

MINUTES OF THE FAIRHAVEN FINANCE COMMITTEE

MEETING HELD THURSDAY, APRIL 14, 2022

Meeting called to order by Chairman Elliott at 7:02 PM

Members Present: Padraic Elliot, Jennifer Dupras, Carolyn Roberts, Kathi Carter, Lisa Plante, Bob Grindrod.

Appointment of Secretary: Bob Grindrod nominated. Motion made by Carolyn Roberts; Seconded by Kathi Carter.

Vote to Accept: 6-0 Passed

Approval of 4/7/2022 Minutes as Revised: Motion to Accept: Bob Grindrod; Seconded by Lisa Plante

Vote to Accept: 6-0 Passed

REVIEW OF ARTICLES FROM THE WARRANT REVISION DATED APRIL 14, 2022

Article 15: Sewer Enterprise Capital Plan Sections A through E Required Funding.

Primary discussion related to Section A, the Sewer Treatment Upgrade project mandated by the EPA.

Requested borrowing authority for \$50 million will be offset by Mattapoissett payment of 16% of costs, and may be further reduced by certain loan forgiveness by Mass DEP. Mr. Furtado further explained the other four items on the list. Total Borrowing Authority requested: \$54,825,000 for all five projects.

Motion to Accept: Lisa Plante Second: Carolyn Roberts

Vote to Accept: 6-0 Passed

Article 45: Mattapoissett River Valley Water District Borrowing.

The request is for Fairhaven's portion (\$4.2 Million) of a District wide capital project to improve the filtration and disinfection systems at the existing Water Treatment Plant located in Mattapoissett. This represents Fairhaven's share, but their portions must also be approved by Mattapoissett and Marion, the other participants in the District.

Motion to Accept: Lisa Plante Second: Carolyn Roberts

Vote to Accept: 6-0 Passed

Article 22: CPC Programs for 2023: Items A Through E \$359,500

An extensive discussion took place with Mr. Paul Foley, representing the CPC, on the various projects. The primary questions related to the proposed Pickleball Courts and where they would be located within Livesey Park. All five items were considered and voted as a package?

Motion to Accept: Lisa Plante Second: Carolyn Roberts

Vote to Accept: 6-0 Passed

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TOWN CLERK

2022 APR 29 P 2:12

FAIRHAVEN,
MASS.

The following Warrant Articles were reviewed, discussed and voted upon as follows:

Article 7: Transfer Surplus Sewer Revenue to Sewer Stabilization fund.

Motion to Accept: Lisa Plante Second: Carolyn Roberts **Vote to Accept: 6-0 Passed**

Article 14: Water Enterprise Capital Plan: FY 2023 Three Parts - \$1,148,000 in total

Motion to Accept: Lisa Plante Second: Carolyn Roberts **Vote to Accept: 6-0 Passed**

Article 16: Roadwork – FY 2023 Bayview Avenue, Farmfield Street, Bonney Street

Motion to Accept: Lisa Plante Second: Carolyn Roberts **Vote to Accept: 6-0 Passed**

Article 17: State Aid to Highways – FY 2023

Motion to Accept: Lisa Plante Second: Carolyn Roberts **Vote to Accept: 6-0 Passed**

Article 19: Ambulance Stabilization – FY 2023 \$70,000

Motion to Accept: Lisa Plante Second: Carolyn Roberts **Vote to Accept: 6-0 Passed**

Article 20: Social Day Care Center – FY 2023 \$175,000

Motion to Accept: Lisa Plante Second: Carolyn Roberts **Vote to Accept: 6-0 Passed**

Article 21: Shellfish Propagation – FY 2023 \$ 18,000

Motion to Accept: Lisa Plante Second: Carolyn Roberts **Vote to Accept: 6-0 Passed**

Article 25: Senior Work Off Program – FY 2023 \$10,000

Motion to Accept: Lisa Plante Second: Carolyn Roberts **Vote to Accept: 6-0 Passed**

Article 27: Water Department Van \$13,000

Motion to Accept: Lisa Plante Second: Carolyn Roberts **Vote to Accept: 6-0 Passed**

Article 28: Amend Storm Water Bylaw Chapter 194 *Yield To Petitioner*

Motion to Accept: Lisa Plante Second: Carolyn Roberts **Vote to Yield: 6-0 Passed**

Article 30: Trash Can Bylaw Change *Yield To Petitioner*

Motion to Accept: Lisa Plante Second: Carolyn Roberts **Vote to Yield: 6-0 Passed**

Article 41: Rezone Upper Narragansett Avenue *Yield To Petitioner*

Motion to Accept: Lisa Plante Second: Carolyn Roberts **Vote to Yield: 6-0 Passed**

Article 42: Public Facilities Setback

Yield To Petitioner

Motion to Accept: Lisa Plante Second: Carolyn Roberts

Vote to Yield: 6-0 Passed

Article 49: FEMA Grant Match – Hydraulic Tools

\$ 1,893

Motion to Accept: Lisa Plante Second: Carolyn Roberts

Vote to Accept: 6-0 Passed

Article 50: FEMA Grant Match – Ambulance

\$ 14,286

Motion to Accept: Lisa Plante Second: Carolyn Roberts

Vote to Accept: 6-0 Passed

Article 52: Rezone 114 Sconticut Neck Road

Yield To Petitioner

Motion to Accept: Lisa Plante Second: Carolyn Roberts

Vote to Yield: 6-0 Passed

Article 57: Revoke Borrowing Authority – Fire Truck Purchase

Motion to Accept: Lisa Plante Second: Carolyn Roberts

Vote to Revoke: 6-0 Passed

Discussion of Reserve Fund Transfers totaling \$21,600 from the Fire Department will be handled at the April 21, 2022 meeting . In addition, we will handle additional Warrant items and review Operating Budgets as prepared by Ms. Graves.

We are informed that the Town Administrator has decided that NO additional positions will be included in the 2023 Budget.

A motion to Adjourn the Meeting was made by Lisa Plante and Seconded by Carolyn Roberts, with a 6 – 0 Vote in favor of adjournment. The meeting was adjourned at 10:07 PM.

The next meeting of the Finance Committee will be held via Zoom at **6:30 PM, Thursday April 21.**

Robert C. Grindrod

Acting Secretary

**REQUEST FOR TRANSFER FROM THE RESERVE FUND
(TO BE SUBMITTED IN TRIPLICATE)**

Applicant is required to submit this request and to be present at the Finance Committee meeting at which the request is to be acted upon, *unless you are specifically informed that your attendance will not be needed. It is the responsibility of the Applicant to contact the Finance Committee chairperson to schedule an appointment*

TO: The Finance Committee for the Town of Fairhaven MA

Request is hereby made for the following transfer from the following reserve fund in accordance with Chapter 40 section 6 of the Massachusetts General Laws. Please circle ONE of the following reserve funds requesting transfer from. GENERAL WATER SEWER

1. Amount requested \$10,000
2. To be transferred to Equipment for Personnel - 01-220-00-5585-00
(List appropriation, include category and line item)
3. Present Balance in Appropriation- Balance in Category \$8,984.79
Balance in Line-item \$-6,369.35
4. Amount will be used for Costs associated with purchasing initial hire uniforms and related equipment.

NOTE: You must detail specific reason and documentation for request. Failure to provide sufficient information will result in your request being denied.

5. **THE EXPENDITURE IS UNFORSEEN AND EXTRODINARY FOR THE FOLOWING REASON** As mentioned in another transfer request, we had a new hire in January due to an unexpected retirement. This new hire is now resigning and we need to start the hire process again. This line item is already in the negative with the unexpected hire in January and rising costs of outfitting a firefighter . With other costs in this category that we have already anticipated for this fiscal year, this category will remain in the negative, drain from other line items in this category and cause the whole category to also be in the negative.

NOTE: You must detail the circumstances for the warrant transfer If amounts remain in category appropriation for this line item, you must explain in detail why payment cannot be made from the remaining funds in category. If insufficient space provided, attach separate sheet.

Wendy J. Graves
(Town Administrator / board chair)

[Signature]
(Officer or Department Head)

Town Administrator required for departments under the Board of selectman

NOTE: For departments not under selectman. Respective board approval vote and chair signature required.

ACTION OF THE FINANCE COMMITTEE

Date of meeting _____ Number of members voting and present _____
Transfer voted the sum of \$ _____ /Transfer Disapproved

Chairperson Finance committee

REQUEST MUST BE MADE AND TRANSFER APPROVED BEFORE ANY EXPEDITURE IN EXCESS OF APPROPRIATION IS INCURRED

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TO: The Finance Committee for the Town of Fairhaven MA

Request is hereby made for the following transfer from the following reserve fund in accordance with Chapter 40 section 6 of the Massachusetts General Laws. Please circle **ONE** of the following reserve funds requesting transfer from. GENERAL WATER SEWER

1. Amount requested \$7,500
2. To be transferred to Repair & Maintenance Buildings 01-220-00-5244-00
(List appropriation, include category and line item)
3. Present Balance in Appropriation- Balance in Category \$23,176.18
Balance in Line-item \$-4,901.07
4. Amount will be used for Costs associated with maintaining fire station headquarters and secondary East Fairhaven location.

NOTE: You must detail specific reason and documentation for request. Failure to provide sufficient information will result in your request being denied.

5. **THE EXPENDITURE IS UNFORSEEN AND EXTRODINARY FOR THE FOLOWING REASON** Our station had multiple expensive repairs that were not anticipated. We had repairs to more than one apparatus door, our station cascade system failed and needed a new motherboard, we had another instance of sewer backup in the basement, our boiler failed and needed repair, in addition to other minor building repairs. We are anticipating bills from a generator failure and repair and another apparatus door repair.

NOTE: You must detail the circumstances for the warrant transfer If amounts remain in category appropriation for this line item, you must explain in detail why payment cannot be made from the remaining funds in category. If insufficient space provided, attach separate sheet.

Wendy J. Graves
(Town Administrator / board chair)

[Signature]
(Officer or Department Head)

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REQUEST FOR TRANSFER FROM THE RESERVE FUND
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TO: The Finance Committee for the Town of Fairhaven MA

Request is hereby made for the following transfer from the following reserve fund in accordance with Chapter 40 section 6 of the Massachusetts General Laws. Please circle **ONE** of the following reserve funds requesting transfer from. **GENERAL** WATER SEWER

1. Amount requested \$600.00
2. To be transferred to Training - 01-220-00-5361-00
(List appropriation, include category and line item)
3. Present Balance in Appropriation- Balance in Category \$23,176.18
Balance in Line-item \$3319.31
4. Amount will be used for Costs associated with the Massachusetts Fire Academy physical agilities test for new hires.

NOTE: You must detail specific reason and documentation for request. Failure to provide sufficient information will result in your request being denied.

5. **THE EXPENDITURE IS UNFORSEEN AND EXTRODINARY FOR THE FOLOWING REASON** As mentioned in another transfer request, we had a new hire in January due to an unexpected retirement. This new hire is now resigning and we need to start the hire process again. We also are attempting to hire 2 new call firefighters which will need PAT's also. With other costs in this category that we have already anticipated for this fiscal year, these additional PAT costs will put this line item in the negative.

NOTE: You must detail the circumstances for the warrant transfer If amounts remain in category appropriation for this line item, you must explain in detail why payment cannot be made from the remaining funds in category. If insufficient space provided, attach separate sheet.

Wendy S. Graves
(Town Administrator / board chair)

[Signature]
(Officer or Department Head)

Town Administrator required for departments under the Board of selectman

NOTE: For departments not under selectman. Respective board approval vote and chair signature required.

ACTION OF THE FINANCE COMMITTEE

Date of meeting _____ Number of members voting and present _____
Transfer voted the sum of \$ _____ /Transfer Disapproved _____

Chairperson Finance committee

REQUEST MUST BE MADE AND TRANSFER APPROVED BEFORE ANY EXPEDITURE IN EXCESS OF APPROPRIATION IS INCURRED

WARRANT

**Town Meeting to Act on Articles in the Warrant
Saturday, June 18, 2022 at 9:00 a.m. in the
Walter Silveira Auditorium at the
Elizabeth I. Hastings Middle School.**

ARTICLE 1: MEASURER OF WOOD AND BARK

To see if the Town will vote to instruct the Select Board to appoint a Measurer of Wood and Bark.

Petitioned by: Select Board

ARTICLE 2: TOWN REPORT

To receive the Annual Report of Town Officers.

