

# General Bylaws



Town of Hampden  
Massachusetts

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## **CHAPTER I. INTRODUCTION**

It is traditional in public affairs to establish rules or Bylaws for the most effective conduct of the meetings and operations of its organizations. Of equal importance is the publication of these rules so that all concerned, particularly newcomers, may be adequately instructed in the conduct of such meetings and of the organization itself.

So it is in the Town of Hampden. The efforts of the first Bylaw Committee which provided the first Bylaws in 1948, and the revisions in 1950 and 1969 are respectfully acknowledged. In preparation for this 1984 revision a Committee was approved at the Annual Town Meeting, April 25, 1983. This Committee has reviewed and revised the Bylaws for completeness and clarity. All General Bylaws of 1969 and subsequent amendments thereto are hereby repealed and annulled on the effective date of these Bylaws.

Whoever violates any of the provisions of these Bylaws shall, unless other provision is expressly made, pay a fine, not exceeding one hundred dollars, for each offense. All fines shall be paid into the Town Treasury.

The invalidity of any section or provision of these Bylaws shall not invalidate any other section or provision thereof.

## **CHAPTER II. TOWN MEETINGS**

The Annual Town Meeting is actually conducted in two parts: the Annual Town Meeting for the transaction of business, and the Annual Town Meeting to elect town officers (commonly referred to as Town Election).

### **SECTION 1.**

The Annual Town Meeting for the transaction of business shall be held on the second Monday in May at 7:00PM (Amended April 26, 1999 / April 25, 2016). Special Town Meetings for the transaction of business shall be called by the Selectboard as provided by law. (Massachusetts General Laws, Chapter 39, Section 9).  
(Adopted April 16, 1974)

The warrant containing all items of business for each Town Meeting shall be posted on the outside Bulletin board at the Town House, on the outside of the buildings located at 43 Somers Road, presently occupied by the Village Food Mart, the Hampden Police Station, the Senior Center and online on the Town's website, at least seven days before any Town Meeting. (Amended May 14, 2018)

The number of registered voters to constitute a quorum at a Town Meeting shall be 50.(amended April 26, 1999)

These procedures shall be followed:

- a. Persons speaking shall address the Moderator.
- b. All questions asked of any person shall be asked through the Moderator.
- c. On entering the meeting room, before or during a Town Meeting held for the transaction of business, each voter of the Town of Hampden shall be identified by the Board of Registrars or their deputies, by reference to the Voters' List. Persons who are not voters of the Town of Hampden shall be seated separately from the voters, in a place designated by the moderator.
- d. All votes on motions shall be taken by a show of hands or, subject to the availability of a system to enable electronic voting and at the discretion of the Moderator, by use of such electronic voting system; nothing in this section shall be construed to prevent the taking of a vote by ballot if a motion to that effect shall be duly made and carried by a majority of the voters present and voting thereon. When a question is determined by a ballot vote, every person voting shall have his or her name checked by the check list of the Registrars of Voters before depositing the ballot in the receptacle provided  
Amended 5/13/20254
- e. Prior to discussion of each article, the Moderator shall indicate, or call for, the pertinent recommendation of the Advisory Board.
- f.

- g. The Moderator shall preserve decorum and order; shall decide all questions of order; and may in the Moderator's discretion, make any ruling of Parliamentary Law, without appeal, utilizing Robert's Rules of Order as a guide.
- h. Bylaws may be adopted, amended or repealed by a majority vote at any Annual Town Meeting.
- i. On matters requiring a two-thirds vote by statute, a count need not be taken unless the vote declared by the Moderator is immediately questioned by seven or more voters as provided in General Laws, Chapter 39, Section 15.(amended April 28, 1997)

## **SECTION 2.**

The Annual Town Meeting to elect town officers and to vote on such other matters as may be voted on the official ballot, shall be held on the third Monday in May(amended April 25, 2016). The polls for the election of town officers shall be open at 7:00 AM (Amended 4/24/06) and remain open until 8:00 PM when they shall be closed. These times shall be stated in the warrant calling said meeting.

If a vacancy occurs in any elected office, that vacancy shall be filled in accordance with the provisions of the Massachusetts General Law, Chapter 41, as amended.

All appointments made by elected officials for the ensuing year will be made after the Annual Town Meeting described in this SECTION 2.

## **CHAPTER III. ADVISORY COMMITTEE**

### **SECTION 1.**

There shall be an Advisory Committee for the Town, which shall perform the duties set forth in the following sections, and be governed by the provisions thereof, and by the provisions of Massachusetts General Laws, Chapter 39, Section 16 and related statutes.

### **SECTION 2.**

The Committee will consist of five members appointed by the Moderator, and the term of each shall be three years, following the expiration of the terms of those appointed heretofore.

The Moderator of the Town elected at said annual Town Election of officers shall fill the expired vacancies (within thirty days).

The Committee shall choose its own officers and cause a true record to be kept of its proceedings and shall serve without pay.

Three members shall constitute a quorum.

### **SECTION 3.**

The said Committee shall fill any vacancy, which may occur in its membership, by a majority of those present and voting. An attested copy of this vote shall be sent by the Committee to the Town Clerk.

If any member is absent from five consecutive meetings of said Committee, except in case of illness, that member's position shall be deemed vacant and shall be filled as herein provided. The term of office of any person so chosen to fill a vacancy shall expire at the adjournment of the next succeeding Annual Town Meeting to elect officers. The Moderator elected at said Town Meeting shall appoint a successor to complete the unexpired term of the member in whose office such vacancy originally occurred.

### **SECTION 4.**

The Selectboard, after drawing any warrant for a Town Meeting, shall transmit immediately a copy thereof to each member of the Advisory Committee and said Committee shall consider all articles. A public hearing shall be held at least seven days before such Town Meeting upon all articles and a notice of such hearing shall be given by posting a copy thereof in at least those public places in the Town, identified in CHAPTER II,

SECTION 1 above, seven days prior to the hearing. After due consideration of the subject matter in such articles, said Committee shall report thereon, in print or otherwise, to the Town Meeting, its recommendations on all articles pertaining to appropriations, the expenditure of money and the incurring of debts. The Committee may make recommendations on any other articles it deems appropriate. (Adopted April 16, 1974 / Amended May 14, 2018)

## **SECTION 5.**

It shall be the duty of the Advisory Committee to consider the annual estimates and expenditures as prepared by the several boards, officers and committees of the Town, or by the Town Accountant. The Advisory Committee shall recommend for comparison, amounts which in the Committee's opinion should be appropriate for the ensuing year. The Committee shall add thereto such explanations and suggestions in relation to the proposed appropriations as it may deem expedient, and report thereon as provided in SECTION 4.

## **SECTION 6.**

In the discharge of its duty said Committee shall have free access to all books of record and accounts, bills and vouchers on which money has been or may be paid from the Town Treasury. Officers, Boards, and Committees of the Town shall, upon request, furnish said Committee with facts, figures and other information pertaining to their several activities.

## **SECTION 7.**

No expenditure shall be made or liability incurred by or in behalf of the Town until an appropriation has been made sufficient to meet such expenditure or liability, in accordance with Massachusetts General Laws, Chapter 44, Section 31.

## **SECTION 7A Revolving Funds** (Adopted 5/14/2018)

1. **Purpose.** This bylaw establishes and authorizes revolving funds for use by town departments, boards, committees, agencies and 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.
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 Annual Town Meeting 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 Selectboard and Advisory Committee.

A. Revolving Fund	B. Department, Board, Committee, Agency or Officer authorized to spend from fund	C. Fees, Charges or other receipts Credited to Fund	D. Program or Activity Expenses Payable from Fund	E. Restrictions or Conditions on Expenses Payable from Fund	F. Other requirements/ Reports	G. Fiscal Years
Building Department Fund	Building Department	Inspection Fees	Payments to non- salaried Inspectors and Inspectors' Expenses	No full time Salaries		FY2019 and Subsequent Years
Board of Health Fund	Board of Health Director	Inspection Fees	Payments to non- salaried Inspectors and Inspectors' Expenses	No full time Salaries		FY2019 and Subsequent Years
Cemetery Commission Fund	Cemetery Commissioners	Burial permits	Burial Expenses And costs	No full time Salaries		FY2019 and Subsequent Years
Council On Aging Fund	Council on Aging Director	Donations; and Fees collected for classes, trips and programs	Costs and expenses related to miscellaneous COA activities, programs and events	No full time Salaries	Each fee to be reserved For specific Activity for which collected	FY2019 and Subsequent Years
Library Fund	Library Commissioners	Late book Returns and Misc. activity fees	Misc. library Expenses	No full time Salaries		FY2019 and Subsequent Years
ConCom Fund	Conservation Commission	Project Deposits and fees	Engineer or Consultant Fees for Conservation Committee activity	No full time Salaries	Fees to be reserved for Specific Project for Which collected	FY2019 and Subsequent Years
Revolving Fund						
Planning Board Fund	Planning Board	Project Deposits and fees	Engineer or Consultant Fees for PB activity	No full time Salaries	Fees to be Reserved for Specific Project for Which collected	FY2019 and Subsequent Years

3. **Interest.** Interest earned on monies credited to a revolving fund established by this by-law shall be credited to the general fund.

4. **Procedures and Reports.** Except as provided in General Laws Chapter 44, § 53E½ and this by-law, the laws, charter provisions, 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 Town Accountant shall include a statement on the collections credited to each fund, the encumbrances and expenditures charged to each fund and the balance of each fund available for expenditure in the regular report the Town Accountant provides the department, board, committee, agency or officer on appropriations made for its use.

**5. Authorized Revolving Funds.** The Table establishes:

- A. Each revolving fund authorized for use by a town department, board, committee, agency or office,
- 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 office in connection with the program or activity for which the fund is established that shall be credited to each fund by the Town Accountant,
- 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.

**Table: Revolving Funds**

**SECTION 8.**

The Advisory Committee shall make an annual report of its activities to be contained in the annual Town Report, or a supplement thereto. (Adopted April 16, 1974.)

**CHAPTER III (A) COMMUNITY PRESERVATION ACT** (Adopted May 7, 2001)

In accordance with the acceptance of MGL 44B, Sections 3,4,5 & 7 (amended November 10, 2001) inclusive, known as the Community Preservation Act, there shall be a dedicated funding source to acquire and preserve open space, parks and conservation land, protect public drinking water supplies, and scenic areas, protect farm land and forests from future development, restore and preserve historic properties, and help meet local families' housing needs. In the Town of Hampden, it will be funded by an additional surcharge of 1% on the annual property tax on real property, and by any annual distributions made by the state. EXCLUSION: \$100,000 of the value of each taxable parcel of residential real property. Any taxpayer receiving an exemption of real property authorized by Chapter 59 of the General Laws shall be exempt from the surcharge. The surcharge paid by a taxpayer receiving an abatement of real property authorized by Chapter 59 shall be reduced in proportion to the amount of such abatement. A community Preservation Committee composed of 9 (amended November 10, 2001) local citizens will make recommendations on the use of the funds and all expenditures will be subject to an annual audit.

**SECTION 1: (Adopted October 29, 2001)**

There shall be a Community Preservation Committee for the Town which shall perform the duties set forth in the following sections and be governed by the provisions thereof and by the provisions of General laws Chapter 44B, Section 5 and any other applicable statutes.

- a. The Committee will consist of nine (9) members. The committee shall include one designee from the Conservation Commission, the Historical Commission, the Planning Board, the Park Commission and the Housing Authority and two persons designated by the Selectboard and two persons designated by the Town Moderator.

