SECTION 2. DEFINITIONS

Unless the context specifically indicates otherwise, the meaning of terms used in this ordinance shall be as follows:

Street trees - trees of a diameter of 1 1/2 inches or more, shrubs, bushes and all other vegetation (on land lying) growing between property lines on either side of all streets, avenues, or ways within the Town.

Park Trees - trees of a diameter of 1 1/2 inches or more, shrubs and bushes and all other woody vegetation in public parks having individual names and all (area) public property owned by the Town and to which the public has free access such as a park.

Public Property - Town owned lands.

Tree Topping - the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

(Sight Distance) Vision Clearance - that are included within the street which will materially obstruct the view of a driver of a vehicle approaching a street intersection. This area is measured at points which are twenty (20) feet distant from their point of intersection along said street lines.

#### SECTION 3. LISTING OF TREES ACCEPTABLE FOR PLANTING

The Tree Warden shall develop and maintain an up to date listing of trees considered most desirable for planting along streets in the following three size classes based on mature height:

|        |                 |
|--------|-----------------|
| small  | (under 20 feet) |
| medium | (20 to 40 feet) |
| large  | (over 40 feet)  |

List of trees not suitable for planting will also be developed and maintained current by the Tree Warden.

**SECTION 4. SPACING BETWEEN STREET TREES**

Street trees shall be planted no closer together than the following:

|                   |         |
|-------------------|---------|
| small size class  | 30 feet |
| medium size class | 40 feet |
| large size class  | 50 feet |

An exception may be made to the above planting spacing (designed or approved by a landscape architect) if authorized by the Tree Warden.

**SECTION 5. PLANTING NEAR CURBS AND SIDEWALKS**

Street trees may be planted no closer to any curb or sidewalk than the following:

|                   |        |
|-------------------|--------|
| small size class  | 2 feet |
| medium size class | 3 feet |
| large size class  | 4 feet |

An exception may be made to the above spacing for special plantings if authorized by the Tree Warden.

**SECTION 6. PLANTINGS NEAR STREET CORNERS AND FIRE HYDRANTS**

No tree shall be planted (within 35 feet) to obstruct visual clearance of any street corner, measured from the point of nearest intersecting curbs or curb lines nor within 10 feet of any fire hydrant.

**SECTION 7. PLANTING NEAR OVERHEAD UTILITIES**

No street tree other than those species listed as small trees in Section 3 of this ordinance may be planted under or within 10 feet of any overhead utility wire.

**SECTION 8. TRIMMING STREET TREES BY UTILITY COMPANIES**

Public utility companies shall notify the Tree Warden in writing prior to trimming any tree located on Town owned property for the purpose of maintaining safe line clearance. All such work shall be performed in accordance with accepted arboricultural standards set forth by the National Arborist Association.

Any Town trees that are pruned by utility companies will have up to two inspections a day by a Tree Warden at \$35.00 per inspection.

**SECTION 9. PLANTING, MAINTENANCE AND REMOVAL**

The Town shall have the right to plant, maintain, and remove trees, plants and shrubs within the lines of all Town owned streets, alleys, avenues, lanes, squares and other public (grounds) property that may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public (grounds) property.

The Tree warden may remove or order to be removed any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines or other public improvements, or is affected with any injurious fungus, insect or other pest. This section does not prohibit the planting of street trees within the roads layout by (adjacent) abutting property owners providing the Tree Warden grants approval and that the selection and location of said trees are in accordance with the provisions of this ordinance.

**SECTION 10. TOPPING OF TREES**

Unless otherwise authorized by the Tree Warden, it shall be unlawful as a normal practice for any person or firm to top any street tree, park tree, or other tree on public property. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this ordinance at the determination of the Tree Warden.

**SECTION 11. HARMING TOWN OWNED TREES**

It shall be unlawful for any person or firm to trim, prune or remove any Town owned tree on public property without the approval of the Tree Warden or to harm a Town owned tree by removing or otherwise damaging the bark and by attaching signs or any other item to any part of the tree using nails or other device that punctures the bark.

**SECTION 12. REMOVAL OF TREE STUMPS**

Stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

**SECTION 13. INSTALLATION OF TREE LIGHTS**

With the approval of the Town Manager and the Tree Warden, decorative lights may be installed in Town owned trees on public property for periods which will not interfere with the proper growth and maintenance of the trees and when the occasion for the lights is deemed appropriate.

Unless otherwise authorized, holiday lights shall be installed no earlier than November 15 and removed no later than March 15.

**SECTION 14. PENALTY**

Any person, firm or corporation violating any applicable provision of this ordinance shall be fined not more than two hundred (\$200) dollars for each offense. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

**CHAPTER XXV**

**OUTDOOR WATER USE BY-LAW**

**SECTION 1. Authority**

This By-Law is adopted by the Town under its police powers to protect public health and welfare and its power under G.L. Ch.40, Sec. 21 et. seq. and implements the Town’s authority to regulate water use pursuant to G.L. Ch. 41, Sec. 69B.

**SECTION 2. Purpose**

The purpose of this By-law is to protect, preserve and maintain the public health, safety and welfare by creating a balance between the needs of the environment, our ground water supply, the citizens of Hamilton and Hamilton’s public water distribution system, and by addressing concerns about lower ground water levels and the potential demand on its water sources during the dry summer months, while recognizing the therapeutic, esthetic and environmental benefits that gardening and landscaping bring to our community. The provisions of this By-law are applicable only to the use of water supplied by the Town’s public water system or withdrawn from the same water sources as the Town’s public water system and do not apply to the use of recycled water, storm water run-off, gray water or water from cisterns or rain barrels that derive their water directly from precipitation.

**SECTION 3. Definitions**

Nonessential Outdoor Water Use shall mean those uses that are not required:

1. for health or safety reasons;
2. by regulation;
3. for the production of food and fiber;
4. for the maintenance of livestock; or
5. to meet the core functions of a business.



Person shall mean any individual, corporation, trust, partnership or association, agency or authority, or other public or private entity and any officer, employee, group or agent of such persons.

State of Water Supply Conservation shall mean a State of Water Supply Conservation declared by the Select Board pursuant to Section 4 of this By-law.

Water Users shall mean all persons who use water supplied by the Town's public water system or withdrawn from the same water sources as the Town's public water system, irrespective of such person's legal responsibility for payment for the use of such water.

#### **SECTION 4. Water Ban**

The Town, through the Select Board, shall have the authority to regulate the use of any automatic or other sprinkler during prescribed daylight hours in an effort to promote water conservation, without declaring a State of Water Supply Conservation pursuant to Section 5 of this By-law.

#### **SECTION 5. Declaration of a State of Water Supply Conservation**

The Select Board may declare a State of Water Supply Conservation upon their determination that there exists or impends a shortage of water, and that conservation measures are appropriate to ensure that an adequate supply of water is available to all users, including fire-fighting operations; that the Town's water withdrawal volumes remain within the limits of any applicable Registration Statement submitted by the Town to the Massachusetts Department of Environmental Protection pursuant to G.L. Ch.21G, Sec. 5 and any applicable water withdrawal Permit issued to the Town pursuant to G.L. Ch.21G, Sec. 11; and that any conditions set forth in such Permit are satisfied. Public notice of a State of Water Conservation shall be given in accordance with Section 7 of this By-Law before any restrictions, conditions or requirements limiting the use of water may be enforced pursuant thereto.

#### **SECTION 6. Restricted Water Uses**

A declaration of a State of Water Supply Conservation shall be accompanied by the imposition of 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 by Section 7.

- A. Odd/Even Day Nonessential Outdoor Water Use: Nonessential outdoor water use by water users with odd-numbered addresses is restricted to odd-numbered days. Nonessential outdoor water use by water users with even-numbered addresses is restricted to even-numbered days.
- B. Nonessential Outdoor Water Use Days: Nonessential outdoor water use is permitted only on the days per week specified in the public notice of the State of Water Supply Conservation.
- C. Nonessential Outdoor Water Use Ban: Nonessential outdoor water use is prohibited at all times.

- D. Nonessential Outdoor Water Use Hours: Nonessential outdoor water use is permitted only during daily periods of low demand, to be specified in the public notice of the State of Water Supply Conservation.
- E. Filling Swimming Pools: Filling of swimming pools is prohibited.
- F. Washing Vehicles: Washing of vehicles is prohibited.
- G. Washing Buildings: Washing of buildings' exterior, surfaces, parking lots, driveways, and sidewalks prohibited.
- H. Outdoor Sprinkler Use: the use of lawn and garden sprinklers of all types, including the use of drip irrigation hoses or other devices that use subsurface application is prohibited. Hand watering is permitted.

**SECTION 7. Public Notice of a State of Water Supply Conservation**

Notice of any declaration of a State of Water Supply Conservation, including the accompanying restrictions, conditions or requirements limiting the use of water imposed by the Select Board shall be published in a newspaper of general circulation within the Town, sent by mail, posted on the Town's Web site, or provided by such other means reasonably calculated to reach and inform all water users of the State of Water Supply Conservation. Notification of the State of Water Supply Conservation shall also be provided to the Massachusetts Department of Environmental Protection.

**SECTION 8. Termination of a State of Water Supply Conservation- Notice**

A State of Water Supply Conservation may be terminated by a majority vote of the Select Board, upon their determination that there no longer exists or impends a shortage of water or that the previously imposed restrictions, conditions or requirements limiting the use of water conservation are no longer essential. Public notice of the termination of a State of Water Supply Conservation shall be given in the same manner used pursuant to Section 7 for notice of its declaration.

**SECTION 9 Summer Irrigation/Outdoor Water Use**

This section is applicable only to the use of water supplied by the Town's public water system and shall be in effect from May 1 to September 30 each year; provided, however, that this time period may be extended by vote of the Select Board, as it deems necessary in light of weather conditions, the need to protect the Town's water supply, applicable regulations of the Department of Environmental Protection, demands on the Town's pumping equipment or other circumstances that the Board deems relevant.

In the event that any provision of this section conflicts with any restrictions, conditions or requirements limiting the use of water imposed by the Select Board pursuant to Section 7 of this By-law, the applicability of such provision shall be suspended for so long as such conflict continues.

It is unlawful to engage in nonessential outside water use through a sprinkler or lawn irrigation system between 8:00 am and 8:00 pm.

All water hoses shall be controlled by a nozzle, sprinkler or other device to regulate the flow of water leaving the hose. No use of an open-ended hose is permitted with the exception of filling or topping of swimming pools.

All outside spigots shall be retrofitted with an antisiphon device.

All existing automatic underground irrigation systems shall have rain sensors wired into them to prevent unnecessary watering.

Nothing in this section shall be construed to prohibit watering through drip irrigation hoses or other devices that use subsurface application and prevent the water from being evaporated through contact with the atmosphere.

**SECTION 10. Penalties**

Any person violating this By-law shall be subject to a penalty, which shall inure to the Town, in the amount of \$50.00 for the first violation and \$100.00 for each subsequent violation. Fines shall be recovered by indictment, or on complaint before the District Court, or by non-criminal disposition in accordance with G.L. Ch. 40, Sec. 21D. Each day of violation shall constitute a separate offense.

**SECTION 11. Severability**

If any portion or provision of this By-law shall be found invalid for any reason by a court of competent jurisdiction, such invalidity shall be construed as narrowly as possible and the balance of the By-law shall be deemed to be amended to the minimum extent necessary to provide the Town substantially the benefits set forth in this By-law.

**CHAPTER XXVI**

*Deleted at the Special Town Meeting - Article 2009/10-4-5 on October 17, 2009.*

## CHAPTER XXVII

### COMMUNITY PRESERVATION COMMITTEE

#### Section 1 – Establishment, Membership, Terms

There is hereby established a Community Preservation Committee, consisting of nine (9) voting members pursuant to G.L. c. 44B, the Community Preservation Act. The Committee shall act pursuant to G.L. c. 44B, § 5. The composition of the committee, the method of selecting its members, and each member's length of term is as follows:

One member of the Conservation Commission as designated by the Conservation Commission for a term of three years.

One member of the Historical Commission as designated by the Historical Commission for an initial term of one year and thereafter for a term of three years.