Petitioned by: Select Board

ARTICLE 3: REPORT OF COMMITTEES

To hear and act upon the reports of any committees, or committee appointed in Town Meeting and to choose any committees or committee the Town may think proper and to raise and appropriate a sum of money for the expense of same, or to take any other action with relation to either of said matters, as the Town may deem necessary and proper.

Petitioned by: Select Board

ARTICLE 4: SETTING SALARIES OF TOWN OFFICERS-FY23

To see if the Town will vote to fix the compensation of the Town's Elected Officers and that said compensation be effective July 1, 2023

A. Select Board	\$25,000.00
B. Town Clerk	\$66,961.00
C. Moderator	\$1,000.00
D. Tree Warden	\$7,321.00
E. Board of Health	\$5,170.00

Or take any other action relative thereto.

Petitioned by: Select Board

ARTICLE 5: BILLS OF PRIOR YEAR – Paid from FY23 funds

A. Stryker	\$680.00
B. Corvel Corporation	\$6.85

and others that may be brought forward.

Petitioned by: Town Administrator

ARTICLE 6: FY22 GENERAL FUND OPERATING BUDGET ADJUSTMENTS

To see if the town will vote to amend Article 9 of the June 12, 2021 Town Meeting “General Fund Operating budget-FY22” as follows:

- A. \$7,321 be transferred from Surplus Revenue (Free Cash) to the Bristol County Agricultural

Petitioned by: Finance Director

ARTICLE 7: SEWER CAPITAL IMPROVEMENTS REVENUE FY21 TO STABILIZATION FUND

To see if the Town will vote to transfer from the Sewer Retained Earnings of June 30, 2020 Sewer Capital Fee \$302,073 to the Sewer Capital Improvements Stabilization Fund or to take any other action relative thereto:

Petitioned by: Board of Public Works

ARTICLE 8: GENERAL FUND OPERATING BUDGET – FY23

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds a sum of money to fund the balance of the FY23 General Fund Operating Budget or take any other action relative thereto:

Petitioned by: Select Board

ARTICLE 9: WATER ENTERPRISE FUND OPERATING BUDGET – FY23

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds a sum of money to fund the balance of the FY23 Water Enterprise Fund Operating Budget or take any other action relative thereto:

Petitioned by: Board of Public Works

ARTICLE 10: SEWER ENTERPRISE FUND OPERATING BUDGET – FY23

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds a sum of money to fund the balance of the FY23 Sewer Enterprise Fund Operating Budget or take any other action relative thereto:

Petitioned by: Board of Public Works

ARTICLE 11: TOWN CABLE ENTERPRISE FUND OPERATING BUDGET – FY23

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds a sum of money to fund the balance of the FY23 Town Cable Television Enterprise Fund Operating Budget or take any other action relative thereto:

Petitioned by: Select Board

ARTICLE 12: SCHOOL CABLE ENTERPRISE FUND OPERATING BUDGET – FY23

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds a sum of money to fund the balance of the FY23 School Cable Television Enterprise Fund Operating Budget or take any other action relative thereto:

Petitioned by: Select Board

ARTICLE 13: GENERAL FUND CAPITAL PLAN – FY23

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds a sum of money to fund Capital Equipment/Projects in the General Fund or take any other action relative thereto:

A. Fire Engine 2 Tool Project	\$35,000.00
B. Public Safety Complex	\$5,637,000.00*
C. Replace Voting Machines	\$38,000.00
D. Ambulance / Stretcher Replacement	\$325,000.00*
E. Police Cruiser Replacements	\$134,000.00
F. High School-Repair and Replace Southeast & Southwest Gables	\$2,275,000.00*
G. High School Alumni Stadium Restroom Facility	\$300,000.00
H. Computer Hardware Equipment Replacement	\$30,000.00
I. Life Pak 15 Replacement (3 Units)	\$96,000.00
J. Replace Loader	\$220,000.00
K. Computer Server for offsite electronic storage	\$24,000.00
L. Beach Mat to provide for handicap access to Town Beach	\$25,000.00
M. Replace Boiler at Town Hall	\$125,000.00
N. COA/Rec Building Roof Replacement (design & construction)	\$54,000.00
O. Replacement of Engines on Harbormaster Boat	\$51,000.00
P. Hydraulic Rescue Tools	\$41,000.00
Q. Upgrade Town/School Phone System	\$223,000.00
R. Replace window blinds/shades at Town Hall	\$21,000.00
S. Control Desk Radio Upgrade	\$48,000.00

Or other project that may be presented at Town Meeting.

Petitioned by: Select Board and Capital Planning Committee

ARTICLE 14: WATER ENTERPRISE CAPITAL PLAN – FY23

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds a sum of money from the Water Enterprise account to fund Capital Equipment/Projects or take any other action relative thereto:

A. Utility Truck with Plow	\$73,000.00
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- | | |
|--|----------------|
| B. Repainting Sconticut Neck Water Tower | \$1,000,000.00 |
| C. Water Gate Valve Maintenance | \$75,000.00 |

Petitioned by: Board of Public Works

ARTICLE 15: SEWER ENTERPRISE CAPITAL PLAN

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds a sum of money from the Sewer Enterprise account to fund Capital Equipment/Projects or take any other action relative thereto:

- | | |
|---|-----------------|
| A. Sewer Treatment Plant Upgrade | \$50,000,000.00 |
| B. Inflow and Infiltration Prevention | \$250,000.00 |
| C. Sunset Beach Sewer Extension | \$1,000,000.00 |
| D. South St Taber St Force Main Upgrades | \$3,500,000.00 |
| E. Blower Building Roof Replacement-Treatment Plant | \$75,000.00 |

Petitioned by: Board of Public Works

ARTICLE 16: ROADWORK – FY23

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds a sum of money not to cumulatively exceed \$425,000 in the aggregate without regards to individual line items to do the following roadwork, in the order of priority as determined by the Board of Public Works or take any other action relative thereto:

- A. Bayview Avenue – Highland Ave to Manhattan Ave, reconstruct, hard-surface, install drainage, curbing and sidewalks a distance of approximately 1325 feet

Petitioned by BPW

- B. Farmfield Street Green St to Pleasant St - reconstruct, hard-surface, install drainage, curbing and sidewalks a distance of approximately 1000 feet

Petitioned by BPW

- C. Bonney Street – Reconstruct, hard-surface and install drainage on Bonney Street from #45 Bonney westerly to the end a distance of approximately 200 feet.

Petitioned by: Board of Public Works & Sherry Bettencourt

ARTICLE: CITIZENS PETITIONS:

- Hard Surface-Bonney Street
- Hard Surface-Chase Road
- Hard surface-Ebony Street

~~Hard Surface-Reservation Road~~
~~Hard Surface-Mill Road from 291 Mill to 312 Mill~~
~~Hard Surface-Yankee Lane from Mill Road to 20 Yankee Lane~~

ARTICLE 17: – STATE AID TO HIGHWAYS – FY23

- A. To see if the Town will vote to authorize the Board of Public Works to accept and enter into contract for the expenditure of any funds allotted or to be allotted by the Commonwealth of Massachusetts for the construction, reconstruction and improvements of Town roads, or take any other action relative thereto.

- B. To see if the Town will vote to appropriate and transfer from available funds a sum of money for capital improvements on local roads, subject to the conditions detailed by the Massachusetts Highway Department pursuant to the MGLS and Transportation Department’s Chapter 90 Guidelines, or to take any other action relative thereto.

Petitioned by: The Board of Public Works

ARTICLE 18: FUNDING CAPITAL STABILIZATION FUND – FY23

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds, including surplus revenue (Free Cash) and reimbursement from the state for school capital projects, to be deposited in the Capital Stabilization Fund as authorized by Chapter 40, Section 5B of the General Laws, or take any other action relative thereto

Petitioned by: Town Administrator

ARTICLE 19: AMBULANCE STABILIZATION – FY23

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds a sum of money not to cumulatively exceed \$70,000 to be deposited in an Ambulance Stabilization Fund as authorized by Chapter 40 Section 5B of the General Laws, or take any other action relative thereto.

Petitioned by: *Fire Chief*

ARTICLE 20: SOCIAL DAY CARE CENTER – FY23

To see if the Town will vote to authorize the Fairhaven Council on Aging to expend in the Fiscal Year 2023 a sum of money not to cumulatively exceed \$175,000.00 from the Grant Account known as “Receipts Reserved for Appropriation for Fairhaven Supportive Social Day Program” for the purpose of providing a Social Day Program for Senior Citizens or take any other action relative thereto.

Petitioned by: Council on Aging

ARTICLE 21: PROPAGATION OF SHELLFISH-FY23

To see if the Town will vote to raise and appropriate, borrow or transfer an amount not to exceed \$18,000.00 from available funds for the propagation of shellfish, or take any other action relative thereto.

Petitioned by: Harbormaster/Shellfish Warden

ARTICLE 22: COMMUNITY PRESERVATION PROGRAM APPROPRIATIONS-FY23

To see if the Town will vote to appropriate or to reserve for later appropriation, and to authorize the Community Preservation Committee to expend or reserve, from the Community Preservation Fund available funds and FY23 Estimated Receipts as set forth herein, the following amounts for community preservation purposes, with such expenditures to be subject to conditions to be specified in applications and award letters from the Community Preservation Committee, with each item considered a separate appropriation:

PROPOSED FISCAL YEAR 2023 COMMUNITY PRESERVATION BUDGET	
APPROPRIATIONS	
Purpose	Recommended Amounts
Spending Appropriations	\$93,000.00
A. Library Sidewalks, Phase 2	
B. Spring Street Firehouse Renovations	\$18,000.00
C. Pickleball at Livesey Park	\$180,000.00
D. Whitfield Manjiro Carriage House Cultural Center	\$60,000.00
Administrative Spending Appropriation	
E. To fund the Community Preservation Committee's annual expenses as follows: Personal Service –\$2,600; Purchase of Services – \$3,400; Supplies – \$500; Other charges/expenders – \$2,000.	\$8,500.00
Total Recommended Appropriations	\$359,500.00

And, whereas Massachusetts General Law, Chapter 44B requires that the Town appropriate for spending, or set-aside for future spending, from the fund balance at least 10% for open space, 10% for historic preservation, and 10% for community housing.

And, whereas the existing reserves and recommended appropriations for open space, historic preservation, and community housing each exceed 10% of the Community Preservation Fund Estimated Receipts.

And, whereas Town Meeting may vote to delete any of the recommended amounts.

Therefore, in the event that recommended amounts are deleted, vote to appropriate as a reserve for future spending from the FY 2023 Community Preservation Fund Estimated Receipts the minimum necessary amounts to allocate not less than 10% (\$65,000) for open space, not less than 10% (\$65,000) for historic preservation, and not less than 10% (\$65,000) for community housing.

, or take any other action relative thereto.

Petitioned by: Community Preservation Committee

ARTICLE 23: REVOLVING FUNDS – FY23

To see if the Town will authorize and / or re-authorize the following Revolving Accounts under the provisions of Massachusetts General Law Chapter 44 Section 53 E ½ under the following terms:

Revolving Fund	Authorized to Spend	Revenue Source	FY23 Limit
Hazardous Materials	Fire Chief	Disposal fees/charges	\$ 100,000
Sustainability	Sustainability/ Green Committee	Fees/charges	\$ 10,000
Hoppy's Landing	Select Board and/or Town Administrator	Fees/charges from users of Hoppy's Landing	\$ 25,000
Town Hall Auditorium	Town Administrator	Town Hall auditorium rental fees	\$ 2,000
Park Utilities	Board of Public Works	User fees	\$ 2,000
Wellness	Wellness Committee	Fees, BCBS reimbursements, vendors	\$ 2,500

Or take any other action relative thereto:

Petitioned by: Select Board

ARTICLE 24: FUND LABOR CONTRACTS: FY23

- A. Clerical Union
- B. Police Union
- C. Dispatchers Union

- D. Fire Union
- E. Highway Union
- F. Water Union
- G. Sewer Union

Petitioned by: TA/Select Board

ARTICLE 25: SENIOR WORK-OFF PROGRAM – FY23

To see if the Town will vote to continue the provisions of MGL, Chapter 59, Section 5C-Senior Work for a total authorization of \$10,000 or take any other relative thereto

Petitioned by: Council on Aging

~~**ARTICLE 26: RETIREMENT COLA - FY23**~~

Petitioned by: Retirement Board

ARTICLE 27: ADDITIONAL FUNDS TO SUPPLEMENT ARTICLE 16B FROM THE OCTOBER 20, 2020 MEETING-WATER DEPT VAN

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds \$ from the Water Enterprise account to fund Water Department Van, or take any other action relative thereto:

Petitioned by: Board of Public Works

ARTICLE 28: AMEND CHAPTER 194 STORM MANAGEMENT - EROSION AND SEDIMENT-FY23

Article (XXX): BY-LAW

To see if the Town will vote to amend Chapter 194 Storm water Management, Illicit Discharge, Soil Erosion, Sediment Control or take any other action relative thereto:

**CHAPTER 194
STORMWATER MANAGEMENT, ILLICIT DISCHARGE, SOIL EROSION,
SEDIMENT CONTROL BY-LAW**

GENERAL REFERENCES

Wetlands – See Ch. 192

Subdivision of Land – See Ch. 322 Zoning By-Law – See Ch. 198

§194-1 Authority.