(At its first meeting, the members of the Committee shall determine, by lot or otherwise, which of its members shall serve a term of one year, which for a term of two years and which for a term of three years so that the terms of approximately one-third of its members expire each year. After expiration of their initial terms, members of the Committee shall serve for terms of three years. A member of the Committee shall serve until his or her successor has been appointed (or elected) and qualified.

- b. A quorum, consisting of a majority of the entire membership of the committee, must be present for the Committee to meet and act. A majority vote of the entire committee membership is needed to take any action.

**SECTION 2:**

The Committee shall study the needs, possibilities and resources of the Town regarding community preservation. The Committee shall consult with existing municipal boards, including the Conservation Commission, the Historical Commission, the Planning Board, the Board of Park Commissioners and the Housing Authority, or persons acting in these 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 possibilities and resources, 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.

**SECTION 3:**

The Committee shall make recommendations to the Town Meeting for the acquisition, creation and preservation of open space; 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 section. 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. Recommendations to the Town Meeting shall include their anticipated costs.

**SECTION 4:**

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 established by the Town to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.

**SECTION 5:**

After receiving recommendations from the Committee, the Town Meeting shall then take such action and approve such appropriations from the Community Preservation Fund and such additional appropriations as it deems appropriate to carry out the recommendations of the Committee.

**SECTION 6: NOT ACCEPTED****SECTION 7:**

The foregoing provisions shall be subject to the provisions of General Laws Chapter 44B, Sections 3 through 7 or any other general or special act relating to community preservation and the rights and obligations of the Committee.

**CHAPTER IV. CONTRACTS BY TOWN OFFICERS****SECTION 1.**

No contract involving an obligation of the Town in excess of \$500 shall be binding upon the Town unless it is in writing and is signed by at least a majority of the board or committee duly authorizing or having control of the appropriation against which such obligation is incurred; and such board or committee shall make a record of every contract in a book which shall be property of the Town.

**SECTION 2.**

Every contract in excess of \$2,000 shall be controlled by Massachusetts General Laws, Chapter 40, Section 4B.

**CHAPTER V. LEGAL AFFAIRS****SECTION 1.**

The Selectboard shall institute, prosecute, and defend any and all claims, actions and proceedings to which the Town is a party, or in which the interests of the Town are, or may be, involved.

**SECTION 2.**

The Selectboard may at their discretion employ counsel to assist them in the institution, prosecution, and defense of any and all claims, actions and proceedings to which the Town is a party, or in which the interests of the Town are, or may be, involved.

### **SECTION 3.**

All town officers, boards and committees requiring the services of the Town Counsel, shall contact Town Counsel only after obtaining the acquiescence of the Selectboard and shall keep the Selectboard apprised of the status of each issue by notifying them in writing or by sending copies of any communications to them.

### **SECTION 4.**

The Selectboard shall annually, in June, and whenever a vacancy shall exist, appoint a member of the Massachusetts Bar to act as Town Prosecutor. The Town Prosecutor shall be subject at any time to removal by the Selectboard.

## **CHAPTER VI. REPORTS**

### **SECTION 1.**

All reports submitted to the Town of Hampden by elected or appointed officials shall be reproduced in the Annual Town Report and a copy shall be retained by the Town Clerk.

## **CHAPTER VII. PERMITS AND FEES**

### **SECTION 1.**

The Selectboard shall from time to time establish a schedule of fees to be charged for the issuance of permits.

### **SECTION 2.**

No permit or license shall be issued until the applicant for same has paid to the Town Treasury a fee.

### **SECTION 3.**

All Town officers who receive a salary shall pay all fees received by them by virtue of their office into the Town Treasury.

### **SECTION 4.**

All Town officers who receive a salary shall on June 30 and December 31 of each year report to the Selectboard the amount of fees received by them by virtue of their offices, and the Selectboard shall publish the same in the Annual Town Report.

### **SECTION 5.**

The Tax Collector or other municipal officer responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as the Tax Collector, shall annually furnish to each department, board, commission or division, hereinafter referred to as the licensing authority, that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges 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.

The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers of any party whose name appears on said list furnished to the licensing authority from the tax collector; provided, however, that written notice is given to the party and the tax collector, as required by applicable provisions of law, and the party is given a hearing, to be held not earlier than fourteen days after said notice. Said list shall be *prima facie* evidence for denial, revocation or suspension of said license or permit to any party. The tax collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the licensing authority with respect to such license denial, revocation or suspension shall be made only for the purpose of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such denial, revocation or suspension. Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the licensing 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 as of the date of issuance of said certificate.

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 satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit: provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.

## **SECTION 6 - Weights & Measures (Adopted April 28, 2003)**

The Town shall receive and may demand the following fees for providing the services of sealing and or registering or inspecting the following classes of weighing and measuring devices:

- a. Each scale with a weighing capacity of more than ten thousand pounds, one hundred dollars.
- b. Each scale with a weighing capacity of five thousand to ten thousand pounds, sixty dollars.
- c. Each scale with a weighing capacity of one thousand to five thousand pounds, thirty dollars.
- d. Each scale with a weighing capacity of one hundred to one thousand pounds, twenty –five dollars.
- e. Scales and balances with a weighing capacity less than one hundred pounds, twenty dollars.
- f. Each liquid capacity measure, except vehicle tanks, ten dollars.
- g. Each liquid measuring meter, except water meters, the following shall apply: motor fuel dispenser , twenty dollars; vehicle tank pump or gravity type, fifty dollars; bulk storage, seventy-five dollars; all others, twenty dollars.
- h. Each taximeter or measuring device on vehicles used to determine the cost of transportation, twenty-five dollars.
- i. Vehicle tanks used in the sale of commodities by liquid measure for each hundred gallons or fraction thereof, five dollars and an additional fee of ten dollars per sealed indicator.
- j. All weights and other measures liquid and linear, two dollars each.
- k. Reverse vending machines (container return), twenty dollars.
- l. Each automated electronic retail checkout system with fewer than four cash registers or computer terminals, not more than seventy-five dollars.
- m. Each automated electronic retail checkout system with no less than four and no more than eleven cash registers or computer terminals, not more than one hundred and fifty dollars.
- n. Each automated electronic retail checkout system with greater than eleven cash registers or computer terminals, not more than two hundred and fifty dollars.

The Town shall also receive reasonable compensation for the use of special facilities, necessary repairs and adjustments made by inspector, and the service of testing these devices, which include time allotted for record keeping and associated paperwork.

The Town shall either collect the fees as listed above or the fees as listed in Massachusetts General Laws, Chapter 98: Section 56, whichever is greater.

## **SECTION 7 Curb Cut Permit (Adopted April 28, 2003)**

No owner or occupant of land, abutting upon a town way of Hampden or any public way which, by statute, said town is obligated to repair and maintain, shall construct any private road or driveway thereon, so as to extend into such public way, without first having obtained a written permit therefor from the Building Inspector and the Superintendent of Highways having charge of the maintenance and repair of such public way. A written permit shall also be approved by the Fire Chief.

If the curb cut is for forestry, agriculture or other purpose not involving construction that requires a building permit, then the plan provided for herein shall be submitted only to the Superintendent of Highways who shall have the sole authority to issue the curb cut permit without approval of the Building Inspector.

The Building Inspector (or in cases where no building permit is required, only the Superintendent of Highways) shall issue the curb cut permit (with approval of the Fire Chief) within forty (40) days or shall render a decision in writing specifying the reason(s) for denial of said permit and shall base that decision upon consideration of public safety. Whoever by him/herself being the owner or occupant, or by his/her agents or servants, violates this regulation, shall be punished by a fine not to exceed one hundred dollars (\$100.00) per day, and shall be liable to the Town of Hampden for all damages caused by the unpermitted curb cut including the cost and expense of removing the obstructing material and of restoring the said way to its former condition.

## **CHAPTER VIII. PROTECTION OF PERSONS OR PROPERTY**

## **SECTION 1.**

No person shall enter upon the premises of another or upon any public or private property with the intention of peeping into the windows of a house or other building or of spying in any manner upon any person or persons therein, and any person so convicted shall be subject to a fine of not more than fifty dollars.

## **SECTION 2.**

Whoever shall, within the Town, whether that public way, county highway, state highway, or a private way open to the public, or in any other place where the public shall have access, consume alcoholic beverages shall be punished by a fine not exceeding \$50. This section shall be construed also to prohibit the consumption of alcoholic beverages, by any person while such person is standing, sitting, walking, running, or otherwise present within such way or public place as herein above defined, or within any vehicle, whether parked or moving, which is within the limits of such public way or place as herein defined. (Adopted April 25, 1983)

## **SECTION 3.**

Whoever shall consume any alcoholic beverages or be in possession of an open container of alcoholic beverages, in any public building, or on any public property, including parks, cemeteries, school houses, and school grounds, public squares, or in any private way or parking area regulated under the provisions of General Laws, Chapter 90, Section 18, shall be punished by a fine not exceeding \$50. (Adopted April 25, 1983.)

## **SECTION 4.**

The foregoing SECTION 2 and 3 shall not apply to any activity duly licensed by the Selectboard under the applicable provisions of the General Laws, or where specific permission has been granted. A violation of this Bylaw shall be deemed to be a breach of peace. (Adopted April 25, 1983.)

## **SECTION 5. Unregistered Vehicles** (Amended April 28, 2008)

The purpose of this section is to regulate and control unregistered and disassembled motor vehicles within the Town of Hampden, to protect the views along our publicly traveled ways and to keep the visual impact of such vehicles on the neighborhood to a minimum. Any motor vehicle which does not have a displayed valid license plate will be considered unregistered for enforcement of this chapter.

1. Keeping more than one unregistered vehicle prohibited; exceptions.

The keeping of more than one unregistered automobile or truck, assembled or disassembled, on any premises shall not be permitted within the R-4 or R-6 District, unless the said automobiles or trucks are stored within an enclosed building.

2. Special permit.

A. A special permit to keep more than one unregistered automobile or truck on any premises not within an enclosed building may be granted by the Selectboard, if it finds that such keeping:

- (1) Is in harmony with the general purposes and intent of this chapter;
- (2) Will not adversely affect the neighborhood; and
- (3) Will not be a nuisance.

Photos of the vehicle and location on the property shall accompany all requests for a special permit.

B. All such permits granted shall limit the number of unregistered automobiles and trucks to be kept on the premises by the permit holder, shall not run with the land and shall be limited to a one year period. All permits will expire on December 31, and will have to be reapplied for the next year.

3. Vehicles used for farming.

This chapter shall not apply to motor vehicles which are designed and used for farming.

4. Violations and penalties.

Whoever violates any provisions of this chapter shall be liable to a penalty of \$5 per day for each day of violation, commencing 10 days following receipt of written notice from the Selectboard. This Bylaw may be

enforced through the non-criminal disposition procedure contained in Chapter XI of the Town of Hampden General Bylaws.

#### **SECTION 6. Hunting** (adopted April 21, 1991 amended April 28, 2008)

No person shall hunt by any means, trap or discharge a firearm on any land owned by the Town of Hampden. No person shall hunt by any means, trap or discharge a firearm on any private property in the Town of Hampden, other than said person's property or the property of said person's parents, children, grandchildren or their spouses, without written permission of the owner of the land upon which hunting, trapping, or discharging of a firearm will take place. Permission forms shall be obtained from the Hampden Town Clerk's office. The distribution of the permission form prior to hunting, trapping or discharging a firearm shall be as follows: The Town Clerk shall receive and stamp all copies, one of which shall be forwarded to the Police Department by the Town Clerk, and the original copy must be retained by the hunter and must be carried while hunting. All permits shall be valid for not more than 2 years or a shorter period as indicated by the land owner.