One member of the Planning Board as designated by the Planning Board for a term of three years.

One member of the Select Board, acting in its capacity as the Board of Park Commissioners, as designated by the Select Board for an initial term of one year and thereafter for a term of three years.

One member of the Housing Authority as designated by the Housing Authority for an initial term of one year and thereafter for a term of three years.

Four citizens at large to be appointed by the Select Board for initial terms of two years and thereafter each for a term of three years.

Any member who serves as a representative of an appointing committee who ceases during his or her term to be a member of the appointing committee shall also cease to be a member of the Community Preservation Committee. Any member may be removed with or without cause by the appointing committee. Any vacancy during the pendency of a term shall be filled by the appointing committee for the remainder of the term. Members may be eligible for reappointment.

Should any of the Commissions, Boards, or Committees who have appointment authority under this by-law chapter be no longer in existence for any reason, the appointment authority for that Commission, Board, or Committee shall devolve upon the persons acting in the capacity of or performing the duties of the former Commission, Board or Committee. If there are no such persons acting in the capacity of or performing the duties of any such Commission, Board, or Committee, then the appointment shall be the responsibility of the Select Board.

All initial appointments shall be made within twenty days of the effective date of this by-law. Thereafter, all vacancies, whether at the end of a member's term or otherwise, shall be filled within twenty days of the creation of the vacancy.

## Section 2 – Duties

1. The Committee shall study the needs, possibilities and resources of the town regarding community preservation. The Committee shall consult with existing municipal boards, including but not limited to the Conservation Commission, the Historical Commission, the Planning Board, the Select Board in its capacity as the Board of Park Commissioners, the Housing Authority and the Open Space Committee, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the Committee shall hold one or more public informational hearings on the needs, possibilities and resources of the town regarding community preservation, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the town.
2. The Committee shall make recommendations to the town meeting for the: acquisition, creation and preservation of open space pursuant to Article XCVII of the Constitution of the Commonwealth and the Hamilton Open Space Plan prepared pursuant to M.G.L.A. c.40 sec. 8C; for the acquisition and preservation of historic resources, for the acquisition, creation and preservation of land for recreational use, for the creation, preservation and support of community housing and for rehabilitation or restoration of such open space, historic resources, land for recreational use and community housing that is acquired or created as provided in this by-law. With respect to community housing, the Committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.
3. The Committee may include in its recommendation to the town meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation. Recommendations for the expenditure of funds shall include the Committee's anticipated administrative and operating expenses.

## **CHAPTER XXVIII**

### **RIGHT TO FARM BY-LAW**

#### **Section 1 Legislative Purpose and Intent**

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

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

## **Section 2 Definitions**

The word "farm" shall include any parcel or contiguous parcels of land, or water bodies used for the primary purpose of commercial agriculture, or accessory thereto.

The words "farming" or "agriculture" or their derivatives shall include, but not be limited to the following:

- Farming in all its branches and the cultivation and tillage of the soil;
- Dairying;
- Production, cultivation, growing, and harvesting of any agricultural, aqua cultural, floricultural, viticultural, horticultural commodities; composting;
- Growing and harvesting of forest products upon forest land, and any other forestry or lumbering operations;
- Raising of livestock including horses;
- Keeping of horses and;
- Keeping and raising of poultry, swine, cattle, ratites (such as emus, ostriches and rheas) and camelids (such as llamas and camels), and other domesticated animals for food and other agricultural purpose, including bees and fur-bearing animals.

By way of example and not limitation "farming" shall encompass activities including, but not limited to, the following:

- Operation and transportation of slow-moving farm equipment over roads within the Town;
- Control of pests, including, but not limited to, insects, weeds, predators, and disease organism of plants and animals;
- Application of manure, fertilizers and pesticides;
- Conducting agriculture-related educational and farm-based recreational activities, including agri-tourism, provided that the activities are related to marketing the agriculture output or services of the farm;
- Processing and packaging of the agricultural output of the farm and the operation of a farmers market or farm stand including signage thereto;
- Maintenance, repair, or storage of seasonal equipment, or apparatus owned or leased by the farm owner or manager used expressly for the purpose of propagation, processing, management, or sale of the agricultural products; and
- On-farm relocation of earth and the clearing of ground for farming operations.

## **Section 3 Right To Farm Declaration**

The Right to Farm is hereby recognized to exist within the Town of Hamilton. The above-described agricultural activities may occur on holidays, weekdays, and weekends by night or day and shall include the attendant incidental noise, odors, dust, and fumes associated with normally accepted agricultural practices. It is hereby determined that whatever impact may be caused to others through the normal practice of agriculture is more than offset by the benefits of farming to the neighborhood, community,

and society in general. The benefits and protections of the Right to Farm By-Law are intended to apply exclusively to those commercial agriculture and farming operations and activities conducted in accordance with generally accepted agricultural practices. Moreover, nothing in this Right to Farm By-Law shall be deemed as acquiring any interest in land, or as imposing any new land use regulation, but neither does it supersede or overrule any other requirements or restrictions on the use of land for the purposes covered hereby, whether by state, regulation or local by-law.

#### **Section 4 Disclosure Notification**

The Agricultural Commission will provide to local realtors and make available at Town Hall in the Town Clerk's Office the disclosure notification below. The Town encourages sellers of property to make this information available to buyers.

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

The notification language required by this Section shall be included in the Town's Annual Report in the Report of the Agricultural Commission. In addition to the above, the notification language required by this Section shall be posted in Town Hall with a current list of active agricultural sites provided by the owners/operators of these sites. Owner/operators who wish to notice their activities for the upcoming year will submit their names and a description of their operations to the Town Clerk on a form available at the Town Clerk's Office by November 1 of each year.

#### **Section 5 Resolution of Disputes**

To enhance the prompt resolution of disputes that may arise between those engaged in the agricultural uses protected under this Bylaw and those who claim that the use or enjoyment of their properties is adversely affected by such uses, the following dispute resolution procedure is established as a means by which owners and tenants may attempt to resolve the dispute in a prompt, effective, and amicable manner.

Any owner or tenant who wishes to complain that farming or a farming activity is adversely affecting the use or enjoyment of the owner's or tenant's real property may file a grievance with the Town Manager, The Zoning Enforcement Officer, the Board of Health, or the Conservation Commission, depending upon the nature of the grievance. Such Board, Commission, or official may forward the grievance to such other Board, Commission, or official whose jurisdiction may be more appropriate to address the grievance. A Board, Commission, or official may refer the grievance to the Agricultural Commission, which shall then undertake such efforts as it deems reasonable and appropriate to facilitate an agreement to resolve the grievance. The Agricultural Commission shall file a report with the referring Board, Commission, or official within 30 days after receipt of the referral, unless the referring Board, Commission, or official establishes a different deadline or the parties to the dispute agree to a different

deadline. Nothing herein shall impair or limit any other remedy available to an aggrieved party, suspend the time within which any such remedy must be pursued, or impair or limit the authority of the Board of Health or any other government body or official to respond to cases of imminent danger or public health risk.

**Section 6 Severability Clause**

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

**CHAPTER XXIX  
STORMWATER MANAGEMENT**

**1. PURPOSE AND INTENT:**

The purpose and intent of this bylaw are to:

- A. Protect water resources;
- B. Require practices that mitigate soil erosion and sedimentation and control the volume and rate of stormwater runoff resulting from land disturbance activities;
- C. Promote infiltration and the recharge of groundwater;
- D. Ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process, and are implemented and maintained;
- E. Encourage the use of Low-Impact Development practices such as reducing impervious cover and the preservation of green space and other natural areas, to the maximum extent practicable;
- F. Comply with state and federal statutes and regulations relating to stormwater discharges;
- G. Establish the Town of Hamilton as the legal authority to ensure compliance with the provisions of this bylaw through inspection, monitoring, and enforcement.

**2. DEFINITIONS**

**ABUTTER:** The owner(s) of land abutting the legal boundaries of the land on which the land-disturbing activity is proposed.

**ADMINISTRATIVE LAND DISTURBANCE APPROVAL:** A determination by the Permit Authority that land disturbance activity does not require a Stormwater Management Permit.

**AGRICULTURE:** The normal maintenance or improvement of land in agricultural or aquacultural use, as defined by the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40, and its implementing regulations.

**ALTERATION OF DRAINAGE CHARACTERISTICS:** Any activity on an area of land that changes the water quality, force, direction, timing, or location of runoff flowing from the area. Such changes include: change from distributed runoff to confined or discrete discharge; change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to



groundwater on the area.

**APPLICANT:** Any person, individual, partnership, association, firm, company, corporation, trust, authority, agency, department, or political subdivision, of the Commonwealth or the Federal government to the extent permitted by law requesting a Stormwater Management Permit and/or Administrative Land Disturbance Review for proposed land-disturbance activity.

**AUTHORIZED ENFORCEMENT AGENCY:** The Planning Board, the Zoning Board of Appeals, and/or their respective employees or agents designated to enforce this bylaw.

**BEST MANAGEMENT PRACTICE (BMP):** An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

**CLEARING:** Any activity that removes the vegetative surface cover.

**COMMON PLAN OF DEVELOPMENT OR SALE:** A contiguous area where multiple separate and distinct development or redevelopment activities have occurred, are occurring, or are proposed to occur under one plan. The “plan” in a “common plan of development or sale” is broadly defined as any announcement or piece of documentation (including, but not limited to, a sign, public notice or hearing, advertisement, drawing, permit application) or physical demarcation (including, but not limited to, boundary signs, lot stakes, surveyor markings).

If the project is part of a common plan of development or sale, the disturbed area of the entire plan shall be used in determining permit requirements. Examples include: 1) phased projects and projects with multiple filings or lots, even if the separate phases or filings/lots will be constructed under separate contract or by separate owners (e.g. a development where lots are sold to separate builders); 2) a development plan that may be phased over multiple years, but is still under a consistent plan for long-term development; and 3) projects in a contiguous area that may be unrelated but still under the same contract, such as construction of a building extension and a new parking lot at the same facility.

**DEVELOPMENT:** The modification of land to accommodate a new use or expansion of use, usually involving construction.

**EROSION:** The wearing away of the land surface by natural or artificial forces such as wind, water, ice, gravity, or vehicle traffic and the subsequent detachment and transportation of soil particles.

**GRADING:** Changing the level or shape of the ground surface.

**GRUBBING:** The act of clearing land surface by digging up roots and stumps

**IMPERVIOUS SURFACE:** Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and roof tops.

**LAND-DISTURBING ACTIVITY:** Any activity that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material, including tree cutting, grubbing, clearing, grading or excavation.

**LOW IMPACT DEVELOPMENT:** A set of strategies that seek to maintain natural systems during the development process. The idea is to create homes and businesses that are integrated into the landscape, not imposed on it. Natural areas and important features are protected, and stormwater is managed with a distributed network of swales and rain gardens, rather than a centralized system of pipes and ponds.

**MASSACHUSETTS STORMWATER MANAGEMENT POLICY:** The Policy issued by the Department of Environmental Protection, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act,

M.G.L. c. 131 §40 and the Massachusetts Clean Waters Act, M.G.L. c. 21, §26-53. The Policy addresses, among other things, stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

**MASSACHUSETTS WATER QUALITY STANDARDS:** Massachusetts Water Quality Standards: The surface water quality standards promulgated by the Massachusetts Department of Environmental Protection in 314 CMR 4.00, *et seq.*

**MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or municipal storm drain system:** The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Hamilton.

**OPERATION AND MAINTENANCE PLAN:** A plan setting up the functional, financial, and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to ensure that it continues to function as designed.

**OUTFALL:** The point at which stormwater flows out from a point source discernible, confined, and discrete conveyance into waters of the Commonwealth.

**OWNER:** A person with a legal or equitable interest in property.

**PERMIT AUTHORITY:** The Planning Board or the Zoning Board of Appeals, as outlined in Section 5.

**PERSON:** An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

**POINT SOURCE:** Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged.

**PRE-CONSTRUCTION:** All activity in preparation for construction.

**REDEVELOPMENT:** Development, rehabilitation, expansion, demolition, or phased projects that disturb the ground surface or increase the impervious area on previously developed sites.