This By-Law is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34.

§194-2 Purpose.

A. The purpose of this bylaw is to provide for the public health, safety, and general welfare of the residents of the Town of Fairhaven, the protection of Fairhaven's water bodies and groundwater, and the protection of Fairhaven's natural resources through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This bylaw establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

B. Increased and contaminated stormwater runoff associated with developed land uses and the accompanying increase in impervious surface are major causes of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands, and groundwater. The harmful impacts of illicit discharge, soil erosion, and sedimentation are:

- (1) Impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands, groundwater, and drinking water supplies;
- (2) Contamination of drinking water supplies;
- (3) Erosion of stream channels and downstream coastal areas;
- (4) Alteration or destruction of aquatic and wildlife habitat;
- (5) Flooding;
- (6) Overloading or clogging of municipal stormwater management systems.

C. The objectives of this By-Law are to:

1. Regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user;
2. Prohibit illicit connections and unauthorized discharges to the municipal separate storm sewer system and require their removal;
3. Protect water resources;
4. Require practices that eliminate soil erosion and sedimentation;
5. Control the volume and rate of stormwater runoff resulting from land disturbance activities in order to minimize potential impacts of flooding;
6. Require practices to manage and treat stormwater runoff generated from new development and redevelopment;
7. Establish minimum construction and post-construction stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
8. Protect groundwater and surface water from degradation;
9. Promote infiltration and the recharge of groundwater

10. Maximize recharge of groundwater in the Fairhaven Aquifer Protection District
11. Prevent pollutants from entering the Town's municipal separate storm sewer system (MS4) and reduce or eliminate pollutants entering the Town's MS4 from existing users;
12. Ensure that soil erosion and sedimentation control measures and stormwater runoff management practices are incorporated into the site planning and design process and are implemented and maintained;
13. Ensure adequate long-term operation and maintenance of structural stormwater best management practices;
14. Require practices to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at construction sites that may cause adverse impacts to water quality;
15. Comply with state and federal statutes and regulations relating to stormwater discharges including total maximum daily load requirements;
16. Establish the Town of Fairhaven's legal authority to ensure compliance with the provisions of this By-Law through inspection, monitoring and enforcement; and
17. Support Chapter 198 §31 (Earth removal regulations), Chapter 198 §31.1 and Chapter 322 § 26 (Stormwater management)

§194-3 Definitions.

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

ABUTTER: The owner(s) of land abutting the lot or lots on which activity regulated by this bylaw is occurring or proposed.

AGRICULTURE: The normal maintenance or improvement of land in agricultural or aquaculture use, as defined by the Massachusetts Wetlands Protection Act and its implementing regulations.

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

APPLICANT: Any "person" as defined below requesting a soil erosion and sediment control permit for proposed land-disturbance activity or a permit relating to or involving stormwater management

BEST MANAGEMENT PRACTICES (BMPs): An activity, procedure, restraint, or structural improvement that helps to reduce the quantity of or improve the quality of stormwater runoff. Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

BOARD OF PUBLIC WORKS: The Board of Public Works for the Town of Fairhaven and its employees, agents or others designated by that Board to enforce this Bylaw

CLEAN WATER ACT: The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

CLEARING: Any activity that removes the vegetative surface cover. Clearing activities generally include grubbing activity as defined below.

CONSTRUCTION ACTIVITY: The erection or placement of a building or other structure, or the placement of any impervious surface, in or on the ground, or site preparation for such activities, including, but not limited to, activities subject to NPDES Construction Permits as laid out in the eligibility conditions of the permit.

CONSTRUCTION AND WASTE MATERIALS: Excess or discarded building or site materials, including but not limited to concrete truck washout, chemicals, litter and sanitary waste at a construction site that may adversely impact water quality.

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

DISCHARGE OF POLLUTANTS: The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or commonwealth from any source.

DISTURBANCE OF LAND: Any action, including clearing and grubbing, that causes a change in the position, location, or arrangement of soil, sand, rock, gravel, or similar earth material.

ENVIRONMENTAL SITE MONITOR: A Registered Professional Engineer or other trained professional selected by the Conservation Commission and retained by the holder of a Minor Land Disturbance Permit or a Full Land Disturbance Permit to periodically inspect the work and report to the Conservation Commission and/or Planning Board

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

EROSION AND SEDIMENTATION CONTROL PLAN: A document containing narrative, drawings and details developed by a registered professional engineer (PE), registered professional land surveyor (PLS), or a certified professional in erosion and sedimentation control (CPESC) which includes best management practices, or equivalent measures designed to control surface runoff, erosion and sedimentation during pre-construction and construction related land disturbance activities.

EROSION CONTROL: The prevention or reduction of the movement of soil particles or rock fragments due to stormwater runoff.

ESTIMATED HABITAT OF RARE WILDLIFE AND CERTIFIED VERNAL POOLS: Habitats delineated for state-protected rare wildlife and certified vernal pools for use with the Wetlands Protection Act Regulations (310 CMR 10.00) and the Forest Cutting Practices Act Regulations (304 CMR 11.00).

FLOODING: A local and temporary inundation or rise in the surface of a body of water, such that it covers land not usually under water.

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

GROUNDWATER: Water beneath the surface of the ground.

GRUBBING: The act of clearing land surface by digging or grinding up roots and stumps.

HAZARDOUS OR TOXIC MATERIAL OR WASTE: Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical,

chemical, corrosive, flammable, reactive, toxic, radioactive, or infectious characteristics, either separately or in combination with any substance or substances, may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, welfare, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as "toxic" or "hazardous" under MGL c. 21C and c. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

ILLEGAL DISCHARGE: Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in this bylaw.

ILLICIT CONNECTION: An illicit connection is defined as either of the following:

Any drain or conveyance, whether on the surface or subsurface, which allows an illegal or illicit discharge into the municipal storm drain system, including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains, sinks or toilets, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency before the effective date of this bylaw OR,

Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

ILLICIT DISCHARGE: Direct or indirect discharge to the municipal storm drain system or a watercourse or the waters of the Commonwealth that is not composed entirely of stormwater, except for projects exempted by this Bylaw or by Regulations issued there under. The term does not include a discharge in compliance with an NPDES stormwater discharge permit or resulting from fire-fighting activities.

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

IMPOUNDMENT: A stormwater pond created by either constructing an embankment or excavating a pit which retains a permanent pool of water.

INFEASIBLE: Not technologically possible, or not economically practicable and achievable in light of best industry practices.

INFILTRATION: The act of conveying surface water into the ground to permit groundwater recharge and the reduction of stormwater runoff from a project site.

INDUSTRIAL ACTIVITY: Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26(b) (14).

LAND-DISTURBING ACTIVITY or LAND DISTURBANCE: Any activity, including without limitation: clearing, grubbing, grading, digging, cutting, excavation of soil, placement of fill, and construction that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material.

LAND USE OF HIGHER POTENTIAL POLLUTANT LOAD (LUHPPL): Land uses or activities with higher potential pollutant loadings, as defined in the Massachusetts Stormwater Management Standards such as auto salvage yards, auto fueling facilities, fleet storage yards, commercial parking lots with high intensity use, road salt storage areas, commercial nurseries and landscaping, outdoor storage and loading areas of hazardous substances or marinas.

LOAD ALLOCATION or WASTE LOAD ALLOCATION: The maximum concentration or mass of a pollutant which can be discharged to a waterway non-point sources without causing a violation of surface water quality standards as established in an applicable Total Maximum Daily Load (TMDL).

LOT: A single parcel of land held in identical ownership throughout and defined by metes, bounds, or boundary lines in a recorded deed on a recorded plan.

MASSACHUSETTS ENDANGERED SPECIES ACT: (M.G.L. c. 131A) and its implementing regulations at (321 CMR 10.00) which prohibit the "taking" of any rare plant or animal species listed as Endangered, Threatened, or of Special Concern.

MASSACHUSETTS STORMWATER MANAGEMENT STANDARDS: The Standards issued by the Department of Environmental Protection, as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act MGL c. 131 s. 40 and the Massachusetts Clean Waters Act MGL c. 21, ss. 23-56. The Standards address stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

MUNICIPAL STORM DRAIN SYSTEM or 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 Fairhaven.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

STORMWATER DISCHARGE PERMIT: A permit issued by the United States Environmental Protection Agency or jointly with the Commonwealth of Massachusetts that authorizes the discharge of pollutants to waters of the United States.

NONSTORMWATER DISCHARGE: Discharge to the municipal storm drain system not composed entirely of stormwater.

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

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

OUTSTANDING RESOURCE WATERS (ORWs): Waters designated by the Massachusetts Department of Environmental Protection as ORWs. These waters have exceptional sociologic, recreational, ecological and/or aesthetic values and are subject to more stringent requirements under both the Massachusetts Water Quality Standards (314 CMR 4.00) and the Massachusetts Stormwater Management Standards set forth in the Massachusetts Stormwater Management Policy. ORWs include vernal pools certified by the Natural Heritage Program of the Massachusetts Department of Fisheries and Wildlife and Environmental Law Enforcement, all Class A designated public water supplies with their bordering vegetated wetlands, and other waters specifically designated.

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

PERMITTEE: The person who holds a land disturbance permit and therefore bears the responsibilities and enjoys the privileges conferred thereby.

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

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

POLLUTANT: Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter, whether originating at a point or nonpoint source, that is considered toxic or detrimental to humans or the environment and is or may be introduced into the municipal storm drain system or any sewage treatment works, or into any water, watercourse or waters of the Commonwealth. Pollutants shall include without limitation:

- A. Paints, varnishes, and solvents;
- B. Oil and other automotive fluids;
- C. Nonhazardous liquid and solid wastes and yard wastes;
- D. Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnance, accumulations, and floatables;
- E. Pesticides, herbicides, and fertilizers;
- F. Hazardous materials and wastes;
- G. Sewage, fecal coliform, and pathogens;
- H. Dissolved and particulate metals;
- I. Animal wastes;
- J. Rock; sand; salt; soils;
- K. Construction wastes and residues; and
- L. Noxious or offensive matter of any kind.

PRE-CONSTRUCTION: All activity in preparation for construction.

PREMISES: Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

PRIORITY HABITAT OF RARE SPECIES: Habitats delineated for rare plant and animal populations protected pursuant to the Massachusetts Endangered Species Act and its regulations.

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.

REDEVELOPMENT: Development, rehabilitation, expansion, demolition or phased projects that disturb the ground surface, including impervious surfaces, on previously developed sites. The creation of new areas of impervious surface or new areas of land disturbance on a site constitutes development, not redevelopment, even where such activities are part of a common

plan which also involves redevelopment. Redevelopment includes maintenance and improvement of existing roadways including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems and repaving; and remedial projects specifically designed to provide improved stormwater management such as projects to separate storm drains and sanitary sewers and stormwater retrofit projects.

RESPONSIBLE PARTIES: owner(s), persons with financial responsibility, persons with operational responsibility, and persons with administrative responsibility.

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

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

SEDIMENTATION: The process or act of deposition of sediment.

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

SLOPE: The incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.

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

STABILIZATION: The use, singly or in combination, of mechanical, structural, or vegetative methods, to prevent or retard erosion.

STORMWATER: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

STORMWATER MANAGEMENT PLAN: A document containing narrative, drawings and details prepared by a registered professional engineer (PE), a registered professional land surveyor (PLS), or a certified professional in erosion and sedimentation control (CPESC) which includes structural and non-structural best management practices and activities to identify sources of pollution or contamination and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems and/or receiving waters to the maximum extent practicable, and to manage and treat stormwater runoff generated from regulated development activity. A stormwater management plan also includes an Operation and Maintenance Plan describing the maintenance requirements for structural best management practices.