Each offender shall receive a written notice to appear before the clerk of the district court at any time during working hours not later than twenty-one days after the date of such notice. Fine for first offense shall be \$100.00. Second time offenders shall be fined a minimum of \$100.00 up to \$300.00. This bylaw shall be enforced by all State and local law enforcement officials and shall be administered under the provisions of Massachusetts General Laws, Chapter 40, Section 21D on non-criminal dispositions. This bylaw shall not apply to the lawful defense of life and property, or to any discharge of firearms in accordance with law enforcement.

For the purposes of this bylaw a firearm shall be defined as any instrument used in the propulsion of shot, shell, bullets or ball by the use of gunpowder or any weapons as defined in Massachusetts General Laws Chapter 140, Section 121 and shall include any bow and arrow.

#### **SECTION 7. Temporary Permit** - (Adopted April 29, 2002)

If a physician certifies in writing that a person has a temporary disability, the Board of Health has authority to issue to that person a temporary permit bearing the international symbol for the handicapped.

The permit is limited to a duration of six (6) months but is renewable by the Board, if necessary, with the written certification of the physician.

The Board of Health shall revoke a temporary handicap permit issued by it if the vehicle to which the permit is affixed is used for special handicapped parking privileges when the vehicle is not operated by or is not carrying as a passenger the person for whose handicap the permit was issued. If the owner or operator of a vehicle for which a temporary handicap permit has been issued stands or parks the vehicle in a space reserved for handicapped persons when the vehicle is not being operated by or is not carrying as a passenger the person for whose handicap the permit was issued, he is subject to a fine and to the procedures established under General Laws Chapter 90, Section 20A.

#### **SECTION 8. Alarms** (Adopted April 25, 2005)

No person shall connect or cause to be connected a fire alarm system to a burglar alarm system whereby the triggering of the burglar alarm would cause the fire alarm system to place a call to the Fire Department.

If a person has for his home or business a burglar alarm system that results in a police call to the person's home or business, the person is liable for a fee of twenty five (\$25) dollars for each false alarm after the first three (3) false alarms in any calendar year.

For the purposes of a burglar alarm, a "false alarm" means the triggering of the alarm by any cause other than by a person whose presence on the premises the alarm system intended to report.

If a person has for his home or business a fire alarm system that results in a Fire Department call to the person's home or business the person is liable for a fee of twenty five (\$25) dollars for each "false alarm" after the first three (3) false alarms in any calendar year.

For the purposes of a fire alarm, a "false alarm" means the triggering of any alarm by any cause other than fire or smoke on the premises which requires the presence of the Fire Department.

All alarms shall have a disconnect feature which will automatically prevent an alarm from transmitting and or sounding for more than fifteen (15) minutes.

#### **SECTION 9. Winter Parking Ban** (Adopted April 28, 2008)

The Police Chief may declare a parking ban on the ways within the Town during the period beginning November 15 through April 15 for the purposes of snow and ice removal. The Chief or his designee shall announce all such parking bans to the press prior to their declaration.

During the parking ban period the Police Department, for the purpose of insuring the free flow of traffic or for the purpose of snow and ice control operations on a town road, may, by its own employees or with such other assistance as it may require, remove or cause to be removed, to the nearest convenient place any vehicle interfering with such traffic or such operation. The department shall keep records of the registration number of each vehicle so removed and of the place to which it was removed.

#### **Road Hazards** (Adopted April 27, 2009)

No person shall place any object in the public roadway or within the public right of way that may interfere with the safe and convenient travel of the public or maintenance of the roads or property.

Whoever violates this section shall be subject to a penalty of not more than one hundred and fifty dollars for each violation and each day that a violation continues shall be treated as a separate offense

#### **SECTION 10. Snow Plowing** (Adopted April 28, 2008)

No person other than an employee in the service of the town or an employee in the service of an independent contractor acting for the town shall pile, push or plow snow or ice onto a town road so as to impede the flow of traffic on such way. Whoever violates this section shall be punished by a fine of \$50 for the first offense, \$100 for the second offense and \$200 for the third offense. Each day, or portion thereof, that such a violation continues shall constitute a separate offense. This Bylaw may be enforced through the non-criminal disposition procedure contained in Chapter XI of the Town of Hampden General Bylaws.

### **CHAPTER IX. AUDITS**

#### **SECTION 1.**

The Town shall have an audit of the financial books and accounts of the Town made periodically by the State Bureau of Accounts or a private accounting firm. (Adopted April 25, 1977.)

### **CHAPTER X. WETLANDS PROTECTION**

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

The purpose of this bylaw is to protect the Wetlands, related water resources and adjoining land areas of the Town of Hampden by prior review and control of activities found by the Conservation Commission (hereinafter "Commission") to have a significant effect upon wetland values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, prevention of water pollution, fisheries, wildlife, wildlife habitat, rare or endangered species, recreation and protection of water quality; these values are to be known collectively as the "wetland values protected by this bylaw."

#### **SECTION 2: Jurisdiction**

Except as otherwise provided in this bylaw, no person shall remove, fill, dredge or alter any bank, fresh water wetland, coastal wetland, beach dune, flat, marsh, meadow or swamp bordering on any estuary, creek, river, stream, pond, or lake, or any land under said waters or any land subject to flooding without filing an application under Section 5 and complying with the provisions of this bylaw. Except as otherwise provided in this bylaw, no person shall undertake any activity in the above-described areas or within one hundred (100) feet of the above-described areas without filing an application under Section 5 and complying with the provisions of this bylaw.

#### **SECTION 3: Exceptions**

The application and permit required by this bylaw shall not be required for maintaining, repairing or replacing, but not substantially changing or enlarging, an existing or lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services, sanitary sewers and storm sewer, provided that written notice has been given to the Commission at least forty-eight (48) hours prior to commencement of work.

The application and permit required by this bylaw shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be performed or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof, provided that advance

notice, oral or written, has been given to the Commission prior to commencement of work or within twenty-four (24) hours after commencement, provided that the Commission or its agent certifies the work as an emergency project, provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency.

The application and permit required by this bylaw shall not apply to work performed for normal maintenance or improvement of land actively devoted to agricultural use at the time of the application, mosquito control work done under Clause (36) of Section 5 of C. 40, or any special Act.

#### **SECTION 4: Consultant Fees**

The Commission is authorized to require any applicant to pay the reasonable costs and expenses borne by the Commission for specific expert engineering and consultant services deemed necessary by the Commission to review an application, Notice of Intent, as described in paragraphs 1 through 4 below, and to review all engineering and consultants' reports submitted to the Commission by or on behalf of the applicant and for field work incidental thereto. In the event that the services of said expert or consultant are reasonably required by the Commission in any enforcement actions described in Section 15, the applicant shall be responsible for the reasonable fees of said expert or consultant. Said payment can be required at any point in the deliberations prior to a final decision rendered. Said services may include but are not necessarily limited to wetlands survey and delineations, hydro geologic and drainage analyses, wildlife habitat evaluation and environmental land use law. The Commission may require the applicant to pay fees directly to the consultant designated by the Commission, not to exceed the following:

1. Projects proposing alteration of up to 1500 square feet of land abutting a resource area (including the 100 foot buffer zone), the consultant fee shall not exceed \$100.00.
2. Projects proposing alteration of 1500 to 2500 square feet of land abutting a resource area (including the 100 foot buffer), or up to 2500 square feet of land under water bodies or land subject to flooding, or up to 50 linear feet of bank, the consultant fee shall not exceed \$400.00.
3. Projects proposing alteration of 2500 to 10,000 square feet of land under water bodies, land subject to flooding, or land abutting a resource area (including the 100 foot buffer) 50 to 200 linear feet of bank, or up to 5000 square feet of wetland, the consultant fee shall not exceed \$1000.00.
4. Projects proposing more than 10,000 square feet of alteration of land under water bodies, land subject to flooding or land abutting a resource area (including the 100 foot buffer) more than 200 linear feet of bank, or more than 5000 square feet of wetland, the consultant fee shall exceed \$5000.00.

Projects which entail unforeseen complications or which may require the expertise of multiple experts may, upon the determination of the Commission, exceed the fee limits as outlined above.

The minimum qualification of the consultant chosen by the Commission shall consist of an educational degree in or related to the field at issue or three or four years of practice in the field at issue or a related field. Hourly fees charged by Consultants shall be made available to the applicant at the applicant's request.

#### **SECTION 5: Applications for Permits & Request for Determination**

Written application shall be filed with the Commission to perform activities regulated by this bylaw affecting wetland values protected by this bylaw. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects upon the environment. No activities shall commence without receiving and complying with a permit, or a negative determination of applicability issued pursuant to this bylaw.

The Commission in an appropriate case may accept as the application and plans under this bylaw the Notice of Intent and plans filed under the Wetlands Protection Act.

At the time of an application or request, the applicant shall pay a filing fee specified in regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act. The Commission may waive the filing fee for an application or request filed by a government agency and may waive the filing fee for a request for determination filed by a person having no direct or indirect financial connection with the property which is the subject of the request.

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may request in writing a determination from the Commission. Such a request for determination shall contain data and plans specified by the regulations of the Commission.

The Commission in an appropriate case may accept as the request under this bylaw the Request for Determination of Applicability filed under the Wetlands Protection Act.

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

Any person filing an application or a request for determination with the Commission at the same time shall give written notice whereof, by certified mail (return receipt requested or hand delivery) to the owner of the land of other than the applicant, to abutters of the land to 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. The notice to abutters shall enclose a copy of the application or request, with plans or shall state where copies may be examined and obtained by abutters free of charge. 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 requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any application or request for determination, with written notice given at the expense of the applicant, five working days prior to the hearing, in a newspaper of general circulation in the community. The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act.

The Commission shall commence the public hearing within twenty-one days from receipt of a completed application or request for determination, unless the applicant extends the twenty-one day time period by a signed written waiver or if the applicant has failed to pay the consultant fees under Section 4.

The Commission shall have authority to continue the hearing to a date certain announced at the hearing or to an unspecified date, for reasons stated at the hearing, which may include the receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission in its description, or comments and recommendations of boards and officials in Section 7. If a date for continuation is not specified, the hearing shall reconvene within twenty-one days after the submission of a specified piece of information or the occurrence of a specified action. The date, time and place of said continued hearing shall be published in a newspaper of general circulation in the community five working days prior to the continuation, at the expense of the applicant, and written notice shall be sent to any person who so requests in writing.

The Commission shall issue its decision or determination in writing within twenty-one days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.

## **SECTION 7: Coordination with Other Boards**

Any person filing a permit application or a request for determination with the Commission shall provide written notice thereof at the same time, by certified mail or hand delivery, to the Selectboard, Planning Board, Zoning Board of Appeals, Board of Health, Town Engineer, Building Inspector and Highway Department. The Commission shall not take final action until such boards and officials have had fourteen days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any such comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

## **SECTION 8: Permits, Determinations and Conditions**

The Commission shall have the authority, after a public hearing, to determine whether a specified parcel of land contains or does not contain resource areas protected under this bylaw. If the Commission finds that no such resource areas are present, it shall issue a negative determination.

If the Commission, after a public hearing on the permit application, determines that the activities which are the subject of the application are likely to have a significant effect upon the wetland values protected by this bylaw, the Commission, within twenty-one days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

If the Commission determines that the activities which are the subject of the application are not likely to have a significant or cumulative detrimental effect upon the wetland values protected by this bylaw, the Commission shall issue a permit without conditions within twenty-one days after the public hearing.

The Commission is empowered to deny a permit for failure to meet the requirements of this bylaw; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent significant or cumulative detrimental effects upon the wetland values protected by this bylaw; and where no conditions are adequate to protect those values. Due consideration shall be given by the Commission to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

A permit shall expire three years from the date of issuance, and all work shall be completed prior to expiration. The Commission may, upon good cause shown, extend a permit once for an additional one year period.

