



## FAIRHAVEN SELECT BOARD AGENDA

March 25, 2024 6:30 p.m.

Town Hall – 40 Center Street – Fairhaven

The meeting can also be viewed on Channel 18 or on FairhavenTV.com

FAIRHAVEN TOWN CLERK  
RCUD 2024 MAR 21 PM 12:21

*On March 24, 2023, the bill to extend Open Meeting Law regulations governing remote participation has passed MA legislation and been signed by the Governor. This bill will allow remote and hybrid meeting options for public bodies through March 31, 2025. Pursuant to an amendment to Town Bylaw Chapter 50 § 13, all government meetings are available through web/video conference and are recorded.*

### A. MINUTES

1. Approve the Joint Select Board and Finance Committee Minutes of March 20, 2024
2. Approve Select Board minutes of March 11, 2024 – Open Session
3. Approve Select Board minutes of March 11, 2024 – Executive Session

### B. TOWN ADMINISTRATOR

1. Staffing Update: Mike Jenney Certified VSO
2. Department Head Update: Public Works
3. World Autism Awareness Day: Light It Up Blue (LIUB), April 2, 2024
4. Fairhaven Historical Society: Lecture on Hetty Green by Charles Slack: April 4<sup>th</sup> at 6:30pm
5. MVP and Green Communities Grants being implemented
6. Mini-splits work started
7. Locking System in April started
8. Interest Letter: Regional Collaboration with Acushnet
9. Other

### C. ACTION / DISCUSSION

1. Issuance and Details of two loans from the Massachusetts Clean Water Trust
2. Livable Streets Committee Appointments
3. Proclamation: May, 2024 Bike Month
4. Bask Host Community Agreement
5. Open Meeting Law Complaint: Received March 11, 2024
6. Flag/Banner Request: Progress Pride Flag for the month of June at Town Hall
7. Flag/Banner Request: Juneteenth Flag the week of June 17 – 24, 2024 at Town Hall
8. Event Request and Special One-Day Liquor License: Buzzards Bay Swim, Saturday, June 22, 2024
9. Marine Resources: Raise the Resident Senior Shellfish age from 62 to 65
10. Police for Annual Town Election, Monday, April 1, 2024
11. Review and Recommend Warrant Articles
12. Close and Sign Annual Town Meeting Warrant
13. Review Town Administrator Act

### D. CORRESPONDENCE

1. Eversource Five-Year Vegetation Management Plan

### E. COMMITTEE LIAISON REPORTS

### F. PUBLIC COMMENT

### G. BOARD MEMBER ITEMS

### H. NEWS AND ANNOUNCEMENTS

1. Annual Town Election Results and Candidate Statements on *Monday, April 1, 2024* at 8:00p.m.
2. The next regularly scheduled Select Board meeting is *Monday, April 8, 2024* at 6:30 p.m.

### ADJOURNMENT

<https://us06web.zoom.us/j/89485993911?pwd=OFd5MzJvVnBxQkIxLzdQcFRlbVM0QT09>

Log on or call 1-929-205-6099, Meeting ID: 894 8599 3911, Passcode: 330130

*Subject matter listed in the agenda consists of items reasonably anticipated (by the Chair) to be discussed. Not all items listed may be discussed and other items not listed (i.e. urgent business not available at the time of posting) may also be brought up for discussion in accordance with applicable law.*



**Monday, March 25, 2024**  
**Town Administrator**

## Light It Up Blue on April 2

Every April Autism Speaks celebrates World Autism Month, beginning with the United Nations-sanctioned World Autism Awareness Day on April 2. This year marks the 16th annual World Autism Awareness Day.

- Light It Up Blue on April 2 in celebration of people with autism and those who love and support them. Join the thousands of landmarks, buildings, homes and communities around the world and come together on April 2, World Autism Awareness Day to shine a light on the autism community.

## **“Hetty” lecture by author Charles Slack**

**Thursday, April 4, 2024, 6:30 p.m.**

**Fairhaven Town Hall, 40 Center Street, Fairhaven**

The Fairhaven Historical Society presents author Charles Slack giving a lecture called “HETTY *The Genius and Madness of America’s First Female Tycoon.*” Mr. Slack is the author of a popular book by the same title that examines the life of Henrietta “Hetty” Howland Robinson Green, often known as the “Witch of Wall Street.”

Sponsored by the Fairhaven Historical Society. Donations accepted. Disabled Accessible, For more information email [historicalsocietyfairhaven@gmail.com](mailto:historicalsocietyfairhaven@gmail.com)



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Angie Lopes Ellison  
Town Administrator

March 18, 2024

Acushnet Board of Selectmen  
Acushnet Town Hall  
122 Main Street  
Acushnet, MA 02743

Dear Members of the Acushnet Board of Selectmen,

I hope this email finds you well. On behalf of the Town of Fairhaven, I am reaching out to express our interest in exploring potential collaboration opportunities between our two towns.

We have taken note of the recent partnership between the Town of Acushnet and Mattapoisett concerning the regionalization of their Planning departments. This initiative underscores the importance of seeking innovative solutions to the challenges faced by municipalities across the Commonwealth, particularly when it comes to balancing quality service delivery with fiscal responsibility.

Given these circumstances, we believe there may be mutual benefits to be gained from exploring collaborative efforts between our towns. By pooling our resources and expertise, we can potentially enhance the efficiency and effectiveness of our respective municipal operations, while also maximizing the value of taxpayer dollars.

With this in mind, we would like to propose that the Acushnet Board of Selectmen authorize Mr. Kelley to work on their behalf. This meeting would serve as an opportunity to discuss potential areas of collaboration and to explore how we might work together to address common challenges and achieve shared goals.

We are confident that through open dialogue and cooperative efforts, we can identify opportunities for synergy and partnership that will benefit the residents of both Fairhaven and Acushnet. We believe that by working together, we can create stronger, more resilient communities that are better equipped to meet the needs of our constituents both now and in the future.

We are eager to hear from you and to begin this important conversation. Thank you for considering our proposal, and we look forward to the opportunity to collaborate with you in the near future.

Sincerely,

Angie Lopes Ellison  
Town Administrator

ALE/ah



**Monday, March 25, 2024**  
**Action / Discussion**

TERMS AND CONDITIONS  
TO THE  
MASSACHUSETTS CLEAN WATER TRUST  
FINANCING AGREEMENT

The following Terms and Conditions are a part of and incorporated into each Financing Agreement (“Financing Agreement”) entered into by and between the Massachusetts Clean Water Trust (together with its successors and assigns, the “Trust”) and each Borrower pursuant to which the Trust provides financial assistance.

**Section 1. Definitions.** All capitalized, undefined terms used in these Terms and Conditions and in the Financing Agreement shall have the same meanings given such terms in Section 1 of the Enabling Act and words importing the singular number shall include the plural number and vice versa. In addition, the following words and phrases shall have the following meanings:

“Additional Security” means any additional or special security for the Loan made by the Trust, and any moneys, revenues, property, or rights pledged, transferred, or otherwise made available to secure repayment of such Loan, including any security agreement, resolution, indenture, trust agreement, pledge, deed, mortgage, or other instrument of security, all as described in Schedule D of the Financing Agreement;

“Administrative Fee” means the fee for the administrative expenses of the Trust relating to the Loan made by the Trust calculated as set forth in Schedule A of the Financing Agreement and payable on the Repayment Dates and in the amounts set forth in Schedule C of the Financing Agreement (as such schedule may be amended from time to time in accordance herewith);

“Applicable Authority” means the general or special laws of the Commonwealth or other governing instrument of the Borrower, identified in Schedule A of the Financing Agreement;

“Application” means an application submitted by the Borrower to the Trust and the Department for financial assistance for all or any part of the Costs of the Project, as more fully described in the related Project Approval Certificate;

“Authorized Officer” means the officer or officers of the Borrower, the Trust or the Department, as the case may be, identified in Schedule A of the Financing Agreement;

“Bonds” means the bonds, if any, issued by the Trust that fund or are secured, in part, by the Loan made by the Trust and payments to be made by the Borrower under the Financing Agreement, all as more fully described in the Master Trust Agreement and the applicable Supplemental Master Trust Agreement;

“Borrower” has the meaning given such term in the Financing Agreement.

“Business Day” means any day other than a Saturday, a Sunday or any other day on which banks doing business in the Commonwealth are authorized or required to be closed for business;

“Closing Date” is the closing date for the Loan as described in in Section 6 hereof;

“Code” means the Internal Revenue Code of 1986, as amended, and all Treasury Regulations promulgated thereunder to the extent applicable to the Loan or the Bonds;

“Commonwealth” has the meaning given such term in the Financing Agreement.

“Continuing Disclosure Agreement” means the agreement, if any, between the Borrower and the Trust or, as applicable, the trustee under any Borrower’s bond resolution or trust agreement, as it may be amended from time to time, under which the Borrower agrees for the benefit of the owners of the Bonds to provide annual reports and notices of certain events in order to assist the underwriters of the Bonds to comply with the provisions of Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended;

“Department” means the Department of Environmental Protection of the Commonwealth, or any body, agency, officer, or other instrumentality of the Commonwealth that shall hereafter succeed to the powers, duties, and functions of the Department as they relate to the purposes of the Trust under the Enabling Act;

“DEP Regulations” means the regulations of the Department applicable to the Program appearing in 310 CMR 44.00 or 310 CMR 45.00, as applicable, in each case as such regulations may be amended from time to time;

“Discount Rate” means a rate of interest equal to the “Bond Buyer 20 Bond Index” rate on the date of the Department’s determination that certain costs of the Project are ineligible for financial assistance, pursuant to section 4(c) hereof;

“Drinking Water Revolving Fund” means the fund established and set up on the books of the Commonwealth in accordance with Section 2QQ of Chapter 29 of the General Laws of the Commonwealth;

“Eligible Borrower” has the meaning given such term in the Enabling Act;

“Enabling Act” means Chapter 29C of the General Laws, as amended from time to time, under which the Trust is organized and established for the purpose of assisting Eligible Borrowers in the Commonwealth to initiate, acquire, construct, improve, maintain and operate Water Pollution Abatement Projects and Drinking Water Projects;

“EPA” means the United States Environmental Protection Agency;

“Event of Default” means any of the events or circumstances specified in Section 9(a) hereof;



“Federal Act” means, as applicable, (i) Title VI of the Federal Water Pollution Control Act (Pub. L. 92-500, commonly known as the Clean Water Act), as amended by the Federal Clean Water Act of 1987 (Pub. L. 100-4), as the same may be further amended from time to time, and all regulations of the EPA applicable thereto as amended from time to time; or (ii) Title XIV of the Federal Public Health Service Act (commonly known as the Safe Drinking Water Act), as amended by the Safe Drinking Water Act Amendments of 1996 (Pub. L. 104-182), as the same may be further amended from time to time, and all regulations of the EPA applicable thereto as amended from time to time;

“Federal Capitalization Grant” means amounts provided to the Trust under one or more agreements between the Trust and the United States of America acting by and through the EPA to be applied in accordance with the applicable Federal Act to fund Loans made by the Trust:

“Financing Documents” means, collectively, the Financing Agreement, each related Project Regulatory Agreement, the Local Governmental Obligations or other evidence of indebtedness, the Interim Loan Note, if any, and every other document executed by the Borrower and delivered to the Trust in connection with the Loan or any Interim Loan and any Additional Security therefor.

“Fiscal Year” means the period beginning on July 1 in any year and ending on June 30 in the next succeeding year;

“Initial Obligation Amount” means the amount set forth as the Initial Obligation Amount in Schedule C to the Financing Agreement;

“Interest Rate” means the rate so designated and set forth in Schedule A of the Financing Agreement;

“Interim Loan” shall have the meaning given such term in Section 10 hereof;

“Interim Loan Interest Rate” means the rate, if any, so designated and set forth in Schedule A of the Financing Agreement;

“Interim Loan Note” shall have the meaning given such term in Section 10 hereof;

“Iron and Steel Products” means the following products made primarily of iron or Steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural Steel, reinforced precast concrete, and construction materials;

“Loan” has the meaning given such term in the Financing Agreement;

“Local Bond Counsel” means an attorney or firm of attorneys (who may be counsel to any party under the Financing Agreement) of nationally recognized standing in connection with the issuance of obligations similar to the Local Governmental Obligations, selected by the Borrower and satisfactory to the Trust;

“Local Governmental Obligations” has the meaning given such term in the Financing Agreement;

“Master Trust Agreement” means the Master Trustee Agreement dated as of January 1, 2015 between the Trust and U.S. Bank National Association, as Master Trustee (the “Master Trustee”), as amended;

“Origination Fee” means the fee for the expenses of the Trust relating to the origination of the Loan made by the Trust, payable in the amount and on the Payment Date set forth in Schedule C of the Financing Agreement (as such schedule may be amended from time to time in accordance herewith);

“Payment Dates” means January 15 and July 15 of each year (commencing on the first such date indicated on Schedule C of the Financing Agreement) or, if any such day is not a Business Day, the next succeeding Business Day;

“Payments” means the payments to be made by the Borrower in repayment of the Loan and the interest, if any, payable thereon, which payments shall be made on the Payment Dates and in the amounts set forth in Schedule C of the Financing Agreement (as such schedule may be amended from time to time in accordance herewith);

“Participating Members” means all cities, towns, districts, commissions or other political subdivisions or instrumentalities of the Commonwealth, if any, which are members of the Borrower or which, by law, contract or otherwise, are service recipients of a System;

“Prepayments” means all payments made by or for the account of the Borrower which reduce or eliminate the principal balance due on the Loan by reason of the prepayment of all or any part of the principal prior to the due date thereof;

“Principal Obligation” means, at any time of calculation, the aggregate unpaid principal amount of the Loan, which shall equal the Initial Obligation Amount less all Payments and all Prepayments on account of the principal amount thereof then or theretofore made or provided for by or for the account of the Borrower and received by or for the account of the Trust;

“Program” means the financial assistance program of the Trust established pursuant to the Enabling Act as more fully described in the Master Trust Agreement;

“Project” means each of the Water Pollution Abatement (including, without limitation, any Title 5 Project) or Drinking Water Projects of the Borrower identified in Schedule A of the Financing Agreement and more fully described in the applicable Project Approval Certificate, as the same may be amended from time to time as provided in the related Project Regulatory Agreement;

“Project Account” means the portion allocable to the Project of the Project Fund established pursuant to the Master Trust Agreement;

“Project Approval Certificate” means a certificate issued by the Department in accordance with the Enabling Act and the DEP Regulations approving a Project and the costs thereof to be

financed or refinanced by the Loan, as more fully described in Schedule A of the Financing Agreement;

“Project Completion Certificate” means the Project Completion Certificate delivered by the Borrower pursuant to the applicable Project Regulatory Agreement;

“Project Cost” or “Costs” means any cost of a Project approved by the Department pursuant to the Enabling Act, the applicable Federal Act and/or the DEP Regulations for payment or reimbursement from proceeds of the Loan or an Interim Loan, as applicable, as more fully described in the applicable Project Regulatory Agreement;

“Project Regulatory Agreement” means an agreement between the Department and an Eligible Borrower, executed and delivered to the Trust by such Borrower concurrently with the execution and delivery of the Financing Agreement associated with a Loan made to finance a Project approved by the Department; that contains provisions relating to the Department’s regulation and supervision of the Project in accordance with 301 CMR 45.00;

“Steel” means an alloy that includes at least fifty-percent (50%) iron, between two-hundredths percent (0.02%) and two percent (2%) carbon, and may include other elements;

“Supplemental Master Trust Agreement” means any of the supplements to the Master Trust Agreement providing for the issue of Bonds by the Trust;

“System” shall mean the water pollution abatement facilities or drinking water facilities under the control of the Borrower, as identified, if applicable, in Schedule A of the Financing Agreement, and all improvements and additions thereto including, without limitation, the Project;

“Title 5 Project” means a Project for which the Borrower has developed, or been requested by its Participating Members to administer, a community septic management program, constituting a Water Pollution Abatement Project within the meaning of the Enabling Act, to assist eligible homeowners to upgrade failing septic systems and otherwise to comply with the requirements of 310 CMR 15.00 *et seq.* (“Title 5”) through underlying betterment agreements with such homeowners; and

“Water Pollution Abatement Revolving Fund” means the fund established and set up on the books of the Commonwealth in accordance with Section 2L of Chapter 29 of the General Laws of the Commonwealth.