STRIP: Any activity which removes the vegetative ground surface cover, including tree removal, clearing, grubbing, and storage or removal of topsoil.

TOTAL MAXIMUM DAILY LOAD or TMDL: A plan required under the Clean Water Act for a pollutant which causes or contributes to a violation of state surface water quality standards in a specific geographic area, and which establishes the maximum amount of that pollutant (referred to as the load allocation and waste load allocation) which may be discharged to the affected waters of the Commonwealth by one or more categories of users without violating state surface water quality standards.

TOTAL SUSPENDED SOLIDS or TSS: Material, including but not limited to trash, debris, and sand, suspended in stormwater runoff.

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

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 material, intermediate product, finished product, by-product, or waste product.

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

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.

WETLAND RESOURCE AREA: Area specified in the Massachusetts Wetlands Protection Act M.G.L. c. 131, §40 and in the Town of Fairhaven Wetlands Protection By-law.

WETLANDS: Tidal and non-tidal areas characterized by saturated or nearly saturated soils most of the year that are located between terrestrial (land-based) and aquatic (water-based) environments, including freshwater marshes around ponds and channels (rivers and streams), brackish and salt marshes; common names include marshes, swamps and bogs. Freshwater wetland, marsh, bog, wet meadow and swamp are defined in M.G.L. Chapter 131, Section 40, and are collectively known as vegetated wetlands. Credible evidence as to wetland affinities of other vegetation in an area shall be considered in making wetland determinations.

§194-4 Applicability.

This By-Law shall apply to land-disturbing activities on any developed and undeveloped land within the jurisdiction of the Town of Fairhaven and water and other materials entering the Town of Fairhaven municipal storm drain system. Land disturbance of 40,000 square feet or more in area is hereby prohibited except in compliance with this Bylaw. The discharge of any substance other than storm water into the municipal storm water system is hereby prohibited except in compliance with this Bylaw.

A. Regulated Land Disturbance Activities –

1. Regulated activities shall include, but not be limited to:

(a) Land disturbance of greater than 40,000 square feet, associated with construction or reconstruction of structures.

(b) 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 40,000 square feet or more of land,

(c) Paving, repaving or other change in surface material over an area of 40,000 square feet or more causing a significant reduction of permeability or increase in runoff

(d) Construction of a new drainage system or alteration of an existing drainage system or conveyance serving a drainage area of more than 40,000 square feet,

(e) Any other activity altering the surface of an area exceeding 40,000 square feet that will, or may, result in increased stormwater runoff flowing from the property into a public way or the municipal storm drain system, or

(f) Construction or reconstruction of a structure or structures with more than 40,000 square feet of roof drainage, or combined roof and surface drainage.

2. Erosion and Sedimentation Control Requirement - A project which includes land disturbance of less than 40,000 square feet shall be considered to be in conformance with this

By-Law if soils or other eroded matter have been or will be prevented from being deposited onto adjacent properties, rights-of-ways, public storm drainage system, or wetland or watercourse. The design, installation, and maintenance of erosion and sediment control operations and facilities shall adhere to the standards specified in the Regulations to this By-Law.

3. Exempted Projects – Notwithstanding the provisions of paragraph A, above, the procedural requirements of this Bylaw shall not apply to activities which have been approved by the Planning Board or the Conservation Commission provided that the applicant has submitted to the Board of Public Works a written determination from the Planning Board or the Conservation Commission that the project complies with the performance standards otherwise required by this Bylaw.

B. Discharge Prohibitions

1. Prohibition of Illegal Discharges: No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person is considered to be in violation of this bylaw if the person connects a line conveying sewage to the MS4, or allows such a connection to continue. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

- (a) Water line flushing;
- (b) Flow from other potable water sources;
- (c) Landscape irrigation or lawn watering;
- (d) Diverted stream flows;
- (e) Rising ground water;
- (f) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20);
- (g) Uncontaminated pumped groundwater (e.g. sump pump) provided that where a pump intake exists inside a structure, the operator seeks a permit from the Board of Public Works prior to discharge and thereafter discharges in accordance with the requirements of the permit and applicable laws and regulations;
- (h) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
- (i) Non-commercial washing of vehicles;
- (j) Springs, natural riparian habitat or wetland flows;

- (k) Discharge from swimming pool water (if dechlorinated - typically 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;
- (l) Discharge from street sweeping;
- (m) Firefighting activities;
- (n) Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test;
- (o) Discharges specified in writing by the Board of Public Works as being necessary to protect public health, safety, welfare, or the environment; and
- (p) The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharge is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

2. Suspension of MS4 Access

- (a) Suspension due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this bylaw may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. Suspension due to Illicit Discharges in Emergency Situations. The violator may petition the authorized enforcement agency for a reconsideration and hearing. Any person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the authorized enforcement agency.
- (b) The Authorized Enforcement Agency may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

3. Industrial or Construction Activity Discharges: Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the authorized enforcement agency prior to the allowing of discharges to the MS4.

C. Exempt Activities - The following activities are exempt from the requirements of this By-Law:

1. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act (M.G.L Chapter 131 §40) and its associated Regulations (310 CMR 10.00).
2. Repair of septic systems when required by the Board of Health for the protection of public health and compliance with Section 4, Paragraph B.
3. Normal maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling provided such maintenance does not include the addition of more than 50 cubic yards of soil material, construction of any walls, alteration of existing grades by more than one foot in elevation, or alteration of drainage patterns.
4. The construction of fencing that will not alter existing terrain or drainage patterns.
5. Construction of utilities other than drainage (gas, water, electric, telephone, etc.) that will not alter terrain or drainage patterns.

§194-5 Administration.

The Board of Public Works shall administer, implement and enforce this By-Law. Any powers granted to or duties imposed upon the Board of Public Works through this By-Law may be delegated in writing by the Board of Public Works to its employees or agents.

§194-6 Regulations.

The Board of Public Works may adopt, and periodically amend rules, regulations, and/or written guidance to effectuate the purposes of this By-Law. Failure by the Board of Public Works 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 By-Law.

Such regulations, rules or guidance may include without limitation, provisions for the establishment of one or more categories of administrative review approvals for specific types or sizes of projects. Administrative review applications that meet all the standard requirements may be issued by one or more agents designated in writing by the Board of Public Works, without the requirement for a public hearing as detailed in this bylaw. Administrative review approval shall comply with all other provisions of this Bylaw.

§194-7 Land Disturbance Permits.

Permit issuance is required prior to any activity disturbing 40,000 or more square feet of land. The site owner or his agent shall apply for the permit with the Conservation Commission. While application may be made by a representative, the permitted must be the owner of the site.

A. Applications - An application shall be made to the Conservation Commission in a form and containing information as specified in this By-Law and in the Regulations adopted by the Conservation Commission and shall be accompanied by payment of the appropriate application and review fees.

B. Fees - Fees shall be established by the Conservation Commission to cover expenses connected with public notice, application review, and monitoring permit compliance. The fee shall be sufficient to also cover professional review. The Conservation Commission is authorized to retain a Registered Professional Engineer or other professional consultant to advise the

Conservation Commission on any or all aspects of these plans. Applicants must pay review fees before the review process may begin.

C. Information Requests - The Conservation Commission may request such additional information as is necessary to enable the Conservation Commission to determine whether the proposed land disturbance activity will protect water resources and comply with the requirements of this By-Law.

D. Determination of Completeness - The Conservation Commission shall make a determination as to the completeness of the application and adequacy of the materials submitted. No review shall take place until the application has been found to be complete.

E. Coordination with Other Boards - On receipt of a complete application for a Land Disturbance Permit the Conservation Commission shall distribute one copy each to the Planning Board, Department of Public Works, Board of Health, and the Building Inspector for review and comment. Said agencies shall, in their discretion, investigate the case and report their recommendations to the Conservation Commission. The Conservation Commission shall not hold a hearing on the Land Disturbance Permit until it has received reports from said agencies or until said agencies have allowed forty-five (45) days to elapse after receipt of the application materials without submission of a report thereon.

F. Entry - Filing an application for a land disturbance permit grants the Conservation Commission or its agent, permission to enter the site to verify the information in the application and to inspect for compliance with permit conditions, to the extent permitted by law.

G. Hearing – Once in receipt of a complete application for a Land Disturbance Permit, the Conservation Commission shall hold a public hearing and shall take final action within ninety (90) days from the close of the hearing unless such time is extended by agreement between the applicant and the Conservation Commission. Notice of the public hearing shall, at least seven (7) business days prior to said hearing, be given by publication in a local paper of general circulation, and by posting. The Conservation Commission shall be responsible for publishing the notice in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and posting the notice at the Town Hall. The Conservation Commission shall make the application available for inspection by the public during business hours at their Town of Fairhaven Office.

H. Action - The Conservation Commission may:

6. Approve the Application and issue a permit if it finds that the proposed plan will protect water resources and complies with the requirements of this By-Law;

7. Approve the Application and issue a permit with conditions, modifications or restrictions that the Conservation Commission determines are required to ensure that the project will protect water resources and complies with the requirements of this By-Law; or

8. Disapprove the application and deny a permit if it finds that the proposed plan will not protect water resources or fails to meet the objectives of and to comply with the requirements of this By-Law. If the Conservation Commission finds that the applicant has submitted insufficient information to describe the site, the work, or the effect of the work on water quality and runoff volume, the Conservation Commission may disapprove the application, denying a permit

I. Project Changes - The permittee, or his or her agent, must notify the agent of the Conservation Commission in writing of any change or alteration of a land-disturbing activity before the change or alteration occurs. If the agent of the Conservation Commission determines that the change or alteration is significant, the agent of the Conservation Commission may require that an amended application or a full application be filed in accordance with this Section. If any change or alteration from the Land Disturbance Permit occurs during land disturbing activities, the agent of the Conservation Commission may require the installation of interim erosion and sedimentation control measures before approving the change or alteration

J. Waivers

9. Following a public hearing on a waiver request, the Conservation Commission may waive strict compliance with any requirement of this bylaw or the rules and regulations promulgated hereunder, where:

- (a) Such action is allowed by federal, state, and local statutes and/or regulations; and
- (b) Is in the public interest; and
- (c) Is not inconsistent with the purpose and intent of this bylaw.

Any applicant must submit a written request to be granted such a waiver. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of the bylaw does not further the purposes or objectives of this bylaw.

All waiver requests shall be discussed and voted on at the public hearing for the project.

If in the Conservation Commission's opinion, additional time or information is required for review of a waiver request, the Conservation Commission may continue a hearing to a certain date announced at the meeting. In the event the applicant objects to a continuance, or fails to provide requested information, the waiver request shall be denied.

§194-8 Erosion and Sedimentation Control Plan.

A. The erosion and sediment control plan should include a written description of the plan as well as an emergency response outline (including response phone numbers) and a maintenance schedule. The plan shall meet the following objectives and criteria:

- 1. Keep disturbed areas small: No more than 60 feet in width and 100 feet in length of a single lot, or five acres of the overall tract at one time. Said plan shall identify design issues and

methods employed to address such items as; topography, soils, vegetation, steep slopes, wetlands and waterbodies;

2. Stabilize and protect disturbed areas quickly: Exposed areas and stockpiles shall be re-vegetated within 40 days of being exposed. The Conservation Commission, depending on weather conditions, may require slope and stockpile stabilization sooner. Methods for stabilizing disturbed areas include mechanical, structural, and vegetative. In some cases, some or all of these methods should be combined in order to retard erosion. These methods shall be identified in the erosion and sedimentation control plan.

3. Keep stormwater runoff velocities low: Velocities of runoff should be in the range of two to 10 feet per second. The removal of the existing vegetative cover during the development and the resulting increase in impermeable surface area after development will increase both the volume and velocity of runoff. These increases must be taken into account when providing for erosion control.

4. Protect disturbed areas from stormwater runoff: Conservation measures can be utilized to prevent water from entering and running over the disturbed area. Diversions and other control practices to intercept runoff from higher elevations, store or divert it away from vulnerable areas, and direct it towards stabilized outlets should be utilized. Selected measures should be identified on the plan and in text.

5. Retain sediment within site area: The best way to control sediment is to prevent erosion; however, sediment can be retained by two methods:

(a) Filtering runoff as it flows and detaining sediment; or

(b) Detain runoff for a period of time so that the soil particles settle out.

