

SPECIAL TOWN MEETING – MAY 4, 2019
WALTER SILVEIRA AUDITORIUM – ELIZABETH HASTINGS MIDDLE SCHOOL
TOWN MEETING MEMBERS PRESENT 184 – QUORUM REQUIRED 100

Meeting called to order by Moderator at 11:52 AM.

The Moderator stated that the warrant had been properly served and that there was a quorum.
Instructions were given to the Town Meeting Members.

Voted that the reading of the warrant and the return of service be omitted. Seconded.

Voted that the Moderator be allowed to refer to the articles by number and title only, Seconded.

Town Meeting Members present:	Precinct 1 – 40
	Precinct 2 – 30
	Precinct 3 – 19
	Precinct 4 – 34
	Precinct 5 – 34
	<u>Precinct 6 – 27</u>
	TOTAL 184

**ARTICLE 1 ESTABLISH ENTERPRISE FUND FOR TOWN OF FAIRHAVEN
CABLE TELEVISION**

By majority vote, the town voted to accept the provisions of Chapter 44, Section 53F 1/2 of the Massachusetts General Laws establishing a Town of Fairhaven Cable Television PEG Access Enterprise Fund, effective July 1, 2019. The Town of Fairhaven Cable Television PEG Access Special Revenue Fund will convert to an Enterprise Fund and the fund balance in the special revenue fund at June 30, 19 will transfer to the fund balance of the enterprise fund effective July 1, 2019, or any other action relative thereto.

**ARTICLE 2 TOWN OF FAIRHAVEN CABLE TELEVISION PEG ACCESS
ENTERPRISE FUND FY 20 RECOMMENDED BUDGET**

By majority vote, the town voted the sum of \$187,327 for Town of Fairhaven Cable Television PEG Access Direct Expenditures and \$12, 673 for Town of Fairhaven Cable Television PEG Access Indirect Costs (to cover costs in the General Fund) for a total of \$200,000 to be appropriated from the Town of Fairhaven Cable Television PEG Access Enterprise.

**ARTICLE 3 ESTABLISH ENTERPRISE FUND FOR FAIRHAVEN PUBLIC SCHOOLS
CABLE TELEVISION**

By majority vote, the town voted to accept the provisions of Chapter 44, Section 53F 1/2 of the Massachusetts General Laws establishing a Fairhaven Public Schools Cable Television PEG Access Enterprise Fund, effective July 1, 2019. The Fairhaven Public Schools Cable Television PEG Access Special Revenue Fund will convert to an Enterprise Fund and the fund balance in the special revenue fund at June 30, 19 will transfer to the fund balance of the enterprise fund effective July 1, 2019, or any other action relative thereto.

**ARTICLE 4 FAIRHAVEN PUBLIC SCHOOLS CABLE TELEVISION PEG ACCESS
ENTERPRISE FUND FY 20 RECOMMENDED BUDGET**

By majority vote the town voted the sum of \$144,687 for Fairhaven Public Schools Cable Television PEG Access Direct Expenditures and \$15,313 for Fairhaven Public Schools Cable Television PEG Access Indirect Costs (to cover costs in the General Fund) for a total of \$160,000 to be appropriated from the Fairhaven Public Schools Cable Television PEG Access Enterprise.

**ARTICLE 5 FUNDING FOR ENGINEERING/ARCHITECTURAL SERVICES RELATED
TO LAND PURCHASE FOR A PUBLIC SAFETY FACILITY, FY19**

By majority vote, the town voted to transfer from Surplus Revenue (Free Cash) the sum of \$32,000 to pay engineering/architectural services related to the possible land purchase for a public safety facility.

ARTICLE 6 ROADWORK FY20

By majority vote, the town voted to transfer from Surplus Revenue (Free Cash) the sum of \$193,370 to reconstruct, hard surface and install drainage on Brown Street,

ARTICLE 7 STREET ACCEPTANCE: ROBERT STREET
MOTION FAILED

ARTICLE 8 TELEVISING BOARD MEETINGS

By majority vote, the town voted to accept, as amended, the following By-Law:

Section 1: Broadcast/Recording Required

All meetings of Town Boards, Commissions and Committees shall be broadcast live and/or recorded for future broadcast over the local cable television network and on-line viewing unless emergency, operational or technical conditions suspend the requirements hereof, as determined by Town Administrator for broadcasts over the public access and government channels or the School Superintendent for broadcasts over the education channel.