## **Section 2. Representations.**

(a) The Borrower represents and warrants to the Trust as follows:

(i) The Borrower is a Local Governmental Unit or other Eligible Borrower, as defined in the Enabling Act, with full legal right and authority under the Enabling Act and the Applicable Authority to authorize, execute, and deliver the Financing Documents, to undertake each Project, to operate its System, if any, and to carry out and consummate all transactions contemplated by the foregoing;

(ii) The Borrower and, to the extent required by the Enabling Act or the Applicable Authority, each Participating Member thereof, if any, has duly and validly authorized the execution, delivery and adoption, as applicable, of the Financing Documents, and all approvals, consents, and other governmental or corporate proceedings necessary for the execution and delivery of any of the foregoing or required to make them the legally binding obligations of the Borrower that they purport to be, in accordance with their terms, have been obtained or made;

(iii) No action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, other than as disclosed to the Trust and the Department, is pending or, to the knowledge of the Authorized Officers of the Borrower executing the Financing Agreement, threatened (1) seeking to restrain or enjoin the execution, delivery and adoption, as applicable, of the Financing Documents, or the construction or operation of any Project or (2) contesting or affecting the validity of the Financing Documents, or the power of the Borrower and, to the extent provided by law, each Participating Member thereof, if any, to pledge and apply any revenues or to assess and collect, as applicable, betterments, taxes, rates and charges to pay such Payments and all other costs and expenses of any Project and the System, if any; and neither the corporate existence of the Borrower nor the title to office of any Authorized Officer of the Borrower executing the Financing Documents is being contested;

(iv) The authorization, execution, delivery and adoption, as applicable, of the Financing Documents, and performance of each thereof, will not constitute a breach of, or a default under, any law, ordinance, resolution, agreement, indenture or other instrument to which the Borrower is a party or by which it or any of its properties is bound; and

(v) The Financing Agreement, the Loan, the Interim Loan, if any, and any Additional Security are, and when executed and delivered the Local Governmental Obligations, or other evidence of indebtedness, if any, will be, (1) valid general obligations of the Borrower, for the payment of which its full faith and credit are and will be pledged, enforceable in accordance with their terms and the terms of the Enabling Act and the Applicable Authority, and payable as to principal, premium, if any, and interest (to the extent not paid from other sources) from (a) taxes which may be levied upon all taxable property within the territorial boundaries of the Borrower, subject only to the limit imposed by Chapter 59, Section 21C of the General Laws of the Commonwealth to the extent applicable to the Local Governmental Obligations, provided that taxes levied on certain taxable property located within a development district, if any, established by the Borrower pursuant to Chapter 40Q of the General Laws may be restricted and unavailable to pay debt service on the Local Governmental Obligations or (b) sums which may be annually apportioned and assessed by the Borrower on its Participating Members pursuant to the Applicable Authority, or (2) valid obligations of the Borrower, enforceable in accordance with their terms and the terms of the Enabling Act and the Applicable Authority, payable from any Additional Security and secured by a valid pledge of and lien on and perfected security interest in such Additional Security, all to the extent provided therein and in Schedule D to the Financing Agreement.

(b) The Trust represents and warrants to the Borrower as follows:

(i) The Trust has the full legal right and authority under the Enabling Act to authorize, execute and deliver the Financing Agreement;

(ii) The Trust has duly and validly authorized the execution of the Financing Agreement; and all approvals, consents, and governmental proceedings necessary to make the execution and delivery of the Financing Agreement the legally binding obligation of the Trust have been obtained or completed;

(iii) No action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body is pending or, to the knowledge of the Authorized Officers of the Trust executing the Financing Agreement, threatened seeking to restrain or enjoin the execution and delivery of the Financing Agreement, or contesting or affecting the validity thereof or hereof; and neither the existence of the Trust nor the title to office of any Trustee of the Trust or any Authorized Officer of the Trust executing the Financing Agreement is being contested;

(iv) The authorization, execution and delivery of the Financing Agreement, and performance thereof, will not constitute a breach of, or a default under, any law, resolution, agreement, indenture or other instrument to which the Trust is a party or by which it is bound; and

(v) The Financing Agreement is a valid obligation of the Trust, enforceable in accordance with its terms and the terms of the Enabling Act.

### **Section 3. The Loan.**

(a) On the terms and conditions provided herein, in the Financing Agreement, and in the Project Regulatory Agreement, the Trust hereby agrees to make and disburse the Loan to the Borrower and the Borrower agrees to accept the Loan in an aggregate amount equal to the Initial Obligation Amount; provided, however, that if the Project Regulatory Agreement is revoked or otherwise terminated by the Department for any reason prior to the disbursement of proceeds of the Loan to the Borrower, then the obligation of the Trust to make and disburse the Loan to the Borrower, including without limitation the obligation of the Trust to make and disburse any Interim Loan, shall be null and void and the Financing Agreement shall terminate. For purposes of compliance with provisions of the applicable Federal Act restricting the use of moneys within the Water Pollution Abatement Revolving Fund and the Drinking Water Revolving Fund, any Local Governmental Obligations purchased to evidence the Borrower's repayment obligations under a Loan shall be deemed to be held for the credit of the Water Pollution Abatement Revolving Fund or Drinking Water Revolving Fund, as applicable.

(b) In addition to the conditions provided in Section 6 hereof, the Borrower acknowledges that the obligation of the Trust to make the Loan and to disburse the proceeds thereof to the Borrower in whole or in part as provided in Section 7 hereof is conditional upon the receipt by the Trust on or before such date of moneys available to the Trust for such purpose in amounts sufficient to fund the amount of the Loan to be disbursed on such date. Subject to compliance with the applicable Federal Act, the Enabling Act and the Master Trust Agreement, the Trust shall draw

upon and apply such lawfully available funds as promptly as practicable and as lawfully permitted and shall deposit or cause the Master Trustee to deposit the amounts so received or so much thereof as the Trust shall direct in the Project Accounts at the times and in the amounts directed by the Trust until the aggregate amount so deposited equals the Initial Obligation Amount (or such lesser amount). Amounts deposited in the Project Accounts shall be applied as provided herein and in the Master Trust Agreement.

(c) The Borrower agrees to issue and deliver the Local Governmental Obligations, or other evidence of indebtedness, to the Trust on the Closing Date in aggregate principal amount equal to the Initial Obligation Amount. Subject to Section 11 hereof, the Local Governmental Obligations, or other evidence of indebtedness, shall be issued in such form as shall be approved by the Trust and shall be payable on the Payment Dates and in the aggregate amounts as to principal and interest corresponding to the Payments required under the Financing Agreement. Except as otherwise provided in Section 4 hereof, the Principal Obligation, and the corresponding principal amount of the Local Governmental Obligations, or other evidence of indebtedness, shall mature and bear interest in the amounts for each Payment specified in Schedule C of the Financing Agreement.

(d) Each Payment made by or for the account of the Borrower under the Financing Agreement shall satisfy the corresponding obligation of the Borrower to pay the principal and interest, if any, then due on the Local Governmental Obligations, or other evidence of indebtedness, as the same becomes due on the applicable payment dates therefor, and each payment of principal and interest made by the Borrower on the Local Governmental Obligations, or other evidence of indebtedness, shall satisfy the obligation of the Borrower to pay the corresponding Payment on the Loan then due under the Financing Agreement.

#### **Section 4. Payments.**

(a) Except as otherwise provided in this Section 4, Payments on account of the Principal Obligation and interest thereon, if any, shall be payable by the Borrower, on the Payment Dates and in the amounts set forth in Schedule C of the Financing Agreement. In addition to such Payments, the Borrower shall pay to the Trust the Administrative Fee and the Origination Fee on the Payment Dates and in the amounts set forth in Schedule C of the Financing Agreement, which fees shall be subject to annual appropriation by the Borrower. The Trust and the Borrower acknowledge and agree that the schedule of Payments set forth in Schedule C of the Financing Agreement results in the Loan being the financial equivalent of a loan to the Borrower at an interest rate not in excess of two percent (2%) for a term of not in excess of 20 years.

(b) The Trust shall provide the Borrower with written notice of each Payment, Administrative Fee and the Origination Fee due under the Financing Agreement not less than ten (10) Business Days in advance of the applicable Payment Date (provided failure by the Trust to provide such notice or any defect therein shall not diminish the obligation of the Borrower to pay such Payment, Administrative Fee and the Origination Fee in the amounts and at the time provided herein). On or prior to each Payment Date, the Borrower shall pay to the Master Trustee for the account of the Trust, by wire transfer to such account or otherwise in such manner as the Trust may from time to time designate to the Borrower, (i) the Payment then due as set forth in Schedule C of the Financing Agreement, as such schedule may be amended from time to time as provided

in this Section 4, and (ii) the Administrative Fee due on such Payment Date set forth in said Schedule C and (iii) on the first Payment Date, the Origination Fee then due on the Loan set forth in said Schedule C. Except as otherwise provided in Section 9(e) hereof, all payments made by the Borrower under the Financing Agreement shall be applied, *first*, to the interest, if any, on the Loan then due and payable, *second*, to the principal amount of the Loan then due and payable, *third*, to the Administrative Fee then due and payable and, *fourth*, to the Origination Fee then due and payable. Any portion of a Payment or Administrative Fee or Origination Fee not paid in full when due shall bear interest under the Financing Agreement until paid at twelve percent (12%) per annum.

(c) The Borrower acknowledges that the Department, in the exercise of its audit procedures under each Project Regulatory Agreement, may reclassify certain Project Costs paid by the Trust from the Loan or Interim Loan, as ineligible for financial assistance under Section 6 of the Enabling Act. In such event, unless the Borrower shall elect to repay such amount as hereinafter provided, on and after the date of such determination by the Department, a portion of the Principal Obligation (determined on a Pro-Rata Basis as hereinafter defined), equal to the amount of such ineligible Project Costs, shall bear interest at the Discount Rate at the time of such determination. As used in this subsection (c), the term "Pro-Rata Basis" means the portion of each payment allocable to the principal amount of the Loan or Interim Loan, as applicable, payable under the Financing Agreement subsequent to the date of a determination by the Department as described in this subsection (c) as is equal, as nearly as practicable, to the ratio by which the amount of ineligible Project Costs paid by the Trust from the Loan or Interim Loan bears to the total Principal Obligation or total principal amount of the Interim Loan, as applicable, then outstanding. Upon any such occurrence the Trust shall recalculate the payments thereafter payable with respect to the Loan or Interim Loan, as applicable, shall certify such amounts to the Borrower and shall amend Schedule C of the Financing Agreement to reflect the increased payments thereafter payable under the Financing Agreement, and shall surrender the Local Governmental Obligations, Interim Loan Notes or other evidence of indebtedness, as applicable, to the Borrower in exchange for an amended or substitute instrument, reflecting such change in payments. Notwithstanding the foregoing, within thirty (30) Business Days of receipt by the Borrower from the Department or the Trust of written notice that an amount of Project Costs paid by the Trust from the Loan or Interim Loan has been determined by the Department pursuant to the applicable Project Regulatory Agreement to be ineligible for financial assistance under Section 6 of the Enabling Act, the Borrower may (and shall upon demand of the Department with respect to any such amount determined by the Department to be ineligible for funding under the applicable Federal Act) repay such amount to the Trust for redeposit in the applicable account, and the amount so repaid shall be deemed to not have been disbursed by the Trust from the Loan or Interim Loan Account for ineligible Project Costs for purposes of this subsection (c).

(d) The Borrower further acknowledges that the Department, in the exercise of its rights under the Project Regulatory Agreement, may terminate the Project Regulatory Agreement after disbursement of some or all of the amount of the Loan or Interim Loan to the Borrower. In such event, the obligation of the Trust to disburse additional amounts of the Loan or Interim Loan to the Borrower shall terminate and the Borrower shall repay to the Trust the amount theretofore disbursed within thirty (30) days of receipt by the Borrower from the Trust of written notice that the Project Regulatory Agreement has been terminated by the Department and, until so repaid,

such amount shall bear interest at the Interest Rate (if disbursed from the Loan) or Interim Loan Interest Rate, if any (if disbursed from the Interim Loan).

(e) Notwithstanding any provision of the Financing Agreement to the contrary, the Borrower and the Trust acknowledge and agree that Schedule C of the Financing Agreement incorporates a schedule of Payments calculated based on the assumption that the Closing Date will be the date indicated in Schedule A of the Financing Agreement. If the Closing Date is different from the date indicated in said Schedule A, the Trust will amend Schedule C to the Financing Agreement (and deliver to the Borrower a copy thereof together with the notice of change in the Closing Date the Trust is required to provide to the Borrower pursuant to Section 6(a) hereof) to adjust the Payments to take into account the actual Closing Date and the accrual of interest on the Loan from such date.

(f) Notwithstanding anything in the Financing Agreement or in the Project Regulatory Agreement to the contrary, all amounts received by the Borrower in payment or prepayment of the obligations of homeowners under the underlying betterment agreements made in connection with a Title 5 Project financed by a Loan or Interim Loan shall be applied by the Borrower either (i) to assist eligible homeowners to upgrade failing septic systems and otherwise to comply with Title 5 through additional betterment agreements with homeowners, or (ii) to pay or provide for all or a portion of the Payments due on the Loan, or payments of principal or interest due on the related Interim Loan, as the case may be, under the Financing Agreement.

#### **Section 5. Prepayments.**

(a) The Principal Obligation shall not be subject to prepayment at the option of the Borrower prior to maturity without the prior written consent of the Trust.

(b) The Principal Obligation, and the corresponding principal amount of the Loan, shall be subject to prepayment in part to the extent of any balance remaining in a Project Account upon the receipt by the Trust of the applicable Project Completion Certificate as provided in Section 7(d) hereof at a prepayment price equal to (i) the Principal Obligation so prepaid plus interest, if any, accrued thereon to the prepayment date, plus (ii) an amount equal to all costs of the Trust incurred in connection with such prepayment (including without limitation trustee's fees and expenses, reasonable attorney's fees, and costs, if any, of any corresponding redemption of Bonds, if applicable).

(c) The Principal Obligation, and the corresponding principal amount of the Loan, shall be subject to prepayment at the request of the Trust in whole or in part upon not less than thirty (30) days' notice to the Borrower to the extent of any balance remaining in a Project Account upon a date designated by the Trust, which date shall be not earlier than twenty (20) months or later than twenty-four (24) months following the Closing Date, at a prepayment price equal to the Principal Obligation so prepaid plus interest, if any, accrued thereon to the prepayment date. In the event that the Project is not yet complete due to extenuating circumstances, the Borrower may submit to the Trust a written request for extension providing a compelling and detailed description of all of the relevant facts and circumstances. The Trust may, in its sole and absolute discretion, provide an extension to a date not later than thirty-six (36) Months following the Closing Date.



(d) Unless the Trust shall otherwise agree, any balance in a Project Account, and any Prepayment under the Financing Agreement of less than all of the Principal Obligation, shall be applied pro rata to each scheduled Payment allocable to the principal of the Loan. Upon any prepayment of the Loan in part, the Trust shall amend the schedule of Payments set forth in Schedule C to the Financing Agreement to reflect such prepayment.