No work proposed in any 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 thereby be registered land, in the registry section of the land court for the district wherein the land lies, by the holder of the permit or, if provided in regulations of the Commission, by the Town of Hampden and until the holder of the permit certifies in writing to the Commission that the permit has been so recorded or the Town of Hampden has recorded said permit.

For good cause the Commission may revoke or modify a permit issued under this bylaw after notice to the holder of the permit, notice to the public, abutters and town boards and officials pursuant to Sections 6 and 7 and public hearing.

The Commission in an appropriate case may combine the permit or other action on an application issued under this bylaw with the Order of Conditions or other action issued under the Wetlands Protection Act.

## **SECTION 9: Preacquisition Violation**

Any person who purchases, inherits, or otherwise acquires real estate upon which work has been done in violation of this section or in violation of any such order issued under this section, shall forthwith comply with any such order or restore such real estate to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless such action is commenced within three (3) years following the recording of the deed or the date of the death by which such real estate was acquired by such person.

## **SECTION 10: Regulations**

The Commission shall adopt fee and administrative regulations needed to implement the provisions of this bylaw. These regulations shall be consistent with the terms of this bylaw. The Commission may amend only administrative and fee regulations only after public notice and public hearing. Prior to the adoption of said regulations, the Commission shall hold at least two (2) public hearings duly advertised and publish a synopsis of the regulations in a newspaper of general circulation at least thirty (30) days before implementation. The rules and regulations may not expand or enlarge the power or jurisdiction of the Commission granted under this bylaw.

Unless otherwise stated in this bylaw or in the rules and regulations promulgated under this bylaw, the definitions, procedures and performance standards of the Wetlands Protection Act and associated Regulations, 310 C.M.R. 10.00, in effect as of the effective date of this bylaw, shall apply. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this bylaw.

## **SECTION 11: Burden of Proof**

The applicant for a permit shall have the burden of proving by a preponderance of credible evidence that the work proposed in the application will not have a significant effect upon the wetland values protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

## **SECTION 12: Definitions**

All terms, unless otherwise specified in this section, are as defined in the Massachusetts Wetland Protection Act, M.G.L. Ch. 131, S. 40 and Regulations 310 C.M.R. 10.00.

## **SECTION 13: 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 may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by a proper bond or deposit of money or negotiable securities, including letter of credit or other undertaking of financial responsibility sufficient in the opinion of the Commission and payable to the Town of Hampden.

## **SECTION 14: Appeals**

Anyone taking issue with a decision of the Commission in issuing a determination of applicability or permit may within ten (10) days of the decision appeal to the Selectboard. This appeal shall state grounds for the appeal and the Selectboard, on consideration of those arguments, may decide to request the Commission to reconsider the decision at issue. Such request by the Selectboard shall be binding in as much as the Commission must reconsider its decision, but any final decision will be solely the responsibility of the Commission.

The Commission, within 21 days of receiving the request for reconsideration from the Selectboard, will open an appeals hearing to consider arguments related to the decision. The Commission may extend the hearing for the purpose of receiving additional information. Upon the close of the appeals hearing, the Commission will issue a final decision within 21 days.

## **SECTION 15: Enforcement**

The Commission, its agents, officers and employees shall have the 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.

The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions.

Upon petition of the Commission, the Selectboard and Town Counsel may take such legal action as may be necessary to enforce this bylaw and permits issued pursuant to it under civil law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal Law.

Any person who violates any provision of this bylaw or any condition of a permit issued pursuant to it shall be punished by a fine of not more than three hundred (\$300.00) dollars. Each day or portion thereof during which a violation continues shall constitute a separate offense. This fine may be in addition to any levied under the Wetland Protection Act.

In the alternative to criminal prosecution, the Commission may elect to utilize the non-criminal disposition procedure known as the “ticketing” approach set forth in G.L.C. 40, Sec. 21D. The fine for any violation disposed of through this procedure shall be two hundred (\$200.00) dollars for each offense. Each day or portion thereof during which a violation continues shall constitute a separate offense. This fine may be in addition to any levied under the Wetlands Protection Act. For purposes of non-criminal disposition, any member duly

authorized by a majority of the members of the Commission, Police Officers and Environmental Police Officers shall all be enforcing persons.

## **SECTION 16: Relation to the Wetlands Protection Act**

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statute, independent of the Wetlands Protection Act and the Regulations thereunder.

## **SECTION 17: 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 or determination which previously has been issued.

# **CHAPTER XI. NON CRIMINAL DISPOSITION OF CERTAIN VIOLATIONS**

(Adopted April 30, 2001)

## **SECTION 1: Violations Covered**

The following violations shall be subject to the non-criminal disposition procedures described in this chapter:

- a) Any violation of an order of the Hampden Board of Health relating to public health which is authorized by the general laws, any special law applicable to the Town of Hampden, the provisions of the state sanitary code or other state regulations, or any Hampden by-law, rule or regulation;
- b) Any violations of an order of the Hampden Building Inspector relating to public safety which is authorized by the general laws, any special law applicable to the Town of Hampden, the provisions of the state building code or other state regulations, or any Hampden by-law, rule or regulation;
- c) Any violation of order of the Chief or Fire Safety Officer of the Hampden Fire Department relating to the public safety which is authorized by the general laws, any special law applicable to the Town of Hampden, the provision of the state fire prevention code or other state regulation, or any other Hampden by-law, rule or regulation; or
- d) Any violation of any other Hampden by-law or rule or regulation of any Hampden officer, board or department.

## **SECTION 2: Amount of penalty** (Amended April 29, 2002)

The penalties for the infractions set forth in Section 1 above shall be as specifically set forth in the respective order, by-law, rule or regulation which is violated but, if no such penalty is provided, the penalty shall be as follows: \$50.00 for the first offense, \$100.00 for the second offense, and \$200.00 for the third offense. Each day, or portion thereof, that such a violation continues shall constitute a separate offense. All fines shall be paid into the town treasury.

## **SECTION 3: Enforcement Procedure**

The violations set forth in Section 1 above shall be disposed of in keeping with the non-criminal disposition procedures set forth in Massachusetts General Laws, Chapter 40, Section 21D or take any other action relative thereto.

# **CHAPTER XII DOG CONTROL AND VIOLATIONS** (Adopted April 28, 2003)

## **1. Description of Violations**

Any owner who allows his/her dog to do or be any of the following will be considered in violation of this by-law:

- a. Unlicensed – a dog, six (6) months or older, which is unlicensed or not re-licensed by April 30 each year.
- b. Run at Large – to go beyond the boundaries of the owner's property unless the dog is:
  1. In sight and under voice command, and
  2. Does not trespass on residential property. Dogs in the act of training, working, hunting, or guarding are excepted.
- c. Chase – a pedestrian, bicycle, or any other vehicle.

- d. Bark – excessively during the day, or to bark between ten (10) pm and six (6) am so disturbing the reasonable quiet of the neighborhood.
- e. Worry livestock – to worry, injure, or kill another's livestock, fowl or pet.
- f. Vicious – a dog that menaces, attacks, or bites a person without provocation.

2. Informal Complaint

- a. Any person may by telephone or letter inform the Dog Officer of any violation by:
  - 1. Identifying him/herself
  - 2. Describing the dog in detail
  - 3. Describing the violation
- b. The Dog Officer shall make a log of all information received, but the identity of the complainant shall be strictly confidential with the Dog Officer.

3. Formal Complaint

- a. Complaint forms shall be readily available from the Dog Officer, the Selectboard's Office, and the Police Department. Any resident may file this form at any of the above points or by mailing it to the Selectboard.
- b. Within seven (7) days of receiving a complaint form, the Dog Officer shall make a progress report to the Complainant.
- c. If the complainant remains unsatisfied he/she may re-file the complaint with the Selectboard. A formal hearing may be called.
- d. Confidentiality ends once a formal complaint is filed.

4. Citations

- a. The Dog Officer, acting upon personal knowledge of a violation, may serve a citation, having the force of law, on the owner. It shall describe the dog's conduct, cite the violation, and secure the enforcement by any of these means:
  - 1. Warning – a warning shall state a deadline for compliance and other steps of enforcement, as necessary.
  - 2. Fine- a fine may be levied to the maximum of \$25.00 for the first offense and \$50.00 for each subsequent offense to be paid to the Town Clerk. Each day of a continuing offense shall be considered a separate offense.
- b. The owner shall comply with the citation by:
  - 1. Satisfying the Dog Officer by complying with the warning or restraint order and/or
  - 2. Paying a fine within ten (10) days to the Town Clerk.
- c. Town Police Officers or the Dog Officer may issue citations for violations of this by-law pursuant to the non-criminal disposition procedures contained in Section XI of the General By-laws of the Town, provided however that only the Selectboard shall have the jurisdiction to order that a dog be permanently restrained, removed from the Town or otherwise disposed of.
- d. The owner has the right to appeal to the Selectboard within ten (10) days of the citation's issue.
- e. Filing an appeal suspends a fine or restitution but not a restraint order.

## **CHAPTER XIII Private Roads Maintenance: Temporary Repairs on Private Ways**

(Approved October 26, 2003)

The Town may make temporary repairs on private ways, which have been opened to public use for a period of six years or more, provided the repairs are for the protection of the health and safety of the general public using such roads.

Such repairs shall include the filling of holes in the subsurface of such ways and repairs to the surface materials thereof. Materials for such repairs, where practical should be the same as, or similar to, those used for the existing surfaces of such ways, but may include surfacing the ways with bituminous materials, including but not limited to bituminous concrete.

Drainage, as determined by the Highway Superintendent to be necessary as a result of the repairs, may also be done. Drain repairs shall be made only if petitioned for by all the abutters who own frontage on such ways with the approval of the land owner, if necessary, and if the Selectboard declare that they are required by the public necessity and convenience to make such repairs based on an advisory opinion of the Highway Superintendent. Drainage easements shall, if necessary, be the responsibility of the petitioners. The cost of such repairs shall be paid by the abutters by a cash deposit as herein provided.

No repairs shall be commenced unless and until a cash deposit equal in amount to the estimated cost of such repairs, as determined by the Highway Superintendent, is paid over to the Town and the Selectboard has given its approval for the project. No betterment charges shall be assessed.

The Town shall not be liable on account of any damage whatsoever caused by such repairs and Section 25 of Chapter 84 shall not apply. The Selectboard may require an indemnity agreement executed by the petitioning abutters, indemnifying the Town for all claims and damages, which may result from changing such repairs.

The Town may, subject to the approval of the Selectboard and based on an advisory report from the Highway Superintendent, make temporary minor repairs to private ways not to exceed \$500 per road per year, in total, provided the private way has been open to public use for a period of six years or more. The repair shall be limited to minor work such as filling, patching, and not more than grading or scraping twice per year.

No such repairs shall be done unless there is a unanimous agreement by all abutters that the work shall commence and the Town of Hampden shall be held harmless from any and all damages or claims arising out of such repairs. Massachusetts General Laws, Chapter 84, Section 25 shall not apply.

## CHAPTER XIV STORMWATER MANAGEMENT

(Approved April 25, 2005)

### 1. PURPOSE

The purpose of this chapter is to eliminate non-stormwater discharges to the Town of Hampden's Municipal Storm Drain System. Non-stormwater discharges contain contaminants and supply additional flows to the Town of Hampden's Storm Drain System. Non-stormwater discharges are major causes of:

- a. impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands, and groundwater;
- b. contamination of drinking water supplies;
- c. alteration or destruction of aquatic and wildlife habitat; and
- d. flooding.