Section 2: Notice Requirement

Notice of all such meetings shall be posted in accordance with the requirements of the Open Meeting Law, M.G.L. Chapter 30A, and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting

Section 3: Scheduling Conflicts

If there is a scheduling conflict with the use of a meeting room, The Town Administrator for municipal property or the School Superintendent for school property or their designees shall have the discretion to determine which board shall have use of the room.

Section 4: Compliance with Open Meeting Law

Nothing contained in this bylaw shall be so construed as to conflict with the requirements of the Open Meeting Law, M.G.L. Chapter 30A.

Section 5: Failure to comply.

A violation of this bylaw or a failure to comply with this bylaw shall not be grounds for challenging or invalidating any actions taken at any meeting of a Town Board, Committee or Commission.

ARTICLE 9 AMENDMENT TO TOWN ADMINISTRATOR ACT

By majority vote, the town voted to revoke its approval of Article 34 of the warrant for the Annual Town Meeting held on May 7, 2016; and in its place vote to authorize the Board of Selectmen to petition the General Court:

(a) to repeal Chapter 389 of the Acts of 2014, An Act Relative to the Board of Public Works in the Town of Fairhaven, and

(b) to amend Chapter 381 of the Acts of 2014, An Act Establishing the Position of Town Administrator in the Town of Fairhaven.

The purpose of the petition is to remove from the authority of the Board of Selectmen certain of that authority presently delegated to the Board of Public Works; and also to further clarify the authority and duties of the Town Administrator with respect to the application of the personnel bylaw and to collective bargaining. The proposed legislation is as follows:

An Act relative to the town administrator in the town of Fairhaven.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 1 of chapter 381 of the acts of 2014 is hereby amended by striking out subsection:

(c) and inserting in place thereof the following subsection:- appoint the town counsel and any special counsels, and all members of committees, boards and commissions except the finance committee and except those appointed by the moderator, elected by the voters or under the jurisdiction of the school committee or of the board of public works and may make appointments to temporary posts and committees the board creates for special purposes;

SECTION 2. Section 2 of said chapter 381 is hereby amended by striking out subsection 9 (e) and inserting in place thereof the following subsection:

(e) Manage and direct the daily reporting and supervision of all town departments under the jurisdiction of the board of selectmen, including: assessors, building commission, council on aging, police, civil defense, animal control officer, gas inspector, plumbing inspector, wiring inspector and weights and measures inspector, recreation, tree, planning, finance, finance director, collector, treasurer, accounting, veterans, town counsel, other committees appointed by and under the jurisdiction of the board of selectmen and the fire department, subject to section 42 of chapter 48 of the General Laws, but not including the school department or the public works department.

SECTION 3. Said section 2 of said chapter 381 is hereby further amended by striking out subsection (g) and inserting in place thereof the following subsection:

(g) Except with respect to the school department, and except with respect to the hiring and firing of employees within the public works department, the town administrator shall have sole authority over the administration of personnel policies for all town employees. With respect to the fire department, such authority shall be subject to section 42 of chapter 48 of the General Laws. The town administrator shall act as the personnel board under all applicable laws and by-laws, except as otherwise set forth in this act. The personnel board as presently constituted shall be eliminated upon the appointment of the town administrator. The town may enact by-laws establishing the wages, salaries and other benefits of employees, which shall be consistent with the authority granted to the town administrator in this act. Notwithstanding the elimination of the personnel board, all actions taken prior to the appointment of the town administrator by the personnel board within its authority, and by any other town official or board, with respect to personnel, including the appointment of all officers and employees, shall continue in full force and effect subject to future action by the town administrator within the town administrator's authority.

SECTION 4. Said section 2 of said chapter 381 is hereby further amended by striking out subsection (k) and inserting in place thereof the following subsection:

(k) With the approval of the board of selectmen, negotiate all collective bargaining agreements on behalf of the town, except for the school department. In collective bargaining negotiations with unions representing employees in the public works department, the town will be represented by the town administrator, the superintendent of public works, and a member of the board of public works. The town administrator may seek the assistance of labor counsel if the town administrator deems it necessary to effect successful negotiations. All final agreements must be approved and executed by the board of selectmen.