**Section 6. Closing.**

(a) In addition to the conditions provided in Section 3 of these Terms and Conditions, the obligation of the Trust to make and fund the Loan is expressly conditional upon the receipt by the Trust on or before the Closing Date (which date shall be the date set forth in Schedule A of the Financing Agreement or such earlier or later date as may be designated by the Trust by written notice delivered to the Borrower not less than twenty (20) days prior to such earlier date or, if the Closing Date is to be a later date, not less than twenty (20) days prior to the date set forth in Schedule A of the Financing Agreement) of the following, each in form and substance satisfactory to the Trust:

(i) Copies, certified by an Authorized Officer of the Borrower, of all governmental or corporate proceedings of the Borrower authorizing the Loan and the issuance of the Local Governmental Obligations or other evidence of indebtedness and the execution and delivery or adoption, as applicable, of the Financing Documents;

(ii) A certificate or certificates of Authorized Officers of the Borrower confirming as of the Closing Date the representations and warranties of the Borrower in Section 2 hereof;

(iii) A certificate of Authorized Officers of the Borrower as to the due authorization, execution, delivery and adoption, as applicable, of the Financing Documents related to the Loan, and to the effect that (x) none of the foregoing instruments have been amended or supplemented since their date (except such amendments or supplements which have been approved by the Trust or the Department, as applicable, or which under the terms of the applicable instrument may be executed and delivered or adopted by the Borrower without the consent of the Trust or the Department) or repealed and that each such instrument remains in full force and effect as of the Closing Date, and (y) as of the Closing Date, no Event of Default or Default, as applicable, and no event which with the passage of time or the giving of notice may become or may be declared to be an Event of Default or a Default, shall have happened and shall be continuing under such Financing Documents;

(iv) An opinion of Local Bond Counsel to the effect that the Financing Documents related to the Loan, and the execution, delivery and adoption thereof, as applicable, have been duly authorized by the Borrower in accordance with the Applicable Authority; such Financing Agreement and each Project Regulatory Agreement and any Additional Security have been duly and validly executed and delivered by the Borrower, as applicable, and each constitutes a valid and binding obligation of the Borrower enforceable in accordance with its terms; the Local Governmental Obligations, or other evidence of indebtedness, and any Additional Security have been duly and validly executed

by or on behalf of the Borrower and delivered to or upon the order of the Trust in accordance with the Financing Agreement and the Applicable Authority; and the Local Governmental Obligations, or other evidence of indebtedness, and any Additional Security constitute, as applicable, (1) valid and binding general obligations of the Borrower enforceable in accordance with their terms and payable as to principal, premium, if any, and interest (to the extent not paid from other sources) from (a) taxes which may be levied upon all taxable property within the territorial boundaries of the Borrower, subject only to the limit imposed by Chapter 59, Section 21C of the General Laws of the Commonwealth to the extent applicable to the Local Governmental Obligations, provided that taxes levied on certain taxable property located within a development district, if any, established by the Borrower pursuant to Chapter 40Q of the General Laws may be restricted and unavailable to pay debt service on the Local Governmental Obligations or (b) sums which may be annually apportioned and assessed by the Borrower on its Participating Members pursuant to the Applicable Authority, or (2) valid and binding obligations of the Borrower enforceable in accordance with their terms and the terms of any Additional Security and entitled to the benefits thereof and the Applicable Authority (in rendering the foregoing opinion, such counsel may take an exception on account of bankruptcy, insolvency and other laws affecting creditors' rights generally and to the exercise of judicial discretion in accordance with general equitable principles);

(v) The Local Governmental Obligations, or other evidence of indebtedness, in such denominations and registered to such registered owners, as the Trust shall designate pursuant to Section 11 hereof;

(vi) To the extent required under Section 8(f) hereof, a Continuing Disclosure Agreement, duly executed by the Borrower, in form and substance satisfactory to the Trust; and

(vii) Such further instruments, certificates and opinions as the Trust or its counsel may reasonably request to confirm, as of the Closing Date, the truth and accuracy of the statements made herein and in each Application by the Borrower and compliance, as of the Closing Date, by the Borrower with the provisions hereof and of each Project Regulatory Agreement, the Enabling Act, the Applicable Authority, and the applicable Federal Act.

(b) In addition to any other conditions expressly provided herein, the obligation of the Borrower to accept the Loan and issue the Local Governmental Obligations or other evidence of indebtedness, to the Trust on the Closing Date is expressly conditioned upon the delivery to the Borrower or to the Master Trustee, if applicable, on or before the Closing Date of the following, each to be in form and substance satisfactory to the Borrower and to be made available to the Borrower upon its request:

(i) Copies, certified by an Authorized Officer of the Trust, of all governmental proceedings of the Trust authorizing the Loan and the execution and delivery of the Financing Agreement;

(ii) A certificate or certificates of an Authorized Officer of the Trust confirming as of the Closing Date the representations and warranties of the Trust in Section 2 hereof; and

(iii) An opinion or opinions of counsel to the Trust (who may also be counsel to the Borrower) to the effect that the Trust is duly created and validly existing under the Enabling Act and has the right and power thereunder to execute the Financing Agreement and to make the Loan; the Financing Agreement and the execution and delivery thereof by the Trust have been duly and lawfully authorized by the Trust; and that the Financing Agreement has been duly and lawfully executed and delivered by the Trust, is in full force and effect and is valid and binding on the Trust and enforceable in accordance with its terms (subject to bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights generally and to the exercise of judicial discretion in accordance with general equitable principles).

#### **Section 7. Disbursement of Proceeds.**

(a) On the Closing Date the Trust shall credit to the payment of the principal of the Interim Loan, if any, such portion of the proceeds of the Loan as shall be necessary to pay such principal in full (subject to Section 10(e)). Any proceeds of the Loan remaining after such payment of principal of the Interim Loan, if any, shall be deposited in the Project Account and applied by the Trust to finance or refinance Costs of the Project as provided herein, in the related Project Regulatory Agreement and in the Master Trust Agreement. Only amounts on deposit in the Project Account representing moneys of the Trust deposited therein as provided in the Financing Agreement and the Master Trust Agreement shall be available to pay Costs of the Project. Amounts in the Project Account shall be invested by the Trust, and all earnings on investment or deposit of amounts in the Project Account shall be applied by the Trust as provided in the Master Trust Agreement. The Borrower shall have no interest in such earnings.

(b) So long as no Event of Default shall have happened and be continuing hereunder or under the Financing Agreement, but subject to Section 3(b) and Section 10 of these Terms and Conditions, within a reasonable period of time from receipt by the Trust of one or more requisitions in form satisfactory to the Trust signed by an Authorized Officer of the Borrower and approved by the Department as provided in the applicable Project Regulatory Agreement, the Trust shall disburse or direct the Master Trustee to disburse to or for the account of the Borrower as directed in such requisitions the amount or amounts set forth therein and approved by the Department solely to finance or, to the extent provided in the applicable Project Regulatory Agreement, refinance Costs of the applicable Project.

(c) Notwithstanding anything herein or in any Project Regulatory Agreement to the contrary, if all or any portion of the Project Costs financed under the Financing Agreement shall have been paid by the Borrower from the proceeds of outstanding notes or other temporary indebtedness issued or incurred in anticipation of the Loan, any amount paid to the Borrower pursuant to this Section 7 in reimbursement for such Costs shall be held and applied by the Borrower (unless otherwise approved by the Trust) solely to pay or provide for the principal of such notes or other indebtedness when due in accordance with the Enabling Act and the Applicable Authority. The Borrower acknowledges that the Trust shall have no responsibility for the holding,

investment or application of any amounts paid to or for the account of the Borrower for such purpose. Notwithstanding anything herein to the contrary, if on the Closing Date any Interim Loan shall be outstanding and unpaid under Section 10 of the Financing Agreement, the Trust shall apply to the payment of the principal of the Interim Loan such portion of the proceeds of the Loan as shall be necessary to pay such principal in full (subject to Section 10(e)).

(d) Upon receipt by the Trust of the Project Completion Certificate for a Project described in the related Project Regulatory Agreement, any balance remaining on deposit in the applicable Project Account not then payable to or for the account of the Borrower in accordance with the Project Completion Certificate shall be applied at the direction of the Borrower with the prior approval of the Trust to (i) additional Costs of the applicable Project upon amendment of the definition thereof approved by the Department or (ii) the prepayment of the Principal Obligation as provided in Section 5(b) hereof.

(e) Notwithstanding anything herein or in any Project Regulatory Agreement to the contrary, the Trust shall not be required to deposit in each Project Account established in accordance with the Financing Agreement an amount in the aggregate in excess of the eligible Costs of the applicable Project to be financed or refinanced by the Loan as set forth in the applicable Project Approval Certificate and the related Project Regulatory Agreement. In addition, the Trust shall not be required to make any deposits to a Project Account or to direct the Master Trustee to disburse therefrom any amount to or for the account of the Borrower while an Event of Default shall have occurred and be continuing hereunder or under the Financing Agreement or, if directed by the Department, while a Default (as defined in the related Project Regulatory Agreement) shall have occurred and be continuing under the related Project Regulatory Agreement. If an Event of Default shall have occurred and be continuing hereunder or under the Financing Agreement, the Trust may apply amounts on deposit in any Project Account to remedy such default as provided in Section 9(b) hereof and the amount available under the Financing Agreement for Project Costs will be correspondingly reduced.

**Section 8. Particular Covenants of the Borrower.** The Borrower covenants and agrees as follows:

(a) The Borrower is duly authorized under the Enabling Act, the Applicable Authority and all other applicable law to authorize the execution, delivery and adoption, as applicable, of the Financing Documents, to accept the Loan, to undertake each Project and to perform and consummate all transactions contemplated by the foregoing. For so long as the Loan or the Local Governmental Obligations shall be outstanding, the Borrower shall comply with the provisions of the Financing Documents and all provisions of law applicable to the Loan, any Interim Loan, each Project, any Additional Security, and the Local Governmental Obligations, or other evidence of indebtedness, including without limitation the Enabling Act, the Applicable Authority, the applicable Federal Act and the DEP Regulations, and shall take all actions necessary to fulfill its obligations under the Financing Agreement and under any of the foregoing.

(b) At the date hereof, at the date of delivery of any Interim Loan and at the Closing Date, no mortgage, pledge, lien, security interest or other encumbrance exists or will exist in or upon, or is or will be otherwise outstanding with respect to (1) any Project or the System, if any, or any part thereof or (2) all or any part of, as applicable, the betterments, rates, charges or other

revenues derived by the Borrower from its ownership and operation thereof or (3) any Additional Security. For so long as the Loan, the Local Governmental Obligations or any Interim Loan shall be outstanding, without the prior written consent of the Trust, the Borrower shall not mortgage, pledge, grant any lien on or security interest in or otherwise encumber or permit the encumbrance of, any Project or the System, if any, or, as applicable, the betterments, rates, charges or other revenues derived by the Borrower from its ownership and operation thereof or any part thereof or any Additional Security unless simultaneously therewith the Borrower shall grant to the Trust to further secure its obligations under the Financing Agreement and the Local Governmental Obligations, or other evidence of indebtedness, a mortgage, pledge, lien on or security interest in such property superior to such new encumbrance.

(c) The Borrower shall apply the proceeds of the Loan and any Interim Loan solely to the payment or reimbursement of Project Costs, or to the refinancing of the same as provided in each Project Regulatory Agreement, or as otherwise provided herein and in each Project Regulatory Agreement.

(d) The Borrower acknowledges that by accepting the Loan or any Interim Loan it may be a sub-recipient of federal financial assistance under the federal Single Audit Act of 1984, as amended by the Single Audit Act Amendments of 1996 (the "SAA"). The Borrower further acknowledges that a Project financed or refinanced under the Financing Agreement may be designated by the Trust as a project to which the SAA shall apply. In such event, the Borrower shall conduct a single audit of its use of federal financial assistance for the Project in accordance with the reporting requirements of Office of Management and Budget Circular A-133. Whether or not a Project is so designated, for so long as the Loan, any Interim Loan or the Local Governmental Obligations shall be outstanding the Borrower shall maintain all records and accounts pertaining to the Loan, any Interim Loan, the Local Governmental Obligations, each Project and the System, if any, for such period and as otherwise required by the applicable Federal Act, the DEP Regulations and each Project Regulatory Agreement and shall furnish to the Trust and the Department all reports thereon at the times and in the form required by the applicable Federal Act, the DEP Regulations and each Project Regulatory Agreement or as otherwise reasonably requested by the Trust or the Department. The Borrower shall permit the Trust or any party designated by it upon reasonable prior notice to the Borrower to examine, visit and inspect each Project and the System, if any, and to inspect and make copies of any accounts, books and records of the Borrower pertaining to the Project, the System, if any, the Loan, any Interim Loan or the Local Governmental Obligations.

(e) If any Event of Default described in clause (i) of subsection 9(a) hereof shall occur and be continuing, the Borrower shall promptly upon request of the Trust provide such information to the Trust as shall be necessary for the Trust to exercise the rights provided in Section 11 of the Enabling Act with respect to the Local Aid Distributions of the Borrower and, as applicable, any Participating Member thereof and any parent governmental unit of the Borrower and any such Participating Member. In addition, the Borrower shall provide written notice to the Trust if at any time while the Loan or any Interim Loan is outstanding any Participating Member of the Borrower shall fail to pay to the Borrower all or any part of any assessment levied by the Borrower on account of any payment and such failure shall not be cured within ten (10) Business Days of the due date of such assessment, such notice to be provided to the Trust no later than the close of business on the Business Day next preceding the expiration of such grace period.

(f) The Trust shall provide written notice to the Borrower if at any time the Borrower shall constitute an obligated person with respect to the Bonds within the meaning of Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended. Thereafter, for so long as the Borrower shall constitute an obligated person, the Borrower will comply with and carry out all of the provisions of the Continuing Disclosure Agreement applicable to it and the Local Governmental Obligations. The Trust shall have no liability to the owners of the Bonds or any other person with respect to such disclosure matters. Notwithstanding any other provision of the Financing Agreement, failure of the Borrower to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default under the Financing Agreement; provided, however, that the Trust may (and at the request of the owners of at least 25% in aggregate principal amount of the Bonds outstanding shall), or any owner (including a beneficial owner) of the Bonds may, take such actions as may be necessary or appropriate, including seeking mandate or specific performance by court order, to cause the Borrower to comply with its obligations under this clause (f).

(g) (i) With respect to a Project for construction that is not a Title 5 Project, the Borrower agrees to comply with the prevailing wage rate requirements of the so-called “Davis-Bacon Act” made applicable by Section 513 of the Clean Water Act (33 U.S.C. 1372) or Section 1450(e) of the Safe Drinking Water Act (42 U.S.C. 300j-9(e)), as applicable. The Borrower shall be responsible for monitoring compliance of contractors and subcontractors concerning federal wage rates under the Davis-Bacon Act requirements. In this regard, the Borrower agrees to incorporate wage rate determinations into contract solicitations, include required contract terms into all construction contracts and subcontracts in excess of \$2,000, review subcontracts for compliance, review certified payrolls, conduct employee interviews and complete any other actions required to determine such compliance, all using forms approved by the Department.

(ii) With respect to a Clean Water Project for a treatment works (other than a Title 5 Project) or a Drinking Water Project for public water systems, the Borrower agrees to comply with the requirements of Section 436 of Pub. L. 113-76 (the “American Iron and Steel Requirement”), except as described below. The Borrower acknowledges and agrees that the American Iron and Steel Requirement includes, among others, the requirement that all of the Iron and Steel Products used in the Project are to be produced in the United States unless (A) the Borrower has requested and obtained a waiver of the American Iron and Steel Requirement from the EPA with respect to the Project or (B) the Department has advised the Borrower in writing that the American Iron and Steel Requirement is not applicable to the Project.

(iii) With respect to a Clean Water Project for repair, replacement or expansion of a treatment works, the Borrower agrees (A) to develop and implement a fiscal sustainability plan applicable to the Project that includes: an inventory of critical assets that are a part of the treatment works; an evaluation of the condition and performance of inventoried assets or asset groupings; a certification that the Borrower has evaluated and will be implementing water and energy conservation efforts as part of the plan; and a plan for maintaining, repairing and, as necessary, replacing the treatment works and a plan for funding such activities; and (B) to certify, as a condition of the final disbursement of the proceeds of the Loan or any Interim Loan, that the Borrower has developed and implemented a plan that meets the requirements under clause (A).