Regulation of illicit connections and discharges to the storm drain system is necessary for the protection of the Town of Hampden's, natural resources, municipal facilities, general health, safety, welfare, and the environment. The objectives of this section are:

- a. to prevent pollutants from entering the storm drain;
- b. to prohibit illicit connections and unauthorized discharges to the storm drain
- c. to remove all such illicit connections;
- d. to comply with state and federal statutes and regulations relating to stormwater discharges; and
- e. to establish the legal authority to ensure compliance with the provisions of this section through inspection, monitoring, and enforcement.

### 2. DEFINITIONS

These definitions and provisions shall apply to the "Discharges to the Municipal Drain System" By-Law.

**AUTHORIZED ENFORCEMENT AGENCY** - The Board of Selectman, its employees or agents designated to enforce this by-law.

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

**CLEAN WATER ACT** - The Federal Water Pollution Control Act (33 U.S.C. section 1251 *et seq.*) and as it is amended from time to time.

**DISCHARGE OF POLLUTANTS** - The addition from any source of any pollutant or combination of pollutants into the storm drain or into waters of the United States or Commonwealth from any source.

**GROUNDWATER** - Water beneath the surface of the ground. Except where the water under the ground is the result of a perched water table.

**ILLICIT CONNECTION** - A surface or subsurface drain or conveyance, which allows an illicit discharge into the storm drain, 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 storm drain that is not composed entirely of stormwater, except as exempted in Section 7. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or resulting from fire fighting activities exempted pursuant to Section 7, subsection d, part 1, 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 SEWER SYSTEM (MS4)** - 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 Hampden.

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

**NON-STORMWATER DISCHARGE** - Discharge to the storm drain not comprised 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, residential, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or non-point source, that is or may be introduced into any storm drain system, waters of the United States, and/or Commonwealth. Pollutants shall include without limitation:

1. paints, varnishes, solvents;
2. oil, grease, antifreeze, other automotive fluids and/or products;
3. non-hazardous liquid and solid wastes;
4. refuse, garbage, litter, rubbish, yard wastes, or other discarded or abandoned objects, ordnances, accumulations and floatables;
5. pesticides, herbicides, and fertilizers;
6. hazardous materials and wastes;
7. sewage;
8. dissolved and particulate metals;
9. metal objects or materials;
10. animal wastes;
11. rock, sand, salt, soils, or other products/materials that mobilize in surface water runoff;

12. and construction wastes and/or residues.

**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** - Runoff from precipitation or snowmelt.

**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 material including without limitation:

1. any synthetic organic chemical;
2. petroleum products;
3. heavy metals;
4. radioactive or infectious waste;
5. acid and alkali substances;
6. any substance defined as Toxic or Hazardous under G.L. Ch. 21C and Ch. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.000;
7. and any substance listed as hazardous under 40 CFR 261.

**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, by-product or waste product.

### **3. APPLICABILITY**

This section shall apply to flows entering the municipally owned and/or operated storm drainage system.

### **4. AUTHORITY**

This by-law is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and the regulations of the federal Clean Water Act 40 CFR 122.34.

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

The Selectboard shall administer, implement and enforce this by-law. Any powers granted to or duties imposed upon the Selectboard to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

## **6. REGULATIONS**

The Selectboard may promulgate rules and regulations to effectuate the purpose of by-law. Failure by the Selectboard 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 storm drain system, into a watercourse, or into waters of the United States and/or 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 THE 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 approval from the Selectboard.
- d. **EXEMPTIONS**
  1. Discharge of flow resulting from fire fighting activities and Highway Department ice and snow control operations.
  2. The following non-stormwater discharges or flows are considered exempt provided that the source is not a significant contributor of pollution to the municipal storm drain system:
    - i. waterline flushing;
    - ii. flow from potable water sources;
    - iii. springs;
    - iv. natural flow from riparian habitats and wetlands;
    - v. diverted stream flow;
    - vi. rising groundwater;
    - viii. uncontaminated groundwater infiltrating as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater, water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
    - ix. discharge from landscape irrigation or lawn watering;
    - x. water from individual residential car washing;
    - xi. 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;
    - xii. discharge from street sweeping;
    - xiii. dye testing, provided verbal notification is given to the Board of Selectboard prior to the time of the test;
    - xiv. non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations;
    - xv. and discharge for which advanced written approval is received from the Selectboard as necessary to protect public health, safety, welfare, and the environment.

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

The Selectboard 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 discharged of pollutants that present imminent risk of harm to 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.

## **9. NOTIFICATION OF SPILLS**

Any spills or releases that require notification under local, state or federal law will be the responsibility of the person responsible for a facility or operation, or for an emergency response for a facility or operation (i.e., construction). In the event of a spill or release which may result in a discharge of pollutants or non-stormwater discharge to the municipal storm drain system, waters of the United States, and/or waters of the Commonwealth, the responsible parties, potentially responsible parties, or any person or persons managing a site or facility shall take all necessary steps to ensure containment, and remediate any municipal storm drains that have been impacted. However, if in the opinion of Selectboard, there is an excessive amount of pollutants in the storm drain system, the Selectboard can require remediation by the responsible party regardless of other state or federal regulations. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall take all necessary steps to ensure containment, clean-up of the release, 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.

## **10. ENFORCEMENT**

The Selectboard or an authorized agent of the Selectboard shall enforce this by-law, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

**CIVIL RELIEF** - If a person violates the provisions of this by-law, regulations, permit, notice, or order issued thereunder, the Selectboard 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.

**ORDERS** - The Selectboard or an authorized agent of the Selectboard 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;
- d. and remediation of contamination in connection with discharges to the MS4

If the enforcing person determines that abatement or remediation of contaminations is required and is the responsibility of the property *owner*, 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 of Hampden may, at its option, undertake such work, and expenses times three thereof shall be charged to the violator.

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 of Hampden, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with The Selectboard 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 Selectboard 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 owners property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Ch. 59, section 57 after the thirty-first day at which the costs first become due.

**PENALTY** - Any person who violates any provision of this by-law, regulation, order or permit issued thereunder, shall be punished by a fine as set forth in Chapter XI "Non Criminal Disposition of Certain Violations" of the General by-laws of the Town of Hampden.

**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 Selectboard, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their

duties under this by-law and may make or cause to be made such examinations, surveys or sampling as the Selectboard deems reasonably necessary

**APPEALS** - The decision or orders of the Selectboard shall be final. Further relief shall be to a court of competent jurisdiction.

**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.

## 11. SEVERABILITY

The provisions 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.

# CHAPTER XIV (A) Erosion and Sediment Control for Stormwater Management

(Adopted April 28, 2008)  
(Revised May 2021)

## SECTION 1. PURPOSE AND AUTHORITY

### 1. Purpose

- A. The purpose of this bylaw is to better manage land development in order to protect, maintain, and enhance the public health, safety, and general welfare of the citizens of Hampden by establishing minimum requirements and procedures to control the adverse impacts associated with stormwater runoff.
- B. The proper management of stormwater runoff will meet the following objectives:
  1. Reduce the adverse water quality impacts of stormwater discharges to rivers, lakes, reservoirs, and streams in order to attain federal water quality standards.
  2. Prevent the discharge of pollutants, including hazardous chemicals, into stormwater runoff.
  3. Minimize the volume and rate of stormwater which is discharged to rivers, streams, reservoirs, and lakes that flows from any site during and following development.
  4. ***Prevent erosion and sedimentation from land development and reduce stream channel erosion caused by increased runoff.***
  5. Provide for the recharge of groundwater aquifers and maintain the base flow of streams.
  6. Provide stormwater facilities that are attractive, maintain the natural integrity of the environment, and are designed to protect public safety.
  7. Maintain or reduce pre-development runoff characteristics after development to the extent feasible.
  8. Minimize damage to public and private property from flooding.
  9. Encourage the use of Low Impact Development (LID) practices such as reducing impervious cover, treating, and infiltrating stormwater at the source, utilizing environmentally sensitive site design, and, the preservation of open space and natural areas, to the maximum extent practicable.
  10. Ensure that these management controls are properly maintained.

### 2. Authority

The Board of Selectman, its employees or agents are designated to enforce this bylaw. The Board of Selectman shall delegate Town agencies to administer, implement and enforce this bylaw. These agencies shall be herein referred to as "Designated Agent" by powers delegated in writing by the Selectboard.

## SECTION 2. DEFINITIONS

The following definitions describe the meaning of the terms used in this Bylaw:

**AUTHORIZED ENFORCEMENT AGENCY:** The Selectboard, its employees, or Designated Agent to enforce this bylaw.

**ADVERSE IMPACT** means any deleterious effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics, or usefulness for human or natural uses which are or may potentially be harmful or injurious to human health, welfare, safety, or property, to biological productivity, diversity, or stability or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

**BEST MANAGEMENT PRACTICES (BMP)** are structural or biological devices that temporarily store or treat urban stormwater runoff to reduce flooding, remove pollutants, and provide other amenities. They can also be non- structural practices that reduce pollutants at their source. BMPs are described in a stormwater design manual, Stormwater Handbook, Volume 2: Technical Guide for Compliance with Massachusetts Stormwater Management Standard (February 2008, Massachusetts Department of Environmental Protection, as updated or amended. An unofficial copy can be obtained at <https://www.mass.gov/guides/massachusetts-stormwater-handbook-and-stormwater-standards> ).

***CONSTRUCTION ACTIVITY*** is disturbance of the ground by removal of vegetative surface cover or topsoil, grading, excavation, clearing or filling.

**DESIGN STORM** is a rainfall event of specified size and return frequency that is used to calculate the runoff volume and peak discharge rate to a BMP.

**DESIGNATED AGENT:** The Building Inspector or assigned replacement in cooperation with the Selectboard, Planning Board, Conservation Commission and Highway Department shall be the enforcing agent for this bylaw.

**DETENTION** is the temporary storage of storm runoff in a BMP, which is used to control the" peak discharge rates, and which provides gravity settling of pollutants.

**DISTURBANCE** is any land clearing, grading, bulldozing, digging or similar activities.

**DRAINAGE AREA** means that area contributing runoff to a single point measured in a horizontal plane, which is enclosed by a ridgeline.

**DRYWELL** is similar to an infiltration trench but smaller with inflow from a pipe; commonly covered with soil and used for drainage areas of less than 1 acre such as roadside inlets and rooftops runoff.

**EASEMENT** means a grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land affected by such easement.

**FLOW ATTENUATION** means prolonging the flow time of runoff to reduce the peak discharge.

**HYDROLOGY MODEL** may include one of the following:

- TR-20, a watershed hydrology model developed by the Natural Resources Conservation Service act that is used to route a design storm hydrograph through a pond.
- TR 55, or Technical Release 55, "Urban Hydrology for Small Watersheds" is a publication developed by the Natural Resources Conservation Service to calculate stormwater runoff and an aid in designing detention basins.
- HydroCAD.

**IMPERVIOUS SURFACES** are areas, such as pavement or rooftops, which prevent the infiltration of water into the soil.

**INFILTRATION** is the downward movement of water from the surface to the subsoil.

**INFILTRATION TRENCH** is a stormwater management excavation filled with aggregate which removes both soluble and particulate pollutants. Trenches are not intended to trap coarse sediments.

**LOW IMPACT DEVELOPMENT (LID)** is a set of approaches that seeks to mimic a site's predevelopment hydrology using design techniques that infiltrate, filter, store, evaporate and detain runoff close to its source.

Instead of conveying, managing and/or treating stormwater in large, end-of-pipe facilities, LID utilizes small-scale, decentralized practices that infiltrate, treat, evaporate, and transpire rainwater and snow melt including bioretention areas, grassed swales, reducing impervious areas, preservation of open space, development density, lot size and configuration, street design, parking design, and other structural stormwater treatment methods.

**MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)** is 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 manmade or altered drain channel, reservoir, and other drainage structure that together comprise the storm drainage system owned, operated and maintained by the Town of Hampden.

**NEW DEVELOPMENT** any construction activities or land alteration on an area that has not previously been developed to include impervious cover.

**OUTFALL** is the terminus of a storm drain or other stormwater structure where the contents are released.

**PEAK DISCHARGE** is the maximum instantaneous rate of flow during a storm, usually in reference to a specific design storm event

**PERMEABLE SOILS** are soil materials with a sufficiently rapid infiltration rate so as to greatly reduce or eliminate surface and stormwater runoff. These soils are generally classified as U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) hydrologic soil types A and B.

**PERSON** is any individual, group of individuals, association, partnership, corporation, company, business, organization, trust, estate, administrative agency, public or quasi-public corporation or body, the Commonwealth or political subdivision to the extent permitted by law thereof.

**POLLUTANT** is any element or property of sewage, residential, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or non-point source, that is or may be introduced into any storm drain system, waters of the United States, and/or Commonwealth. Pollutants shall include without limitation:

1. paints, varnishes, solvents.
2. oil, grease, antifreeze, other automotive fluids and/or products.
3. non-hazardous liquid and solid wastes.
4. refuse, garbage, litter, rubbish, yard wastes, or other discarded or abandoned objects, ordnances, accumulations and floatables.
5. chemicals, including but not limited to pesticides, herbicides, and fertilizers.
6. hazardous materials and wastes as defined by MGL 310 CMR 40 and 310 CMR 30.
7. sanitary waste.
8. dissolved and particulate metals.
9. metal objects or materials.
10. animal waste.
11. rock, sand, salt, soils, or other products/materials that mobilize in surface water runoff.
12. and construction wastes and/or residues, including but not limited to, discarded building materials and concrete washout.

**REDEVELOPMENT** is any construction, land alteration, or improvement of impervious surfaces that does not meet the definition of new development

**RETENTION** is the holding of runoff in a basin without release except by means of evaporation, infiltration, or emergency bypass.

**SMALL MS4 GENERAL PERMIT:** EPA General Permits for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts, dated April 2016, as amended.

**START OF CONSTRUCTION** is the first land-disturbing activity associated with a development, including land preparation such as: clearing, grading, and filling; installation of streets and walkways; excavation for

basements; footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

SWALE is a natural depression or wide shallow ditch used to temporarily store, route, or filter runoff.

USGS HUC 12: United States Geological Survey 12-digit Hydrologic Unit Code, a geographic area representing part of all of a surface drainage basin, a combination of drainage basins, or a distinct hydrologic feature as delineated by the USGS. HUC 12 are identified and boundaries are viewable on MassGIS.

## SECTION 3. APPLICABILITY

### 1. Applicability

Prior to the issuance of any site plan approval or development permit for any proposed development listed below, a stormwater management permit, or a waiver of the requirement for a stormwater management permit, must be approved by the Designated Agent. The Designated Agent shall coordinate with other appropriate Boards or Commission having other permit authority and review procedures for land use. The stormwater management permit waiver shall only be granted for residential projects.

No person shall, on or after the effective date of the bylaw, initiate any land clearing, land grading, earth moving or development activities without first complying with this bylaw. The following uses and activities shall be required to submit drainage reports, plans, construction drawings, specifications, and as-constructed information in conformance with the requirements of this bylaw:

- A. Multi-family residential developments involving four or more units.
- B. Any new commercial, industrial, and institutional structures under the same ownership, with at least 5,000 square feet of gross floor area, 10,000 square feet of impervious surface, or that require 10 or more parking spaces.**
- C. Redevelopment or additions to existing commercial, industrial, and institutional uses which result in an additional impervious surface area or gross floor area of greater than 5,000 square feet, or which results in an increase of 10 or more parking spaces.
- D. Subdivisions and construction activities of any kind disturbing greater than 40,000 square feet.
- E. Development or redevelopment involving multiple separate activities in discontinuous locations or on different schedules if the activities are part of a larger common plan of development that all together disturbs one or more acres.

### 2. Exemptions

To prevent the adverse impacts of stormwater runoff, the stormwater performance standards in Section 6 must be met at all construction activity or land disturbance that individually or as part of a Common Plan of Development resulting in disturbance of land in excess of the thresholds defined in Section 3.1.

The following activities are exempt from the requirements for submittal and approval of a stormwater management plan under Section 4.

- A. Additions or modifications to existing single family structures as approved by the Designated Agent.
- B. Residential developments that do not disturb more than 40,000 square feet of land, provided that they are not part of a larger common development plan.
- C. Repairs to any stormwater treatment system deemed necessary by the Designated Agent.
- D. Any emergency activity that is immediately necessary for the protection of life, property, or the environment, as determined by the Designated Agent.
- E. Any agricultural activity which is consistent with an approved soil conservation plan prepared or approved by the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS).
- F. Any logging which is consistent with a timber management plan approved under the Forest Cutting Practices Act by the Massachusetts Department of Conservation and Recreation.
- G. Work undertaken by the Hampden Highway Department; and
- H. Repairs or replacement of an existing sewage disposal system deemed necessary by the Board of Health.

### 3. Stormwater Design Manual

A stormwater design manual, Stormwater Handbook, Volume 2: Technical Guide for Compliance with Massachusetts Stormwater Management Standard (February 2008, Massachusetts Department of Environmental Protection, as updated or amended) is hereby incorporated by reference as part of this bylaw, and shall furnish additional policy, criteria and information including specifications and standards, for the proper implementation of the requirements of this bylaw.

This manual includes a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. The manual may be updated and expanded from time to time, based on improvements in engineering, science, monitoring and local maintenance experience, at the discretion of the Hampden Designated Agent or Massachusetts Department of Environmental Protection. Stormwater treatment practices that are designed and constructed in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards.

## SECTION 4. PERMIT PROCEDURES AND REQUIREMENTS

### 1. Permit Required

No landowner shall commence land disturbance activities, without approval of a Stormwater Management Permit from the Designated Authority and meeting the requirements of this bylaw.

### 2. Application Requirements

Application for approval of a Stormwater Management Permit shall include the following:

- A. A stormwater management plan or an application for waiver shall be submitted to the Designated Agent for review and approval for any proposed development specified in Section 3.1. Three copies of the stormwater management plan shall be submitted, and clearly labeled, along with other documents required in this bylaw for site plan review. The plan shall contain supporting computations, drawings, and sufficient information describing the manner, location, and type of measures in which stormwater runoff will be managed from the entire development. The plan shall serve as the basis for all subsequent construction.
- B. An erosion and sediment control plan, which shall contain sufficient information to describe the nature and purpose of the proposed development.
- C. A maintenance agreement
- D. A non-refundable permit review fee

The applicant may request, and the Designated Agent may grant, a waiver from any information requirements it judges to be unnecessary to the review of a particular plan

### 3. Procedures for Review and Approval of Stormwater Permits

- A. The procedures for review and approval of stormwater management permits shall be consistent with review procedures of Town Boards, as appropriate for the use.
- B. The Designated Agent shall refer all major stormwater management permit applications to the appropriate Board, Commission and/or Department for review and shall consider any comments submitted by Board, Commission and/or Department during the review period. Within 21 days of receipt of a complete application the Designated Agent will distribute and notify the appropriate agencies.

### 4. Criteria for Review of Stormwater Permits

In addition to other criteria used by the Designated Agent in making permit decisions, for the uses specified in this bylaw, the Agent must also find that the Stormwater Management Plan submitted with the permit application meets the following criteria:

- A. the Stormwater Management Plan and the Erosion and Sediment Control Plan are consistent with the

Purposes and Objectives of this Bylaw in Section 1.

- B. the Stormwater Management Plan meets the Performance Standards described in Section 6.
- C. the Erosion and Sediment Control plan must meet the Design Requirements in Section 7.

## 5. Designated Agent Action

The Designated Agent's action, rendered in writing, shall consist of either:

- A. Approval of the Stormwater Management Permit Application based upon determination that the proposed plan meets the purposes in Section 1 and the standards in Section 6 and will adequately protect the water resources of the community and is in compliance with the requirements set forth in this by-law.
- B. Approval of the Stormwater Management Permit Application subject to any conditions, modifications or restrictions required by the Board or Designated Agent which will ensure that the project meets the purposes in Section 1 and the standards in Section 6 and adequately protects water resources, set forth in this by-law.
- C. Disapproval of the Stormwater Management Permit Application based upon a determination that the proposed plan, as submitted, does not meet the purposes in Section 1 and the standards in 6 or adequately protect water resources, as set forth in this by-law.

Failure of the Designated Agent to take final action upon an Application within 90 days shall be deemed to be approval of said Application unless extended by mutual agreement. Upon certification by the Town Clerk that the allowed time has passed without Designated Agent action, the Designated Agent must issue a Stormwater Management Permit.

## 6. Inspections

No plan will be approved without adequate provision for inspection of the property before development activity commences. The applicant shall arrange with the Designated Agent for scheduling inspections, or upon request by the Designated Agent, shall have a qualified third-party inspector, as determined by the Designated Agent, perform the inspections, and submit a detailed report as to their findings. A qualified inspector is a person knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, who possesses the skills to assess conditions at the construction site that could impact stormwater quality, and the skills to assess the effectiveness of any stormwater controls selected and installed to meet the requirements of this permit. The applicant shall arrange with the Designated Agent for scheduling the following inspections:

- A. Initial inspection: prior to approval of any plan
- B. Erosion Control Inspections: after site clearing, rough grading, and final grading to ensure erosion control practices are in accord with the plan.
- C. Bury inspection: prior to backfilling of any underground drainage or stormwater conveyance structures.
- D. Final Inspection: when all work, including construction of stormwater management facilities and landscaping have been completed. Final inspection shall include a full inspection of all stormwater pipes installed provided by the applicant.

The Designated Agent shall inspect the work and either approve it or notify the applicant in writing in what respects there has been a failure to comply with the requirements of the approved plan. Any portion of the work which does not comply shall be promptly corrected by the applicant or the applicant will be subject to the bonding provisions of Section 9 or the penalty provisions of Section 10. The Town may conduct random inspections to ensure effective control of erosion and sedimentation during all phases of construction.

## 7. Right-of-Entry for Inspection

When any new drainage control facility is installed on private property, or when any new connection is made between private property and a public drainage control system, the filing of an application shall be deemed as the property owner's permission to the Designated Agent for the right to enter the property at reasonable times and in a reasonable manner for the purpose of the inspection. This includes the right to enter a property when it has a reasonable basis to believe that a violation of this bylaw is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this bylaw.

## 8. Application Review Fees

The fee for review of any land development application shall be based on the amount of land to be disturbed and site complexity. The fee structure shall be established by the Hampden Selectboard. All of the monetary contributions shall be credited to the General Fund or Revolving Stormwater Fund and shall be made prior to issuance of any building permit for development.

The Selectboard, Designated Agent, Planning Board, and Conservation Commission are authorized to retain a Registered Professional Engineer (PE) or other professional consultant to advise the Board of Designated Agent, Planning Board, and Conservation Commission on any or all aspects of the application and/or the project's compliance with conditions of a Review or Permit. The Selectboard, Designated Agent, Planning Board, and Conservation Commission may require the applicant to pay reasonable costs to be incurred by the Selectboard, Designated Agent, Planning Board, and Conservation Commission for the employment of outside consultants pursuant to stormwater management regulations as authorized by G.L. c. 44, § 53G.