§194-9 Stormwater Management Plan.

The Stormwater Management Plan shall contain sufficient information to describe the nature and purpose of the proposed development, pertinent conditions of the site and the adjacent areas, and proposed best management practices for the permanent management and treatment of stormwater. The Stormwater Management Plan shall contain sufficient information for the Conservation Commission to evaluate the environmental impact, effectiveness, and acceptability of the measures proposed by the applicant for reducing adverse impacts from stormwater. The Plan shall be designed to meet the Massachusetts Stormwater Management Standards and DEP Stormwater Management Handbook. The Stormwater Management Plan shall fully describe the project in drawings, and narrative. The applicant shall submit such material as is required for the administration of this By-Law.

A. The Plan shall meet the standards defined in Bylaw 198-31.1.A and Bylaw 322-26.

B. The Plan shall utilize the 24-hour rainfall data taken from the NOAA Atlas 14 (or most current data from NOAA) and type III storm.

§194-10 Operation and Maintenance Plans.

A. An Operation and Maintenance Plan - (O&M Plan) for the permanent storm water management system is required at the time of application for all projects. The maintenance plan shall be designed to ensure compliance with this By-Law and that the Massachusetts Surface Water Quality Standards contained in 314 CMR 4.00 are met in all seasons and throughout the life of the system. The Operation and Maintenance plan shall include any requirements deemed necessary by the Conservation Commission to insure compliance with said plan, including without limitation a covenant. The Conservation Commission shall make the final decision of what maintenance option is appropriate in a given situation. The Conservation Commission will consider natural features, proximity of site to water bodies and wetlands, extent of impervious surfaces, size of the site, the types of stormwater management structures, and potential need for ongoing maintenance activities when making this decision. Once approved by the Conservation Commission the Operation and Maintenance Plan shall be recorded at the Bristol County Registry of Deeds by the permittee, shall run with the land, shall remain on file with the Conservation Commission and shall be an ongoing requirement. The Operation and Maintenance Plan shall conform to the requirements listed in the Regulations adopted by the Conservation Commission for the administration of this By-Law. Stormwater management easements shall be provided by the property owner(s) in areas and as necessary to carry out the required maintenance.

B. Changes to Operation and Maintenance Plans

10. The owner(s) of the stormwater management system must notify the Conservation Commission or its agent of changes in ownership or assignment of financial responsibility.

11. The maintenance schedule in the Maintenance Agreement may be amended to achieve the purposes of this By-Law by mutual agreement of the Conservation Commission and the Responsible Parties. Amendments must be in writing and signed by all Responsible Parties

§194-11 Inspection and Site Supervision.

A. Preconstruction Meeting - Prior to clearing, excavation, construction, or any land disturbing activity requiring a permit, the applicant, the applicant's technical representative, the general contractor, pertinent subcontractors, and any person with authority to make changes to the project, shall meet with the Conservation Commission or its designated agent to review the permitted plans and proposed implementation.

B. Commission Inspection - The Conservation Commission or its designated agent shall make inspections as hereinafter required and shall either approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the approved plans and any conditions of approval. One copy of the approved plans and conditions of approval, signed by the Conservation Commission shall be maintained at the site during the progress of the work. In order to obtain inspections, the permittee shall notify the Agent of the Conservation Commission at least three (3) working days before each of the following events:

12. Erosion and sediment control measures are in place and stabilized;

13. Rough Grading has been substantially completed;

14. Final Grading has been substantially completed;
15. Bury Inspection: prior to backfilling of any underground drainage or stormwater conveyance structures.
16. Close of the Construction Season; and
17. Final landscaping (permanent stabilization) and project final completion.

C. **Permittee Inspections** - The permittee or his/her agent shall conduct and document inspections of all control measures no less than weekly or as specified in the permit, and prior to and following anticipated storm events. The purpose of such inspections will be to determine the overall effectiveness of the control plan, and the need for maintenance or additional control measures. The permittee or his/her agent shall submit monthly reports to the Conservation Commission or designated agent in a format approved by the Conservation Commission. The Conservation Commission may require, as a condition of approval, that an Environmental Site Monitor, approved by the Conservation Commission, be retained by the applicant to conduct such inspections and prepare and submit such reports to the Conservation Commission or its designated agent.

D. **Access Permission** - To the extent permitted by law, or if authorized by the owner or other party in control of the property, the Conservation Commission, its agents, officers, and employees 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 Conservation Commission deems reasonably necessary to determine compliance with the permit.

§194-12 Surety.

The Conservation Commission may require the permittee to post before the start of land disturbance activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be approved by town counsel, and be in an amount deemed sufficient by the Conservation Commission to insure that the work will be completed in accordance with the permit. If the project is phased, the Conservation Commission may release part of the bond as each phase is completed in compliance with the permit but the bond may not be fully released until the Conservation Commission has received the final report as required by Section 13 and issued a certificate of completion.

§194-13 Final Reports.

No later than two (2) years upon completion of the work, the permittee shall submit a report (including certified as-built construction plans) from a Registered Professional Engineer (P.E.), Registered Professional Land Surveyor (PLS), or a certified professional in erosion and sedimentation control (CPESC) certifying that all erosion and sedimentation control devices, and approved changes and modifications, have been completed in accordance with the conditions of the approved Land Disturbance permit. Any discrepancies should be noted in the cover letter. The as-built drawings must depict all on site controls, both structural and non-structural, designed to manage the stormwater associated with the completed site (post construction stormwater management). The final report shall also include documentation to verify the

stormwater management system has been properly operated and maintained in accordance with the approved O&M Plan.

§194-14 Certificate of Completion.

The Conservation Commission will issue a Certificate of Completion upon receipt and approval of the final reports and/or upon otherwise determining that all work of the Land Disturbance permit has been satisfactorily completed in conformance with this By-Law. The Certificate of Completion shall be recorded at the Registry of Deeds by the Owner(s).

§194-15 Monitoring of Discharges.

A. **Applicability.** This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

B. **Access to Facilities.**

18. The authorized enforcement agency shall be permitted to enter and inspect facilities subject to regulation under this bylaw as often as may be necessary to determine compliance with this bylaw. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

Facility operators shall allow the authorized enforcement agency ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

The authorized enforcement agency shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.

The authorized enforcement agency has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the authorized enforcement agency and shall not be replaced. The costs of clearing such access shall be borne by the operator.

Unreasonable delays in allowing the authorized enforcement agency access to a permitted facility is a violation of a storm water discharge permit and of this bylaw. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this bylaw.

If the authorized enforcement agency has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this bylaw, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this bylaw or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

§194-16 Requirement to Prevent, Control, and Reduce Stormwater Pollutants by the Use of Best Management Practices.

The authorized enforcement agency will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

§194-17 Watercourse Protection.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

§194-18 Notification of Spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the authorized enforcement agency within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment,

the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

§194-19 Enforcement.

A. The Board of Public Works or an authorized agent of the Board of Public Works shall enforce this By-Law, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations. The Conservation Commission or an authorized agent of the Conservation Commission shall enforce the provisions of this By-Law, regulations, orders, violation notices, and enforcement orders under its control, and may pursue all civil and criminal remedies for such violations.

B. Orders.

19. The Board of Public Works or an authorized agent of the Board of Public Works or the Conservation Commission or an authorized agent of the Conservation Commission may issue a written order to enforce the provisions of this By-Law or the regulations thereunder, which may include:

- a. A requirement to cease and desist from the violating activity until there is compliance with the By-Law and any existing permits
- b. Maintenance, installation or performance of additional erosion and sedimentation control measures;
- c. Monitoring, analyses, and reporting
- d. Remediation of erosion and sedimentation resulting directly or indirectly from the land-disturbing activity
- e. The elimination of illicit connections or discharges
- f. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property

20. If the enforcing person determines that abatement or remediation of erosion and sedimentation, stormwater pollution or contamination hazards is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of Fairhaven may, at its option, undertake such work, and the property owner shall reimburse the Town's expenses.

21. Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner shall be notified of the costs incurred by the Town of Fairhaven, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the enforcing agency 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 enforcing agency affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs.

C. Criminal Penalty - Any person who violates any provision of this By-Law, regulation, order or permit issued thereunder, shall be punished by a fine of not more than \$ 300.00 for each offense. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

D. Non-Criminal Disposition - As an alternative to criminal prosecution or civil action, the Town of Fairhaven may elect to utilize the non-criminal disposition procedure in which case the enforcing agency or authorized agent shall be the enforcing person. The penalty for each violation shall be \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

E. Appeals - All decisions or orders of the enforcing agency shall be final. Further relief shall be to a court of competent jurisdiction.

F. 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.

§194-20 Compliance with the provisions of EPAs General Permit for MS4s in Massachusetts.

This bylaw shall be implemented by the Board of Public Works or other enforcing agencies in accordance with the requirements of EPAs most recent General Permit for MS4s in Massachusetts relating to illicit connections and discharges, construction site runoff, and post-construction stormwater management. The Board of Public Works shall include these requirements in any Regulations that it issues. The Board of Public Works or other enforcing agency may establish additional requirements by Regulation to further the purposes and objectives of this bylaw so long as they are not less stringent than those in the MS4 General Permit for Massachusetts.

§194-21 Severability.

If any provision, paragraph, sentence, or clause of this By-Law or the application thereof to any person, establishment or circumstance shall be held invalid for any reason, all other provisions shall continue in full force and effect to the extent permitted by law.

Petitioned by: Board of Public Works

ARTICLE 29: TREE WARDEN FROM ELECTED TO APPOINTED-FY23

To see if the Town will vote to amend the Town of Fairhaven By-Laws by adding the following section:

The tree warden shall be appointed by the Select Board, and shall exercise the duties of Tree warden and of insect pest control. Such tree warden shall be qualified by training and experience in the field of arboriculture and licensed with the Department of Food and

Agriculture in accordance with the provisions of section ten of chapter one hundred and thirty-two B of the general laws. The term of such appointment shall be for three years.

Petitioned by: Board of Public Works

ARTICLE 30: AMEND BPW BY-LAW SOLID WASTE & RECYCLING-FY23

To see if the town will vote to add a section to the Town of Fairhaven By-laws or to take any other action relative thereto:

- a. Customers shall place solid waste and recycling curbside prior to 7:00 am on the designated collection day but no earlier than 5:00 pm on the day prior to the designated collection day.
- b. Customers shall remove all acceptable solid waste containers from the public layout (street or sidewalk) as soon as practicable or, in any event, no later than 5:00 pm on the designated collection day for the area.

Petitioned by: Board of Public Works

~~ARTICLE 31: SAFE ROUTE TO SCHOOLS~~

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds a sum of money to do the following project, or take any other action relative thereto:

Petitioned by: Board of Public Works

ARTICLE 32: TOWN HALL A/C SPLITS-FY23

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds a sum of money to do the following projects, or take any other action relative thereto

Petitioned by: Select Board

ARTICLE 33: TOWN HALL REPAIRS-FY23

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds a sum of money to do the following projects, or take any other action relative thereto:

- A. Replace Curved Windows \$8,000.00
- B. Repair Clock Gears \$8,000.00

Petitioned by: Select Board

ARTICLE 34: MUNICIPAL LIGHT PLANT

To see if the town will vote pursuant to M.G.L. C.164 sec.36 to acquire a municipal light plant and to authorize such plant to construct, purchase or lease, and maintain such facilities as may be necessary for the distribution or the operation of a telecommunications system for municipal use or for the use of its customers, pursuant to M.G.L. C.164 sec.47E, or as otherwise authorized by law, or to take any other action thereto:

Petitioned by: Broadband Study Committee

ARTICLE 35: PROPAGATION OF SHELLFISH – DISTURBED BY DREDGING-FY23

To see if the Town will vote transfer an amount not to exceed \$23,396.00 from Shellfish Mitigation Fees for the propagation of shellfish, or take any other action relative thereto.

Petitioned by: Harbormaster/Shellfish Warden

ARTICLE 36: UPDATE GENERAL PROVISIONS OF BYLAW, SECTION 1-6, NONCRIMINAL DISPOSITION OF VIOLATIONS-FY23

Add the below language in red to Chapter 1 General Provisions Section 1-6 Noncriminal disposition of violations D. In addition to police officers, who shall in all cases be considered enforcing persons for the purpose of this section, the following officers of the Town shall be enforcing persons with respect to the following enumerated bylaws, rules and regulations. The penalties set forth shall apply to a violation of each of the enumerated bylaws, rules and regulations. (12) Wetlands (Chapter 192).

