

# **TOWN of FAIRHAVEN MASSACHUSETTS**

ANNUAL TOWN MEETING  
SATURDAY, JUNE 18, 2022  
AT 9:00 A.M.



## **UPDATED WARRANT ARTICLES**

- Article 29: amend BPW by-law solid waste & recycling
- Article 32: update General Provisions of bylaw, section 1-6, noncriminal disposition of violations
- Article 36: wetlands bylaw updates
- Article 38: upper Narragansett Avenue rezone
- Statement of General Fund Reserves: Appendix C (page 69)

**Town Meeting**  
**Saturday, June 18, 2022**

**Corrected Article Language**

**ARTICLE 29: AMEND BPW BY-LAW SOLID WASTE & RECYCLING**

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, **the day following** on the designated collection day for the area.

*Petitioned by: Board of Public Works*

**Motion:** Move to amend article 29 by adding the words “the day following” after the phrase “no later than 5:00 pm on” as it appears in subsection “b”, and to adopt the article as so amended.

**PROPOSED CHANGE for**  
**June 18, 2022 Annual Town Meeting**  
**Article 32**

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.

**(10) 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.

# Proposed Changes for 2022 Annual Town Meeting

## Article 36

### Chapter 192

#### WETLANDS

- |        |  |         |                                    |
|--------|--|---------|------------------------------------|
| 192.1. | Purpose.   | 192.8.  | Definitions.                       |
| 192.2. | Regulated activities.                              | 192.9.  | Security.                          |
| 192.3. | Exceptions.  | 192.10. | Enforcement                        |
| 192.4. | Permit application and requests for determination. | 192.11. | Violations and penalties           |
| 192.5. | Notice and hearings                                | 192.12. | Burden of Proof                    |
| 192.6. | Permits; determinations and conditions.            | 192.13. | Relation to Wetland Protection Act |
| 192.7. | Regulations.                                       | 192.14. | Severability                       |

[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.

*Proposed article to be included in the Annual Town Meeting Warrant for June, 2022*

ARTICLE 38 - NARRAGANSETT AVENUE AMENDMENT TO ZONING MAP  
PETITIONED BY PLANNING BOARD

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.



**TOWN OF FAIRHAVEN  
GENERAL FUND RESERVES**

**FY23 General Fund BOS/TA Recommended Budget**

**\$56,046,953**

**Certified Free Cash 7/1/21**

**4,411,068**

**FY2022:**

Art 5	Bills of Prior Year	(686.85)
Art 6a	Bristol Aggie assessment increase	(7,600.00)
Art 6b	Voke assessment increase	(111,177.00)
Art 6c	Police salaries	(65,000.00)

**Less: TM June 18, 2022 transfer to FY22 Operating Bdgt:**

**(184,464)**

**FY2023:**

**Less: TM June 18, 2022 for FY23 Operating Bdgt:**

Art 13a	Fire Eng 2 tool project	(35,000.00)
" b	Replace voting machines	(38,000.00)
" c	Replace ambulance/stretchers	(25,000.00)
" d	Replace cruisers	(134,000.00)
" f	Replace computer equipment	(30,000.00)
" g	Replace life pak 15 (3 units)	(96,000.00)
" h	Replace loader	(220,000.00)
" i	Computer server for offsite electronic storage	(24,000.00)
" j	Beach mat for handicap access	(25,000.00)
" k	Replace boiler at town hall	(125,000.00)
" l	COA/Rec building roof replace(design/construct)	(54,000.00)
" m	Replace Harbormaster boat engine	(26,000.00)
" n	Hydraulic rescue tools	(41,000.00)
" o	Upgrade town/school phone system	(223,000.00)
" p	Replace windows/blinds in town hall	(21,000.00)
" q	Control desk radio upgrade	(48,000.00)
Art 16	Roadwork	(425,000.00)
Art 18	Transfer from Surplus Revenue to GF Cap Stab Fd	(400,000.00)
Art 25	Retirement base COLA increase	(64,041.00)
Art 30	Town Hall Repairs (windows/clock gears)	(16,000.00)
Art 33	Climate change assessment (25% match)	(10,000.00)

Art 37	Hazard mitigation plan (10% match)	(5,000.00)	
Art 41	Union Wharf purchase 900 sq ft parcel	(80,000.00)	
Art 43	West Island Dredging (20% match)	(40,000.00)	
Art 44	Union Wharf North Side (25% match)	(250,000.00)	
Art 45	Hydraulic Rescue Equipment (5% match)	(1,893.00)	
Art 46	New ambulance FEMA (5% match)	(14,286.00)	
Art 51	St. Light on Welcome St	<u>(800.00)</u>	
Less: TM June 18, 2022 for FY23 Financial Articles :			(2,472,020)
<b>Balance remaining in Free Cash</b>			<b>1,754,584</b>
<b>GF Stabilization Fund as of 3-31-22</b>			<b>3,181,089</b>
<b>GF Capital Stabilization Fund as of 3-31-22</b>		5,819,088	
Less: Public Facility Complex Design TM 6/18/22 - Art 40		(5,000,000)	
Add: Surplus Revenue TM 6/18/22 - Art 18		<u>400,000</u>	
<b>Balance remaining GF Capital Stabilization</b>			<b>1,219,088</b>
<b>Total GF Reserves</b>			<b>6,154,761</b>

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