SECTION 5. Said section 2 of said chapter 381 is hereby further amended by striking out subsection (m) and inserting in place thereof the following subsection:

(m) Submit to the board of selectmen a written proposed budget for town government for the ensuing fiscal year. The proposed budget shall detail all estimated revenue from all sources, and all proposed expenditures, including debt service for the previous, current and ensuing 5 years. The proposed budget shall include proposed expenditures for both current operations and capital projects during the ensuing year, detailed by department, committee, agency, purpose and position and proposed financing methods. The proposed budget shall include estimated revenues and free cash available at the close of the fiscal year, including estimated balances in special accounts. The town may, by by-law establish additional financial information and reports to be provided by the town administrator. To assist the town administrator in preparing the proposed annual budget of revenue and expenditures, the finance director, all boards, officers and committees of the town, including the school committee and the board of public works, shall furnish to the town administrator, in a writing in such a form as the town administrator shall establish, all relevant information in their possession, including a detailed estimate of the appropriations required and any available funds.

SECTION 6. Said section 2 of said chapter 381 is hereby further amended by striking out subsection (v) and inserting in place thereof the following subsection:

(v) Manage and oversee the use, maintenance, security and, with the approval of the board of selectmen, regulate the rental for all the town buildings, properties and facilities, including information technology, except those under the jurisdiction of the school department or the public works department, unless so requested by either of those departments.

SECTION 7. Said section 2 of said chapter 381 is hereby further amended by striking out subsection (x) and inserting in place thereof the following subsection:

(x) With the approval of the board of selectmen, prosecute, defend and settle all litigation for or against the town or its officers and employees, subject to such appropriation as may be necessary to effect settlement, except for litigation involving only the school department or the public works department, unless so requested by either of those departments.

SECTION 8. Chapter 389 of the acts of 2014 is hereby repealed,

SECTION 9. This act shall take effect upon its passage.

ARTICLE 10 ESTABLISH OPEB TRUST

By majority vote, the town voted to accept the provisions of Section 20 of Chapter 32B of the Massachusetts General Laws, as amended by Section 15 of Chapter 218 of the Acts of 2016, establishing an Other Post Employment Benefits Liability Trust Fund and to authorize the Board of Selectmen and Treasurer to execute a declaration of trust creating an expendable trust for the purpose of holding monies appropriated to such fund: to designate the Treasurer as the trustee of such trust; to authorize the transfer of any and all monies currently held for the purpose of paying retiree health and life benefits to such trust; and to authorize the trustee to invest and reinvest the monies in such fund under the prudent investor rule established in chapter 203C.

ARTICLE 11 BUFFER ZONE PROTECTION

To see if the Town will vote to amend the Town's wetlands by-law by adding thereto a section 192.15 which identifies limits on, or prohibition of, specific activities within one hundred feet of protected wetland resource areas (the "Buffer Zone"),

Or to take any other action thereto.

MOVED TO PASS OVER

ARTICLE 12: STORM WATER MANAGEMENT

By 2/3rds vote, the town voted to adopt the document entitled "Stormwater Management, Illicit Discharge, Soil Erosion, Sediment Control By-Law" storm water management by-law, pursuant to federal and state laws, to protect public water bodies and wetlands from pollutants that may be introduced into storm water. The proposed by-law will regulate the direct introduction of potential pollutants into the storm drainage system; the introduction of potential pollutants by run-off from land disturbance during development; and the introduction of potential pollutants from those which may be allowed subject to regulation and permitting.

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:

Impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands, groundwater, and drinking water supplies;

Contamination of drinking water supplies;
Erosion of stream channels and downstream coastal areas;
Alteration or destruction of aquatic and wildlife habitat;
Flooding;
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.

LLICIT 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.

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.

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 POLICY: The Policy 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 Policy addresses 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:

Paints, varnishes, and solvents;

Oil and other automotive fluids;

Nonhazardous liquid and solid wastes and yard wastes;

Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnance, accumulations, and floatables;

Pesticides, herbicides, and fertilizers;

Hazardous materials and wastes;

Sewage, fecal coliform, and pathogens;

Dissolved and particulate metals;

Animal wastes;

Rock; sand; salt; soils;

Construction wastes and residues; and

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.

6PRIORITY 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.

Regulated Land Disturbance Activities –

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.

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,

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
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,
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

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

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.

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.

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:

Water line flushing;

Flow from other potable water sources;

Landscape irrigation or lawn watering;

Diverted stream flows;

Rising ground water;

Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20);

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;

Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;

Non-commercial washing of vehicles;

Springs, natural riparian habitat or wetland flows;

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;

Discharge from street sweeping;

Firefighting activities;

Dye testing is an allowable discharge, but requires a verbal notification to the Board of Public Works prior to the time of the test;

Discharges specified in writing by the Board of Public Works as being necessary to protect public health, safety, welfare, or the environment; and

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.