- A. Enforcing person(s): the Chair of the Conservation Commission or the Commission's Agent
- B. Fines: \$300 for each offense. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw, regulations, or permit violated shall constitute a separate offense.

Petitioned by: Conservation Commission

ARTICLE 37: CLIMATE CHANGE VULNERABILITY ASSESSMENT GRANT MATCH-FY23

To see if the Town will vote to appropriate \$10,000 as a local match for a state grant to conduct a town-wide coastal vulnerability and risk assessment of municipal infrastructure and natural resources considering exposure to sea level rise and coastal storms.

Petitioned by: Conservation Commission

ARTICLE 38: WETLANDS BYLAW UPDATES-FY23

[HISTORY: Adopted by the Annual Town Meeting of the Town of Fairhaven 5-10-1988 by Art. 58 (Ch. XXIX of the 1934 Bylaws). Amendments noted where applicable.]

GENERAL REFERENCES

Conservation Commission – See Ch. 8

Subdivision of land – See Ch. 322

§ 192-1. Purpose.

The purpose of this chapter is to protect the wetlands, related water resources and adjoining land areas in the Town of Fairhaven by controlling activities deemed by the Fairhaven Conservation Commission likely to have a significant or cumulative 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, water pollution control, fisheries, land containing shellfish, wildlife habitat, recreation, aesthetics, and agriculture values, and the ability of resource areas to mitigate impacts from climate change (collectively, the "wetland values protected by this chapter").

§ 192-2. Regulated activities.

[Amended 5-1-2010 STM by Art. 13]

Except as permitted by the Fairhaven Conservation Commission or as provided in this chapter, no person shall remove, fill, dredge, build upon or alter the following resource areas:

- A. Any freshwater or coastal wetland, marsh, wet meadow, bog, or swamp; or within 100 feet of these resource areas.
- B. Any bank, beach, creek, dune, lake, river, pond, stream, estuary, or ocean; or within 100 feet of these resource areas.
- C. Any land under lakes, rivers, ponds, streams, estuaries or the ocean.
- D. Lands subject to flooding or inundation by groundwater or surface water, lands subject to tidal action, coastal storm flowage, or flooding, or within 100 feet of these resource areas.
- E. The Coastal Resilience Zone (CRZ)
- D.F. Land in the Nasketucket River Basin Overlay District.

§ 192-3. Exceptions.

- A. The permit and application required by this chapter shall not be required for maintaining, repairing or replacing an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone or other telecommunication services, provided that the structure or facility is not substantially changed or enlarged.
- B. The permit and application required by this chapter shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that:
 - 1) The work is to be performed by or has been ordered to be performed by an agency of the Commonwealth of Massachusetts or a political subdivision thereof.
 - 2) Advance notice, oral or written, has been given to the Commission or its agent prior to commencement of work or within 24 hours after commencement.
 - 2)3) For any work proposed to the north of the eastern terminus of the hurricane barrier, and within one hundred (100) feet of a wetland resource are protected under the Massachusetts Wetlands Protection Act and corresponding regulations and this Bylaw and corresponding regulations, notice shall also be provided to the United States Environmental Protection Agency (EPA), which is implementing the cleanup of the New Bedford Harbor Superfund Site.
 - 3)4) The Commission or its agent certifies the work as an emergency project.
 - 4)5) The work is performed only for the time and place so certified for the limited purposes necessary to abate the emergency.
 - 5)6) Within 21 days of commencement of an emergency project a permit application shall be filed with the Conservation Commission for review as provided by this chapter.
- C. Upon failure to meet these requirements and any other requirements imposed by the Commission pursuant to this chapter, the Commission may, after notice and a public hearing,

revoke or modify an emergency project certification and order restoration and mitigation measures.

§ 192-4. Permit application and requests for determination.

- A. Written application shall be filed with the Conservation Commission to perform regulated activities regulated as defined in § 192-2. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the environment. No activities shall commence without receiving and complying with a permit issued pursuant to this chapter.
- B. In its discretion the Commission may accept the notice of intent and plans filed under MGL c. 31, § 40 (the Wetlands Protection Act) as the application and plans under this chapter. Any person desiring to know whether or not the proposed activity of an area is subject to this chapter may request a determination for the Commission in writing. Such a request for determination shall contain data and plans specified by the regulations of the Commission.
- C. At the time of an application or request, the applicant shall pay a filing fee specified in the regulation of the Commission, said fee to be in addition to any fee required by MGL c. 131, § 40 (the Wetlands Protection Act). The Commission may establish filing fees in amounts reasonably designed to recover the cost to the Town of processing such application, including the cost to the Town of professional services for design review, site inspection and testing and related services. The Commission may waive the filing fee for an application or request filed by a government agency and shall waive all fees, costs and expenses for a request for determination filed by a person who is not the owner or a person acting on behalf of the owner.

§ 192-5. Notice and hearings.

- A. At the same time any person files an application or request for determination with the Conservation Commission, he/she shall give written notice thereof, by certificate of mailing, certified mail, or hand delivery to all abutters according to the most recent records of the Assessors, including those across a traveled way, a body of water or a Town line. The notice to abutters shall enclose a copy of the application or request, with plans, or shall state where copies may be examined by abutters. When a person requesting a determination is other than the owner or a person acting on behalf of the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner(s) as well as the person making the request. For any work proposed to the north of the eastern terminus of the hurricane barrier, and within one hundred feet (100) feet of a wetland resource area protected under the Massachusetts Wetlands Protection Act and corresponding regulations and this Bylaw and corresponding regulations, notice shall also be provided to the United States Environmental Protection Agency (EPA), which is implementing the cleanup of the New Bedford Harbor Superfund Site. This notice to EPA shall enclose a copy of the application or request, with plans.
- B. The Commission shall conduct a public hearing on any application or request for determination, with written notice given, at the expense of the applicant, in a newspaper of general circulation in the Town at least five working days prior to the hearing.
- C. The Commission shall commence the public hearing within 21 days from receipt of a completed application or request for determination and shall issue its permit, denial or determination in writing within 21 days of the close of said public hearing. In its discretion, the Commission may

combine this hearing under this chapter with a hearing conducted under MGL c. 131, § 40 (the Wetlands Protection Act).

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

§ 192-6. Permits; determinations and conditions.

- A. If, after a public hearing, the Conservation Commission determines that the activities which are the subject of the application are not likely to have a significant or cumulative effect upon the wetlands values protected by this chapter, the Commission shall, within 21 days of the close of the hearing, issue a permit for the activities requested. Such permit shall be without conditions. If, after a public hearing, the Conservation Commission determines that the activities which are the subject of the application are likely to have a significant or cumulative effect upon any or all of the wetlands values protected by this chapter, the Commission shall, within 21 days of the close of the hearing, issue a permit for the activities requested, in which case the Commission shall impose conditions which it deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions, or deny a permit.
- B. The Commission may deny a permit for the following reasons:
 - 1) Failure to meet the requirement of this chapter.
 - 2) Failure to submit necessary information and/or plans requested by the Commission.
 - 3) Failure to meet the design specifications, performance standards and other requirements in regulations of the Commission.
 - 4) Failure to avoid or prevent unacceptable significant or cumulative effects upon any or all of the wetland values protected by this chapter.
- C. A permit shall expire three years from the date of issue. Any permit may be renewed once for an additional period, up to three years, provided that a written request for renewal is received by the Commission prior to expiration and that the Commission may grant such extension as it finds necessary to allow completion of the permitted work.
- D. Any permit issued under this chapter may be revoked or modified by the Commission after public notice and notice to the holder of the permit and a public hearing thereon, upon a finding of the existence of circumstances which would justify the denial of or imposition of conditions on a permit.
- E. In its discretion, the Commission may combine the permit or other action on an application issued under this chapter with the order of conditions issued under the Wetlands Protection Act.

§ 192-7. Regulations.

After public notice and public hearing, the Conservation Commission shall promulgate rules and regulations to achieve the purposes of this chapter. Failure by the Commission to promulgate such rules

and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this chapter.

§ 192-8. Definitions.

The following definitions shall apply in the interpretation and implementation of this chapter:

AESTHETICS

Includes, without limitation, the relevant qualities to be protected under the bylaw which are due to those natural and natively scenic impressions of all resource areas protected under this Bylaw, including but not limited to our shores, ponds, lakes, streams, rivers, harbors, and the lands bordering them. The aesthetic trust of the Commission shall be the preservation of a perception of the land which is most conducive to a natural aquatic system, a wildlife habitat, and a protective buffer between wetland resources and human development activities.

ALTER

Includes, without limitation, the following activities when undertaken to, upon, within or effecting resource areas protected by this chapter:

- A. Removal, excavation or dredging of soil, sand, loam, peat, gravel or aggregate materials of any kind.
- B. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood retention characteristics.
- C. Drainage or other disturbance of water level or water table.
- D. Dumping, discharging or filling with any material which may degrade water quality.
- E. Placing of fill or removal of material which would alter elevation.
- F. Driving of piles, erection, alteration or repair of buildings or structures of any kind.
- G. Placing of obstructions or objects in water.
- H. Destruction of plant life, including cutting of trees.
- I. Changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water.
- J. Any activities, changes or work which may cause or tend to contribute to pollution or any body of water or groundwater.

CUMULATIVE EFFECT

An effect that is significant when considered in combination with other activities that have occurred, that are occurring simultaneously, or that are reasonably foreseeable, whether such other activities are contemplated as a separate phase of the same project, or arise from unrelated but reasonably foreseeable future projects. Future effects of sea level rise, coastal or inland flooding, or other future climate change effects are included among cumulative effects.

COASTAL FLOOD RISK AREA

Any land which is subject to any inundation caused by coastal storms up to and including that predicted to be caused by the 1% annual storm for the Target Year, as defined by the best available coastal flooding model.

COASTAL RESILIENCE ZONE (CRZ)

Shall include the following resource areas: (a) any Land Subject to Coastal Storm Flowage; (b) any Coastal Flood Risk Area; and (c) the buffer zone of any Other Coastal Wetland Resource located in whole or in part within (a) or (b). The CRZ may include within its boundaries one or more of the following subareas: Velocity (V) Zone; Moderate Wave Action Area (MoWA); Highly Developed Area; and Special Transitional Area.

HIGHLY DEVELOPED AREA

As defined in the DEP Regulations, and to be applied for the purposes of this Bylaw to any applicable subareas within the CRZ.

MODERATE WAVE ACTION AREA (MoWA)

A subarea of LSCSF, with wave heights between 1.5 – 3 feet, as defined in the DEP Regulations or by FEMA. If the best available coastal flooding model projects a broader extent of the MoWA than that defined in the DEP Regulations, the Conservation Commission may adopt such modified projection by Local Regulation.

PERSON

Any individual, group of individuals, association, partnership, corporation company, business organization, trust, estate, the Commonwealth of Massachusetts or political subdivision thereof to the extent subject to Town bylaws, administrative agency, public or quasi-public corporation or body, the Town of Fairhaven and any other legal entity, its legal representatives, agents or assigns.

SPECIAL TRANSITIONAL AREA

Subareas within the CRZ that are located immediately landward of coastal beaches, coastal dunes, barrier beaches, coastal banks, or salt marshes, and extending in a direction perpendicular from the nearest adjoining land under water to the interior boundary of the CRZ.

TARGET YEAR

The year specified by the Conservation Commission for projections of sea level rise and flood risk. If the Best Available Coastal Flooding model is based on a single target year, then the Conservation Commission shall adopt that year as the Target Year. If the model includes multiple target years, then the Conservation Commission shall adopt, by Local Regulation, the Target Year for the Best Available Coastal Flooding model.

§ 192-9. Security.

As part of a permit issued under this chapter, in addition to any security required by any other Town or state board, agency or official, the Conservation Commission may require that the performance and observance of any conditions imposed hereunder be secured wholly or in part by one or more of the methods described below:

- A. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility in an amount sufficient in the opinion of the Commission.
- B. By a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the

Town of Fairhaven requiring the permit conditions to be performed before any interest may be conveyed other than a mortgage interest.

§ 192-10. Enforcement.

- A. The Conservation Commission, its agents, officers and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this chapter and make or cause to be made such examinations, surveys or samplings as the Commission deems necessary.
- B. The Commission shall have authority to enforce this chapter, its regulations and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions.
- C. Upon request of the Commission, the ~~Board of Selectmen~~ **Selectboard** and Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.
- D. Town boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

§ 192-11. Violations and penalties.