**RUNOFF:** Rainfall, snowmelt, or irrigation water flowing over the ground surface.

**SEDIMENT:** Mineral or organic soil material that is transported by wind or water, from its origin to another location; the product of erosion processes.

**SEDIMENTATION:** The process or act of deposition of sediment.

**SITE:** Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.

**SLOPE:** The slope of land at any point, stated as a percentage, shall be defined as the change in elevation over a horizontal distance measured perpendicular to the contours divided by the distance over which the change occurs multiplied by 100. The slope of land at any point, may be stated as a ratio (e.g., 2:1, 3:1, 4:1). The first number of the ratio indicates the horizontal distance and the second number indicates the vertical rise.

**SOIL:** Any earth, sand, rock, gravel, or similar material.

**STORMWATER:** Stormwater runoff, snow melt runoff, and surface water runoff and drainage.

**STORMWATER MANAGEMENT PERMIT (“SMP” and/or “Permit”):** A permit issued by the Permit Authority, after review of an application, plans, calculations, and other supporting documents, which shows that the proposed project is designed to protect the environment of the Town from the deleterious effects of uncontrolled and untreated stormwater runoff.

**STORMWATER MANAGEMENT PLAN:** A plan required as part of the application for a Stormwater Management Permit. *See* Section 6 and Planning Board Rules and Regulations. A document containing narrative, drawings and details developed by a qualified professional engineer (PE) or a Certified Professional in Erosion and Sedimentation Control (CPESC), which includes best management practices, or equivalent measures designed to control surface runoff, erosion and sedimentation during pre-construction and construction related land disturbance activities.

**VERNAL POOLS:** Temporary bodies of freshwater which provide critical habitat for a number of vertebrate and invertebrate wildlife species.

### **3. AUTHORITY**

- A. This bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR §22.34
- B. Nothing in this bylaw is intended to replace the requirements of any other bylaw that has been made or may be adopted by the Town of Hamilton.

### **4. APPLICABILITY**

- A. This bylaw shall apply to all activities that result in disturbance of one or more acres of land that drains to the Municipal Separate Storm Sewer System. A permit from the Permit Authority shall be required for any construction activity including tree cutting, grubbing, clearing, grading, excavation, and/or alteration of drainage characteristics that results in a land disturbance that will disturb equal to or greater than one acre of land, or will disturb less than one acre of land but which is part of a larger common plan of development or sale which will ultimately disturb equal to or greater than one acre of land, draining to the Town’s Municipal Separate Storm Sewer System.
- B. Administrative Land Disturbance Review is required for projects that result in the disturbance of land between 5,000 sq. ft. and 43,559 sq. ft. The purpose of the Administrative Land Disturbance Review is to determine whether an Administrative Land Disturbance Approval or Stormwater Management Permit is required.
- C. A Stormwater Management Permit from the Permit Authority shall be required for any construction activity including tree cutting, grubbing, clearing, grading and excavation that results in the following:
  - 1) Any land disturbance that will result in a proposed use that would have a higher potential pollutant loads pursuant to the Massachusetts Stormwater Management Standards; or
  - 2) Any land disturbance that is more than 5,000 sq. ft. of land with a slope equal to or greater than 25%, or any land disturbance that is more than 10,000 sq. ft. of land with a slope equal to or greater than 15%, or any disturbance that is more than 21,780 sq. ft. of land with more a slope equal to or greater than 10%; or
  - 3) Total cumulative added impervious surface that meets or exceeds 5,000 sq. ft.; or
  - 4) Disturbance of volume greater than 1,500 cubic yards; or

- 5) Any land disturbance on a lot of any size which has caused or can reasonably be expected to cause or contribute to a violation of Massachusetts water quality standards or as deemed necessary by the Permit Authority for a project that would otherwise require Administrative Land Disturbance Review.

D. Construction activities that are exempt are:

- 1) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act Regulations, 310 CMR 10.04 and M.G.L. c. 40A, §3;
- 2) Maintenance of existing landscaping, gardens, or lawn areas associated with a single-family dwelling provided such maintenance does not include the addition of more than 100 cubic yards of soil material, or alteration of drainage patterns;
- 3) The construction of fencing that will not substantially alter existing terrain or drainage patterns;
- 4) Normal maintenance of Town owned public land, ways, and appurtenances;
- 5) Repair or maintenance of an individual subsurface septic disposal system, and related elements such as pipes, provided that the post-repair condition drainage is equal to the pre-repair condition.
- 6) Any work or projects for which all necessary approvals and permits have been issued before the effective date of this bylaw section.
- 7) Maintenance, reconstruction or resurfacing of any public or private way; and the installation of drainage structures or utilities within or associated with such ways that have been approved by the appropriate authorities provided that written notice be filed with the Permit Authority fourteen (14) days prior to commencement of activity.

## 5. RESPONSIBILITY FOR ADMINISTRATION

- A. For the purpose of this bylaw section, as noted in subsection B below, the term Permit Authority shall indicate the Planning Board or the Zoning Board of Appeals, as appropriate. Any powers granted to or duties imposed upon the Permit Authority may be delegated in writing by the Permit Authority to its employees or agents.
- B. To the extent that the Zoning Board of Appeals is the Permit Authority under M.G.L. c. 40B and for certain activity, development, construction, or reconstruction under the Zoning Bylaw for which the Applicant also must seek a Stormwater Management Permit, then the Zoning Board of Appeals shall also be the Permit Authority in that instance.
- C. For all other applications which fall under the purview of this bylaw, the Planning Board shall be the Permit Authority.
- D. Applications, plans and accompanying data under this bylaw may be filed simultaneously with and may be incorporated into those plans and documents required in other permitting processes.
- E. Planning Board Rules and Regulations. The Planning Board shall adopt and may periodically amend Rules and Regulations to effectuate the purposes of this bylaw section. Failure by the Planning Board to promulgate such Rules and Regulations shall not have the effect of suspending or invalidating this bylaw. The Rules and Regulations shall include but shall not be limited to: the size, quantity, and distribution of plans; filing fee; required details for Stormwater Management Plan; Operation and Maintenance Plan; and Inspection and Site Supervision. The Planning Board Rules and Regulations shall be used to effectuate the purposes of this bylaw by the Zoning Board of Appeals when it is acting as the Permitting Authority.

F. Stormwater Management Standards.

- 1) The Permit Authority will utilize the policy, criteria and information including specifications and standards of the latest edition of the Massachusetts Stormwater Handbook to execute the provisions of this bylaw. This Policy includes a list of acceptable stormwater treatment practices, including the specific design criteria for each. The Policy may be updated and expanded periodically, based on improvements in engineering, science, monitoring, and local maintenance experience. Unless specifically altered in the Regulations, stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to be protective of Massachusetts water quality standards.
- 2) The Permit Authority will apply the Stormwater Management Standards as outlined in the Massachusetts Stormwater Handbook Vol 2, Chapter 1, which prioritize Site Planning and use of environmentally sensitive site design and low impact development techniques.
- 3) Stormwater Credit System. The Permit Authority may adopt a Stormwater Credit System as part of the regulations authorized by this bylaw section. This credit system will allow applicants the option to use better site design practices to reduce some of the requirements specified in the criteria section of the Regulations. Failure of the Permit Authority to promulgate such a credit system through its Regulations or a legal declaration of its invalidity by a court shall not act to suspend or invalidate the effect of this bylaw.

**6. PERMITS AND PROCEDURES**

A. Application – Administrative Land Disturbance Review.

An Administrative Land Review requires the submission of an application and, upon review of the application, the Permit Authority shall issue a written determination approving the proposed land disturbance activities or requiring a Stormwater Management Permit Application. Subsections D. and F. below are inapplicable to Administrative Land Disturbance Review.

The Administrative Land Disturbance Approval Application package shall include:

- 1) A completed Application Form with signatures of all owners;
- 2) An instrument survey with a proposed site plan which includes all information required by Section 4;
- 3) A list of abutters, certified by the Assessors Office (abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water);
- 4) A project description;
- 5) Payment of the application and review fees;
- 6) One (1) complete copy filed with the Town Clerk by the Applicant which shall serve to establish the filing date; and
- 7) A full electronic copy.

*See Stormwater Management Permit Rules and Regulations for additional filing requirements.*

B. Application -Stormwater Management Permit.

A completed application for a Stormwater Management Permit (SMP) shall be filed with the Permit Authority. The Stormwater Management Permit Application package shall include:

- 1) A completed Application Form with original signatures of all owners;
- 2) An instrument survey with a proposed site plan which includes all information required by Section 4;
- 3) A list of abutters, certified by the Assessors Office (abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water);
- 4) Stormwater Management Plan and project description;
- 5) Operation and Maintenance Plan;
- 6) Payment of the application and review fees;
- 7) One (1) complete copy filed with the Town Clerk by the Applicant which shall serve to establish the filing date; and
- 8) A full electronic copy.

*See Stormwater Management Permit Rules and Regulations for additional filing requirements.*

C. Entry. When obtaining an Administrative Land Disturbance Review or when filing an application for a permit, the Applicant shall grant the Permit Authority or its agent, permission to enter the site to verify the information in the application and to inspect for compliance with permit conditions, after proper notification to the Applicant at least 24 hours in advance. Refusal to grant voluntary access may result in denial of a permit or the Administrative Land Disturbance Review application.

D. Public Hearing.

- 1) If an application is filed concurrently for a Definitive Subdivision Plan approval, for a project under the Zoning bylaw, or for a M.G.L. c. 40B filing, the public hearing and decision requirements shall follow the requirements of the particular application.
- 2) To the extent possible, required hearings of the Permit Authority shall run concurrently with the Stormwater Management Permit hearing, and every effort shall be made to handle the permitting process expeditiously.
- 3) If an application is filed independently of other filings, the Permit Authority shall hold a public hearing within sixty (60) days of the receipt of a complete application and shall take final action within sixty (60) days from the time of the close of the hearing unless such time is extended by agreement between the applicant and the Permit Authority. Notice of the public hearing shall be given by publication in a newspaper of local circulation, public posting, and by certified mail at the Applicant's expense to abutters at least fourteen (14) days prior to the hearing date. The Permit Authority shall make the application available for inspection by the public during business hours at the Hamilton Town Hall.

E. Information Requests. The applicant shall submit all additional information requested by the Permit Authority to issue a decision on the application.

F. Waivers.

- 1) The Permit Authority may waive strict compliance with any requirement of this bylaw or the Rules and Regulations adopted hereunder, where:
  - (a) Such action is allowed by federal, state, and local statutes and/or regulations;

- (b) It is in the public interest; and
- (c) It is not inconsistent with the purpose and intent of this bylaw.

- 2) Any Applicant may submit a written request to be granted such a waiver. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of the bylaw does not further the purpose or objectives of this bylaw.
- 3) All waiver requests shall be discussed and voted on at the Public Hearing for the project.
- 4) If in the Permit Authority's opinion, additional time or information is required for review of a waiver request, the Permit Authority may continue the hearing to a date certain announced at the meeting. In the event the Applicant objects to a continuance, or fails to provide requested information, the waiver request shall be denied.

G. Actions by the Permit Authority may include:

- 1) Approve the Stormwater Management Permit Application and issue a permit if it finds that the proposed plan will protect water resources and meets the objectives and requirements of this bylaw;
- 2) Approve the Stormwater Management Permit Application and issue a permit with conditions, modifications, or restrictions that the Permit Authority determines are required to ensure that the project will protect water resources and meets the objectives and requirements of this bylaw; or
- 3) Disapprove the Stormwater Management Permit Application and deny the permit if it finds that the proposed plan will not protect water resources or fails to meet the objectives and requirements of this bylaw.

H. Vote required. A simple majority of the Permit Authority shall be required to grant a Stormwater Management Permit.

I. The Permit Authority shall enforce all violations of the Stormwater Management Permit approval and conditions. *See* Section 12 below for enforcement of violations of this bylaw which do not fall under a valid Stormwater Management Permit.