## SECTION 5. THE STORMWATER MANAGEMENT AND EROSION CONTROL PLAN

### 1. Contents of the Stormwater Management and Erosion Control Plan

The application for a stormwater management permit shall consist of submittal of a stormwater management and erosion control plan, prepared by a professional engineer licensed by the Commonwealth of Massachusetts, which meets the design requirements provided by this Bylaw. The plan shall include sufficient information to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed development on water resources; and the effectiveness and acceptability of measures proposed for managing stormwater runoff. The Plan must be designed to meet the Massachusetts Stormwater Management Standards as set forth in Section 6 of this bylaw and the Massachusetts Department of Environmental Protection Stormwater Handbook Volumes 1 and 2. The applicant shall certify on the drawings that all clearing, grading, drainage, construction, and development shall be conducted in strict accordance with the plan. The minimum information submitted for support of a stormwater management plan shall be as follows:

- A. A locus map,
- B. The existing zoning, and land use at the site,
- C. The proposed land use,
- D. The location(s) of existing and proposed easements,
- E. The location of existing and proposed utilities,
- F. The site's existing & proposed topography with contours at 2-foot intervals,
- G. The existing site hydrology,
- H. A description & delineation of existing stormwater conveyances, impoundments, and wetlands on or adjacent to the site or into which storm water flows.
- I. A delineation of 100-year flood plains, if applicable
- J. Estimated seasonal high groundwater elevation (November to April) in areas to be used for storm water retention, detention, or infiltration.
- K. The existing and proposed vegetation and ground surfaces with runoff coefficient for each,
- L. A drainage area map showing pre and post construction watershed boundaries, drainage area and storm water flow paths,
- M. A description and drawings of all components of the proposed drainage system including:
  - (1) locations, cross sections, and profiles of all brooks, streams, drainage swales and their method of stabilization,
  - (2) all measures for the detention, retention, or infiltration of water,
  - (3) all measures for the protection of water quality,
  - (4) the structural details for all components of the proposed drainage systems and storm water management facilities,
  - (5) notes on drawings specifying materials to be used, construction specifications, and typical.
  - (6) expected hydrology with supporting calculations.
  - (7) proposed improvements including location of buildings or other structures, impervious surfaces, and drainage facilities, if applicable,
  - (8) a description of construction and waste materials expected to be stored on-site, and a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to storm water, and spill

prevention and response.

- (9) timing, schedules, and sequence of development including clearing, stripping, rough grading, construction, final grading, and vegetative stabilization.
- (10) a maintenance schedule for the period of construction.

## SECTION 6. STORMWATER MANAGEMENT PERFORMANCE STANDARDS

### 1. Minimum Control Requirements

Projects must meet the Small MS4 General Permit requirements and Massachusetts Stormwater Management Standards as follows.

- A. No new stormwater conveyances (e.g., outfalls) may discharge untreated stormwater directly to or cause erosion in wetlands or water of the Commonwealth.
- B. Stormwater management systems must be designed so that post-development peak discharge rates do not exceed pre-development peak discharge rates.
- C. Loss of annual recharge to groundwater should be minimized through the use of infiltration measures to the maximum extent practicable. The annual recharge from the post-development site should approximate the annual recharge rate from the pre-development or existing site conditions, based on soil types.
- D. Stormwater management systems on new development shall be designed to meet an average annual pollutant removal equivalent to 90% of the average annual load of Total Suspended Solids (TSS) related to the total post-construction impervious area on the site AND 60% of the average annual load of Total Phosphorus (TP) related to the total post-construction impervious surface area on the site. Average annual pollutant removal requirements are achieved through one of the following methods:
  - (1) Installing BMPs that meet the pollutant removal percentages based on calculations developed consistent with EPA Region 1's BMP Accounting and Tracking Tool (2016) or other BMP performance evaluation tool provided by EPA Region 1, where available. If EPA Region 1 tools do not address the planned or installed BMP performance, then any federally or State-approved BMP design guidance or performance standards (e.g., State stormwater handbooks and design guidance manuals) may be used to calculate BMP performance; or
  - (2) Retaining the volume of runoff equivalent to, or greater than, one (1.0) inch multiplied by the total post-construction impervious surface area on the site; or
  - (3) Meeting a combination of retention and treatment that achieves the above standards; or
  - (4) Utilizing offsite mitigation that meets the above standards within the same USGS HUC 12 as the new development site.
- E. Stormwater management systems on redevelopment sites shall be designed to meet an average annual pollutant removal equivalent to 80% of the average annual post-construction load of TSS related to the total post-construction impervious area on the site AND 50% of the average annual load of TP related to the total post-construction impervious surface area on the site. Average annual pollutant removal requirements are achieved through one of the following methods:
  - (1) Installing BMPs that meet the pollutant removal percentages based on calculations developed consistent with EPA Region 1's BMP Accounting and Tracking Tool (2016) or other BMP performance evaluation tool provided by EPA Region 1, where available. If EPA Region 1 tools do not address the planned or installed BMP performance, then any federally or State-approved BMP design guidance or performance standards (e.g., State stormwater handbooks and design guidance manuals) may be used to calculate BMP performance; or
  - (2) Retaining the volume of runoff equivalent to, or greater than, 0.8 inch multiplied by the total post-construction impervious surface area on the redeveloped site; or
  - (3) Meeting a combination of retention and treatment that achieves the above standards; or
  - (4) Utilizing offsite mitigation that meets the above standards within the same USGS HUC 12 as the redevelopment site.
- F. Redevelopment activities that are exclusively limited to maintenance and improvement of existing roadways, (including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems, and repaving projects) shall improve existing conditions unless infeasible and are exempt from 6.E. Roadway widening or improvements that increase the amount of impervious area on the redevelopment site by greater than or equal to a single lane width shall meet the requirements of 6.E.

- G. Stormwater discharges from areas with higher potential pollutant loads require the use of specific stormwater management BMPs (see Massachusetts Stormwater Handbook Volume 1: Overview of Massachusetts Stormwater Standards). The use of infiltration practices without pretreatment is prohibited.
- H. Stormwater discharges to critical areas must utilize certain stormwater management BMPs approved for critical areas (see Massachusetts Stormwater Handbook Volume 1: Overview of Massachusetts Stormwater Standards). Critical areas are Outstanding Resource Waters (ORWs), swimming beaches, cold water fisheries and recharge areas for public water supplies.
- I. Erosion and sediment controls must be implemented to prevent impacts during disturbance and construction activities.
- J. All stormwater management systems must have an operation and maintenance plan to ensure that systems function as designed.
- K. New development and redevelopment stormwater management BMPs should be optimized for nitrogen removal and removal of other pollutants in accordance with the Small MS4 General Permit where discharges are to a water listed as impaired on the Massachusetts Integrated List of Waters published by Massachusetts Department of Environmental Protection.
- L. When the proposed discharge may have an impact upon a sensitive receptor, including streams or storm sewers, the Designated Agent may require an increase in these minimum requirements, based on existing stormwater system capacity.

## 2. Stormwater Management Measures

- A. Stormwater management measures shall be required to satisfy the minimum control requirements and shall be implemented in the following order of preference:
  - 1. Infiltration, flow attenuation, and pollutant removal of runoff on-site to existing areas with grass, trees, and similar vegetation and through the use of open vegetated swales and natural depressions.
  - 2. Use of stormwater on-site to replace water used in industrial processes or for irrigation.
  - 3. Stormwater detention structures for the temporary storage of runoff which is designed so as not to create a permanent pool of water; and
  - 4. Stormwater retention structures for the permanent storage of runoff by means of a permanent pool of water.
  - 5. Retention and evaporation of stormwater on rooftops or in parking lots.
- B. *Infiltration practices shall be utilized to reduce runoff volume increases. A combination of successive practices may be used to achieve the applicable minimum control requirements. Justification shall be provided by the applicant for rejecting each practice based on site conditions.*
- C. Best Management Practices shall be employed to minimize pollutants in stormwater runoff prior to discharge into a separate storm drainage system or water body.
- D. All stormwater management facilities shall be designed to provide an emergency overflow system and incorporate measures to provide a non-erosive velocity of flow along its length and at any outfall.
- E. The designed release rate of any stormwater structure shall be modified if any increase in flooding or stream channel erosion would result at a downstream dam, highway, structure, or normal point of restricted stream flow.

## 3. Specific Design Criteria

Additional policy, criteria, and information including specifications and design standards may be found in the Stormwater Design Manual.

- A. Low Impact Development (LID) site planning and design strategies must be implemented unless infeasible in order to reduce the discharge of stormwater from development sites, per the Small MS4 General Permit.
- B. Infiltration systems
  - 1. Infiltration systems shall be equipped with clean stone and or filter fabric adjacent to the soil or other sediment removal mechanisms.
  - 2. Infiltration systems greater than 3 feet deep shall be located at least 10 feet from basement walls.
  - 3. Due to the potential for groundwater contamination from dry wells, they shall not be an

- acceptable method for management of runoff containing pollutants.
- 4. Infiltration systems designed to handle runoff from commercial or industrial impervious parking areas shall be a minimum of 100 feet from any drinking water supply well.
- 5. Infiltration systems shall not be used as sediment control basins during construction unless specific plans are included to restore or improve the basin surface.
- 6. Infiltration basins shall be constructed with a three-foot minimum separation between the bottom of the structure and the seasonal high groundwater elevation, as determined by a certified soil evaluator; and
- 7. Provisions shall be made for safe overflow passage, in the event of a storm which exceeds the capacity of an infiltration system.
- C. Retention and detention ponds shall be designed and constructed in accordance with the criteria of the Stormwater Handbook, Volume Two: Technical Guide for Compliance with Massachusetts Stormwater Management Standard February 2008, Massachusetts Department of Environmental Protection, as updated or amended).
- D. The applicant shall give consideration in any plan to incorporating the use of natural topography and land cover such as natural swales, and depressions as they exist prior to development to the degree that they can accommodate the additional flow of water.
- E. The Designated Agent shall give preference to the use of swales in place of the traditional use of curbs and gutters based on a case-by-case review of stormwater management plans.
- F. The applicant shall consider public safety in the design of any stormwater facilities. The banks of detention, retention, and infiltration basins shall be sloped at a gentle grade into the water as a safeguard against personal injury, to encourage the growth of vegetation and to allow the alternate flooding and exposure of areas along the shore. Basins shall have a 4:1 slope to a depth two feet below the control elevation. Side slopes must be stabilized and planted with vegetation to prevent erosion and provide pollutant removal. The banks of detention and retention areas shall be designed with sinuous rather than straight shorelines so that the length of the shoreline is maximized, thus offering more space for the growth of vegetation.
- G. Where a stormwater management plan involves direction of some or all runoff off of the site, it shall be the responsibility of the applicant to obtain from adjacent property owners a easements or other necessary property interests concerning flowage of water. Approval of a stormwater management plan does not create or affect any such rights.
- H. All applicants for projects which involve the storage or use of hazardous chemicals shall incorporate handling and storage "best management practices" that prevent such chemicals from contaminating runoff discharged from a site into infiltration systems, receiving water bodies or storm drains, and shall include a list of such chemicals in the application.
- I. Runoff from parking lots shall be treated by oil and water separators or other controls to remove oil and sediment.
- J. The basic design criteria methodologies, and construction specifications, subject to the approval of the Designated Agent, shall be consistent with, or more stringent than, the most current edition of the Stormwater Handbook, Volume 2: Technical Guide for Compliance with Massachusetts Stormwater Management Standard (February 2008, Massachusetts Department of Environmental Protection, as updated or amended).