- A. Any person who violates any provision of this chapter, regulations thereunder or permits issued thereunder shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw regulations or permit violated shall constitute a separate offense.
- B. In the alternative to criminal prosecution, the Commission may elect to utilize the noncriminal disposition procedure set forth in MGL c. 40, § 21D.

§ 192-12. Burden of proof.

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have unacceptable significant or cumulative effect upon the wetland values protected by this chapter.

§ 192-13. Relation to Wetland Protection Act.

This chapter is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Statutes, independent of MGL c. 131, § 40 (the Wetlands Protection Act) and regulations thereunder.

§ 192-14. Severability.

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

Petitioned by: Conservation Commission

ARTICLE 39: HAZARD MITIGATION PLAN GRANT MATCH-FY23

To see if the Town will vote to appropriate \$5,000 as a local match for a MEMA Hazard Mitigation Grant Program grant to update our Hazard Mitigation Plan by 2023 as required.

Petitioned by: Conservation Commission

ARTICLE 40: PUBLIC SHADE TREE BYLAW-FY23

§ 88-1. Title : Chapter 88 – Fairhaven Public Shade Tree Bylaw

§ 88-2. Preamble:

- 1) Chapter 88, the Fairhaven Public Shade Tree Bylaw, is a local bylaw to enhance the rules and regulations of MGL Chapter 87, clarify the role and responsibilities of the Tree Warden and Departments overseeing trees, establish rules for notification and public input required for certain tree work, and establish protocols for record keeping, jurisdictions, etc. The bylaw also contains tree planting guidelines, pruning guidelines, a tree replacement policy and a policy for removal of trees when necessary derived from the state of Massachusetts. Eventually, details will be incorporated into a Fairhaven Tree Manual. Chapter 88 should be consulted in conjunction with existing required planting and landscaping provisions already established in Chapter 198 Zoning and Chapter 322 Subdivision of Land.

§ 88-3. Purpose:

- 1) The Town finds that the preservation of existing trees and the promotion of new tree planting is a public purpose that protects the public health, welfare, environment, aesthetics and quality of life of the Town and its citizens. The purpose of this bylaw is to promote a diverse, healthy and sustainable community forest in order to maintain the historic character of Fairhaven, to provide for the general welfare, and enhance the appearance and land values of the Town. The Town has invested substantial resources for many years to plant and maintain trees and these trees belong to the citizens of the Town. The Town also recognizes the need for a highly reliable network of public utilities to supply businesses, homes, hospitals and other services in an area subject to storms and high winds and therefore includes rules for emergency work and tree removal when necessary.

§ 88-4. Definitions: *(Samples mostly from DCR Guide to Local Tree Bylaws for Massachusetts)*

- 1) Caliper – Diameter of a tree trunk (in inches) measured six inches above the ground for trees up to and including four-inch diameter, and 12 inches above the ground for larger trees.
- 2) Certified Arborist – An arborist certified by the Massachusetts Arborists' Association or the International Society of Arboriculture, or any successor of either organization.

- 3) **Critical Root Zone (CRZ)** – The minimum area beneath the canopy of a tree which must be left undisturbed in order to preserve a sufficient root mass to give a tree a reasonable chance of survival. The CRZ is represented by a concentric circle centering on the tree's trunk and extending outward towards the tree's dripline.
- 4) **Diameter at Breast Height (DBH)** – The standard measure of tree size for those trees existing on a site that are at least four (4) inches in diameter at a height of four and one-half (4.5) feet above the existing grade at the base of the tree. If a tree splits into multiple trunks below four and one-half (4.5) feet above the existing grade, the DBH shall be considered to be the measurement taken at the narrowest point beneath the split.
- 5) **Drip line** – A vertical line running through the outermost portion of the crown (outer branch tips) of a tree and extending to the ground.
- 6) **Emergency** - When portions of a tree or a whole tree falls onto or dangerously close to property, vehicles or power lines causing significant damage.
- 7) **Hazard Tree – (See Risk Tree)** A tree that has structural defects in the roots, stem, or branches that may cause the tree or parts of the tree to imminently fail, where such failure may cause property damage or personal injury.
- 8) **Overstory Tree** – A tree that will generally reach a mature height of greater than forty (40) feet.
- 9) **Park Trees** – Trees, shrubs, bushes, and all other woody vegetation in public parks having individual names, and all areas owned by the Town, or to which the public has free access as a park.
- 10) **Person** – Any person, firm, partnership, association, corporation, company, or organization of any kind including public or private utility and municipal department
- 11) **Protected Tree** –
- 12) **Pruning** – The selective removal of plant parts, such as branches, buds, or roots to meet specific goals and objectives such as improving the tree's structure, removing dead limbs or directing new, healthy growth.
- 13) **Public Shade Tree (aka Street Tree and Town Tree)** – Trees, shrubs, bushes, and all other woody vegetation on land lying between property lines on either side of all streets, avenues, or ways within the Town other than a State Highway, and all trees, shrubs, bushes, and all other woody vegetation in Town Parks or on land surrounding Town buildings, and as further defined in Massachusetts General Laws Chapter 87, §1. When it appears in any proceeding in which the ownership of or rights in a tree are material to the issue, that, from length of time or otherwise, the boundaries of the highway cannot be made certain by records or monuments, and that for that reason it is doubtful whether the tree is within the highway or a park or on land surrounding a public building, it shall be taken to be public property until the contrary is shown.

- 14) Remove (including removing and removal) – The cutting down of any public shade or street tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning, or other direct or indirect actions resulting in the death of a public tree, including, but not limited to, excessive or improper pruning. See also: ‘Tree Removal.’
- 15) Specifications – A document stating a detailed, measurable plan, or proposal for provision of a product or service. (ANSI A300 Part 1)
- 16) Standard, ANSI A300 – The performance parameters established by industry consensus as a rule for the measure of extent, quality, quantity, value, or weight used to write specifications. (ANSI A300 Part 1)
- 17) Street Trees (aka Public Shade Tree and Town Tree) – Trees, shrubs, bushes, and all other woody vegetation on land lying between property lines on either side of all streets, avenues, or ways within the Town other than a State Highway, and all trees, shrubs, bushes, and all other woody vegetation in Town Parks or on land surrounding Town buildings, and as further defined in Massachusetts General Laws Chapter 87, §1.
- 18) Topping –The severe cutting back of limbs to stubs within the tree’s crown to such a degree so as to remove the normal canopy and disfigure the tree.
- 19) Tree Removal – The cutting down of any public tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a public tree, including, but not limited to excessive or improper pruning, excavation, or construction damage. This includes the cutting down of a public tree and all other acts that will cause a tree to die within a three-year period. See also: ‘Remove.’
- 20) Tree Risk – The likelihood of a tree failure impacting a target and the likely severity of the consequences.
- 21) Tree Warden – The agent of the Town having primary enforcement responsibilities under this chapter and MGL c. 87 and charged with the responsibility for review, notification and record keeping required pursuant to this chapter.

§ 88-5. Permitting:

- 1) A valid tree work permit from the Tree Warden shall be obtained prior to doing any of the following work:
 - A. Trimming of Town Trees (aka Public Shade Trees or Street Trees).
 - B. Excavation within or adjacent to the public right-of-way or public property which may disturb roots of Town Trees, including but not limited to the installation of utilities.
 - C. Removal of Town Trees.

- D. Application for a tree work permit shall be made to the Tree Warden a minimum of 30 business days prior to commencement of the planned work, except in an unforeseen emergency. Application for work on conservation lands shall be submitted to the Conservation Commission.
- E. It is the obligation of the contractor to positively verify that trees to be trimmed or removed are growing within the public right-of-way and require a work permit.
- F. All work by a Utility Company on Town Trees shall be supervised in the field by an attending Massachusetts certified arborist, who shall be responsible for the work performed, and shall maintain regular contact with the Town's Tree Warden. All work shall be done according to the approved Utility Annual Vegetation Management Plan and the Utility Annual Hazard Tree Removal for that year.
- G. Both the contractor and the utility shall be responsible for ensuring that the bucket operators are trained and knowledgeable of the standards of this chapter, including the ANSI Standard Z-133, and National Arborist Association (NAA) Pruning Standards.

§ 88-6. **Jurisdiction:** Mass. General Laws Chapter 41 §106 requires the Towns to have a Tree Warden, and Chapter 87 assigns this person the responsibility for managing public shade trees along public ways. This section clarifies the jurisdiction of the Tree Warden and the role and responsibilities of the Tree Warden and other departments.

1) Role and Responsibility of the Tree Warden

- A. The Tree Warden shall have the primary care and control of all public shade trees, shrubs and growths in the town, except those within a state highway, as well as in Town Parks or on land surrounding Town buildings, and shall have care and control of the latter, if so requested in writing by the park commissioners.
- B. The Tree Warden shall enforce all the provisions of law for the care and preservation of such trees, shrubs and growths.
- C. The Tree Warden is a public service position and being able to respond to and communicate with the public is an important aspect of the job.
- D. The Tree Warden shall expend all money appropriated for the setting out and maintenance of such trees, shrubs and growths and keep detailed records of requests, complaints, public hearings and actions taken such as planting, trimming and removing public shade trees. Such records shall include the date, location, species and a narrative detailing what action was taken and why.

- E. No tree shall be planted within a public way unless it is in the Town Tree Management Plan, unless prior approved by the Tree Warden and the Planning Board.
 - F. The Tree Warden shall adhere to the regulations for the care, preservation, maintenance and removal of public shade trees as established in this bylaw.
- 2) **Training: Required Training and Credentials of the Tree Warden.** The Tree Warden for the Town of Fairhaven must have the following accreditations:
- A. Be a Certified Arborist;
 - B. Have three (3) years supervisory experience in commercial or municipal tree care;
 - C. Have a Massachusetts Pesticide License within 90 days of employment (Preferred but not required).
 - D. Associate of Science Degree in Arboriculture / Urban Forestry or a related degree (Preferred but not required).
- 3) **Training: Required Training and Credentials of the Tree Warden Deputy**
- A. The Tree Warden may appoint a qualified Deputy Tree Warden to act in place of the Tree Warden when the Tree Warden is unable to be present. The Deputy Tree Warden must have two of the following four credentials:
 - 1) Be a Certified Arborist;
 - 2) Three (3) years supervisory experience in commercial or municipal tree care;
 - 3) Massachusetts Pesticide License within 90 days of deputation (Preferred but not required);
 - 4) Associate of Science Degree in Arboriculture / Urban Forestry or a related degree (Preferred but not required).
 - B. Employees of the Tree Department or employees of the Department of Public Works doing tree work for the Tree Department shall have specialized training in the care and maintenance of public shade trees.
- 4) **Planning: Role of the Department of Planning with regard to Trees**
- A. The Planning Department shall be notified at the time of advertisement when Tree public hearings are scheduled. The Planning Department may assist with coordination of Tree Hearings.
 - B. The Planning Department shall assist with the development and updating of the Fairhaven Tree Management Plan.
 - C. The Planning Department shall assist in updating the geo-location of tree work in G.I.S. created during the Tree Inventory.

§ 88-7. Administrative Requirements and Responsibilities:

1) Record Keeping:

- A. The Tree Warden shall keep detailed records of requests, complaints, public hearings and actions taken such as planting, trimming and removing public shade trees.
- B. These records shall include the date, location, species and a narrative detailing what action was taken and why.
- C. These records shall be periodically updated and filed with the Department of Planning, be provided upon request by the public and maintained by the Tree Warden as Keeper of the Record.

2) Notification and Public Hearings:

- A. Public shade trees shall not be cut, trimmed or removed, in whole or in part, by any person other than the Tree Warden or their deputy, even if he be the owner of the fee in the land on which such tree is situated, except upon a permit in writing from said Tree Warden after a public hearing in which no objection was submitted in writing. Public Shade Tree public hearings shall be conducted during Planning Board meetings.
- B. Public shade trees shall not be cut, trimmed or removed by the Tree Warden or their deputy or other person without a public hearing and said Tree Warden or their deputy shall cause a notice, stamped by the Town Clerk, of the time and place of such hearing thereof, which shall identify the size, type and location of the shade tree or trees to be cut down or removed, to be posted in two or more public places in the town and upon the tree at least seven days before such hearing and published in a newspaper of general circulation in the town once in each of two successive weeks, the first publication to be not less than seven days before the day of the hearing.
- C. Tree wardens shall not cut down or remove or grant a permit for the cutting down or removal of a public shade tree if, at or before the public hearing as provided in the preceding section, objection in writing is made by one or more persons. If an objection in writing is made by one or more persons against the cutting, trimming or removing the tree in question and the Tree Warden believes the tree should be cut, trimmed or removed the Tree Warden may advertise a second public hearing at the Select Board.