(iv) The Borrower certifies that it is not ‘excluded’ or ‘disqualified’ (as such terms are defined in 2 CFR Part 180). The Borrower covenants to comply with 2 CFR Part 180, Subpart C and to require its contractors to comply with said Subpart C, including to pass down the requirement of such compliance to its subcontractors and to each lower tier transaction.

(v) The Borrower agrees (A) to make the Six Good Faith Efforts whenever procuring construction, equipment, services and supplies with proceeds of the Loan and to retain records of such compliance. For this purpose, the “Six Good Faith Efforts” means: (1) ensure Disadvantaged Business Enterprises (as defined in 40 CFR 33.103, “DBEs”) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities (e.g., placing DBEs on solicitation lists and soliciting them whenever they are potential sources); (2) make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process (including, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date); (3) consider in the contracting process whether firms competing for large contracts could subcontract with DBEs (e.g., dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process); (4) encourage contracting with a consortium of DBEs when a contract is too large for one DBE firm to handle individually; (5) use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the United States Department of Commerce; and (6) if the prime contractor awards subcontracts, require the prime contractor to take the steps (1) through (5) of this definition.

(vi) If the Borrower (A) is subject to, or chooses to follow, competitive bidding requirements and (B) the Borrower has received one or more Loans from the Trust in with a combined total of more than \$250,000 in any one fiscal year, then the Borrower agrees to create and maintain a bidders list as described in 40 CFR 33.501.

(vii) The Borrower acknowledges that the EPA must ensure that any connections between the Borrower’s network or information system and EPA networks used by the Borrower to transfer data under the Financing Agreement, are secure. For this purpose, a “connection” is defined as a dedicated persistent interface between the Borrower’s information technology (“IT”) system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition. If the Borrower’s connections, as so defined, do not go through the Environmental Information Exchange Network or EPA’s Central Data Exchange, the Borrower agrees to contact the EPA project officer and work with the designated EPA regional/headquarters information security officer to ensure that the connections meet EPA security requirements, including entering into interconnection service agreements, as appropriate. This covenant does not apply to manual entry of data by the Borrower into systems operated and used by EPA’s regulatory programs for the submission of reporting and/or compliance data.

(h) The Borrower shall comply with (A) the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102; Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 95-500; and all Executive Orders and regulations promulgated under the foregoing; and (B) all other applicable federal cross-cutting authorities (see Schedule I hereto for a non-exhaustive list of such authorities). In addition, the Borrower specifically acknowledges that the Project must undergo a state environmental review process that conforms generally to the National Environmental Policy Act of 1969, as amended (NEPA), as provided in the Project Regulatory Agreement.

(i) The Borrower will maintain accounts with respect to the Project according to generally accepted accounting principles as issued by the Governmental Accounting Standards Board (GASB), including the standards relating to the reporting of infrastructure assets pursuant to GASB Statement No. 34, or any successor thereto.

(j) The Borrower acknowledges that by accepting the Loan or any Interim Loan the Project shall be subject to the prohibition on certain telecommunications and video surveillance services or equipment set forth in Section 889 of Pub. L. 115-232 and 2 CFR 200.216 (the "Prohibition"). The Borrower agrees that proceeds of the Loan or any Interim Loan under this Financing Agreement shall not be used to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, system or service that uses "covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology as part of any system. For purposes of this Section 8(j), "covered telecommunications equipment or services" means any of the following: (A) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (B) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (C) telecommunications or video surveillance services provided by such entities or using such equipment; or (D) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of the People's Republic of China. The Borrower further agrees that it will include a condition in each construction contract for the Project that the contractor will: (i) comply with the Prohibition; and (ii) pass down the requirement to comply with the Prohibition in any subcontract or other lower tier contract with respect to such Project. Certain equipment, systems or services subject to the Prohibition are recorded in the United States' System for Award Management, however, the Borrower acknowledges that there is no exhaustive list of components and services that fall under the Prohibition.

(k) The Borrower acknowledges that by accepting the Loan or any Interim Loan the Project shall be subject to the Build America, Buy America Requirements (defined below). The Borrower shall: (1) comply with all federal requirements applicable to the assistance received (including those imposed by the Infrastructure Investment and Jobs Act ("IIJA"), Public Law No.



117-58) which the Borrower understands includes, but is not limited to, the following requirements: that all of the iron and steel, manufactured products, and construction materials used in the Project are to be produced in the United States (“Build America, Buy America Requirements”) unless (i) the Borrower has requested and obtained a waiver from the cognizant Federal agency pertaining to the Project (i.e. the Federal agency contributing the greatest amount of Federal funds to the Project) or the Project is otherwise covered by a general applicability waiver or (ii) the EPA and all of the contributing Federal agencies (if any) have otherwise advised the Borrower in writing that the Build America, Buy America Requirements are not applicable to the Project; and (2) comply with all record keeping and reporting requirements under all applicable legal authorities, including any reports required by the funding authority (such as EPA and/or the Commonwealth), such as performance indicators of program deliverables, information on costs and project progress. The Borrower understands that (x) each contract and subcontract related to the Project is subject to audit by appropriate federal and Commonwealth entities and (y) failure to comply with the applicable legal requirements and this Agreement may result in a default hereunder that results in a repayment of the assistance agreement in advance of the maturity of the Loan or Local Governmental Obligations or any Interim Loan, termination and/or repayment of other types of financial assistance, and/or other remedial actions. To the extent the Project is subject to the Build America, Buy America Requirements, the Borrower acknowledges and agrees that each construction contract related to the Project shall contain a clause requiring compliance with such requirements, substantially as follows:

*“The [Contractor] acknowledges to and for the benefit of [Borrower] (“Owner”) and the Massachusetts Clean Water Trust (the “Funding Authority”) that it understands the goods and services under this [Agreement] are being funded with federal monies and have statutory requirements commonly known as “Build America, Buy America” that requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States (“Build America, Buy America Requirements”) including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this [Agreement]. The Contractor hereby represents and warrants to and for the benefit of the Owner and Funding Authority (a) the Contractor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by the Owner or the Funding Authority. Notwithstanding any other provision of this [Agreement], any failure to comply with this paragraph by the Contractor shall permit the Owner or Funding Authority to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Owner or Funding Authority resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the Funding Authority or any damages owed to the Funding Authority by the Owner). If the Contractor has no direct contractual privity with*

*the Funding Authority, as a lender or awardee to the Owner for the funding of its project, the Owner and the Contractor agree that the Funding Authority is a third-party beneficiary and neither this paragraph (nor any other provision of this [Agreement] necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the Funding Authority.”*

(l) For construction Projects, the Borrower agrees to comply with signage requirements consistent with EPA guidance as follows:

(i) *Investing in America Emblem.* The Borrower will ensure that a sign is placed at construction sites supported in whole or in part by Loan displaying the official *Investing in America* emblem and must identify the Project as a “*project funded by President Biden’s Bipartisan Infrastructure Law*” or “*project funded by President Biden’s Inflation Reduction Act,*” as applicable. Construction is defined at 40 CFR 33.103 as “erection, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other improvements to real property, and activities in response to a release or a threat of a release of a hazardous substance into the environment, or activities to prevent the introduction of a hazardous substance into a water supply.” The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period. The Borrower will ensure compliance with the guidelines and design specifications provided by EPA for using the official *Investing in America* emblem available at: <https://www.epa.gov/invest/investing-america-signage>.

(ii) *Procuring Signs.* Consistent with Section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, the Borrower is encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, the Borrower is encouraged to translate the language on signs (excluding the official *Investing in America* emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

(iii) *Public or Media Events.* The Borrower is encouraged to notify the EPA of public or media events publicizing the accomplishment of significant events related to construction projects as a result of this agreement and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days’ notice.

(m) The Borrower represents that it has complied, and will continue to comply, with the Federal Flood Risk Management Standard defined by Executive Order No. 11988, as amended by Executive Order No. 13960, and made applicable to the Project by Executive Order 14030 (*i.e.* it has determined whether the Project is located in or will affect a floodplain; if so, it has prepared a floodplain assessment and sought alternate locations; if there is no practical alternative location, it has documented the mitigating measures or design modifications taken to reduce the threat to

the floodplain from Project and has informed the Project-area community as to the need for the Project to be located where it is).

(n) The Borrower acknowledges and agrees that the Commonwealth, directly and through its instrumentality, the Trust, reserves its rights to assert claims and causes of action against, and to recover funds from, third parties (including without limitation product manufacturers) that caused or contributed to or are otherwise liable for per- and poly-fluoroalkyl substances (PFAS) contamination impacting the drinking water, groundwater, surface waters or environment in the Commonwealth in any manner. Nothing in these Terms and Conditions or in the Financing Agreement is intended to impede the Borrower's independent rights to pursue any such claims or causes of action.

(o) For so long as the Loan or any Interim Loan or Local Governmental Obligations shall be outstanding, the Borrower shall duly observe and comply with each of the additional covenants and conditions set forth in Schedule D of the Financing Agreement.

### **Section 9. Defaults and Remedies.**

(a) The occurrence of any of the following events shall constitute, and is herein defined to be, an Event of Default under the Financing Agreement and the Local Governmental Obligations, or other evidence of indebtedness:

(i) if the Borrower shall fail to pay when due all or any part of any payment of principal of or interest on the Loan, any Interim Loan or the Local Governmental Obligations, or other evidence of indebtedness;

(ii) if the Borrower shall fail to pay when due any installment of the Administrative Fee payable under the Financing Agreement or the Origination Fee or any portion thereof and such failure shall continue for a period of thirty (30) days after written notice thereof shall be given to the Borrower by the Trust;

(iii) if the Borrower shall fail to perform and observe any covenant, agreement or condition on its part provided in the Financing Agreement or in the Local Governmental Obligations, or other evidence of indebtedness, or in any Additional Security, which failure is not addressed in another clause of this Section 9(a), and such failure shall continue for a period of thirty (30) days after written notice thereof shall be given to the Borrower by the Trust; provided if such failure cannot be remedied within such thirty (30) day period, it shall not constitute an Event of Default under the Financing Agreement if corrective action satisfactory to the Trust is instituted by the Borrower within such period and diligently pursued until the failure is remedied;

(iv) if any representation or warranty made by or on behalf of the Borrower in the Financing Agreement or in any Application or in any Additional Security shall prove to have been incorrect or to be misleading in any material respect as and when made;

(v) if (x) an order, judgment or decree is entered by a court of competent jurisdiction (a) appointing a receiver, trustee, or liquidator for the Borrower or the whole or any substantial part of any Project or the System, if any, (b) granting relief in involuntary

proceedings with respect to the Borrower under the federal bankruptcy act, or (c) assuming custody or control of the Borrower or of the whole or any substantial part of any Project or the System, if any, under the provision of any law for the relief of debtors, and the order, judgment or decree is not set aside or stayed within sixty (60) days from the date of entry of the order, judgment or decree or (y) the Borrower (a) admits in writing its inability to pay its debts generally as they become due, (b) commences voluntary proceedings in bankruptcy or seeking a composition of indebtedness, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a receiver of the whole or any substantial part of any Project or the System, if any, or (e) consents to the assumption by any court of competent jurisdiction under any law for the relief of debtors of custody or control of the Borrower or of the whole or any substantial part of any Project or the System, if any, or (z) legislation shall be enacted by the Commonwealth (a) appointing a receiver or trustee for the Borrower or the whole or any substantial part of any Project or the System, if any, or (b) assuming custody or control of the Borrower or of the whole or any substantial part of any Project or the System, if any, or (c) providing for a moratorium upon the payment of the principal of or interest on the Loan, any Interim Loan or the Local Governmental Obligations;

(vi) if the Borrower shall fail to pay when due (whether at maturity or upon redemption or otherwise) any principal of or interest on any indebtedness of the Borrower for borrowed money, other than the Loan, any Interim Loan, the Local Governmental Obligations and indebtedness described in Chapter 40D of the General Laws of the Commonwealth;

(vii) if an 'event of default' (however defined) shall occur in any Additional Security (giving effect to all applicable grace and cure periods, if any, set forth in such Additional Security); and

(viii) if a Default shall occur under a Project Regulatory Agreement (as defined therein) and the Department shall request that the Trust declare an Event of Default under the Financing Agreement.

(b) In addition to its other remedies provided herein, if an Event of Default specified in clause (i) or clause (v) of subsection 9(a) hereof shall occur and be continuing, the Trust may proceed to enforce its rights under the Financing Agreement and under the Local Governmental Obligations, or other evidence of indebtedness, by exercise of the following remedies in such order of priority as the Trust shall determine in its discretion:

(i) if any Payments shall be due and unpaid under the Financing Agreement, the Trust may exercise the rights provided in Section 11 of the Enabling Act with respect to the Local Aid Distributions of the Borrower and, as applicable, any Participating Member thereof and any parent governmental unit of the Borrower and any such Participating Member;

(ii) if any payments of principal of or interest on the Loan or any Interim Loan shall be due and unpaid under the Financing Agreement, the Trust may apply to such

default any or all undisbursed amounts allocable to the Loan, the Interim Loan, if any, or any other loan or interim loan made by the Trust to the Borrower; or

(iii) by notice to the Borrower the Trust may declare the principal of the Loan and any Interim Loan and all payments on account of principal or interest payable thereon, and the corresponding principal amount of the Local Governmental Obligations, to be immediately due and payable and, upon such declaration, the Principal Obligation, principal of any Interim Loan and all interest, if any, accrued thereon shall be and become immediately due and payable, anything herein or in the Local Governmental Obligations, or other evidence of indebtedness, to the contrary notwithstanding.

(c) If an Event of Default specified in clause (viii) of subsection 9(a) shall occur and be continuing, the Trust shall, if directed by the Department, exercise on behalf of the Department any and all remedies available to the Department upon a Default under the applicable Project Regulatory Agreement.

(d) Notwithstanding anything herein to the contrary, if any Event of Default under the Financing Agreement or in any Additional Security shall occur and be continuing, the Trust may proceed to protect its rights under the Financing Agreement, and may seek to compel compliance by the Borrower with the terms and provisions hereof and of the Local Governmental Obligations, or other evidence of indebtedness and of any Additional Security, by suit or suits in equity or at law, for the specific performance of any covenant, term or condition hereof or thereof, or in aid of the execution of any power granted herein or therein, and, except as herein limited, may exercise any other right or remedy upon such default as may be granted to the Trust under the Additional Security, if any, or under the Enabling Act, the Applicable Authority, or under any other applicable provision of law.

(e) During the continuance of an Event of Default, the Trust shall apply all amounts received upon the exercise of its rights and remedies under the Financing Agreement as follows and in the following order:

(i) to the payment of the reasonable and proper charges (including attorneys' fees) of the Trust and the Department incurred in the exercise of any right or remedy under the Financing Agreement or under any Project Regulatory Agreement;

(ii) to the payment and satisfaction of all interest then due and unpaid under the Financing Agreement upon any defaulted Payments as provided in Section 4(b) hereof and any defaulted payments of interest (if any) on any Interim Loan;

(iii) to the payment and satisfaction of all Payments then due and unpaid under the Financing Agreement, as such Payments may be adjusted as provided in Section 4 hereof, and to the payment and satisfaction of all payments on account of principal and interest, if any, on any Interim Loan then due and unpaid under the Financing Agreement and, in either case, if the amount available is not sufficient to pay such payments then due and payable, *first* to the payment of the portion of such payments due and unpaid representing interest and *second* to the portion of such payments due and unpaid representing the principal and, in either case, ratably in order of the due dates thereof;

(iv) to the reimbursement to the applicable account of any amounts withdrawn therefrom as provided in clause (ii) of subsection 9(b);

(v) *first*, to the payment and satisfaction of all interest then due and unpaid under the Financing Agreement upon any due and unpaid Administrative Fees as provided in Section 4(b) hereof, and, *second*, to the payment and satisfaction of all Administrative Fees then due and unpaid under the Financing Agreement; and

(vi) *first*, to the payment and satisfaction of all interest then due and unpaid under the Financing Agreement upon any due and unpaid Origination Fee as provided in Section 4(b) hereof, and, *second*, to the payment and satisfaction of the Origination Fee or the portion thereof then due and unpaid under the Financing Agreement.