Suspension of MS4 Access

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 Board of Public Works 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 Board of Public Works 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 Board of Public Works.

The Board of Public Works 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 Board of Public Works 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.

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 Board of Public Works prior to the allowing of discharges to the MS4.

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

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).

Repair of septic systems when required by the Board of Health for the protection of public health and compliance with Section 4, Paragraph B.

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.

The construction of fencing that will not alter existing terrain or drainage patterns.

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 Board of Public Works. While application may be made by a representative, the permitted must be the owner of the site.

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

Fees - Fees shall be established by Board of Public Works to cover expenses connected with public notice, application review, and monitoring permit compliance. The fee shall be sufficient to also cover professional review. The Board of Public Works is authorized to retain a Registered Professional Engineer or other professional consultant to advise the Board of Public Works on any or all aspects of these plans. Applicants must pay review fees before the review process may begin.

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

Determination of Completeness - The Board of Public Works 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.

Coordination with Other Boards - On receipt of a complete application for a Land Disturbance Permit the Board of Public Works 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 Board of Public Works. The Board of Public Works 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.

Entry - Filing an application for a land disturbance permit grants the Board of Public Works 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.

Hearing - Once in receipt of a complete application for a Land Disturbance Permit, the Board of Public Works 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 Board of Public Works. 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 Board of Public Works 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 Board of Public Works shall make the application available for inspection by the public during business hours at their Town of Fairhaven Office.

Action - The Board of Public Works may:

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;

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

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 Board of Public Works 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 Board of Public Works may disapprove the application, denying a permit

Project Changes - The permittee, or his or her agent, must notify the agent of the Board of Public Works in writing of any change or alteration of a land-disturbing activity before the change or alteration occurs. If the agent of the Board of Public Works determines that the change or alteration is significant, the agent of the Board of Public Works 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 Board of Public Works may require the installation of interim erosion and sedimentation control measures before approving the change or alteration

Waivers

Following a public hearing on a waiver request, the Board of Public Works may waive strict compliance with any requirement of this bylaw or the rules and regulations promulgated hereunder, where:

Such action is allowed by federal, state, and local statutes and/or regulations; and

Is in the public interest; and

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 Board of Public Works's opinion, additional time or information is required for review of a waiver request, the Board of Public Works 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.

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;

Stabilize and protect disturbed areas quickly: Exposed areas and stockpiles shall be re-vegetated within 40 days of being exposed. The Board of Public Works, 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.

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.

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.

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 Board of Public Works 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 set forth in the Massachusetts Stormwater Management Policy and DEP Stormwater Management Handbook Volumes I and II. 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.

§194-10 Operation and Maintenance Plans.

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 Board of Public Works to insure compliance with said plan, including without limitation a covenant. The Board of Public Works shall make the final decision of what maintenance option is appropriate in a given situation. The Board of Public Works 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 Board of Public Works 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 Board of Public Works and shall be an ongoing requirement. The Operation and Maintenance Plan shall conform to the requirements listed in the Regulations adopted by the Board of Public Works 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.

Changes to Operation and Maintenance Plans

The owner(s) of the stormwater management system must notify the Board of Public Works or its agent of changes in ownership or assignment of financial responsibility.

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

§194-11 Inspection and Site Supervision.

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 Board of Public Works or its designated agent to review the permitted plans and proposed implementation.

Commission Inspection - The Board of Public Works 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 Board of Public Works 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 Board of Public Works at least three (3) working days before each of the following events:

Erosion and sediment control measures are in place and stabilized;

Rough Grading has been substantially completed;

Final Grading has been substantially completed;

Bury Inspection: prior to backfilling of any underground drainage or stormwater conveyance structures.

Close of the Construction Season; and

Final landscaping (permanent stabilization) and project final completion.

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 Board of Public Works or designated agent in a format approved by the Board of Public Works. The Board of Public Works may require, as a condition of approval, that an Environmental Site Monitor, approved by the Board of Public Works, be retained by the applicant to conduct such inspections and prepare and submit such reports to the Board of Public Works or its designated agent.

Access Permission - To the extent permitted by law, or if authorized by the owner or other party in control of the property, the Board of Public Works, 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 Board of Public Works deems reasonably necessary to determine compliance with the permit.

§194-12 Surety.

The Board of Public Works 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 Board of Public Works to insure that the work will be completed in accordance with the permit. If the

project is phased, the Board of Public Works 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 Board of Public Works has received the final report as required by Section 13 and issued a certificate of completion.