3) Vegetation Management Plan: Publication, Notification and Review of a Utility Annual Vegetation Management Plan

- A. The Annual Vegetation Management Plan shall include, but not be limited to, a map (hardcopy and digital) of the circuits where the maintenance work will be performed, a detailed narrative describing the work to be performed, the

tree maintenance standards that will be followed and any foreseeable variance from those standards.

- B. The Annual Vegetation Management Plan shall conform to the most current and relevant standards of the American National Standard Institute (ANSI); National Electric Safety Code 218 Tree Trimming; and OSHA 29 CFR Part 1910 Line Clearance Tree Trimming Operations.
 - C. Upon receipt of the Annual Vegetation Management Plan the Tree Warden will send the plan to the Select Board, Planning Department, Department of Public Works and Conservation Commission.
 - D. Upon receipt of the Annual Vegetation Management Plan the Tree Warden will schedule a public hearing within 45 days at the Planning Board. The Planning Board and Tree Warden shall review the plan together and vote whether to approve, approve with conditions or deny the Annual Vegetation Management Plan.
 - E. The approval of the Annual Vegetation Management Plan shall require a majority vote of the Planning Board and Tree Warden.
- 4) **Annual Hazard Tree Removal Plan: Publication, Notification and Review of Utility Annual Hazard Tree Removal Plan**
- A. The Annual Hazard Tree Removal Plan shall include, but not be limited to, the specific trees that the utility has identified as a hazard and proposes to remove.
 - B. The Annual Hazard Tree Removal Plan shall comply with local ordinances and regulations.
 - C. The Annual Hazard Tree Removal Plan shall be submitted not less than 90 days prior to the date a utility proposes to begin tree removal.
 - D. Upon receipt of the Annual Hazard Tree Removal Plan the Tree Warden will send the plan to the Select Board, Planning Department, Department of Public Works and Conservation Commission.
 - E. Upon receipt of the Annual Hazard Tree Removal Plan the Tree Warden will schedule a public hearing within 45 days at the Planning Board. The Planning Board and Tree Warden shall review the plan together and vote whether to approve, approve with conditions or deny the Annual Hazard Tree Removal Plan.
 - F. The approval of the Annual Hazard Tree Removal Plan shall require a majority vote of the Planning Board and Tree Warden, together.
 - G. Upon receipt of the Annual Hazard Tree Removal Plan, the Tree Warden, or a designee thereof, shall notify the utility in writing within 60 days whether or

not the plan has been approved, approved with modifications and/or conditions or denied.

§ 88-8. **Planting:** The Tree Warden with the Planning Department and Planning Board or Board or Commission so authorized, shall develop and maintain an up-to-date listing of trees considered most desirable for new plantings along streets in the following three size classes based on mature height:

- 1) No tree shall be planted on public property to obstruct visual clearance of any street corner, measured from the point of nearest intersecting curbs or curb lines nor within 10 feet of any fire hydrant.
- 2) No tree other than those species listed as small trees or trees with a columnar form, may be planted on public property under or within 10 feet of any overhead utility wire, except where authorized by the Tree Warden
- 3) The Town shall have the right to plant, maintain, and remove trees, plants and shrubs within the lines of all Town-owned streets, alleys, avenues, lanes, squares and other public property that may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public property.
- 4) Installation of tree lights. With the approval of the Town Administrator and the Tree Warden, decorative lights may be installed in Town-owned trees on public property for periods which will not interfere with the proper growth and maintenance of the trees and when the occasion for the lights is deemed appropriate.
- 5) Unless otherwise authorized, holiday lights shall be installed no earlier than November 15 and removed no later than February 15.

§ 88-9. **Maintenance: To be incorporated into a Fairhaven Tree Manual.**

- 1) **Pruning and Trimming Standards:** In order to minimize adverse impacts of pruning on the Town's trees, all work performed shall comply with the following requirements and standards.
 - A. Trimming shall be done in such a manner as to protect current tree health with all possible regard for future growth and development
 - B. All work will be performed in compliance with ANSI Standard Z-133 and National Arborist Association (NAA) Pruning Standards.
 - C. No major limb or a limb with a diameter greater than 15% of the tree diameter at breast height (dbh) shall be removed unless approved by the Tree Warden, prior to the commencement of trimming.
 - D. Climbing irons shall not be used by employees on any tree, except when in the process of complete tree removal

- E. Unless otherwise authorized by the Tree Warden in writing, it shall be unlawful as a normal practice for any person or firm to top any Town tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this chapter at the determination of the Tree Warden.
- F. A reasonable attempt shall be made to trim dead wood from the area being worked.

2) Removal and Replacement of Public Shade Trees:

- A. A valid work permit shall be obtained from the Tree Warden for removal of any Town tree, except that approval of the Conservation Commission shall be required on conservation lands. Tree removal is subject to approval including but not limited to the Tree Warden acting pursuant to MGL Ch. 87 and Fairhaven Ch. 88; the Planning Board along designated scenic roads pursuant to MGL Ch. 40, § 15C, The forgoing list is intended to be for convenience only and does not purport to be exhaustive; this section shall not be construed as an exemption from or a relaxation of any applicable requirements of law.
- B. Town trees to be removed shall be replaced, subject to approval of a plan detailing the species and location, by the entities with jurisdiction listed above.
- C. Any planned program of tree removal shall be subject to a tree replacement program, specifying the numbers, location, type and size of trees to be installed, and a maintenance program.
- D. Abutting property owners may plant street trees within the road layout, provided that the Tree Warden grants approval and that the selection and location of said trees are in accordance with the provisions of this chapter. However, the tree becomes public property.
- E. Tree wardens shall not cut down or remove or grant a permit for the cutting down or removal of a public shade tree if, at or before a public hearing, objection in writing is made by one or more persons, unless such cutting or removal or permit to cut or remove is approved by the select board at a duly noticed public hearing.
- F. Violations of any provision of this bylaw or MGL 87 shall be punished by forfeiture of not more than five hundred dollars per tree to the use of the Town (See MGL Chapter 87 § 6).

§ 88-10. Appeals:

§ 88-11. Penalties:

§ 88-12. Severability:

Petitioned by: Select Board

ARTICLE 41: UPPER NARRAGANSETT AVENUE REZONE-FY23

To amend the Zoning Map as follows: Narragansett Boulevard north of Progress Avenue (Paper Street).

Rezone the following described lots from Business District (B) to the Single Residence District (RA) and comprised of the following Assessor's Map-Lots:

30a Lots 198-207, 30a Lots 209-213, 30a Lots 215-220, 30a Lots 306-328.

Petitioned by: Planning Board

ARTICLE 42: PUBLIC FACILITIES SETBACK-FY23

To amend the Zoning Bylaw § 198-29.5 Wind Energy facilities (WEF) as follows:

To add to § 198-29.5.B, the Wind Energy Facilities (WEF) Applicability section. The bylaw currently reads "Applicability. This section applies to all municipal and private utility-scale, on-site WEF, and small wind energy systems proposed to be constructed after the effective date of this section, but not to facilities fully constructed prior to the adoption of this section." Add the following sentence "... with the exception that no new residential structures shall be constructed within the setbacks established in § 198-29.H (5) for new or existing Wind Energy Facilities."

Petitioned by: Planning Board

~~ARTICLE 43: BRIDGE STREET ENGINEERING DESIGN-FY23~~

To see if the Town will transfer from the Capital Stabilization Fund a sum of money to engage an architect/engineer to design a public safety facility

or take any other action relative thereto:

Petitioned by: Select Board

~~ARTICLE 44: UNION WHARF PURCHASE 900 SQ FT PARCEL-FY23~~

Petitioned by: Select Board

ARTICLE 45: MATTIPOISETT RIVER VALLEY WATER DISTRICT BORROWING-FY23

To see if the town will vote to raise and appropriate, borrow or transfer from available funds a sum of money \$4,200,000 to do the following upgrades: new filtration system and disinfection at the Mattapoissett River Valley Water Treatment Plant, or take any other action relative thereto:

Petitioned by: Board of Public Works

ARTICLE 46: SEAPORT ECONOMIC COUNCIL GRANT - WEST ISLAND DREDGING \$200,000 WITH 20% MATCH OF \$40,000-FY23

To see if the Town will vote to transfer from Surplus Revenue (Free Cash), \$40,000 for the required 20% matching funds associated with the Seaport Economic Council Dredging Design and Permitting Grant for the West Island Dredging Project \$200,000 or to take any other action relative thereto:

Petitioned by: Harbormaster

ARTICLE 47: SEAPORT ECONOMIC COUNCIL GRANT - UNION WHARF NORTH SIDE \$1,000,000 WITH 25% MATCH OF \$250,000-FY23

To see if the Town will vote to transfer from Surplus Revenue (Free Cash), \$250,000 for the required 25% matching funds associated with the Seaport Economic Council to start fixing the north side of Union Wharf \$1,000,000 or to take any other action relative thereto:

Petitioned by: Harbormaster

ARTICLE 48: ROGLER'S SCHOOL-FY23

Petitioned by: TA/Select Board

ARTICLE 49: FEMA GRANT-HYDRAULIC RESCUE EQUIP \$26,000 WITH 5% MATCH OF \$1,893.00-FY23

To see if the Town will vote to transfer from Surplus Revenue (Free Cash), \$1,893 for the required 5% matching funds associated with FEMA Grant for Hydraulic Rescue Equipment \$26,000 or to take any other action relative thereto:

Petitioned by: Fire Chief

ARTICLE 50: FEMA GRANT-NEW AMBULANCE \$285,715 WITH 5% MATCH OF \$14,286-FY23

To see if the Town will vote to transfer from Surplus Revenue (Free Cash), \$14,286 for the required 5% matching funds associated with FEMA Grant for a new ambulance \$285,715 or to take any other action relative thereto:

Petitioned by: Fire Chief

ARTICLE 51: SEWER RESERVE FOR FUTURE DEBT-FY22

Transfer from Sconticut Neck Sewer Betterment Stabilization to Sewer Reserve for future Sewer debt, or take any other action relative thereto.

Petitioned by: Finance Director

ARTICLE 52: CITIZENS PETITION-REZONING 114 SCONTICUT NECK ROAD-FY23

To see if the Town will vote to rezone 114 Sconticut Neck Road from existing zoning Business District to proposed zoning Mixed Use District, or take any other action relative thereto.

Petitioned by: Ronald Oliveira

ARTICLE 53: CITIZENS PETITION-STREET ACCEPTANCE MILL ROAD FROM 291-312-FY23

To see if the Town will accept as a public street Mill road from 291 to 312, or take any other action relative thereto.

Petitioned by: Brian Lopes

ARTICLE 54: CITIZENS PETITION-STREET ACCEPTANCE YANKEE LANE FROM MILL ROAD TO 20 YANKEE LANE

To see if the Town will accept as a public street Yankee Lane from Mill Road to 20 Yankee Lane, or take any other action relative thereto.

Petitioned by: Brian Lopes

ARTICLE 55: CITIZENS PETITION-STREET LIGHT REQUESTS To see if the Town will vote to raise and appropriate, borrow or transfer from available funds a sum of money for the installation and maintenance of the following street light, or take any other action relative thereto:

A. Welcome Street (area 24 to cul de sac) -already installed

Petitioned by: Ivan Ketchum

ARTICLE 56: TRANSFER FROM SURPLUS REVENUE-FY23

To see is the Town will vote to transfer a sum of money from Surplus Revenue for the reduction of the tax levy, or take any other action relative thereto:

Petitioned by: Select Board

ARTICLE 57: OTHER BUSINESS

To act upon any other business which may legally come before this meeting.

And you are hereby directed to serve this warrant by posting an attested copy thereof on or near the front or main entrance of the polling place in Precinct 1, Town Hall; and on or near the entrance of the polling place in Precinct 2 and 3, Elizabeth I. Hastings Middle School, School

Street; and on or near the entrance of the polling place in Precinct 4, Fire Station meeting room, 146 Washington Street; and on or near the front or main entrance of the polling place in Precinct 5 and 6, Recreation Center, 227 Huttleston Ave; seven days at least prior to the date of the meeting.