(f) No remedy conferred upon or reserved to the Trust is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Financing Agreement or in any Additional Security or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient.

#### **Section 10. Interim Financing; Principal Forgiveness.**

(a) Subject to the availability to the Trust of moneys for such purpose and the provisions of Section 3(a) hereto, if the Closing Date set forth in Schedule A of the Financing Agreement is more than forty five (45) days subsequent to the date of execution and delivery of the Financing Agreement by the Trust, the Trust (upon not less than ten (10) Business Days prior notice from the Borrower) agrees to provide interim financing (an "Interim Loan") to the Borrower to pay or provide for all or any part of the eligible Costs of any Project (i) incurred by the Borrower on and after the date of execution and delivery by the Borrower of the Financing Agreement or (ii) incurred by the Borrower prior to the date of its execution and delivery of the Financing Agreement and either (x) paid by the Borrower from the proceeds of notes or other obligations issued by the Borrower in anticipation of the Loan, or (y) paid by the Borrower from other moneys available to the Borrower under a valid declaration of official intent to reimburse such payment from the proceeds of the Loan. The Interim Loan shall be evidenced by a note (the "Interim Loan Note") issued by the Borrower to the Trust pursuant to the Applicable Authority in form and substance satisfactory to the Trust and otherwise as hereinafter provided.

(b) The Interim Loan Note shall be dated the date of its execution and delivery by the Borrower, shall mature and be payable on the Closing Date (subject to renewal at the option of the Trust to one or more dates not later than three (3) years subsequent to such date of execution and delivery or, if later, the expected completion date of the applicable Projects as determined by the Department), shall be in principal amount equal to the aggregate amount of proceeds thereof from time to time disbursed to or for the account of the Borrower and shall be in such maximum aggregate principal amount as shall be requested by the Borrower not exceeding the lesser of (i) the aggregate eligible Costs of each Project which have been or are expected to be expended at or prior to the maturity date of the Interim Loan Note (as set forth in the applicable Project Regulatory

Agreement) and (ii) the Initial Obligation Amount set forth in Schedule C of the Financing Agreement (or such lesser amount as shall equal the total eligible Costs of the Projects approved by the Department at the date of the Interim Loan Note). The principal amount of the Interim Loan Note from time to time outstanding shall bear interest from the date or dates of disbursement thereof to or for the account of the Borrower until repaid at the Interim Loan Interest Rate set forth in Schedule A of the Financing Agreement, calculated on the basis of actual days and a 365/366 day year, payable at maturity.

(c) Upon execution and delivery by the Borrower of the Interim Loan Note, the Trust shall, subject to the availability to the Trust of moneys for such purpose, disburse amounts (representing proceeds of the Interim Loan) pursuant to requisitions for payment or reimbursement of Costs of the applicable Project submitted to the Trust by the Borrower. For purposes of this Section 10, all provisions of Section 7(a), (c) and (e) hereof applicable to the Project Account and the requisition and disbursement therefrom of proceeds of the Loan, shall be equally applicable (to the extent not inconsistent herewith) to the requisition and disbursement of proceeds of the Interim Loan. Notwithstanding the foregoing, as more fully described in Section 4(c) and (d), the Borrower acknowledges that the Department, in the exercise of its rights under the Project Regulatory Agreement, may reclassify certain Project Costs as ineligible and/or terminate the Project Regulatory Agreement and in such events the Trust may have no further obligation to disburse proceeds of the Interim Loan and the Borrower may be obligated to repay all or a portion of disbursements previously made.

(d) Notwithstanding anything herein to the contrary, the obligation of the Trust to make and fund the Interim Loan is expressly conditional upon the receipt by the Trust of the following, each in form and substance satisfactory to the Trust:

(i) A certificate or certificates of Authorized Officers of the Borrower as to the due authorization, execution, delivery and adoption, as applicable, of the Financing Agreement, any Additional Security, the Project Regulatory Agreement and the Interim Loan Note, and confirming as of the date of execution and delivery of the Interim Loan Note the representations and warranties of the Borrower in Section 2 hereof applicable to the Interim Loan, and to the further effect that (x) none of the foregoing instruments have been amended or supplemented since their date (except such amendments or supplements which have been approved by the Trust or the Department, as applicable, or which under the terms of the applicable instrument may be executed and delivered or adopted by the Borrower without the consent of the Trust or the Department) or repealed and that each such instrument remains in full force and effect as of such date, and (y) as of such date, no Event of Default or Default, as applicable, and no event which with the passage of time or the giving of notice may become or may be declared to be an Event of Default or a Default, shall have happened and shall be continuing under the Financing Agreement or any Project Regulatory Agreement;

(ii) The Interim Loan Note duly executed by Authorized Officers of the Borrower;

(iii) An opinion of Local Bond Counsel to the effect that the Financing Agreement, each Project Regulatory Agreement, any Additional Security, and the Interim

Loan Note have been duly authorized, executed and delivered by the Borrower in accordance with the Applicable Authority and each constitutes a valid and binding obligation of the Borrower enforceable in accordance with its terms and the terms of the Enabling Act and the Applicable Authority; the Interim Loan Note has been duly and validly executed by or on behalf of the Borrower and delivered to or upon the order of the Trust in accordance with the Financing Agreement and the Applicable Authority; and the Interim Loan Note constitutes (1) a valid and binding general obligation of the Borrower enforceable in accordance with its terms and payable as to principal, premium, if any, and interest (to the extent not paid from other sources) from (a) taxes which may be levied upon all taxable property within the territorial boundaries of the Borrower, subject only to the limit imposed by Chapter 59, Section 21C of the General Laws of the Commonwealth to the extent applicable to the Interim Loan Note, provided that taxes levied on certain taxable property located within a development district, if any, established by the Borrower pursuant to Chapter 40Q of the General Laws may be restricted and unavailable to pay debt service on the Interim Loan Note or (b) sums which may be annually apportioned and assessed by the Borrower on its Participating Members pursuant to the Applicable Authority, or (2) a general or special obligation of the Borrower (as provided in any Additional Security) payable from any Additional Security and any other moneys, funds and accounts provided in the Financing Agreement and secured by a valid pledge of and lien on and perfected security interest in any such Additional Security (in rendering the foregoing opinion, such counsel may take an exception on account of bankruptcy, insolvency and other laws affecting creditors' rights generally and to the exercise of judicial discretion in accordance with general equitable principles); and

(iv) An Interim Loan Origination Fee, in an amount equal to one-tenth of one percent (.1%) of the maximum aggregate principal amount of the Interim Loan Note, but not less than \$500 or more than \$1,000, as stated in Schedule A.

(e) *Principal Forgiveness.* Schedule B contains or will contain the provisions related to any principal forgiveness for which Loan and the Interim Loan qualifies (if any). Except as described in Schedule B, principal forgiveness will be applied to reduce or retire the Interim Loan Note upon completion of the Project. Notwithstanding anything herein to the contrary, Schedule B may be amended by the Trust from time to time upon notice to the Borrower (i) to reflect any change to the amount, if any, of principal forgiveness expected to be applied to the Loan or the Interim Loan, (ii) to comply with any additional conditions or restrictions applicable to the Trust and/or the Borrower resulting from the source(s) of funds used by the Trust to provide such principal forgiveness and (iii) to make such other changes as the Trust, in its sole reasonable discretion, deems advisable to permit the orderly administration of principal forgiveness.

#### **Section 11. Assignment, Transfer and Exchange.**

(a) The Borrower acknowledges that the Trust may pledge and assign the Financing Agreement or all or part of its rights under the Financing Agreement, and the right, title and interest of the Trust in and to all or part of the Loan, the Local Governmental Obligations and Payments thereunder and under the Financing Agreement or any Additional Security to the Master Trustee in accordance with the Master Trust Agreement and in connection with any such assignment may transfer to the Master Trustee the Loan, the Local Governmental Obligations and any or all



Payments and the Local Governmental Obligations attributable thereto, and the Borrower by its execution and delivery of the Financing Agreement expressly consents to any such assignment and transfer.

(b) In connection with any assignment by the Trust provided herein, the Borrower further agrees to deliver the Local Governmental Obligations, or other evidence of indebtedness, to the Trust on the Closing Date, or on any date thereafter when the Local Governmental Obligations, or other evidence of indebtedness, may be assigned, exchanged or transferred in accordance with its terms and the terms of the Financing Agreement, in such denominations, registered to such owners, in one or more series, and otherwise in such form and tenor as the Trust may request to evidence the Loan made, and the Payments payable, under the Financing Agreement, separately or as a whole, or in part one or in part the other, or in any combination thereof, provided that the aggregate principal amount payable on the Local Governmental Obligations, or other evidence of indebtedness, shall not exceed the Principal Obligation payable under the Financing Agreement on the Loan plus interest, if any, accrued and to accrue thereon as provided therein and herein.

(c) Except as hereinabove provided, so long as any Event of Default shall not have occurred under the Financing Agreement and be continuing, the Trust shall not assign the Financing Agreement or the Loan made hereby, or transfer or sell the Local Governmental Obligations], without the prior written approval of the Borrower.

(d) The Borrower may not assign the Financing Agreement or the Loan or the Local Governmental Obligations, or any of its rights or obligations under the Financing Agreement or hereunder, without the express prior written consent of the Trust.

**Section 12. Action by Parties.** Where the Financing Agreement shall provide for any direction, consent, approval or other action to be taken or made by the Borrower, the Trust or the Department hereunder or under the Financing Agreement, such direction, consent, approval or other action shall be sufficiently taken or made for all purposes of the Financing Agreement if taken or made by Authorized Officers of the Borrower, the Trust or the Department, as the case may be.

**Section 13. Notices.** All notices, consents, certificates and other communications under the Financing Agreement shall be sufficiently given when delivered by hand or courier or sent by signed electronic mail or registered or certified mail, postage prepaid, addressed to the Addresses for Notice set forth in Schedule A of the Financing Agreement or to such further or different address as any of the parties to the Financing Agreement or the Department may designate in writing to the other notice parties indicated in said Schedule A.

**Section 14. Severability.** In the event any provision of the Financing Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 15. No Right of Set-Off.** By their execution and delivery of the Financing Agreement, the Trust and the Borrower agree that, except as otherwise provided in the Financing Agreement, neither the Trust nor the Borrower shall have any right to set-off and apply any amount

at any time held, and other indebtedness at any time owing, by the Trust to or for the account of the Borrower, or by the Borrower to or for the account of the Trust, as applicable, against any and all of the obligations of the Borrower or the Trust, as applicable, now or hereinafter existing on the Local Governmental Obligations, or other evidence of indebtedness, or otherwise under the Financing Agreement.

**Section 16. Amendment of Financing Agreement and Other Instruments.** Except as expressly provided herein or in the Financing Agreement with respect to the amendment of Schedule A, Schedule B, Schedule C and Schedule D of the Financing Agreement, the Financing Agreement and the Local Governmental Obligations, or other evidence of indebtedness, may not be amended, modified or changed in any respect except in writing signed by the parties to the Financing Agreement. No such amendment, modification or change of the Financing Agreement which, in the reasonable opinion of the Department (expressed in a certificate of an Authorized Officer of the Department delivered to the Trust prior to the execution and delivery of such amendment, modification and change by the Trust), materially and adversely affects the rights and obligations of the Department under any Project Regulatory Agreement, shall be effective until the Department shall have consented in writing thereto. The Trust shall deliver a copy of any such proposed amendment, modification or change of the Financing Agreement to the Department at least ten (10) days prior to the execution and delivery thereof by the Trust.

**Section 17. Term.**

(a) The term of the Financing Agreement shall be from the date of execution and delivery thereof by the parties to the Financing Agreement until all payments on account of principal of and interest on the Loan and any Interim Loan, all Administrative Fees and the Origination Fee payable under the Financing Agreement shall have been paid in full or provision for the payment thereof shall have been duly provided for in accordance with this Section 17.

(b) Notwithstanding anything in subsection 17(a) to the contrary, prior to the payment of all payments on account of principal of and interest on the Loan and any Interim Loan payable under the Financing Agreement at the times and in the manner provided herein, the Borrower may defease its obligations under the Financing Agreement and under the Local Governmental Obligations, or other evidence of indebtedness, and upon such defeasance shall be discharged from its obligations, covenants and agreements under the Financing Agreement and under the Local Governmental Obligations, or other evidence of indebtedness, if the Borrower shall deposit with the Trust (in the case of payments related to any Interim Loan) or the Master Trustee for the account of the Trust (in the case of Payments related to the Loan) either moneys in an amount sufficient, or Defeasance Obligations (as defined in the Master Trust Agreement), the principal installments of and/or interest on which when due, without reinvestment, will provide moneys which, together with the moneys, if any, deposited with the Trust or the Master Trustee, as the case may be, at the same time, will be sufficient, to pay (i) all payments on account of principal of and interest on the Loan and any Interim Loan payable under the Financing Agreement at the times and in the amounts provided herein on the scheduled Payment Dates therefor, (ii) all Administrative Fees payable to the Trust under the Financing Agreement accrued to such date of deposit, (iii) the Origination Fee or any portion thereof that has not previously been paid to the Trust and (iv) any and all other amounts incurred or reasonably expected to be incurred by the Trust in effecting such defeasance.

**Section 18. Financing Loans with Proceeds of Bonds, Pledging Loans to Bonds; Additional Borrower Requirements.** Notwithstanding anything in Section 10 hereof to the contrary, at the sole option of the Trust, upon not less than ten (10) days' prior notice to the Borrower, the Trust may finance any Loan with proceeds of Bonds issued by the Trust and pledge such Loan as security for such Bonds, provided that no such pledge and financing shall increase or otherwise adversely affect the obligations of the Borrower by changing the payment terms of the Loan or the interest thereon or the security therefor, without the prior written consent of the Borrower. Upon such a pledge and financing of a Loan by the Trust a Borrower may have to comply with certain additional requirements, including, without limitation:

(i) to update its Loan Questionnaire by completing and signing a Verification Form;

(ii) to sign such other documents as determined by bond counsel for such Bonds to be necessary and appropriate; and

(iii) to make such certifications as determined by bond counsel for such Bonds to be necessary and appropriate, including: (1) that it will not take, or permit to be taken, any action or actions that would cause any Bond, to which a Loan or a Local Governmental Obligation is pledged, to be an "arbitrage bond" within the meaning of Section 148 of the Code or a "private activity bond" within the meaning of Section 141(a) of the Code or that would cause any such Bond to be "federally guaranteed" within the meaning of Section 149(b) of the Code, or that would otherwise cause any amounts payable with respect to such Bonds to become included in the gross income of a holder of such Bonds for federal income tax purposes; and (2) that it will take all actions, maintain all records and accounts, and make all reports requested by the Trust or required by any provision of applicable law or the Project Regulatory Agreement, necessary to comply with, or necessary to permit the Trust to comply with, the provisions of Section 148(f) of the Code.

**Section 19. Execution in Counterparts; Electronic Signatures.** The Financing Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Electronic signatures shall be deemed original signatures for purposes of the Financing Agreement and all matters related thereto, with such electronic signatures having the same legal effect as original signatures. The parties to the Financing Agreement agree that the Financing Agreement, any amendment thereto or any other document necessary for the consummation of the transaction contemplated by the Financing Agreement may be accepted, executed or agreed to through the use of an electronic signature in accordance with applicable law and as so accepted, executed or agreed, will be binding on all parties to the Financing Agreement.

**Section 20. Applicable Law.** The Financing Agreement, including these Terms and Conditions and all schedules to the Financing Agreement, shall be governed by and construed in accordance with the laws of the Commonwealth.

**Section 21. Further Assurances.** The Borrower shall, at the request of the Trust, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances and other instruments as may be necessary or desirable for better assuring, conveying,

granting, assigning and confirming the rights, covenants and agreements granted or made or intended to be granted or made by the Financing Agreement and the Local Governmental Obligations, or other evidence of indebtedness.