J. Appeals. A decision of the Permit Authority shall be final. Further relief of a decision by the Permit Authority made under this bylaw shall be reviewable in the Superior Court in an action filed within 60 days of the final action taken by the Permit Authority, in accordance with M.G.L. c. 249, §4.

## 7. FINAL REPORT

Upon completion of the work, the Applicant shall submit a report (including certified as-built construction plans, as outlined in Subdivision Regulations, Section IV.B.8.a), from a Registered Professional Engineer (P.E.), certifying that all erosion and sediment control devices, and approved changes and modifications, have been completed in accordance with the conditions of the approved permit. Any discrepancies should be noted in the cover letter.

## 8. CERTIFICATE OF COMPLETION

The Permit Authority will issue a letter certifying completion upon receipt and approval of the Final Report and/or upon otherwise determining that all work allowed by the permit has been satisfactorily completed in conformance with the permit and this bylaw.

## 9. EMPLOYMENT OF OUTSIDE CONSULTANTS

The Permit Authority may employ outside consultants, at the Applicant's expense, under the terms of the Zoning Bylaw and/or the Planning Board Rules and Regulations, to assist in its permit decision, including but not limited to plan review, drainage, and stormwater analysis; to determine conformance with this bylaw and other requirements; and for construction inspection.

## **10. PERFORMANCE GUARANTEE**

- A. The Permit Authority may require the Applicant to post, before the start of land disturbance activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security as performance guarantee, to be in an amount deemed sufficient by the Permit Authority to ensure that the work will be completed in accordance with the permit. If the project is phased, the Permit Authority may release part of the bond as each phase is completed in compliance with the permit but the bond may not be fully released until the Permit Authority has received the Final Report as required by Section 7 of this bylaw and issued a Certificate of Completion.
- B. The Planning Board Rules and Regulations shall establish reasonable criteria for assessing the Performance Guarantee.

## **11. DURATION OF STORMWATER MANAGEMENT PERMIT**

A Stormwater Management Permit is granted for a period of three years from the date of its approval and shall lapse if substantial use or construction has not commenced by such date, except for good cause as shown.

## **12. ENFORCEMENT**

- A. Land disturbance activities in excess of the thresholds established in Section 4 of this bylaw conducted without a Stormwater Management Permit or Administrative Land Disturbance Approval shall constitute a violation of this bylaw. The Permit Authority, or an authorized agent of the Permit Authority, shall enforce this bylaw, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.
- B. Orders:
  - 1) The Permit Authority or an authorized agent of the Permit Authority may issue a written order to enforce the provisions of this bylaw or any regulations adopted hereunder, which may include:
    - (a) A requirement to cease and desist from the land-disturbing activity until there is compliance with the bylaw and provisions of the (a) Stormwater Management Permit or Administrative Land Disturbance Approval;
    - (b) Maintenance, installation or performance of additional erosion and sediment control measures;
    - (c) Monitoring, analyses, and reporting; and/or
    - (d) Remediation of erosion and sedimentation resulting directly or indirectly from the land-disturbing activity.
  - 2) If the enforcing person determines that abatement or remediation of erosion and sedimentation is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town may, at its option, pursue a Court Order allowing the Town to undertake such work, and requiring the property owner to reimburse the Town for all costs incurred.



- 3) Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner shall be notified of the costs incurred by the Town of Hamilton, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Permit Authority within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest, or within thirty (30) days following a decision of the Permit Authority affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall constitute a municipal charge for purposes of M.G.L. c. 40, §58, and a lien may be imposed on the property for the amount of the unpaid charge, pursuant to M.G.L. c. 40, §58. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in M.G.L. c. 59, §57 on the 31st day after the costs first become due.
- C. Criminal Penalties. Any person who violates any provision of this bylaw, regulation, or permit issued hereunder, shall be subject to fines, civil action, criminal prosecution, and tax liens, as appropriate and as lawfully established by the Town of Hamilton.
  - D. Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in M.G.L. c. 40, §21D and General Bylaw Chapter XIII, *Penalties for Violation*, in which case the Permit Authority or its agent shall be the enforcing person. The penalty for the 1st violation shall be \$100.00. The penalty for the 2<sup>nd</sup> violation shall be \$200.00. The penalty for the 3rd and subsequent violations shall be \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
  - E. Remedies Not Exclusive. The remedies listed in this bylaw are not exclusive of any other remedies available under any applicable federal, state, or local law.

**13. SEVERABILITY**

If any provision, paragraph, sentence, or clause of this bylaw shall be held invalid for any reason, all other provisions shall continue in full force and effect.

**CHAPTER XXX**

**ILLICIT DISCHARGE DETECTION AND ELIMINATION BY-LAW**

**1. PURPOSE**

Regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of the town’s water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment. The objectives of this By-Law are:

1. to prevent Pollutants from entering the town’s municipal separate storm drain system (MS4);
2. to prohibit illicit connections and unauthorized discharges to the MS4;
3. to require the removal of all such illicit connections;

4. to comply with state and federal statutes and regulations relating to stormwater discharges; and
5. to establish the legal authority to ensure compliance with the provisions of this By-Law through inspection, monitoring, and enforcement.

## **2. DEFINITIONS**

For the purposes of this By-Law, the following shall mean:

**AUTHORIZED ENFORCEMENT AGENCY:** The Select Board, as the Board of Public Works, with the Director of Public Works as its Designated Agent.

**BEST MANAGEMENT PRACTICE (BMP):** An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

**CLEAN WATER ACT:** The Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.) as hereafter amended.

**DISCHARGE OF POLLUTANTS:** The addition from any source of any Pollutant or combination of Pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.

**GROUNDWATER:** Water beneath the surface of the ground.

**ILLICIT CONNECTION:** A surface or subsurface drain or conveyance, which allows an illicit discharge into the municipal storm drain system, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this By-Law.

**ILLICIT DISCHARGE:** Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Section 8. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or a Surface Water Discharge Permit, or resulting from firefighting activities exempted pursuant to Section 8, of this By-Law.

**IMPERVIOUS SURFACE:** Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and rooftops.

**MUNICIPAL SEPARATE STORM DRAIN SYSTEM (MS4) or MUNICIPAL STORM SEWER SYSTEM:** The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Hamilton.

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT:** A permit issued by United States Environmental Protection Agency or jointly with the State that authorizes the discharge of Pollutants to waters of the United States.

**NON-STORMWATER DISCHARGE:** Discharge to the municipal storm drain system not composed entirely of stormwater.

**PERSON:** An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

**POLLUTANT:** Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the Commonwealth.

Pollutants shall include without limitation:

1. paints, varnishes, and solvents;
2. oil and other automotive fluids;
3. non-hazardous liquid and solid wastes and yard wastes;
4. refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, and accumulations;
5. pesticides, herbicides, and fertilizers;
6. hazardous materials and wastes; sewage, fecal coliform and pathogens;
7. dissolved and particulate metals;
8. animal wastes;
9. rock, sand, salt, soils;
10. construction wastes and residues; and
11. noxious or offensive matter of any kind.

**PROCESS WASTEWATER:** Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

**RECHARGE:** The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

**STORMWATER:** Storm water runoff, snow melt runoff, and surface water runoff and drainage.

**SURFACE WATER DISCHARGE PERMIT:** A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of Pollutants to waters of the Commonwealth of Massachusetts.

**TOXIC OR HAZARDOUS MATERIAL or WASTE:** Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under M.G.L. Ch. 21C and Ch. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

**WATERCOURSE:** A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.

**WATERS OF THE COMMONWEALTH:** All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

**WASTEWATER:** Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

### **3. APPLICABILITY**

This By-Law shall apply to flows entering the municipally owned storm drainage system.

### **4. AUTHORITY**

A. This By-Law is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Procedures Act, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR §122.34 and the Phase II ruling from the Environmental Protection Agency found in the December 8, 1999 Federal Register.

B. Nothing in this By-Law is intended to replace the requirements or authority of any other By-Law, state, federal, or superseding authority.

### **5. RESPONSIBILITY FOR ADMINISTRATION**

The Town Manager shall administer, implement and enforce this By-Law. Any powers granted to or duties imposed upon the Town Manager may be delegated in writing by him to the Designated Agent or to another authorized agent.

### **6. REGULATIONS**

The Select Board may promulgate Rules and Regulations to effectuate the purposes of this By- Law. Failure by the Board to promulgate such Rules and Regulations shall not have the effect of suspending or invalidating this By-Law.

## 7. PROHIBITED ACTIVITIES

- A. Illicit Discharges. No person shall dump, discharge, cause or allow to be discharged any Pollutant or non-stormwater discharge into the municipal separate storm drain system (MS4), into a watercourse, or into the waters of the Commonwealth.
- B. Illicit Connections. No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.
- C. Obstruction of Municipal Storm Drain System. No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior written approval from the Designated Agent.

## 8. EXEMPTIONS

- A. Discharge or flow resulting from fire fighting activities.
- B. The following non-stormwater discharges or flows are exempt from the prohibition of non-stormwaters provided that the source is not a significant contributor of a Pollutant to the municipal storm drain system **and such discharge complies with the requirements of Chapter X, Section 9 of these By-laws.**
  - 1. Waterline flushing;
  - 2. Flow from potable water sources;
  - 3. Springs;
  - 4. Natural flow from riparian habitats and wetlands;
  - 5. Diverted stream flow;
  - 6. Rising groundwater;
  - 7. Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
  - 8. Water from exterior foundation drains, footing drains (not including active groundwater dewatering

systems), crawl space pumps, or air conditioning condensation;

9. Discharge from landscape irrigation or lawn watering;
10. Water from individual residential car washing;
11. Discharge from dechlorinated swimming pool water (less than one ppm chlorine), provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
12. Plowing, sanding, and salting, and other measures during snow and ice conditions;
13. Discharge from street sweeping;
14. Dye testing, provided verbal notification is given to the Designated Agent at least 7 days prior to the time of the test;
15. Non-stormwater discharge permitted under an NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
16. Discharge for which advanced written approval is received from the Designated Agent as necessary to protect public health, safety, welfare or the environment.
17. Discharge or flow that results from exigent conditions and occurs during a State of Emergency declared by any agency of the federal or state government, or by the Town Manager, the Select Board or the Board of Health.

## **9. EMERGENCY SUSPENSION OF STORM DRAINAGE SYSTEM ACCESS**

The Designated Agent may suspend municipal storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of Pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the Authorized Enforcement Agency may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

## **10. NOTIFICATION OF SPILLS**

A. Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of Pollutants to the municipal drainage system or waters of the Commonwealth, the person shall take all necessary steps to ensure containment, and cleanup of the release.

B. In the event of a release of oil or hazardous materials, the person shall immediately notify the municipal Fire and Police Departments and the Designated Agent. In the event of a release of non-hazardous material, the reporting person shall notify the Designated Agent no later than the next business day. The reporting person shall provide to the Designated Agent written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter.

C. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

## **11. ENFORCEMENT**

A. The Town Manager shall enforce this By-Law, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

B. Civil Relief. If a person violates the provisions of this By-Law, regulations, permit, notice, or order issued thereunder, the Select Board may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

B. Orders. The Town Manager may issue a written order to enforce the provisions of this By-Law or the regulations thereunder, which may include: (a) elimination of illicit connections or discharges to the MS4; (b) performance of monitoring, analyses, and reporting; (c) that unlawful discharges, practices, or operations shall cease and desist; and (d) remediation of contamination in connection therewith.

C. If the enforcing person determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the town may, at its option, undertake such work, and expenses thereof shall be charged to the violator.

D. Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Town Manager within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the Town Manager, affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in M.G.L. Ch. 59 §57 after the thirty-first day at which the costs first become due.

E. Criminal Penalties. Any person who violates any provision of this By-Law, regulation, or permit issued hereunder, shall be subject to fines, civil action, criminal prosecution, and tax liens, as appropriate and as lawfully established by the Town of Hamilton.

F. Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the Town of Hamilton may elect to utilize the non-criminal disposition procedure set forth in M. G.L. Ch. 40 §21D and General By-Law Chapter XIII, in which case the Select Board shall be the enforcing person. The penalty for each violation shall be \$100.00 for the first offense, \$200.00 for the second violation, and \$300.00 for the third violation. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

G. Entry to Perform Duties Under this By-Law. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Town Manager may enter upon privately owned property for the purpose of performing his duties under this By-Law and regulations and may make or cause to be made such examinations, surveys or sampling as the Town Manager deems reasonably necessary.

H. Appeals. The decisions or orders of the Town Manager shall be final. Further relief shall be to a court of competent jurisdiction.

I. Remedies Not Exclusive. The remedies listed in this By-Law are not exclusive of any other remedies available under any applicable federal, state or local law.

## **SECTION 12. SEVERABILITY**

The provisions of this By-Law are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this By-Law or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this By-Law.

## **SECTION 13. TRANSITIONAL PROVISIONS**

Property owners shall have 90 days from the effective date of the By-Law to comply with its provisions or petition the Select Board for an extension provided good cause is shown for the failure to comply with the By-Law during the specified period.

## **CHAPTER XXXI**

### **TOWN OF HAMILTON ADOPTION OF HISTORIC DISTRICT BY-LAW**

1. There is hereby established a Historic District, hereinafter called "The District" under the provisions of General Laws, Chapter 40C, as amended, bounded and described as set forth in the copy of the by-law on file with the Town Clerk.



The metes and bounds are shown on a map entitled "Hamilton Historic District, Established 1972" filed with the Town Clerk and to be recorded with the Essex South District Registry of Deeds. Said map is designated as the map required for filing in accordance with the fourth paragraph of Section 3 of said Chapter 40C, as amended. The sources of said map are Assessors Maps #40 and #49 on file with the Board of Assessors of Hamilton.

2. There is hereby established a Historic District Commission, hereinafter called "The Commission", under the provisions of General Laws, Chapter 40C, as amended, consisting of seven members and three alternate members, appointed by the Select Board. Before making any appointment the Select Board shall in writing request the names of two nominees from the Hamilton Historical Society, two nominees from the Chapter of the American Institute of Architects covering Hamilton, and two nominees from the Board of Realtors covering Hamilton. One appointment shall be made from the two nominees named by each such organization. If any such organization shall fail to name two nominees within thirty days of such request, the Select Board may make the appointment without nomination from such organization. The remaining appointments may be made without nomination from any independent organization. At least one member so appointed shall be a resident of or owner of property within the Historic District. When the Commission is first established two members shall be appointed for a term of one year, two shall be appointed for a term of two years, and three shall be appointed for three years. Their successors shall be appointed in like manner for terms of three years. The filling of vacancies in the membership of the Commission, the designation of alternate members to serve as required, and the election of Officers shall be in accordance with the provisions of General Laws, Chapter 40C, as amended.

3. The authority of the Commission shall not extend to the review of any of the categories of buildings, structures, or external architectural features in the District set out in items one through seven of Section 8a of Chapter 40C, as amended.

4. The Commission shall have all the powers and perform all the duties conferred and impaired on Historic District Commissions by the General Laws of the Commonwealth.

5. In accordance with Section 14 of General Laws, Chapter 40C, as amended, the Commission shall have the powers and duties of a Historical Commission, as provided by General Laws, Chapter 40, Section 8D.

6. The Commission shall adopt rules and regulations for the conduct of its business not inconsistent with the provisions of General Laws, appropriation, employ clerical and technical assistants or consultants and may accept money gift and expend same for such purposes.

7. In case any section, paragraph, or part of this by-law be for any reason declared invalid or unconstitutional by any court of last resort, every other section, paragraph, or part shall continue in full force and effect.

8. Preservation of Historically Significant Buildings

**Purpose and Intent**

This bylaw is adopted for the purpose of preserving and protecting significant historic buildings, as defined herein, within the Town of Hamilton and encouraging owners of such buildings to seek out

alternatives so as to preserve, rehabilitate, or restore such buildings rather than to demolish them or alter them in a detrimental way. Such buildings constitute or reflect distinctive features of the architectural, cultural, economic, agricultural, political, or social history of the Town. Further, through the bylaw, residents of the Town are alerted to impending demolition or alteration of significant buildings. By preserving and protecting significant buildings, streetscapes, landscapes and neighborhoods, this bylaw promotes the public welfare by making the Town a more attractive and desirable community.

To achieve these purposes, the Hamilton Historic District Commission, exercising its powers and duties as the Historical Commission, shall advise the Building Inspector with respect to applications for demolition permits, as defined herein. The issuance of demolition permits is regulated as provided by this bylaw.

**Definitions** – As used throughout this bylaw, the terms defined below have the following meanings:

**APPLICANT** - Any person or entity who files an application for a demolition permit. If the applicant is not the owner of the premises upon which the building is situated, the owner must indicate on or with the application his/her assent to the filing of the application.

**APPLICATION** - An application for the demolition of a building.

**BUILDING** - Any combination of materials having a roof, whether partial or full, and regardless of the presence or absence of walls or sides, and which is intended for shelter, housing, or enclosure of any person, process, equipment, animals, or goods, including a structure.

**BUILDING INSPECTOR** - The person occupying the office of Building Inspector or otherwise authorized to issue demolition permits.

**COMMISSION** – The Hamilton Historic District Commission, as defined by Chapter XXXI of the Town Bylaws, or its designee.

**DEMOLITION** - Any act of pulling down, destroying, removing, dismantling, or razing a building or commencing the work of total or substantial destruction with the intent of completing the same. The removal, whether in one project or more than one project over the course of a twenty-four (24) month period, of 50% or greater of a building involving the removal of historically significant character-defining exterior features as determined by the Commission shall constitute demolition. Normal repairs or maintenance in kind that is identical to the original structure does not constitute demolition.

**DEMOLITION/ALTERATION PERMIT** - The building permit issued by the Building Inspector as required by the State Building Code for demolition, substantial demolition, alteration, renovation or removal of a building, excluding a building permit issued solely for the demolition of the interior of a building.

**HISTORIC DISTRICT** - a defined district, such as the existing Hamilton Historic District, that has been established under the Historic Districts Act, General Laws, Chapter 40C.

**PREFERABLY PRESERVED** - Any significant building or structure that the Commission determines, following a public hearing, should be preserved or rehabilitated rather than demolished. A preferably preserved building or structure is subject to the 12-month demolition delay period of this bylaw.

**SIGNIFICANT BUILDING** – Any building or portion thereof within the Town constructed prior to 1940 and which has been determined by the Commission or its designee to be significant based on any of the following criteria:

- The building is listed on, or is within an area listed on, the National Register of Historic Places; or
- The building has been found, by the Massachusetts Historical Commission, to be eligible for the National Register of Historic Places; or
- The building is importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic, or social history of the Town, the Commonwealth or the nation; or
- The building is historically or architecturally important (in terms of period, style, method of building construction or association with a recognized architect or builder) either by itself or in the context of a group of buildings.

If a building is of an unknown age, it shall be presumed to be constructed prior to 1940.

### **Procedure**

No Demolition/Alteration Permit for a significant building shall be issued until the provisions of this bylaw have been satisfied.

An application for a Demolition/Alteration Permit for a building regulated by this bylaw is to be submitted to the Building Inspector, who shall within seven (7) calendar days of receipt transmit a copy thereof to the Commission. No Demolition/Alteration Permit shall be issued during this time.

An applicant who requires a Special Permit from the Planning Board or from the Board of Appeals in order to perform any activity subject to the requirements of this bylaw may, at the time of filing an application for said Special Permit, file with the Building Inspector a Notice of Intention to apply for a Demolition/Alteration Permit. Such Notice shall be filed in the same manner, and contain the same documentation, as an application for a Demolition/Alteration Permit for a building that was, in whole or part, built prior to 1940. The purpose of the Notice is to allow, if necessary, the applicable boards to hear and decide historic preservation and Special Permit matters contemporaneously. Once filed, such Notice shall be treated for the purpose of Historic Preservation review by the Commission and the special permit granting authority as an application filed pursuant to this section. In the event that the required Special Permit issues to the applicant, the Building Inspector may treat such Notice as an application for a Demolition/Alteration Permit.

An applicant may withdraw an application without prejudice at any time prior to a decision by the

Commission.

The Building Inspector shall, within seven (7) calendar days of receipt of such application, forward a copy thereof to the Commission.

Within ten (10 business days of the receipt of the Application by the Commission, the Commission staff in consultation with the Chair of the Commission shall make an initial determination as to whether the building falls into one or more of the categories listed as (a) through (d) below, and shall notify in writing the Commission, the Building Commissioner, Town Clerk, Planning Director, the Applicant, and the owner of record if different from the Applicant, of the initial determination. The categories are as follows:

- a. The building is located in the Historic District;
- b. The building is listed on or is within an area listed on the National or State Register of Historic places; is eligible for listing on either Register; or is a building for which a preliminary determination of eligibility has been made by the Massachusetts Historical Commission;
- c. The building is associated with one or more significant historic persons or events, or with the broad architectural, cultural, political, economic, or social history of the Town, Commonwealth, or nation; or
- d. The building is historically or architecturally significant in terms of its period, style, method of building construction, or its association with a significant architect or builder, either by itself or as part of a group of buildings.

If the building does not fall into any of these categories, the Chair and Commission Staff may determine that the building in question is not preferably preserved and not subject to the public hearing process. Within five (5) business days of the filing of the initial determination with the Town Clerk, any person aggrieved by the determination may file with Commission Staff and the Town Clerk an appeal of the Chair and Commission Staff's determination and the application will require review by the full Commission. The Building Inspector may not issue the demolition permit until the expiration of the five (5) business day appeal period.

Within twenty one (21) calendar days of receipt of the application from the Building Inspector, the Commission shall hold a meeting to determine if a public hearing will be required to determine whether the significant building is preferably preserved. If it is determined that no public hearing is required, the Building Inspector is authorized to issue the demolition permit. If it is determined that a public hearing is required, the Commission will hold a public hearing as specified in this bylaw.

Within forty five (45) calendar days of the determination that a public hearing is required, the Commission shall hold a public hearing to determine if it is in the public interest for a significant building to be preserved or rehabilitated rather than demolished, and, based on such determination, whether the significant building is a preferably preserved building.

No less than fourteen (14) calendar days prior to the hearing date, the Commission shall transmit written notice of the meeting time and place to the applicant, owner of record (if different from the applicant),

the owners of all properties within 300 (three hundred) feet of the subject property, the Building Inspector, the Hamilton Historical Society, and any others the Commission deems necessary to notice. The Commission shall give notice of the public hearing by publishing once at least fourteen (14) calendar days before the hearing a notice in a newspaper of general circulation in the town of the time, place, and purpose of the hearing. The applicant shall be responsible for the payment of the cost of publication.

In cases where it is known that additional approvals will be required for the proposed redevelopment of the premises, including zoning variances, special permits, and/or subdivision approvals, notice of the Commission's public hearing shall be provided to the authority responsible for granting said approvals.

If, following the public hearing, the Commission determines that:

1. The building is historically or architecturally significant; and
2. The demolition of this historically or architecturally significant building would be detrimental to the historical or architectural resources of the Town,

the Commission shall declare the building a preferably preserved significant building.

If, following the public hearing, the Commission determines that the building proposed for demolition is not historically or architecturally significant, or that the proposed demolition of the building would not be detrimental to the purposes protected by this bylaw, the Commission shall notify the Building Inspector. The Building Inspector may then issue the Demolition/Alteration Permit.

The Commission shall file written notice of its decision with the Town Clerk within thirty (30) calendar days of its vote. A copy of the decision shall also be mailed to the applicant and provided to the Building Inspector.

Failure to open the hearing or file its decision with the Town Clerk within these prescribed time periods shall be deemed to constitute constructive approval by the Commission, and in such case, the Building Inspector shall, subject to the requirements of the State Building Code and any other applicable laws, by-laws, rules and regulations, issue the Demolition/Alteration Permit.

Upon a determination by the Commission that any building which is the subject of an application is a preferably preserved building, no permit for new construction or alterations of the premises shall be issued for a period of twelve (12) months from the date of the receipt of the application of the Demolition/Alteration Permit to the Building Inspector unless otherwise agreed to by the Commission. The time period for delay shall be extended until the final resolution of any appeal of the Commission's decision to delay filed by the applicant, if the appeal is not resolved by the end of the twelve month period.