## SECTION 7. DESIGN REQUIREMENTS FOR EROSION AND SEDIMENT CONTROL PLAN

1. The design requirements of the Erosion and Sediment Control Plan are:
  - A. Minimize total area of disturbance
  - B. Sequence activities to minimize simultaneous areas of disturbance.
  - C. Minimize peak rate of runoff in accordance with the Massachusetts Department of Environmental Protection Stormwater Management Standards.
  - D. Minimize soil erosion and control sedimentation during construction. Prevention of erosion is preferred over sedimentation control.
  - E. Divert uncontaminated water around disturbed areas
  - F. Maximize groundwater recharge.
  - G. Install, and maintain all Erosion and Sediment Control measures in accordance with the manufacturers and designers specifications and good engineering practices
  - H. Prevent off-site transport of sediment.
  - I. Protect and manage on and off-site material storage areas (overburden and stockpiles of dirt, borrow

areas, or other areas used solely by the permitted project are considered a part of the project).

- J. Comply with applicable Federal, State, and local laws and regulations including waste disposal, sanitary sewer or septic system regulations, and air quality requirements, including dust control.
- K. Prevent adverse impact from the proposed activities to habitats mapped by the Massachusetts Natural Heritage & Endangered Species Program as Endangered, Threatened or of Special concern, Estimated Habitats of Rare Wildlife and Certified Vernal Pools, and Priority Habitats of Rare Species
- L. Institute interim and permanent stabilization measures. The measures shall be instituted on a disturbed area as soon as practicable but no more than 14 days after construction activity has temporarily or permanently ceased on that portion of the site.
- M. Properly manage on-site construction and waste materials. Construction site operators shall control wastes, including but not limited to, discarded building materials, concrete truck washout, chemicals, litter, and sanitary wastes. These wastes may not be discharged to the MS4.
- N. Prevent off-site vehicle tracking of sediments.

## SECTION 8. MAINTENANCE

- 1. Operation, Maintenance, and Inspection Agreement
  - A. Prior to issuance of any building permit for which stormwater management is required, the Designated Agent shall require the applicant or owner to execute an operation, maintenance and inspection agreement binding on all subsequent owners of land served by the private stormwater management facility. The agreement shall be designed to ensure that water quality standards are met in all seasons and throughout the life of the system. Such agreement shall provide for access to the facility at reasonable times for regular inspections by the Town or its authorized representative and for regular or special assessments of property owners to ensure that the facility is maintained in proper working condition to meet design standards and any provision established. The agreement shall include:
    - (1) The name(s) of the owner(s) for all components of the system.
    - (2) Maintenance agreements that specify:
      - (a) The names and addresses of the person(s) responsible for operation and maintenance.
      - (b) The person(s) responsible for financing maintenance and emergency repairs.
      - (c) A detailed Maintenance Schedule for all drainage structures, including swales and ponds.
      - (d) A list of easements with the purpose and location of each.
      - (e) The signature(s) of the owner(s).
    - (3) Stormwater management easements as necessary for:
      - (a) Access for facility inspections and maintenance.
      - (b) Preservation of stormwater runoff conveyance, infiltration, and detention areas and facilities, including flood routes for the 100-year storm event.
      - (c) Direct maintenance access by heavy equipment to structures requiring regular cleanout.
    - (4) Stormwater management easement requirements:
      - (a) The purpose of each easement shall be specified in the maintenance agreement signed by the property owner.
      - (b) Stormwater management easements are required for all areas used for off-site stormwater control unless a waiver is granted by the Town.
      - (c) Easements shall be recorded with the Registry of Deeds prior to issuance of a Certificate of Completion.
    - (5) Changes to Operation and Maintenance Plans
      - (a) The owner(s) of the stormwater management system must notify the Designated Agent of changes in ownership or assignment of financial responsibility.
      - (b) The maintenance schedule in the Maintenance Agreement may be amended to achieve the purposes of this by-law by mutual agreement of the Designated Agent and the Responsible Parties. Amendments must be in writing and signed by all Responsible Parties. Responsible Parties must include owner(s), persons with financial responsibility, and persons with operational responsibility.
  - B. The agreement shall be recorded by the applicant and/or owner in the land records of the Registry of Deeds.
  - C. The agreement shall also provide that, if after notice by the Designated Agent to correct a violation requiring maintenance work, satisfactory corrections are not made by the owner(s) within thirty days, the Designated Agent may perform all necessary work to place the facility in proper working

condition. The owner(s) of the facility shall be assessed the cost of the work and any penalties.

2. Maintenance Responsibility

- A. The owner of the property on which work has been done pursuant to this Bylaw for private stormwater management facilities, or any other person or agent in control of such property, shall maintain in good condition and promptly repair and restore all grade surfaces, walls, drains, dams and structures, vegetation, erosion and sediment control measures and other protective devices. Such repairs or restoration and maintenance shall be in accordance with approved plans.
- B. A maintenance schedule shall be developed for the life of any stormwater management facility and shall state the maintenance to be completed, the time period for completion, and who shall be legally responsible to perform the maintenance. This maintenance schedule shall be printed on the stormwater management plan.
- C. The owner of the property on which work has been done pursuant to this Bylaw for private stormwater management facilities, or any other person or agent in control of such property, shall submit, by February 1 of each calendar year, an annual report to the Board of Selectman, detailing maintenance and inspection activities conducted in conjunction with the stormwater management facilities.

**SECTION 9. PERFORMANCE BOND**

The Designated Agent or the appropriate Board or Commission shall require from the developer a surety or cash bond, irrevocable letter of credit, or other means of security acceptable to the Designated Agent prior to the issuance of any building permit for the construction of a development requiring a stormwater management facility. The amount of the security shall not be less than the total estimated construction cost of the stormwater management facility. The bond so required in this section shall include provisions relative to forfeiture for failure to complete work specified in the approved stormwater management plan, compliance with all of the provisions of this Bylaw and other applicable laws and regulations, and any time limitations. The bond shall not be fully released without a final inspection of the completed work by the Designated Agent, submission of "As-built" plans, and certification of completion by the Designated Agent of the stormwater management facilities being in compliance with the approved plan and the provisions of this Bylaw. As-built plans shall be provided no later than two (2) years after completion of construction projects.

**SECTION 10. ENFORCEMENT AND PENALTIES**

1. Violations

Any development activity that has commenced or is conducted contrary to this Bylaw may be restrained by injunction or otherwise abated in a manner provided by law.

2. Notice of Violation

When the Designated Agent determines that an activity is not being carried out in accordance with the requirements of this Bylaw, it shall issue a written notice of violation to the owner of the property. The notice of violation shall contain:

- A. the name and address of the owner applicant.
- B. the address when available or the description of the building, structure, or land upon which the violation is occurring.
- C. a statement specifying the nature of the violation.
- D. a description of the remedial measures necessary to bring the development activity into compliance with this Bylaw and a time schedule for the completion of such remedial action.
- E. a statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed.
- F. a statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within fifteen (15) days of service of notice of violation.

3. Stop Work Orders

Persons receiving a notice of violations will be required to halt all construction activities. This "stop work order" will be in effect until the Designated Agent confirms that the development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a notice of violation in a timely manner can result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this Bylaw.

4. **Criminal and Civil Penalties**  
Any person who violates any provision of this bylaw, valid regulation, or the terms or conditions in any permit or order prescribed or issued thereunder, shall be subject to a fine not to exceed \$300.00 for each day such violation occurs or continues or subject to a civil penalty, which may be assessed in an action brought on behalf of the Town in any court of competent jurisdiction.
5. **Non-Criminal Disposition**  
As an alternative to criminal prosecution or civil action, the Town of Hampden may elect to utilize the non-criminal disposition procedure set forth in the Town of Hampden General Bylaws, Chapter XI. The Designated Agent shall be the enforcing entity. Each day or part thereof that such violation occurs or continues shall constitute a separate offense, applicable penalties to apply.
6. **Restoration of Lands**  
Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Designated Agent may take necessary corrective action, the cost of which shall become a lien upon the property until paid. Within thirty (30) days after the Designated Agent completes all measures necessary for corrective action, the violator and 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 cost with the Designated Agent 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 Designated Agent affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the cost shall become a special assessment against the property owner of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in M.G.L. Chapter 59, s 57 after the thirtieth (30) day at which the costs first become due.
7. **Holds on Occupancy Permits**  
Occupation permits will not be granted until corrections to all stormwater practices have been made and accepted by the Designated Agent.
8. **Entry to Perform Duties Under this Bylaw**  
To the extent permitted by state law, or if authorized by the owner or other party in control of the property, Designated Agent may enter upon privately owned property for the purpose of performing their duties under this bylaw and regulations and may make or cause to be made such examinations, surveys or sampling as the Designated Agent deems reasonably necessary
9. **Appeals**  
The decisions or orders of the Designated Agent shall be final. Further relief shall be to a court of competent jurisdiction.
10. **Remedies Not Exclusive**  
The remedies listed in this bylaw are not exclusive of any other remedies available under any applicable federal, state, or local bylaw.

## SECTION 11. SEVERABILITY

The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof.

## CHAPTER XV - RIGHT TO FARM BY-LAW

(Added 4/30/07)

### SECTION 1 Legislative Purpose and Intent

The purpose and intent of this By-law is to state with emphasis the Right to Farm accorded to all citizens of the Commonwealth under Article 97, of the Constitution, and all state statutes and regulations thereunder including

but not limited to Massachusetts General Laws Chapter 40A, Section 3, Paragraph 1; Chapter 90, Section 9, Chapter III, Section 125A and Chapter 128 Section IA. We the citizens of the Town of Hampden 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 Hampden 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 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, aquacultural, floricultural, viticultural, or horticultural commodities; growing and harvesting of forest products upon forest land, and any other forestry or lumbering operations; raising of livestock including, but not limited to, horses, 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 purposes, including bees and fur-bearing animals.

"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 agricultural output or services of the farm; processing and packaging of the agricultural output of the farm and the operation of a farmer's market or farm stand including signage thereto; maintenance, repair, or storage of seasonal equipment, or apparatus owned or leased by the farm owner or manager used expressly for the purpose of propagation, processing, management, or sale of the agricultural products; and on-farm relocation of earth and the clearing of ground for farming operations.

## **SECTION 3 Right To Farm Declaration**

The Right to Farm is hereby recognized to exist within the Town of Hampden. 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 this By-law are intended to apply especially to those agricultural 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 land use regulation, which is properly the subject of state statute, regulation, or local zoning law.

## **SECTION 4 Posting of Right to Farm Bylaw**

The Selectboard shall post the right to farm declaration on town bulletin boards annually to run contiguous with the posting of the annual Town Meeting. Furthermore, the right to farm declaration will be included as part of the town bylaws which are posted on the Town of Hampden's Website: [www.hampdenma.gov](http://www.hampdenma.gov).

## **SECTION 5 Resolution of Disputes**

Any person who seeks to complain about the operation of a farm may, notwithstanding pursuing any other available remedy, file a grievance with the Select Board. The Select Board shall review and facilitate the resolution of the grievance.

## **SECTION 6 Severability Clause**

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

## **CHAPTER XVI, Prohibition on Marijuana Establishments** (added 3/28/2018)

In accordance with Massachusetts General Laws Chapter 94G, Section 3(a)(2), all types of marijuana establishments, as defined in Massachusetts General Laws Chapter 94G, Section 1 and as may otherwise be defined by Massachusetts law or regulation, to include, without limitation, all marijuana cultivators, marijuana testing facilities, marijuana product manufacturers, marijuana retailers, on-site consumption at a business location, any other types of licensed marijuana-related businesses, and the conducting of any such activity for commercial purposes by whichever name used, shall be prohibited within the Town of Hampden. This prohibition shall not be construed to affect the medical use of marijuana as expressly authorized by the provisions of Chapter 369 of the Acts of 2012 and 105 CMR 725.000 (as the same may be amended from time to time).