**Section 22. Prior Financing Agreements.** Except as otherwise provided herein, the Financing Agreement merges and supersedes all prior negotiations, representations, and agreements between the parties relating to the subject matter of the financing of the Project and the Financing Agreement, including these Terms and Conditions and constitutes the entire agreement between the parties in respect to the Financing Agreement and hereof.

CROSS-CUTTING FEDERAL AUTHORITIES

The following list of cross-cutting federal authorities is provided for reference only; additional applicable federal cross-cutting authorities may exist. While the Super-Cross Cutters apply in all circumstances, certain of the Other Cross-Cutting Authorities listed may not apply in all circumstances.

Super Cross-Cutters

- Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*
- Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794
- The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 95-500

Other Cross-Cutting Authorities

- Executive Order 11246 (1965) – *Equal Employment Opportunity*, as amended
- Archeological and Historic Preservation Act, 54 U.S.C. 312502
- Clean Air Act, 42 U.S.C. 7506(c)
- Coastal Barriers Resources Act, 16 U.S.C. 3501 *et seq.*
- Coastal Zone Management Act of 1972, 16 U.S.C. 1451 *et seq.*
- Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*
- Executive Order 12898 (1994) – *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*
- Farmland Protection Policy Act, 7 U.S.C. 4201 *et seq.*
- Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*
- Executive Order 14030 (2021) – *Climate-Related Financial Risk* (reinstating Executive Order 13690 (2015) – *Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input*, amending Executive Order 11988 (1977) – *Floodplain Management*)
- Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*
- Marine Mammal Protection Act of 1972, Pub. L. 92-522.
- Migratory Bird Treaty Act, 16 U.S.C. 703 *et seq.*
- National Historic Preservation Act, 54 U.S.C. 300101 *et seq.*
- Executive Order 11990 (1977) – *Protection of Wetlands*
- Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*
- Wild and Scenic Rivers Act, 16 U.S.C. 1271 *et seq.*
- Executive Order 11593 (1971) – *Protection and Enhancement of the Cultural Environment*

(Please Note: The following statements are an essential part of the permanent note record. Read them carefully before signing this certificate. Advise Locke Lord LLP of any inaccuracy.)

**Town of Fairhaven, Massachusetts**

**\$65,151,891 Interim Loan Note and \$4,848,109 Interim Loan Note**

CERTIFICATE

We, the members of the Select Board and the Treasurer of the Town of Fairhaven, Massachusetts (the "Town"), certify that we have signed the (i) \$65,151,891 0 percent Interim Loan Note and (ii) \$4,848,109 0 percent Interim Loan Note (the "Notes") of the Town each dated March 1, 2024 and payable on the Closing Date. The Note bears the Town seal, which is also affixed to this certificate.

We further certify that (i) Financing Agreement No. CWP-22-67 and (ii) Financing Agreement No. CWP-22-67-A with the Massachusetts Clean Water Trust (the "Trust"), each dated as of December 6, 2023 providing for the Interim Loan evidenced by the Note, and the Project Regulatory Agreement with the Department of Environmental Protection dated as of December 1, 2023 relating to the Project financed by the Note have been signed by the Treasurer or other duly authorized Town official and we hereby confirm those Agreements. Capitalized terms used in this certificate and not otherwise defined shall have the same meanings given those terms in the Financing Agreement and Chapter 29C of the General Laws (the "Enabling Act"). The Financing Agreement and the Project Regulatory Agreement are sometimes referred to collectively in this certificate as the "Agreements".

We, the members of the Select Board and the Treasurer of the Town, certify that we have authorized the use of any facsimiles of our signatures that may be printed on the Note.

We, members of the Select Board and the Treasurer, also certify as follows:

1. Authority. The Note is issued pursuant to the Enabling Act, Chapter 44 of the General Laws (the "Applicable Bond Act") and a vote of the Town passed June 18, 2022 (Article 15A), as amended by a vote of the Town passed November 14, 2023 (Article 3), which authorized a total borrowing of \$70,000,000.
2. Other Debt. No other debt has been incurred under that vote of the Town.

3. Representations under Section 2 of the Terms and Conditions to the Massachusetts Clean Water Trust Financing Agreement.

(i) The Town is a Local Governmental Unit as defined in the Enabling Act with full legal right and authority under the Enabling Act and the Applicable Bond Act to authorize, execute and deliver the Agreements, to execute, issue and deliver the Note, to undertake the Project, to operate its System and to carry out and consummate all transactions contemplated by the foregoing.

(ii) The Town has duly and validly authorized the execution and delivery of the Agreements and the Note and all approvals, consents and other governmental proceedings necessary for the execution and delivery of any of the foregoing or required to make them the legally binding obligations of the Town that they purport to be in accordance with their terms have been obtained or made.

(iii) No action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body is pending or, to our knowledge, threatened seeking to restrain or enjoin the execution or delivery or performance of any of the Agreements or the Note or the construction or operation of the Project; or contesting or adversely affecting the validity of the Agreements or the Note or the power of the Town to assess and collect taxes, rates and charges to pay the Payments and all other costs and expenses of the Project and the System; and neither the corporate existence of the Town nor the title to office of any of us or any other Authorized Officer of the Town executing the Agreements or the Note is being contested.

(iv) The authorization, execution and delivery of each of the Agreements and the Note, and performance of each of them, will not constitute a breach of, or a default under, any law, ordinance, resolution, agreement, indenture or other instrument to which the Town is a party or by which it or any of its properties is bound.

(v) The Financing Agreement and the Note are valid general obligations of the Town, for the payment of which its full faith and credit are pledged, enforceable in accordance with their terms and the terms of the Enabling Act and the Applicable Bond Act, and payable as to principal, premium, if any, and interest, if any, (to the extent not paid from other sources) from taxes which may be levied upon all taxable property within the territorial boundaries of the Town, subject only to the limit imposed by Chapter 59, Section 21C of the General Laws.

4. No Default. As of this date, no Event of Default or Default, as applicable, and no event which with the passage of time or the giving of notice may become or may be declared to be an Event of Default or a Default, has happened and is continuing under either of the Agreements.

5. Loan Questionnaire. The statements and information set forth in the Loan Questionnaire submitted by the Town to the Trust in connection with the Interim Loan are true and correct in all material respects on this date as if made on this date.

6. Special Conditions. The Town hereby acknowledges the special conditions set forth in Exhibit C to the Project Regulatory Agreement and Schedule B to the Financing

Agreement and the Town has satisfied or expects to satisfy all of such conditions and is not aware of any circumstances adversely affecting its expectation of satisfying those conditions.

7. Use of Project and Note Proceeds.

(a) Reimbursement. The proceeds of the Note may be used, in part, to reimburse the Town for capital expenditures previously made for the Project. Any such expenditures were made pursuant to G.L. c. 44, §20A and the rules and regulations of the State Director of Accounts and any such expenditure was documented by a "Report of Advance of Funds in Lieu of Borrowing" filed with the Director. Any such expenditures were made within 18 months prior to this date. At the time of the filing of any report referred to above the Town reasonably expected to reimburse the expenditures with the proceeds of a borrowing.

(b) Prior Bonds or Notes. No proceeds of the Note will be used to pay or retire any bonds, notes or other evidence of indebtedness previously issued by the Town.

(c) No Sale of Project. The Town does not expect to sell any Project prior to repayment of the Note.

(d) Use in Trade or Business. Not more than 5% of the gross proceeds of the Note are to be used (directly or indirectly) in any trade or business carried on by any person other than a state or local governmental unit. (Use in a trade or business includes all activities carried on by the federal government (including its agencies and instrumentalities), by so-called Section 501(c)(3) organizations and by all other nongovernmental entities other than natural persons, but does not include use as a member of or on the same basis as the general public.) The Town does not have or plan to have any contract or other arrangement not applicable to the general public under which a party, other than the Commonwealth or a local governmental unit, is to have the use of the Project or is to make payments based on costs of the Project rather than system costs.

(e) Private Loans. None of the gross proceeds of the Note are to be used by the Town directly or indirectly to make or finance loans to others. (The foregoing representation does not preclude the financing of a Project whose costs are to be paid by betterment assessments over a period of years.)

I, the Town Accountant, certify to the Treasurer that rates and charges have been set at a sufficient level to cover the estimated operating expenses and debt service related to the Sewer Enterprise Fund including debt service payments on the Notes.

We, the members of the Select Board, the Treasurer and the Town Clerk, further certify as follows:

(a) Authorization, Execution and Delivery of Documents. The Financing Agreement, the Project Regulatory Agreement and the Note have been duly authorized, executed and delivered. None of those instruments has been amended or supplemented since its date (except such amendments or supplements which have been approved by the Trust or the Department, as applicable) or repealed and each such instrument remains in full force and effect as of this date.



(b) Open Meeting Law. All proceedings essential to the issue of the Note and the authorization of the bonds and deliberations of a quorum relating thereto have been taken at a meeting or meetings open to the public; notice of each such meeting was filed in my office and publicly posted in the time and manner set forth in the General Laws, as amended, in effect at the time of each such meeting (Chapter 39, §23B for proceedings occurring prior to July 1, 2010 and Chapter 30A, §§18-25 for proceedings occurring on or after July 1, 2010) or, if applicable, in accordance with an alternative method of notice prescribed or approved by the Attorney General as set forth in 940 CMR 29.03(2)(b); no deliberations, decision or vote in connection with the Note or bonds were taken in executive session and no vote was taken by secret ballot; and the official record of each such meeting was made available to the public and remains available to the public as set forth in G.L. c.39, §23B or c.30A, §§18-25, as amended.

(c) Signatures and Incumbency. The signatures of the members of the Select Board and the Treasurer as appearing below are the genuine, electronic, or facsimile signatures of the persons who held those offices when the Note was signed and when it was delivered. The officials who signed the Agreements were the persons who held those offices when the Agreements were signed and when they were delivered and such signatures are the genuine, electronic, or facsimile signatures of those persons.

(d) Proceedings. No proceeding essential to the execution, delivery or issue of the Agreements and the Note has been repealed or amended except as stated in paragraph (1) above, and no proceedings have been taken relating to the Agreements and the Note other than those certified to Locke Lord LLP.

(e) Bylaws. The bylaws or votes described below are the only bylaws or standing votes of the Town affecting the authorization, sale or issue of the Note, or the authorization, execution or delivery of the Agreements, and there has been no change therein affecting those matters in any way except as may be indicated below:

Code of the Town of Fairhaven, Massachusetts, 1997, as amended through May 7, 2016 and as certified to Locke Lord LLP on June 13, 2022.

(f) Home Rule. The Town has not adopted a home rule charter and the Town has not amended or repealed any special law relating to the Town through the use of home rule procedures.

(g) No Referendum. No petition for a referendum has been filed with respect to any of the proceedings essential to the authorization, sale or issue of the Note or the authorization, execution or delivery of the Agreements.

(h) Select Board Vote. Attached hereto is a true copy of the Select Board Vote, which has not been amended or repealed and remains in full force and effect on this date.

[The balance of the page is intentionally left blank.]

8. Execution of Counterparts and Delivery by Electronic Means. This certificate, as well as any other certificates or documents relating to the Note (collectively, the “Documents”), may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document. Delivery of an executed counterpart of a signature page to a Document by electronic mail in a “.pdf” file or by other electronic transmission shall be as effective as delivery of a manually executed counterpart signature page to such Document. Electronic signatures on any of the Documents shall be deemed original signatures for the purposes of the Documents and all matters relating thereto, having the same legal effect as original signatures.

Dated: \_\_\_\_\_  
(Date of delivery of and  
payment for the Note - to  
be left blank until delivery)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Members of the Select Board

\_\_\_\_\_  
Treasurer

\_\_\_\_\_  
Town Accountant

\_\_\_\_\_  
Town Clerk

(Town Seal)

## VOTE OF THE SELECT BOARD

I, the Clerk of the Select Board of the Town of Fairhaven, Massachusetts, certify that at a meeting of the board held March 25, 2024, of which meeting all members of the board were duly notified and at which a quorum was present, the following vote was passed, all of which appears upon the official record of the board in my custody:

- VOTED:
- (1) that the Town shall issue a bond or bonds in an aggregate principal amount not to exceed \$70,000,000 (the "Bonds") pursuant to Chapters 29C and 44 of the General Laws and a vote of the Town passed on June 18, 2022 (Article 15A), as amended by the vote passed on November 14, 2023 (Article 3), for planning or construction of sewers and other water pollution control abatement infrastructure (the "Project");
  - (2) that the terms of the Financing Agreement (or Agreements) and the Project Regulatory Agreement (or Agreements) each relating to the Notes and the Bonds are hereby approved;
  - (3) that in anticipation of the issuance of the Bonds the Treasurer is authorized to issue an interim loan note or notes (the "Notes") from time to time in an aggregate principal amount not to exceed \$70,000,000;
  - (4) that each Bond or Note shall be issued as a single registered security, and sold to the Massachusetts Clean Water Trust (the "Trust") at a price determined pursuant to the Financing Agreement (or Agreements);
  - (5) that the Treasurer is authorized to determine the date, the form, the maximum interest rate and the principal maturities of each Bond and Note, and to execute a Financing Agreement (or Agreements) with the Trust with respect to the sale of the Bonds and Notes, such date, form and maturities and the specific interest rate or rates of the Bonds and Notes to be approved by a majority of the Select Board and the Treasurer and evidenced by their execution of the Bonds or Notes;
  - (6) that any certificates or documents relating to each Bond and Notes (collectively, the "Documents"), may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document; delivery of an executed counterpart of a signature page to a Document by electronic mail in a ".pdf" file or by other electronic transmission shall be as effective as delivery of a manually executed counterpart signature page to such Document; and electronic signatures on any of the Documents shall be deemed original signatures for the purposes of the Documents and all matters relating thereto, having the same legal effect as original signatures;
  - (7) that all action taken to date by the Town and its officers and agents to carry out the Project and its financing, including the execution of any loan

commitment or agreement by the Treasurer, are hereby ratified, approved and confirmed; and

- (8) that the Treasurer and the other appropriate Town officials are each hereby authorized to take any and all actions necessary or convenient to carry out the provisions of this vote, including execution and delivery of the Financing Agreement (or Agreements) and the Project Regulatory Agreement (or Agreements) relating to the Project.

I further certify that the vote was adopted at a meeting open to the public, that no vote was taken by secret ballot, that notice stating the place, date, time and agenda of the meeting (which agenda included the adoption of the above vote) was filed with the Town Clerk and a copy thereof posted in a manner conspicuously visible to the public at all hours in or on the municipal building that the office of the Town Clerk is located or, if applicable, in accordance with an alternative method of notice prescribed or approved by the Attorney General as set forth in 940 CMR 29.03(2)(b), at least 48 hours, not including Saturdays, Sundays and legal holidays, prior to the time of the meeting and remained so posted at the time of the meeting, that no deliberations or decisions in connection with the sale of the Bonds or Notes were taken in executive session, and that the official record of the meeting was made available to the public promptly and remains available to the public, all in accordance with G.L c.30A, §§18-25, as amended. I further certify that the vote has not been amended, supplemented or revoked and remains in effect on this date.

Dated: March 25, 2024

\_\_\_\_\_  
Clerk of the Select Board

No. 1

\$65,151,891

United States of America  
The Commonwealth of Massachusetts

TOWN OF FAIRHAVEN  
INTERIM LOAN NOTE

PRINCIPAL AMOUNT: Sixty-Five Million One Hundred Fifty-One Thousand Eight Hundred and Ninety-One Dollars

The Town of Fairhaven, Massachusetts (the "Borrower"), for value received, promises to pay to the Massachusetts Clean Water Trust (the "Trust"), upon presentation and surrender hereof, the Principal Amount specified above, or such lesser amount as shall have been advanced from time to time to the Borrower on account of this note in accordance with the Financing Agreement hereinafter referred to, on the Closing Date (as defined in the Financing Agreement) at the principal corporate trust office of U.S. Bank Trust Company, National Association, in the City of Boston, Massachusetts. The date and amount of each advance made on account of this note shall be endorsed on the Schedule of Advances attached hereto by an authorized officer of the Trust. No interest shall accrue and be payable on the Principal Amount of this note.