§194-13 Final Reports.

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.

§194-14 Certificate of Completion.

The Board of Public Works 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

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

Access to Facilities.

The Board of Public Works 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 Board of Public Works.

Facility operators shall allow the Board of Public Works 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 Board of Public Works shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Board of Public Works to conduct monitoring and/or sampling of the facility's storm water discharge.

The Board of Public Works 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 Board of Public Works and shall not be replaced. The costs of clearing such access shall be borne by the operator.

Unreasonable delays in allowing the Board of Public Works 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 Board of Public Works reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this bylaw.

If the Board of Public Works 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 Board of Public Works 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 Board of Public Works 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 (SWPP) 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 Board of Public Works 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 Board of Public Works 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.

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.

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

A requirement to cease and desist from the violating activity until there is compliance with the By-Law and any existing permits

Maintenance, installation or performance of additional erosion and sedimentation control measures;

Monitoring, analyses, and reporting

Remediation of erosion and sedimentation resulting directly or indirectly from the land-disturbing activity

The elimination of illicit connections or discharges

The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property

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.

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 Board of Public Works 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 Board of Public Works 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.

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.

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 Board of Public Works 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.

Appeals - All decisions or orders of the Board of Public Works shall be final. Further relief shall be to a court of competent jurisdiction.

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

§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 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 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.

ARTICLE 13 HISTORIC SITE REUSE SPECIAL PERMIT

By 2/3rds vote, the town voted to amend the zoning by-law by adding a special permit authorizing the reuse of certain historic sites. The purpose of the by-law is to promote the preservation of historic sites by allowing adaptive reuse of historic buildings. The proposed by-law will identify the special permit granting authority which will have authority to issue a special permit appropriate to make feasible the preservation and reuse of eligible historic sites, or take any other action thereto.

“HISTORIC SITE REUSE SPECIAL PERMIT”.

PART 1

Chapter 198, Section to be determined:

Purpose

The purpose of the Historic Site Reuse Special Permit is to promote the adaptive reuse of eligible municipally owned buildings no longer used by the Town for municipal purposes for residential use that protects the historic character by modifying those general zoning regulations including parking and loading, lot and building dimensions, density and use limitations, which would otherwise make such preservation infeasible, while protecting the health, welfare, aesthetics and character of the neighboring community.

Eligible Building and Lot

Any municipally owned building constructed before 1920 and no longer used by the Town for municipal purposes will be eligible for consideration for a special permit under this section.

The lot on which an eligible building is situated, and any adjoining lots which were used in common with the eligible building for its principal municipal use shall be eligible for a Historic Site Reuse Special Permit.

Special Permit Granting Authority

The special permit granting authority shall be the Planning Board.

Application and Fee

The applicant shall submit to the Planning Board a hardcopy original and a digital copy of the special permit application along with ten hardcopy prints and a digital copy of the proposed project plans, including the site plan for the property subject to the Special Permit, and construction plans sufficient in detail to show all proposed modifications to existing zoning requirements.

The application and plans shall provide:

A statement of the facts supporting the eligibility of the subject building for Special Permit;

A description of the proposed project including the planned alteration or reconstruction of the eligible building, the planned alteration, reconstruction or construction of any other structures and the proposed uses.

A detailed statement of all proposed modifications to zoning bylaw requirements.

An analysis of the project prepared by a qualified professional Massachusetts licensed architect or Massachusetts licensed engineer addressing the feasibility of the project; the reason modification of zoning regulations is needed to make the project feasible; and the impact of each of those modifications on the neighboring community.

A description of the proposed plans for preservation of the historic building and site, including plans for maintenance and the financial mechanism for the cost of maintenance.

A proposal, with draft legal documentation, to provide assurance of the continued maintenance of the historic building and site, specifically granting the Town of Fairhaven standing and authority to enforce continued protection and maintenance of the historic site.

The plans shall provide:

Actual dimensions of the lot or lots subject to the proposed special permit.

All easements existing or proposed.

Location and size of existing and proposed structures, including any existing structures within 300 feet of the site.

Name, width and condition of all abutting streets.

All proposed parking and driveway areas, including curbing and planting islands.

Existing and proposed topography at two-foot minimum contours.

Existing and proposed water, sanitary and storm drainage facilities noting any new construction and/or new impervious surface area and areas that may be subject to Storm Water Regulations.

Detailed elevation drawings of all existing and proposed buildings.