If twelve (12) months (if no appeal by the applicant) or the extended time period as set forth in the preceding paragraph have passed since the Demolition/Alteration Permit application was submitted to the Building Inspector, a Demolition/Alteration Permit shall be promptly issued by the Building

Inspector.

Notwithstanding the above, the Building Inspector may issue a Demolition/Alteration Permit for a preferably preserved building after receipt of written notice from the Commission that:

1. The building has been fully documented to the satisfaction of the Commission,
2. All salvageable and valuable artifacts and materials have been or will be removed and preserved to the satisfaction of the Commission, and
3. Any of the following applies:
  - a) The Commission is satisfied that there is no reasonable likelihood that the applicant, owner, or some other reasonable person or group is willing to purchase, preserve, rehabilitate, restore, or relocate said building; or
  - b) The Commission is satisfied that for at least 12 (twelve) months, including periods of time prior to the date of submission of an application for demolition permit, the owner has made continuing, bona fide, and reasonable efforts to locate a purchaser to preserve, rehabilitate, restore, or relocate said building or structure, and that such efforts have been unsuccessful; or
  - c) The Commission is satisfied that the proposed demolition may be conducted in a manner that is not detrimental to the historical or architectural resources of the town.

The Building Inspector may issue a demolition permit or a building permit for a preferably preserved building within the 12 (twelve) months if the Commission notifies the Building Inspector in writing that the Commission finds that the intent and purpose of this bylaw is served even with the issuance of the demolition permit.

No permit for demolition of a building determined to be a preferably preserved building shall be granted until all plans for future use and development of the site have been filed with the Building Inspector and have been found to comply with all laws pertaining to the issuance of a building permit. All approvals necessary for the issuance of such building permit including without limitation any necessary zoning variances or special permits must be granted and all appeals from the granting of such approvals must be concluded prior to the issuance of a demolition permit under this bylaw.

A decision by the Commission expires two (2) years from the date of the decision. If demolition has not occurred prior to the expiration of the Commission's decision, a new application for a demolition permit must be filed with the Building Inspector, and reviewed by the Commission in accordance with the provisions of this section, prior to any subsequent demolition.

### **Application Contents**

An applicant proposing to demolish a building subject to this bylaw shall file with the Building Inspector an application containing the following information:

1. The address of the building to be demolished.
2. Map showing location of the building or portion thereof to be demolished, with reference to the lot lines and to neighboring buildings and structures.
3. Written description of the building or portion thereof to be demolished sufficient to identify the nature and extent of the proposed demolition.
4. Photographs of all elevations.
5. The owner's name, address and telephone number, and e-mail address.
6. Construction date of building and source for information.
7. The reason for requesting a Demolition/Alteration Permit.
8. A brief description of the proposed reuse, reconstruction or replacement.
9. Authorization for a site visit by the Commission.

### **Administration**

The Commission may adopt such rules and regulations as are necessary to administer the terms of this bylaw, but may not increase the length of the delay period stated herein.

In computing any period of time prescribed in this bylaw, the day of the act, event, or default after which the designated period begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next business day.

The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this bylaw, including the retention of consultants deemed necessary to assist the Commission in its review of an application.

The Commission may delegate authority to make initial determinations of significance to one or more members of the Commission or to a municipal employee.

The Commission may proactively develop a list of significant buildings that will be subject to this by-law. Buildings proposed for the significant building list shall be added following a public hearing, with notice to the record owners of any building proposed to be included on the list.

### **Responsibilities of the Owner**

The owner of a significant building for which a Demolition/Alteration Permit is being sought shall:

1. Provide such information as is reasonably requested by the Commission in connection with its consideration of whether the significant building is a preferably preserved building.

2. Allow exterior access to the property on which the significant building is located, as reasonably requested by the Commission; and
3. Secure the significant building.

An applicant who has applied for a Demolition/Alteration Permit for a preferably preserved building shall:

1. Participate in the investigation of preservation options for the preferably preserved building; and
2. Reasonably cooperate with the Commission and any interested parties seeking alternatives to the demolition of the preferably preserved building.

Once a significant building is determined to be a preferably preserved building, the owner shall be responsible for properly securing the building, if vacant, to the satisfaction of the Building Inspector.

Should the owner fail to secure the building, a subsequent destruction of the building at any time during the demolition delay period, which destruction could have been prevented by the required security measures, shall be considered a demolition in violation of this bylaw.

### **Emergency or Hardship Demolition**

If after an inspection the Building Inspector finds that a building subject to this bylaw is found to pose an immediate threat to public health or safety due to its deteriorated condition and that there is no reasonable alternative to the immediate demolition of the building, then the Building Inspector may issue an emergency demolition permit to the owner.

The Building Inspector shall then prepare a report explaining the condition of the building and the basis for his decision, which shall be forwarded to the Commission, within five (5) calendar days.

If the owner of the building suffers from financial hardship such that sale of the building to a buyer who wishes to demolish the building is the only option to provide the owner with financial support to preserve or protect the owner's health, safety or well-being, the Chair and the Commission staff may file with the Town Clerk and the Building Inspector a determination of financial hardship. Within five (5) business days of the filing of the determination of financial hardship with the Town Clerk, any person aggrieved by the determination may file with Commission Staff and the Town Clerk an appeal of the Chair and Commission Staff's determination and the application will require review by the full Commission. The Building Inspector may not issue the demolition permit until the expiration of the five (5) business day appeal period. In reviewing a request for a determination of financial hardship, the Chair and Commission staff may consider the sale price, the identity of the buyer, and the buyer's relationship with the owner, if any, to ensure that the purchase is not an effort to evade the provisions of this bylaw.

Nothing in this bylaw is intended to conflict with or abridge any obligations or rights conferred by G.L. c. 143, §§ 6-10 regarding removal or demolition of dangerous or abandoned structures. In the event of a conflict, the applicable provisions of Chapter 143 shall control.

Nothing in this bylaw shall be deemed to conflict with or abridge the authority of the Board of Health



pursuant to G.L. c. 111, § 127B or the Select Board pursuant to G.L. c. 139, §§ 1 – 3A. The Board of Health or the Select Board is encouraged to consult with the Commission prior to taking action against a building constructed prior to 1940.

Nothing in this by-law shall be deemed to conflict with the provisions of the Historic Districts Act, Massachusetts General Laws, Chapter 40C, with respect to requirements of notice, hearing and issuance by the Commission of a Certificate of Appropriateness, a Certificate of Non-Applicability or a Certificate of Hardship prior to demolition of any building in the historic district.

### **Enforcement and Remedies**

Permits and determinations under this bylaw shall run with the land.

The Commission and Building Inspector are each specifically authorized to institute any and all actions and proceedings as either of them may deem necessary and appropriate to obtain compliance with the requirements of this bylaw or to prevent a threatened violation thereof.

Any owner of a significant building that is demolished without first obtaining a Demolition/Alteration Permit in accordance with the provisions of this bylaw shall be subject to a penalty of \$100 (one hundred dollars). Each day the violation exists until a faithful restoration of the demolished building or other remediation plan has been approved by the Commission shall constitute a separate offense. The Building Inspector may enforce this section by noncriminal disposition as provided by MGL c. 40, § 21D.

If a significant building is voluntarily demolished without first obtaining a Demolition/Alteration Permit, no building permit authorizing construction on the lot on which the building was located or on any adjoining lot under common ownership therewith shall be issued for a period of two (2) years from the date of the demolition on the subject parcel of land or any adjoining parcels of land under common ownership or control, unless the building permit is for the faithful restoration of the significant building or unless otherwise agreed to by the Commission.

### **Appeals**

A person aggrieved by reason of their inability to obtain a Demolition/Alteration Permit may appeal to the Select Board. The appeal shall be filed with the Town Clerk within twenty-one (21) calendar days after the date that the Commission's decision is filed with the Town Clerk. The Petitioner shall transmit a copy of the Commission's decision, with the date of filing certified by the Town Clerk, to the Select Board. The Select Board shall hold a public hearing within thirty (30) calendar days of the receipt of the petition and shall render a decision within sixty (60) calendar days from the date of filing. Failure by the Select Board to take final action upon a petition within the sixty (60) day period shall be deemed to be a grant of the appeal.

A person aggrieved by a decision of the Select Board may appeal to a court of competent jurisdiction within twenty-one (21) calendar days after the Board's decision has been filed with the Town Clerk.

Notice of such action with a copy of the complaint shall be filed with the Town Clerk within the same twenty-one (21) days.

### **Historic Districts Act**

Following a determination that the building is significant and preferably preserved, the Commission may recommend to Town Meeting that the building be protected through the provisions of Massachusetts General Law, Chapter 40C, the Historic Districts Act. The steps required under M.G.L. Chapter 40C shall be followed prior to the expansion of the local historic district. Nothing in this by-law shall be deemed to conflict with the provisions of the Historic Districts Act, Massachusetts General Laws Chapter 40C. If any of the provisions of this by-law do so conflict, that act shall prevail.

### **Severability**

If any provision of this bylaw shall be found invalid for any reason, such invalidity shall be construed as narrowly as possible, and the balance of the bylaw shall be deemed to be amended to the minimum extent necessary so as to secure the purposes of this bylaw.

## **CHAPTER XXXII**

### **HAMILTON AFFORDABLE HOUSING TRUST**

#### **SECTION 1:** Authority/establishment

Pursuant to G.L. c. 44, § 55C, there is hereby established an affordable housing trust fund to be known as the Hamilton Affordable Housing Trust Fund ("Trust"), which shall be subject to the supervision of the Select Board of the town of Hamilton. Said Trust shall be governed by a board of trustees.

#### **SECTION 2:** Purposes

The Board of Trustees of the Hamilton Affordable Housing Trust shall:

- A. Exercise its powers and perform its duties for the purpose of investigating and implementing alternatives for the provision of and providing affordable housing for persons of low and moderate income (as defined in G.L. c. 44 § 2), and
- B. Receive and expend funds for the acquisition, rehabilitation, renovation, construction, financing or refinancing of property within the Town of Hamilton for the purposes of providing affordable housing and to further provide mechanisms to ensure such use.

#### **SECTION 3:** Composition

The Trust shall have five (5) voting Trustees at all times and the Select Board shall appoint the Trustees. At Trustees must be residents of the Town of Hamilton, Massachusetts at the time of appointment and at all times throughout the Trustee's term. At all times at least one of the Trustees shall be a member of the Select Board. In making such appointments, the Select Board shall endeavor to provide a broad-based membership including legal, banking, financial and real estate professionals, other members of the local business community and affordable housing advocates. The Town Manager shall serve as a sixth Trustee, without the authority to vote.

**SECTION 4:** Term of Office

Upon establishment of the Trust, the Select Board shall forthwith appoint (2) Trustees whose initial terms shall expire on the first June 30 after appointment and (3) Trustees whose initial terms shall expire on the second June 30 after appointment. Thereafter, the Trustees shall be appointed for a two (2) year term commencing on July 1 and ending on June 30 or until such time as a successor is appointed, should said appointment be delayed.

**SECTION 5:** Organization

The Trustees shall annually elect one Trustee to serve as Chairperson. Sub-committees and/or ad hoc task related committees may be created by a majority vote of the Trustees to carry out the purposes of the Trust.

**SECTION 6:** Filling of vacancies

In the event of a vacancy in the position of Trustee, the appointment shall be made in the same manner as the original appointment.

**SECTION 7:** Meetings, quorum

Meetings of the Trust shall be held at the call of the Chairperson or any two (2) Trustees. Three voting Trustees shall constitute a quorum and a majority vote of the voting membership shall be required to approve any motion.

**SECTION 8:** Powers and duties

In addition to the powers and duties specified in G.L. c. 44, § 55C, the Board of Trustees shall have the following additional powers and duties:

- A. To establish criteria and/or qualifications for affordable housing recipients and make expenditures in accordance with the Trust's above-stated purposes.
- B. To enter into an agreement with the Town of Hamilton, wherein the Board of Trustees shall undertake to make to the Town, annual payments in lieu of taxes in connection with any real property acquired and owned by the Board; entering into such agreement shall not be

mandatory but shall be at the discretion of the Board of Trustees.