This note is issued pursuant to Chapter 29C and Chapter 44 of the General Laws as amended for the purpose of financing costs of a sewage treatment plant upgrade project in anticipation of the proceeds of a loan to the Borrower under and pursuant to Financing Agreement No. CWP-22-67 dated as of December 6, 2023 between the Trust and the Borrower (the "Financing Agreement"). This note shall mature on the Closing Date (as defined in the Financing Agreement) and is a general obligation of the Borrower and the full faith and credit of the Borrower are pledged to the payment of the principal of this note.

Dated: March 1, 2024

TOWN OF FAIRHAVEN, MASSACHUSETTS

By: \_\_\_\_\_  
Treasurer

Countersigned:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Select Board

(TOWN SEAL)

No. 1

\$4,848,109

United States of America  
The Commonwealth of Massachusetts

TOWN OF FAIRHAVEN  
INTERIM LOAN NOTE

PRINCIPAL AMOUNT: Four Million Eight Hundred Forty-Eight Thousand One Hundred and Nine Dollars

The Town of Fairhaven, Massachusetts (the "Borrower"), for value received, promises to pay to the Massachusetts Clean Water Trust (the "Trust"), upon presentation and surrender hereof, the Principal Amount specified above, or such lesser amount as shall have been advanced from time to time to the Borrower on account of this note in accordance with the Financing Agreement hereinafter referred to, on the Closing Date (as defined in the Financing Agreement) at the principal corporate trust office of U.S. Bank Trust Company, National Association, in the City of Boston, Massachusetts. The date and amount of each advance made on account of this note shall be endorsed on the Schedule of Advances attached hereto by an authorized officer of the Trust. No interest shall accrue and be payable on the Principal Amount of this note.

This note is issued pursuant to Chapter 29C and Chapter 44 of the General Laws as amended for the purpose of financing costs of a sewage treatment plant upgrade project in anticipation of the proceeds of a loan to the Borrower under and pursuant to Financing Agreement No. CWP-22-67-A dated as of December 6, 2023 between the Trust and the Borrower (the "Financing Agreement"). This note shall mature on the Closing Date (as defined in the Financing Agreement) and is a general obligation of the Borrower and the full faith and credit of the Borrower are pledged to the payment of the principal of this note.

Dated: March 1, 2024

TOWN OF FAIRHAVEN, MASSACHUSETTS

By: \_\_\_\_\_  
Treasurer

Countersigned:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Select Board

(TOWN SEAL)

# Volunteer Application

**Full Name:** Aaron Novy

**How long have you been a Fairhaven resident:** 12 years

**What Board/Committee are you interested in joining, what is your reason:**  
Livable Streets Committee

**Have you attended a meeting of this Board or Committee:** Yes

**Have you (or are you currently) served on any Town of Fairhaven Boards:** No

**Interests and Qualifications:** I'm a resident of Fairhaven and ride bikes with my kids all over this great town and hope to look for ways to improve access for walkers and cyclists.

# Volunteer Application

**Full Name:** Freddie Estremera

**How long have you been a Fairhaven resident:** 12 yrs

**What Board/Committee are you interested in joining, What is your reason for joining:** Livable Streets Committee

**Have you attended a meeting of this Board or Committee:** Yes

**Have you (or are you currently) served on any Town of Fairhaven Boards:** No

**Interests and Qualifications:** Former President of the New Bedford Bicycle Committee. Self-thought in topics of human friendly infrastructure and urban planning topics such as "Space Making" and building human scale streets. Worked on leading the committee to develop a well thought out map of bikeable streets throughout the city for which the city used to prioritize to create bike sharrows, develop the Southcoast Bikeway connection, and develop the idea of creating the city's "blue lane" initiative to use the hurricane barriers as usable community spaces as walking/biking/running/etc paths.





**Town of Fairhaven**  
**Massachusetts**  
Office of the Select Board  
**Proclamation**

C 3

*Whereas:* throughout the month of May, Fairhaven will celebrate biking and the freedom, joy, and well-being it imbues within us, as well as the power that more people riding bikes has in making life better for everyone; and,

*Whereas:* May 15-21, 2024, is “Bike to Work Week,” and May 19, 2024, is “Bike to Work Day”; and

*Whereas:* throughout the month of May, the residents of Fairhaven and its visitors will experience the joys of bicycling, simply getting out and going somewhere by bike; and

*Whereas:* bicycling has been shown to improve citizens’ health, well-being, and quality of life, growing the economy of town, attracting tourism dollars and local business spending, and reducing pollution, congestion, and parking costs on our streets and roads; and

*Whereas:* the Fairhaven Livable Streets Committee, the South Coast Bikeway Alliance / Mass Bike and civic groups will be joining the League of American Bicyclists in promoting bicycling during the month of May 2024; and

*Whereas:* these groups are also promoting the use of the bicycle as both a means of transportation and recreation year-round to attract more visitors to enjoy our local parks and trail systems, as well as restaurants, hotels, retail establishments, and cultural and scenic attractions; and

*Whereas:* these groups are also promoting greater public awareness of bicycle operation and safety education during Bike Month and year-round to reduce collisions, injuries, and fatalities and improve health and safety for everyone on the road

*Now, therefore,* We, Leon E. Correy III, Charles K. Murphy, Sr., Stasia Powers, Keith Silvia and Robert J. Espindola, the Select Board of the Town of Fairhaven, do hereby proclaim May, 2024 as Bike Month in the Town of Fairhaven.

Given under our hands and seal on this day, 25<sup>th</sup> of March,  
in the year of our Lord Two Thousand and Twenty-Four

\_\_\_\_\_  
Leon E. Correy III, Chair

\_\_\_\_\_  
Charles K. Murphy, Sr., Vice-Chair

\_\_\_\_\_  
Stasia Powers, Clerk

\_\_\_\_\_  
Keith Silvia

\_\_\_\_\_  
Robert J. Espindola

**TOWN OF FAIRHAVEN AND  
BASK, INC.**

**HOST COMMUNITY AGREEMENT**

THIS HOST COMMUNITY AGREEMENT (the “**Agreement**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by and between Bask, Inc., a Massachusetts corporation, and any successor in interest, with a principal office address of 2 Pequot Road, Fairhaven MA 02719 (the “**Company**”), and the Town of Fairhaven, a Massachusetts municipal corporation with a principal address of 40 Center Street, Fairhaven MA 02719 (the “**Town**”), acting by and through its Select Board in reliance upon all of the representations made herein.

WHEREAS, the Company operates a medical marijuana treatment center (dispensing only) and a marijuana retailer establishment (collectively, the “**Marijuana Establishment**”) under the Town’s zoning bylaws, as the same may be amended from time to time (the “**Zoning**”) at 2 Pequot Road, Fairhaven, Massachusetts (the “**Facility**”), in accordance with and pursuant to applicable state laws and regulations, including, but not limited to 935 CMR 500.00 *et seq.* and such approvals as may be issued by the Town in accordance with the Zoning and other applicable local regulations; and

WHEREAS, the parties intend to undertake certain obligations to one another as the Company maintains the requisite licenses from the Massachusetts Cannabis Control Commission (the “**CCC**”) or such other state licensing or monitoring authority, as the case may be, to operate the Marijuana Establishment and maintains all required local permits and approvals from the Town; and

WHEREAS, the parties intend by this Agreement to replace any prior Host Community Agreement between the parties and satisfy the provisions of G.L. c.94G, Section 3(d), as amended by Chapter 180 of the Acts of 2022, applicable to the operation of a Marijuana Establishment, such activities to be only done in accordance with the applicable state and local laws and regulations in the Town.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Town agree as follows:

**1. Recitals**

The Parties agree that the above Recitals are true and accurate and that they are incorporated herein and made a part hereof.

**2. Annual Payments**

A. Community Impact Fee

The Town asserts that it will incur expenses and impacts on the Town's road and infrastructure systems, law enforcement, and fire protection services, as well as other unforeseen impacts on the Town. Accordingly, in order to mitigate the financial impact on the Town and the use of Town resources, the Company agrees to pay an Annual Community Impact Fee to the Town, in the amount and under the terms provided herein.

1. The Company shall annually pay an Annual Community Impact Fee in accordance with 935 CMR 500.180(2) and (4) that is reasonably related to the Company's impact on the Town and in an amount up to but no more than three percent (3%) of gross sales from marijuana and marijuana product sales at the Facility, which shall include sales of marijuana or marijuana products for medicinal use. The term "gross sales" shall mean the total of all sales transactions of the Facility without limitation, whether wholesale or retail, and shall include but not be limited to all adult use marijuana and medical marijuana sales occurring at the Facility, including the sale of marijuana, marijuana infused products, paraphernalia, and any other products sold at the Facility.

2. The Town shall transmit an itemized invoice of claimed impact fees to the Company each year no later than thirty (30) days after the anniversary of the date the Company received a final license from the CCC. The Company shall, within thirty (30) calendar days after receiving the Town's itemized invoice, submit the same and any supporting documentation if applicable to the Commission. Payment of the Annual Community Impact Fee shall be made in the amounts and pursuant to the procedures and timeline set forth in 935 SMR 500.180.

3. No impact fees shall be assessed after the eighth year of the Company's operations or after nine years from the date the Company received a Final License for its operations at the Facility.

4. The Town may elect not to assess or not to collect an impact fee in a particular year. Any such election shall not operate as a waiver of the Town's rights under this Agreement to collect impact fees in a subsequent year.

#### B. Additional Costs, Payments and Reimbursements

1. Permit and Connection Fees: The Company hereby acknowledges and accepts that it must pay customary permit fees and other permit application fees, sewer and water connection fees, and all other local charges and fees generally applicable to other commercial developments in the Town.
2. Facility Consulting Fees and Costs: The Company shall reimburse the Town for any and all reasonable consulting costs and fees related to any land use applications concerning the Facility, including planning, engineering, legal and/or environmental professional consultants and any related reasonable

disbursements at standard rates charged by the above- referenced consultants in relation to the Facility.

3. Other Costs: The Company shall reimburse the Town for the actual costs incurred by the Town in connection with holding public meetings and forums substantially devoted to discussing the Facility and/or reviewing the Facility and for any and all reasonable consulting costs and fees related to the monitoring and enforcement of the terms of this Agreement, including, but not limited to independent financial auditors and legal fees.
4. Late Payment Penalty: The Company acknowledges that time is of the essence with respect to their timely payment of all funds required under Section 2 of this Agreement. In the event that any such payments are not fully made with ten (10) days of the date they are due, the Town shall provide the Company with written notice of such failure to make a timely payment. The Company shall have a ten (10) day period to cure such failure to make timely payment from the date of receipt of such notice. If the Company fails to make full payment within such cure period, the Company shall be required to pay the Town a late payment penalty equal to five percent (5%) of such required payments.

### **3. Local Vendors and Employment**

To the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company will make every effort in a legal and non-discriminatory manner to give priority to local businesses, suppliers, contractors, builders and vendors in the provision of goods and services called for in the construction, maintenance and continued operation of the Facility when such contractors and suppliers are properly qualified and price competitive and shall use good faith efforts to hire Saugus residents.

### **4. Local Taxes**

At all times during the Term of this Agreement, all applicable real estate and personal property taxes for the property shall be paid by the Company.

### **5. Security**

To the extent requested by the Fairhaven Police Department, and subject to the security and architectural review requirements of the CCC, or such other state licensing or monitoring authority, as the case may be, the Company shall work with the Fairhaven Police Department in determining the placement of exterior security cameras.

The Company agrees to cooperate with the Police Department, including but not limited to periodic meetings to review operational concerns, security, delivery schedule and procedures, cooperation

in investigations, and communications with the Police Department of any suspicious activities at or in the immediate vicinity of the Facility, and with regard to any anti-diversion procedures.

To the extent requested by the Fairhaven Police Department, the Company shall work with the Police Department to implement a comprehensive diversion prevention plan to prevent diversion at the Marijuana Establishment.

## **6. Community Concerns**

The Company agrees to employ its best efforts to work collaboratively and cooperatively with its neighboring businesses and residents to establish written policies and procedures to address mitigation of any concerns or issues that may arise through its operation of the Facility; said written policies and procedures, as may be amended from time to time, shall be reviewed and approved by the Town and shall be incorporated herein by reference and made a part of this Agreement, the same as if each were fully set forth herein.

## **7. Additional Obligations**

The obligations of the Company and the Town recited herein are specifically contingent upon the Company maintaining a license for operation of the Facility in Fairhaven, and the Company's maintaining any and all necessary local approvals to locate, occupy, and operate the Facility in Fairhaven.

This Agreement does not affect, limit, or control the authority of Fairhaven's boards, commissions, and departments to carry out their respective powers and duties to decide upon and to issue, or deny, applicable permits and other approvals under the statutes and regulations of the Commonwealth, the General and Zoning Bylaws of the Town, or applicable regulations of those boards, commissions, and departments or to enforce said statutes, bylaws, and regulations. The Town, by entering into this Agreement, is not thereby required or obligated to issue such permits and approvals as may be necessary for the Facility to operate in the Town, or to refrain from enforcement action against the Company and/or its Facility for violation of the terms of said permits and approvals or said statutes, bylaws, and regulations.

## **8. Support**

The Town agrees to submit to the CCC, or such other state licensing or monitoring authority, as the case may be, the required certifications relating to the Company's application for a license to operate the Facility where such compliance has been properly met, but makes no representation or promise that it will act on any other license or permit request, including, but not limited to any zoning application submitted for the Facility, in any particular way other than by the Town's normal and regular course of conduct and in accordance with its rules and regulations and any statutory guidelines governing them.

## **9. Term**

Except as expressly provided herein, this Agreement shall take effect on the date set forth above, and shall be applicable for as long as the Company operates the Facility in the Town.

## **10. Successors/Assigns**

The Company shall not assign, sublet, or otherwise transfer its rights nor delegate its obligations under this Agreement, in whole or in part, without the prior written consent from the Town, and shall not assign or obligate any of the monies payable under this Agreement, except by and with the written consent of the Town, which consents shall not be unreasonably delayed, conditioned, or withheld. This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Neither the Town nor the Company shall assign, sublet, or otherwise transfer any interest in the Agreement without the written consent of the other, which consent shall not be unreasonably delayed, conditioned, or withheld.

Events deemed an assignment include, without limitation: (i) Company's final and adjudicated bankruptcy whether voluntary or involuntary; (ii) the Company's takeover or merger by or with any other entity; (iii) the Company's outright sale of assets and equity, majority stock sale to another organization or entity for which the Company does not maintain a controlling equity interest; (iv) any assignment for the benefit of creditors; and/or (vi) any other change in ownership or status of the Company that would require approval by the CCC.

## **11. Notices**

Any and all notices, consents, demands, requests, approvals or other communications required or permitted under this Agreement, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, and shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service, or, if sent by private overnight or other delivery service, when deposited

with such delivery service.

To Town of Fairhaven:

Town Administrator  
Angie Lopes Ellison  
40 Center Street  
Fairhaven, MA 02719

To Company:

Tim Keogh  
Bask, Inc.  
2 Pequod Road  
Fairhaven, MA 02719  
tim@cometobask.com

With a copy to:

Philip C. Silverman  
Vicente LLP  
800 Boylston Street, 26<sup>th</sup> Floor  
Boston, MA 02199  
p.silverman@vicentellp.com

## **12. Severability**

If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction or the CCC, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless the Town or the Company would be substantially or materially prejudiced. Further, if the Company is determined to be in breach of any provision hereof, the Company shall pay for all reasonable fees and costs incurred by the Town in enforcing this Agreement.

## **13. Governing Law**

This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, and the Company submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

## **14. Entire Agreement**

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the Company and the Town with respect to the matters described herein. This Agreement supersedes all prior agreements, negotiations, and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

## **15. Amendments/Waiver**

Amendments, or waivers of any term, condition, covenant, duty or obligation contained in this Agreement may be made only by written amendment executed by authorized representatives of both parties to the original Agreement, prior to the effective date of the amendment.