The stamp and seal of the design professional responsible for the plans.

The applicant shall pay a fee, in an amount determined by the Planning Board, sufficient to pay the cost to the Planning Board of professional services for review and advice concerning the proposal.

Interdepartmental Communication

The Planning Board shall submit a copy of the application and the plans to the Building Department, the Fairhaven Historical Commission, the Board of Selectmen, the Board of Public Works, and the Fire Department and any other Boards as appropriate. Comments by any board should be submitted to the Planning Board for inclusion in the Special Permit application record. If no comment is made by one of these Boards to the Planning Board within 30 days of receipt, no objection by the recipient board shall be assumed.

Public Hearing

The Planning Board shall hold a public hearing in conformance with MGL 40A Section 9 and Special Permit public hearing notification requirements of MGL 40 Section 11 on the application for special permit within 65 days of submission to the Board, and a decision will be rendered by the Board within 90 days following the date of the hearing.

Issuance of Special Permit

A Special Permit for Historic Site Reuse may be issued under this section by a two-thirds vote of the Planning Board upon a determination by the Board that the proposed structures and uses are in harmony with the general purpose and intent of the zoning by-laws, protects the essence of the

historical property and the particular purpose and intent of this section, and conditioned on the following standards being met by the proposed project:

The eligible building may be used for multi-family residential use.

The frontage and side setback for the eligible building will be those in existence prior to any alteration which may be allowed by the Special Permit.

Any addition to the historic building shall be at the rear of the building opposite the primary fronting street line, and facing the primary rear lot line. (For purposes of this provision the side lines of corner lots shall not be considered front or rear lot lines.) The lot size, building lot coverage and yard dimension requirements may be decreased by up to 20% on the primary lot with the historic building on it in order to make any such addition to the historic building feasible. Any new lots and their development areas which may be created and allowed by the Special Permit shall be similar to the existing average size of lots of the surrounding neighborhood, which shall include abutting lots, and opposing lots on fronting street lines (even if the average lot size does not conform to existing zoning).

Any new residential structures shall not be larger than the average size of the existing houses in the surrounding neighborhood, which shall include abutting lots, and opposing lots on fronting street lines.

Unless expressly waived by the Planning Board, the off-street parking requirements to service the eligible historic building will be the existing parking prior to any alteration, or the requirements found in Fairhaven Zoning Chapter 198, Section 27, Part B.1 A and B (Two bedrooms or more - two (2) parking spaces; less than two bedrooms - one parking space).

Unless expressly waived by the Planning Board, the off-street parking requirements to service any new residential structures which may be allowed by special permit will be the requirements set forth in this by-law, or the average off-street parking on those developed properties abutting the eligible lot, whichever is less.

The property for which a special permit is granted pursuant to this section shall not be subject to the requirements of §§198-27 (Parking; loading and landscaping) and 198-29 (SP for non-residential and multifamily) of this zoning by-law.

The applicant shall enter into protective covenants or other legal devices to preserve and maintain the exterior, and to the extent the Planning Board deems appropriate, the interior historic integrity and character of the eligible building.

The applicant shall enter into appropriate covenants or otherwise guarantee timely completion of the proposed work that preserves and maintains the historic character of the eligible building.

The board may impose such other conditions as it deems proper to ensure compliance with the purpose of this article.

PART 2

Add the following sentence to §198-15 C (1):

“The Planning Board shall be the special permit granting authority for special permits for historic site reuse.”

PART 3

Add the following line to §198-16 under other principal uses:

	RR-RA	RB	RC	P	B	D	AG	WRP
Historic Site Reuse	A	A	A	A	A	A	A	A

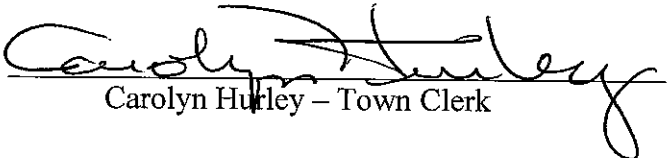
PART 4

Add the following new subsection to §198-17

D. Developments using the Historical Site Reuse Special Permit (Chapter 98 Section TBD) intensity of use requirements for eligible buildings and lots shall be governed by the provisions of the Historical Site Reuse Special Permit section and the terms of a special permit granted thereunder.”

Motion to adjourn sine die at 1:05 on Saturday, May 4, 2019. Seconded

Respectfully Submitted,


Carolyn Hurley – Town Clerk