**SECTION 9:** Powers Reserved by the Select Board

The Board of Trustees shall not have the following powers which are reserved and remain with the Select Board, for the purposes of this bylaw only and not all property acquisitions, and are subject to approval by a majority vote of the Select Board:

- A. The acquisition or disposition of real property.
- B. The expenditure of trust funds for the acquisition of real property.
- C. The borrowing of money and the mortgaging and pledging of trust assets.

**SECTION 10:** Treasurer-Collector as custodian

The Treasurer-Collector shall be the custodian of the Trust's funds and shall maintain separate accounts and records for said funds. He or she shall invest the funds in the manner authorized by M.G.L. c. 44, §§ 55, 55A and 55B. Any income or proceeds received from the investment of funds shall be credited to and become part of the Trust.

**CHAPTER XXXIII  
Hamilton Council on Aging By-law**

Article 1.-**Name**-The Organization shall be known as the Hamilton Council on Aging, hereinafter called the “**Council**”.

Article 2.-**Definition**-An elderly person shall be defined as being aged 60 and older

Article 3.-**Purposes**-The basic purposes of the Council on Aging are:

- a. To act as a unified body for services to the elderly of Hamilton;
- b. To advance, improve and enhance programs for the elderly of Hamilton;
- c. To service all senior residents of Hamilton in as many ways as possible.

Article 4.-**Officers and Elections**-The officers of the Council shall:

- a. Be a Chairman, Vice-Chairman and Secretary
- b. Shall be elected each year by a majority of Council members present and voting at the regular monthly meeting in July

Article 5.-**Membership**-

- a. The Council shall consist of seven voting members and two alternates who are residents of Hamilton. An alternate shall have voting rights only when a quorum is not present and the Alternate is so designated by the Chair of the Council in the member's absence;

- b. Membership on the Council shall be for a 3 year term;
- c. A candidate for Council membership shall submit a letter of intent to the Chairman and be voted on by the Council before presenting the name to the Select Board for appointment;
- d. If a resignation or incapacity of any officer or member occurs, the remaining term will be filled consistent with the Town of Hamilton Select Board's policy for filling committee vacancies;
- e. A quorum shall be 4 members;
- f. All members shall be sworn in by the Town Clerk within 10 days of their appointment;
- g. All members shall serve without compensation.

**Article 6.-Meetings:**

- a. The Council shall meet monthly on the first Wednesday of the month, or on such other date as set by the Council Chairman, at a time set by the Council Chairman and at the Hamilton Senior Center, 299 Bay Road.
- b. Special meetings may be called at the request of the Chairman or any four members

**Article 7.-Amendments-**Amendments to these By-Laws must be submitted to the Council and mailed to each member at least seven days prior to the meeting when the amendments are to be considered. If approved, the Select Board will vote whether to include the amendments in a Warrant article for consideration at an annual or special Town Meeting.

**Article 8.-Annual Report-**An Annual Report shall be submitted to the Town to be included in the Town's Annual Report, and also to the Executive Office of Elder Affairs in Boston.

**CHAPTER XXXIV  
PERSONNEL BY-LAW**

The Select Board, shall have the authority to establish and amend Personnel Policies for non- union employees of the Town. The Compensation and Classification Table, as amended from time to time, shall be incorporated by reference into the Personnel By-law. Amendment to the Compensation and Classification Table shall further be approved by Town Meeting, except that in the case of urgent necessity, the Select Board may establish interim positions and compensation until the vote of the next Town Meeting. The compensation of elected officers of the Town shall be established annually by vote of the Town. A public hearing, notice of which is to be published at least seven (7) days prior to the hearing in a newspaper of general circulation in the Town, shall be held by the Select Board prior to the adoption or amendment of any personnel policy. For purposes of this by-law, personnel policies may include any conditions of employment, consistent with applicable state or federal law.

**CHAPTER XXXV  
ENVIRONMENTAL HAZARDS: REDUCTION OF WASTE**

**A. PLASTIC BAG REDUCTION**

**SECTION 1. Findings and Purpose**

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

**SECTION 2. Definitions**

The following words shall, unless context clearly indicates otherwise, have the following meanings:

**"ASTM D6400"**, the American Society for Testing and Materials (ASTM) International "Standard Specification for Compostable Plastics" which includes those plastics and products made from plastics that are designed to be composted under aerobic conditions in municipal and industrial aerobic composting facilities, including future iterations of that standard.

**"ASTM D7081"**, ASTM International "Standard Specification for Biodegradable Plastics in the Marine Environment" which includes those plastics and products that are designed to be biodegradable under the marine environmental conditions of aerobic marine waters or anaerobic marine sediments, or both, including future iterations of that standard.

**"Carryout Bag"** shall mean a bag provided by a store to a customer at the point of sale for the purpose of removing products purchased at the store. Carryout Bags shall not include those bags, whether plastic or not, intended for the use by a customer for placing loose produce or other bulk food items to carry to the point of sale or checkout area of the store.

**"Compostable Plastic Bag"** shall mean a plastic bag that (1) conforms to the current ASTM D6400 specifications for compostability; (2) is certified and labeled as meeting the ASTM D6400 standard specifications by a recognized verification entity.

**"Health Agent"**, the Health Agent for the Town of Hamilton or his/her designee.

**"Marine Degradable Plastic Bag"** shall mean a plastic bag that conforms to the current ASTM D7081 standard specification for marine degradability.

**"Retail establishment"** shall mean any business facility that sells goods directly to the consumer including but not limited to grocery stores, pharmacies, liquor stores, "mini-

markets," and retail stores and vendors selling clothing, food, and household or personal items. **"Reusable Bag"** shall mean a bag with handles that is specifically designed for multiple reuse and is either:

- (1) made of cloth or other washable fabric; or
- (2) made of durable plastic 3 mil in thickness; or
- (3) of some other durable non-toxic material.

**"Thin-Film, Single-Use Plastic Bags"** shall mean those bags typically with handles, constructed of high-density polyethylene (HDPE), low density polyethylene (LDPE), linear low density polyethylene (LLDPE), polyvinyl chloride (PVC), polyethylene terephthalate (PET), polypropylene (other than woven and non-woven polypropylene fabric) if said film is less than 3.1 mils (.0762mm) in thickness and which do not meet the ASTM D6400 or ASTM D7081 standard specifications.

### **SECTION 3. Thin-film, Single-Use Plastic Bags Prohibited**

- A. No retail establishment in the Town of Hamilton shall provide Thin-Film, Single-Use Plastic Bags to customers.
- B. If a retail establishment provides Carryout Bags to customers, the bags must be one of the following:
  1. Recyclable paper bag, or
  2. Reusable Carryout Bag, or
  3. Bag made from a polymer which meets the specifications of ASTM D6400 or ASTM 7081, as amended.
- C. Exception: Thin-film plastic bags typically without handles which are used to contain dry cleaning, newspapers, produce, meat, bulk foods, wet items and other similar merchandise are not prohibited under this bylaw.

### **SECTION 4. Enforcement; violations and penalties.**

- A. The Board of Health and the Health Agent shall have the authority to administer and enforce this bylaw.
- B. Whoever violates any provision of this bylaw may be penalized by a non-criminal disposition process as provided in G.L. c. 40, §21D or by the criminal or non-criminal process set forth in the Town General Bylaw Ch. XIII.
- C. For the first violation, the Enforcing Authority, upon a determination that a violation has occurred, shall issue a written warning notice to the establishment which will specify the violation.
- D. The following penalties shall apply:
  - a. A ~~fine~~ of \$25 for the first violation following the issuance of a written warning notice.
  - b. A fine of \$50 for the second and any other violation that occurs after the issuance of a warning notice.
- E. Fines are cumulative and each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.
- F. Whoever violates any provision of this bylaw may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each offense shall be

three hundred dollars. (\$300.00)

**SECTION 5. Severability; effective date.**

- A. Each section of this bylaw shall be construed as separate to the end that if any section, sentence, clause or phrase thereof shall be held invalid for any reason, the remainder of that bylaw and all other bylaws shall continue in full force.
- B. This bylaw shall take effect twelve (12) months following approval of the by-law by the Attorney General to allow time for retail establishments to use their existing inventory of plastic checkout bags and to convert to alternative packaging materials.

**SECTION 6. Regulations**

The Board of Health may adopt and amend rules and regulations to effectuate the purposes of this bylaw. Prior to the adoption or amendment of the rules and regulations, the Board of Health shall hold a public hearing. Notice of the time and place of the hearing, and of the subject matter, sufficient for identification, shall be published in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than 14 days before the day of the hearing. A copy of the adopted regulations shall be provided to the Office of the Town Clerk. Failure by the Board of Health to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

**B. EXPANDED POLYSTYRENE FOOD AND BEVERAGE CONTAINERS PROHIBITED**

**SECTION 7. Findings and Purpose**

Expanded polystyrene food containers form a significant portion of the solid waste stream going into our landfills. Local landfills are running out of room; our future solid waste may need to be transported hundreds of miles to a landfill at a considerable cost. Expanded polystyrene are not biodegradable; once buried in a landfill, they will remain for centuries. The elimination of expanded polystyrene food and beverage containers is in the best interest of the health and welfare of the inhabitants of the Town of Hamilton.

**SECTION 8. Definitions**

As used in this article, the following terms shall have the meanings indicated:

**"Disposable Food Service Container"** shall mean single-use disposable products for serving or transporting prepared, ready-to-consume food or beverages, including, without limitation, take-out foods and/or leftovers from partially consumed meals prepared by a restaurant and/or retail food establishment. This includes, but is not limited to, plates, cups, bowls, trays, hinged or lidded containers, straws, cup lids, or utensils. It shall not include single-use disposable packaging for unprepared foods.

**"Expanded Polystyrene"** shall mean blown polystyrene (polystyrene that has been expanded or blown using a gaseous blowing agent into a solid foam) and expanded and extruded forms, which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding



(extruded foam polystyrene), sometimes called Styrofoam, a Dow Chemical Co. trademarked form of polystyrene foam.

**"Prepared Food"** shall mean any food or beverage prepared on the restaurant and/or retail food establishment's premises using any cooking or food preparation technique. Prepared food shall not include any raw uncooked meat, fish or eggs unless provided for consumption without further food preparation. Prepared food may be eaten on or off the food establishment's premises.

**"Restaurant"** shall mean any establishment which serves food for consumption whether on or off the premises and which may also maintain tables for the use of its customers.

**"Retail Food Establishment"** shall mean any establishment which sells food for consumption off the premises, including but not limited to grocery stores, theaters and all other food service establishments not included in the definition of a "Restaurant" in this section.

### **SECTION 9. Prohibition**

Expanded Polystyrene food or beverage Disposable Food Service Containers shall not be used to package or serve food or beverages by Restaurants and or/Retail Food Establishments within the Town of Hamilton. This bylaw shall not apply to the packaging of uncooked meat, uncooked poultry, and/or uncooked fish.

### **SECTION 10. List of Available Alternatives**

Not later than sixty (60) days following approval hereof by the Attorney General, the Board of Health shall adopt a list of available suitable affordable biodegradable/compostable or recyclable alternatives for each type of Disposable Food Service container per food or beverage product, which the Board of Health shall update as needed.

### **SECTION 11. Enforcement, Violations and Penalties**

- A. The Board of Health, the Health Agent, and persons designated by the Health Agent shall have the authority to administer and enforce this bylaw.
- B. Whoever violates any provision of this bylaw may be penalized by a non-criminal disposition process as provided in G.L. c. 40, §21D or by the criminal or non-criminal process set forth in the Town General By-law Ch. XIII.
- C. For the first violation, the Enforcing Authority, upon a determination that a violation has occurred, shall issue a written warning notice to the establishment which will specify the violation.
- D. Thereafter, the following penalties shall apply
  - a. A fine of \$25 for the first violations following the issuance of a written warning notice.
  - b. A fine of \$50 for the second and any other violation that occurs after the issuance of a warning notice.
- E. Fines are cumulative and each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.
- F. Whoever violates any provision of this bylaw may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each offense shall be three hundred dollars (\$300.00).

**SECTION 12. Severability; effective date**

- A. Each section of this bylaw shall be construed as separate to the end that if any section, sentence, clause or phrase thereof shall be held invalid for any reason, the remainder of the bylaw shall continue in full force.
- B. This bylaw shall take effect twelve (12) months following the approval of the bylaw by the Attorney General to allow time for Restaurants and Retail Food Establishments to use their existing inventory of Expanded Polystyrene food or beverage containers and to convert to alternative materials.

**SECTION 13. Regulations**

The Board of Health may adopt and amend rules and regulations to effectuate the purpose of this by-law. Prior to the adoption or amendment of the rules and regulations, the Board of Health shall hold a public hearing. Notice of the time and place of the hearing, and of the subject matter, sufficient for identification, shall be published in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than 14 days before the day of the hearing. A copy of the adopted regulations shall be provided to the Office of the Town Clerk. Failure by the Board of Health to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

*ATM 4-5-2015 Amended – August 14, 2015*

**Chapter XXXVI  
Departmental Revolving Funds**

Section 1. Purpose. This by-law/ordinance establishes and authorizes revolving funds for use by town/city departments, boards, committees, agencies or officers in connection with the operation of programs or activities that generate fees, charges or other receipts to support all or some of the expenses of those programs or activities. These revolving funds are established under and governed by General Laws Chapter 44, § 53E½.

Section 2. Expenditure Limitations. A department or agency head, board, committee or officer may incur liabilities against and spend monies from a revolving fund established and authorized by this by-law without appropriation subject to the following limitations:

- A. Fringe benefits of full-time employees whose salaries or wages are paid from the fund shall also be paid from the fund.
- B. No liability shall be incurred in excess of the available balance of the fund.
- C. The total amount spent during a fiscal year shall not exceed the amount authorized by the town on or before July 1 of that fiscal year, or any increased amount of that authorization that is later approved during that fiscal year by the Select Board, town manager, and finance committee.

Section 3. Interest. Interest earned on monies credited to a revolving fund established by this bylaw shall be credited to the general fund.

Section 4. Procedures and Reports. Except as provided in General Laws Chapter 44, § 53E½ and this by-law, the laws, by-laws, rules, regulations, policies or procedures that govern the receipt and custody of town monies and the expenditure and payment of town funds shall apply to the use of a revolving fund established and authorized by this by-law. The Finance Director shall include a statement on the collections credited to each fund, the encumbrances and expenditures charged to the fund and the balance available for expenditure in the regular report the Finance Director provides the department, board, committee, agency or officer on appropriations made for its use.

Section 5. Authorized Revolving Funds.

The Table establishes:

- A. Each revolving fund authorized for use by a town department, board, committee, agency or officer;
- B. The department or agency head, board, committee or officer authorized to spend from each fund;
- C. The fees, charges and other monies charged and received by the department, board, committee, agency or officer in connection with the program or activity for which the fund is established that shall be credited to each fund by the Finance Director;
- D. The expenses of the program or activity for which each fund may be used;
- E. Any restrictions or conditions on expenditures from each fund;
- F. Any reporting or other requirements that apply to each fund, and
- G. The fiscal years each fund shall operate under this by-law.

| A<br>Revolving<br>Fund                             | B<br>Department,<br>Board,<br>Committee,<br>Agency or<br>Officer<br>Authorized<br>to Spend<br>from Fund | C Fees,<br>Charges or<br>Other Receipts<br>Credited to<br>Fund                        | D Program<br>or Activity<br>Expenses<br>Payable<br>from Fund                                                                                                                                                    | E<br>Restrictions<br>or<br>Conditions<br>on Expenses<br>Payable<br>from Fund | F Other<br>Requirements/<br>Reports     | G Fiscal<br>Years                           |
|----------------------------------------------------|---------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|-----------------------------------------|---------------------------------------------|
| Recreation<br>and Parks                            | Town<br>Manager                                                                                         | Recreation<br>Program Fees<br>and Receipts<br>from pool<br>passes and<br>pool program | Salaries,<br>expenses,<br>supplies,<br>and<br>contractual<br>services to<br>operate<br>recreational<br>programs,<br>including<br>the pool,<br>and capital<br>expenses to<br>operate and<br>maintain<br>the pool | None                                                                         | Balance<br>available for<br>expenditure | All years<br>on or after<br>July 1,<br>2021 |
| Council on<br>Aging                                | Town<br>Manager                                                                                         | Receipts and<br>fees from COA<br>programs,<br>activities, and<br>trips                | Salaries,<br>expenses,<br>supplies,<br>and<br>contractual<br>services to<br>operate<br>COA<br>programs,<br>activities<br>and trips                                                                              | None                                                                         | Balance<br>available for<br>expenditure | All years<br>on or after<br>July 1,<br>2018 |
| Emergency<br>Dispensing<br>Services<br>and Clinics | Town<br>Manager                                                                                         | Receipts from<br>insurance<br>reimbursement,<br>bequest, and<br>contributions         | Expenses,<br>supplies,<br>and<br>contractual<br>services to<br>operate<br>EDS and<br>clinics                                                                                                                    | None                                                                         | Balance<br>available for<br>expenditure | All years<br>on or after<br>July 1,<br>2018 |

## CHAPTER XXXVII

### BYLAW FOR THE IMPROVEMENT OF UNSAFE STRUCTURES OR PROPERTY AND THE MAINTENANCE OF VACANT BUILDINGS

#### 1. AUTHORITY AND PURPOSE

Pursuant to the general powers granted to towns by Article 89 of the Amendments to the Massachusetts Constitution, and the specific powers granted by Massachusetts General Laws, Chapter 139, Sections 1- 3A, this Bylaw is adopted for the prevention of any unreasonable interference with the common interest of the general public in maintaining decent, safe, and sanitary structures. The provisions of this Bylaw shall be applicable to any building, structure, or property that meets any one of the two sets of conditions set forth herein under the definitions of “Unsafe Structure or Property,” or “Vacant Buildings”.

#### 2. DEFINITIONS

- A. 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.
- B. 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, platform, bin, fence, parking area, sign, flagpole, or mast for antenna or the like.
- C. Enforcement Authority – This Bylaw shall be enforced by the Building Commissioner or his qualified designee.
- D. Interested Parties - In connection with the enforcement and notification requirements of this Bylaw, Interested Parties are: the Enforcement Authority; any Responsible Party; owners and occupants of property abutting the subject property; owners and occupants of property directly opposite the subject property on any public or private street or way; and a person filing a complaint under this Bylaw.
- E. Occupant - A person who occupies real property with the consent of the owner as a lessee, tenant at will, licensee, or otherwise. The singular use of the term includes the plural when the context so indicates.
- F. Owner - Every person who alone or jointly or severally with others (a) has legal title to any building, structure or property; or (b) has care, charge, or control of any such building structure or property 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 (c) is a mortgagee in possession; or (d) is an agent, trustee or other person appointed by the courts.
- G. Responsible Party - The owner or occupant (in the case of real property) of property that is the subject of proceedings under this Bylaw. The singular use of the term includes the plural when the context so indicates.

### 3. UNSAFE STRUCTURE OR PROPERTY

Unsafe is a condition of a structure or structures or personal property that exposes persons to unreasonable risk of injury or harm, or exposes property to unreasonable risk of damage, loss or destruction.

### 4. VACANT BUILDINGS

Vacant buildings or structures are ones which (a) are or will be unoccupied, i.e., not inhabited or lived in, by a Responsible Party for a period of one hundred eighty (180) consecutive days or more and (b) for which the Responsible Party has failed to do any of the following:

- (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, and;
- (e) for properties vacant for six months or more at which the utilities have been shut off, remove or cut and cap such utilities to prevent accidents.

### 5. VIOLATIONS

If the Enforcement Authority is informed of or has reason to believe that unsafe conditions, as defined in Section 3, or that vacant buildings, as defined in Section 4, 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 Enforcement Authority 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.

### 6. PROCEDURES FOR ENFORCEMENT

A. Procedures – During his investigation of the matter, the Enforcement Authority shall make reasonable efforts to consult with the Responsible Party for the purpose of obtaining voluntary compliance with this Bylaw before initiating any enforcement action.

If, after inspection, the Enforcement Authority confirms the existence of unsafe conditions or vacant buildings in violation of this Bylaw and the Responsible Party fails to voluntarily comply, he shall issue a Notice of Violation and may make and issue such Orders as he deems necessary to correct or eliminate the unsafe conditions or obtain compliance with the requirements for vacant buildings. Said Notice and Orders shall be in writing and shall be served upon all Responsible Parties as can be determined after reasonable inquiry.

Any Interested Party who has filed a written complaint of unsafe conditions or vacant buildings to the Enforcement Authority upon which complaint the Enforcement Authority has determined that the conditions do not exist, or the Enforcement Authority has taken action that the Interested Party claims is

inadequate, shall have a right to a review of the matter by the Town Manager. At the request of such an Interested Party, the Town Manager shall confer with the Enforcement Authority and may confer with other appropriate agencies of Town government such as the Council on Aging, Assessors Department, and Building Department. The Town Manager shall make a decision and recommend appropriate action in writing to the Interested Parties, the Responsible Parties, the Enforcement Authority, and the Select Board.

Any person aggrieved by the decision and recommendation of the Town Manager may request a hearing before the Select Board. Said request shall be in writing and received by the Select Board within ten (10) business days of issuance of the Town Manager's decision. A copy of the hearing request shall also be delivered to the complainant, if any, and to all Interested Parties. 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 Enforcement Authority shall be final.

A request for hearing shall not constitute a stay of the Enforcement Authority's Order unless the Enforcement Authority so orders.

Upon receipt of a timely request, the Select Board shall convene a public hearing, which may include an examination of any complainant or Responsible Party, under oath, to determine whether conditions under this Bylaw exist. Based on the evidence and testimony presented at said public hearing, the Select Board may affirm the Enforcement Authority'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 unsafe conditions. The determination of the Select Board after a hearing shall be final.

Fines for non-compliance with the Enforcement Authority's or Select Board's Order may be assessed as a non-criminal disposition pursuant to M.G.L. Chapter 40, Section 21D and Article XIII of the Town's Bylaws in the following amounts:

- i. First offense, \$100.00
- ii. Second offense, \$200.00
- iii. Third and successive offenses, \$300.00 each

Each violation of this Bylaw shall constitute a separate offense. Each day that any such violation continues shall constitute a separate offense.

The Enforcement Authority may require that a complaint be made in writing subject to the penalties of perjury. If the Enforcement Authority determines that a reported condition may warrant immediate action, or constitutes a substantial violation of this Bylaw, the Enforcement Authority may seek authority to file for injunctive relief in court without first holding a hearing or providing prior notice to the Responsible Party and without requiring the disclosure of the identity of the complainant.

If the Enforcement Authority determines that the condition is subject to the jurisdiction of the Board of Health or is a violation of the State Sanitary Code or any health regulation, in addition to enforcing this Bylaw, he shall refer the matter to the Board of Health for action.

B. Notice to Complainant - In any matter in which a complaint has been made by a person other than the Enforcement Authority, the Enforcement Authority shall notify the complainant in advance of

all conferences or proceedings concerning resolution of the complaint or of any enforcement action and the complainant shall be allowed to be present.

C. Removal of Unsafe Conditions or Vacant Buildings by Select Board - If the Responsible Party fails to remedy the conditions upon notice and order from the Enforcement Authority to do so, the Select Board may cause corrective action for the conditions as provided in General Laws c. 139.

E. Reports by Enforcement Authority - The Enforcement Authority shall file with the Town Manager each month a report that shall include all complaints under this Bylaw 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. 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.

## 7. OTHER LAWS

Compliance with this Bylaw shall not relieve the Responsible Party of any applicable obligations set forth in any other codes, regulations, covenant conditions or restrictions, and/or homeowner or condominium association rules and regulations.