#### **16. Headings**

The article, section, and/or paragraph headings in this Agreement are for convenience of reference only, and shall in no way affect, modify, define or be used in interpreting the text of this Agreement.

#### **17. Counterparts**

This Agreement may be signed in any number of counterparts all of which taken together, each of which is an original, and all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing one or more counterparts.

#### **18. Signatures**

Facsimile, electronic, or e-mailed signatures affixed to this Agreement shall have the same weight and authority as an original signature.

#### **19. No Joint Venture**

The Parties hereto agree that nothing contained in this Agreement or any other documents executed in connection herewith is intended or shall be construed to establish the Company and the Town and any other successor, affiliate or corporate entity as joint ventures or partners.

#### **20. Nullity**

This Agreement shall be null and void in the event that the Company does not locate a marijuana retailer establishment in the Town or relocates the marijuana retailer establishment out of the Town, provided, however, that if the Company decides not to locate a marijuana retailer establishment in the Town, the Company shall reimburse the Town for its reasonable legal fees associated with the negotiation of this Agreement. Further, in the case of any relocation out of the Town, the Company agrees that an adjustment of Annual Payments due to the Town hereunder shall be calculated based upon the period of occupation of the marijuana retailer establishment within the Town, but in no event shall the Town be responsible for the return of any funds provided to it by the Company.

#### **21. Indemnification**

The Company shall indemnify, defend, and hold the Town harmless from and against any and all claims, demands, liabilities, actions, causes of actions, defenses, proceedings and/or costs and expenses, including attorney's fees, brought against the Town, their agents, departments, officials, employees, insurers and/or successors, by any third party arising from or relating to the development of the Property and/or Facility, except as such have resulted from the negligence of the Town. Such indemnification shall include, but shall not be limited to, all reasonable fees and reasonable costs of attorneys and other reasonable consultant fees and all fees and costs (including



but not limited to attorneys and consultant fees and costs) shall be at charged at regular and customary municipal rates, of the Town's choosing incurred in defending such claims, actions, proceedings or demands. The Company agrees, within thirty (30) days of written notice by the Town, to reimburse the Town for any and all costs and fees incurred in defending itself with respect to any such claim, action, proceeding or demand. Any indemnification amount paid by the Company pursuant to this Agreement shall be included as part of the Annual Community Impact Fee.

**22. Third-Parties**

Nothing contained in this agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Town or the Company.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

Town of Fairhaven

By: \_\_\_\_\_  
Its:

Bask, Inc.

By: \_\_\_\_\_  
Its:



The Commonwealth of Massachusetts  
 Office of the Attorney General  
 One Ashburton Place  
 Boston, Massachusetts 02108

## OPEN MEETING LAW COMPLAINT FORM

### Instructions for completing the Open Meeting Law Complaint Form

The Attorney General's Division of Open Government interprets and enforces the Open Meeting Law, Chapter 30A of the Massachusetts General Laws, Sections 18-25. Below is the procedure for filing and responding to an Open Meeting Law complaint.

#### Instructions for filing a complaint:

- o Fill out the attached two-page form completely. Sign and date the second page. File the complaint with the public body within 30 days of the alleged violation. If the violation was not reasonably discoverable at the time it occurred, you must file the complaint within 30 days of the date the violation was reasonably discoverable. A violation that occurs during an open session of a meeting is reasonably discoverable on the date of the meeting.
- o To file the complaint:
  - o For a local or municipal public body, you must submit a copy of the complaint to the chair of the public body AND to the municipal clerk.
  - o For all other public bodies, you must submit a copy of the complaint to the chair of the public body.
  - o Complaints may be filed by mail, by email, or by hand. Please retain a copy for your records.
- o If the public body does not respond within 14 business days and does not request an extension to respond, contact the Division for further assistance.

#### Instructions for a public body that receives a complaint:

- o The chair must disseminate the complaint to the members of the public body.
- o The public body must meet to review the complaint within 14 business days (usually 20-22 calendar days).
- o After review, but within 14 business days, the public body must respond to the complaint in writing and must send the complainant a response and a description of any action the public body has taken to address the allegations in the complaint. At the same time, the body must send the Attorney General a copy of the complaint and a copy of the response. The public body may delegate this responsibility to an individual member of the public body, its counsel, or a staff member, but only after the public body has met to review the complaint.
- o If a public body requires more time to review the complaint and respond, it may request an extension of time for good cause by contacting the Division of Open Government.

#### Once the public body has responded to the complaint:

- o If you are not satisfied with the public body's response to your complaint, you may file a copy of the complaint with the Division by mail, by email, or by hand, but only once you have waited for 30 days after filing the complaint with the public body. Mail may be sent to: The Division of Open Government, Office of the Attorney General, One Ashburton Place - 20<sup>th</sup> Floor, Boston, MA 02108. Emails may be sent to: [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us).
- o When you file your complaint with the Division, please include the complaint form and all documentation relevant to the alleged violation. You may wish to attach a cover letter explaining why the public body's response does not adequately address your complaint.
- o The Division will not review complaints filed with us more than 90 days after the violation, unless we granted an extension to the public body or you can demonstrate good cause for the delay.

If you have questions concerning the Open Meeting Law complaint process, we encourage you to contact the Division of Open Government by phone at (617) 963-2540 or by email at [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us).



## OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

### Your Contact Information:

First Name: Robert Last Name: Espindola

Address: 14 John St.

City: Fairhaven State: MA Zip Code: 02719

Phone Number: (774) 263-1046 Ext. \_\_\_\_\_

Email: respindola@fairhaven-ma.gov

Organization or Media Affiliation (if any): Town of Fairhaven, Select Board

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual  Organization  Media

### Public Body that is the subject of this complaint:

City/Town  County  Regional/District  State

Name of Public Body (including city/town, county or region, if applicable): Town of Fairhaven

Specific person(s), if any, you allege committed the violation: Angeline Lopes Ellison, Leon Correy

Date of alleged violation: 2-26-2024

## Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

On February 16th, I sent an email to the Open Meeting Law email address asking for clarification about "if going into executive session for the purpose of discussing the goals and objectives that will be set in place for the Town Administrator for the upcoming year (i.e. the basis for how the Town Administrator will be scored at their annual review under their existing contract) is a valid reason for a Select Board to enter executive session"

On February 21st, I received a statement from Ms. Carrie Benedon, Assistant Attorney General, that stated "We have explained in a few prior determination letters that discussions of the process or metrics through which an evaluation will be conducted is not a proper matter for executive session. Please see the attached determinations, and others that are cited within them."

On February 21st, I forwarded that email, along with the attached determinations to Town Administrator Angie Lopes Ellison and all four of my fellow Board members to alert them that I had received guidance from the Attorney General that Goals should not be taken up in Executive Session.

On February 23rd, the Select Board received an email containing an electronic copy of our "packet" for our February 26th meeting. In the section of the packet labeled "Monday, February 26th, Executive Session" the first page of that section was a one page document titled "2024 Town Administrator Goals" that included a listing of five (5) main goals with bullets under each one. That document was followed by a copy of the existing Town Administrators Contract for which the term runs until April 4th, 2025. The contract document calls for an appraisal of calendar year goals to be completed by the end of December of that year. It appeared clear to me that, despite the Attorney Generals guidance, we were being called into Executive Session to discuss 2024 goals (under the existing contract). During our Open Meeting discussion prior to voting to go into executive session, I referred to the email exchange between Ms. Benedon and I that I had forwarded to everyone prior to the meeting, handed a hard copy of the email and all three determination letters and explained that goal setting did not meet the standard for discussion in Executive Session.

I thought that was made very clear. Upon entering Executive Session, Town Administrator Ellison started the meeting by saying that she wanted to discuss goals and became very angry. I felt uncomfortable both because the discussion was about to ensue about goals and because I felt there was a hostile environment aimed at me, so I exited the Executive session at that point. Later, Town Administrator Ellison left the room and at that point I reentered the Executive session for the remainder of it where there was discussion about what was actually on the Executives Session (her contract).

On March 11th, the Board approved Executive Session meeting minutes that confirm not only that the topic of goals discussed in Executive Session but Town Administrator Ellison also filed a formal complaint to the rest of the Board about me while I was not in the room. There was nothing posted on the Executive Session agenda to discuss concerns about any Board member and I received no notification that that discussion would take place without me present in the room. Furthermore, it is my understanding, from talking to Labor Counsel, that because of the comments made about me in Executive Session, I will be questioned in an investigation about the allegations.

The meeting notes make no mention of the Chair attempting to stop the conversation about goals or about me during the Executive Session even though the Chair has received, in writing, a copy of guidance from the Attorney General that it is the Chairs responsibility to ensure that topics not on the Executive Session Agenda are not discussed in Executive Session.

I believe the actions taken in executive session to discuss goals after receiving written notice by email and then verbal notice during the Open Public meeting as well as the complaint to the rest of the Board with me absent and without proper notice, show a blatant disregard for the Open Meeting Law. I believe it is my responsibility to file a formal complaint in an effort to stop this sort of thing from happening in the future.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

Investigate the complaint and determine if there was an Open Meeting Law violation. If there was, provide guidance on how to avoid a similar violation in the future

## Review, sign, and submit your complaint

### I. Disclosure of Your Complaint.

**Public Record.** Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

**Publication to Website.** As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

### II. Consulting With a Private Attorney.

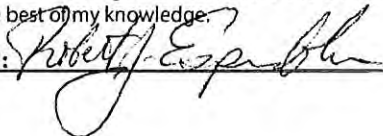
The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

### III. Submit Your Complaint to the Public Body.

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us).

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: \_\_\_\_\_



Date: \_\_\_\_\_

3-11-2024

For Use By Public Body

Date Received by Public Body:

For Use By AGO

Date Received by AGO:

March 15, 2024

Request to Fly Progress Pride Flag in June

Dear Select Board,

I hope this message finds you well. I'm writing to request the flying of the Progress Pride Flag during the month of June. This gesture would symbolize our support for LGBTQ+ and the BIPOC community in the ongoing pursuit of equality and acceptance.

-Jess Fidalgo, Chair

Belonging Committee

March 15, 2024

Request to Fly Juneteenth Flag in Recognition of Federal Holiday

Dear Select Board,

I am writing to kindly request the flying of the Juneteenth flag in recognition of the federal holiday, as we celebrate this important day commemorating the emancipation of the last 250,000 slaves in Texas on June 19, 1865. Displaying the Juneteenth flag would demonstrate our commitment to honoring the significance of this historic date to the final enforcement of the Emancipation Proclamation that was made over 2 years prior on Jan 1, 1863.

June 19th 2024 is on a Wednesday this year. We would suggest having the flag up for a week June 17-24. Last year the city of New Bedford flew the flag at city hall for the long weekend as our reference point, however the Select Board may chose longer or shorter in their purview.

Thank you for considering our request.

-Jess Fidalgo, Chair

Belonging Committee

General Release and Indemnity  
Flag/Banner Policy

I/we, Belonging Committee in consideration of the approval of my/our request to the Town of Fairhaven to be allowed to display a flag or banner on public property, do hereby agree to release the Town, and its officers, agents, and employees, from any and all liability for damage or injury suffered by me/us including but not limited to personal injury or property damage resulting from, or related to, the placement, display or removal by me/us or by any other person, of the flag or banner: and further I/we agree to indemnify, defend and hold harmless the Town, and its officers, agents, and employees, from any and all claims for damage or injury, including but not limited to personal injury or property damage resulting from, or related to, the placement, display or removal by me/us or by any other person, of the flag or banner.

3/14/24  
Date:

Jessica Fidalgo, Belonging Committee  
Name (print)

Chair  
Title (if signed on behalf of an organization):

Jessica Fidalgo  
Signed:

Office Use only

Received on

By

Approved by Select Board

Dates to be displayed

# SELECT BOARD'S MEETING

**Monday March 25, 2024**

**Annual Buzzards Bay Swim  
Special one Day Liquor License**

**Application submitted by:**

**Nina Chomack,  
Director of Public Engagement**

**Date and Times to be held:**

**Saturday June 22, 2024  
From  
7:30 A.M.- 11:00 A.M.**





February 12, 2024

Fairhaven Select Board  
Fairhaven Town Hall  
40 Center Street  
Fairhaven, MA 02719

Dear Fairhaven Select Board,

The finish line of the **Buzzards Bay Swim** has been held successfully at DCR's Fort Phoenix State Reservation in Fairhaven, MA for the past 30 years. This year's event has been scheduled for Saturday, June 22, 2024.

For the past several years, we've requested and received a one-day liquor license for this event and permission from DCR to distribute no more than one beer per 21-and-over swimmer between the hours of 7:00-11:00 a.m. Our beer partner is Buzzards Bay Brewing from Westport and the distribution has gone very smoothly with no issues.

We would like to request permission again this year. Beer will be made available only to registered swimmers who have paid a \$25 registration fee, who are over 21, and quantity is limited to one beer per swimmer. We will have a separate, stand-alone 10' x 10' pop-up tent that is roped off from the public where a TIPS certified bartender will serve cans of beer. There will be recycling bins for the empties that will be collected by BBC and recycled post-event. Signage will be kept to a minimum inside the beer tent only.

DCR is willing to issue an alcohol waiver for the event as long as we 1) secure a one-day special liquor license from the Town of Fairhaven, 2) provide DCR with a certificate of insurance including liquor liability and 3) secure a police detail for the beer tent only during hours of service from 7:30am-10:30am.

Please let us know if you have questions or need more information. Thank you for your consideration.

Best regards,

Nina Chomak  
Director of Public Engagement  
Chomak@savebuzzardsbay.org  
(508) 999-6363 x205

[www.savebuzzardsbay.org](http://www.savebuzzardsbay.org)

114 Front Street, New Bedford, Massachusetts 02740 | Tel: 508-999-6363 Fax: 508-984-7913





# TOWN OF FAIRHAVEN

## APPLICATION FOR SPECIAL LICENSE

General Law Chapter 138, Section 14

Date: 2/6/24

To the Licensing Board:

The undersigned hereby applies for a SPECIAL LICENSE under provisions of Chapter 138, Section 14

to sell

**Beer ONLY**

(Beer and Wine)

or

(All Alcoholic Beverages)

For a Buzzards Bay Swim to be held at

DCR's Fort Phoenix State Reservation

100 Green St Fairhaven, MA 02719

by TIPS certified bartender

date Saturday June 22, 2024

from 7:30 A.M. to 11:00 A.M.

Name of Applicant: Nina Chomack, Dir. Public Engagement

Address of Applicant: 111 Front St

New Bedford, MA 02740

Telephone: (508) 999-9696 ext 205

For a banquet or public dinner, the applicant should be responsible, manager of the banquet or public dinner.

For a picnic, field day or outing, applicant should be a representative of responsible organization or individual.

### FEE:

Beer & Wine \$20.00

All Alcoholic \$35.00

# SELECT BOARD'S MEETING

**Monday, March 25, 2024**

**Request submitted by:**

**Raise the resident senior Shellfish age from 62 to 65. This permit is of no charge and dos not expire. This was recommended by the Marine Resource Committee to increase revenue.**



# TOWN CLERK'S OFFICE

## FAIRHAVEN, MASSACHUSETTS

TOWN HALL · 40 CENTER STREET · FAIRHAVEN, MA 02719

TELEPHONE: 508-979-4023 X 3 · EMAIL: CLERK@FAIRHAVEN-MA.GOV

To: Select Board  
From: Town Clerk's Office  
Date: March 20, 2024  
RE: April 1, 2024 – Annual Town Election Police Officer Assignment

**Action is requested in response to the changes made to section 72 of MGL 54, which now charges the Select Board with detailing a sufficient number of police officers or constables for each polling location.**

*On June 22, 2022 the election reform law (the "VOTES Act") was signed into law by Governor Baker. The VOTES Act makes many of the changes from the pandemic permanent (eg., Vote by Mail and Early In-Person Voting). In addition, the assignment of the number of police officers and/or constables at polling places now requires a vote of the Select Board.*

The Town of Fairhaven has 6 precincts that will vote in 1 polling location-the Fairhaven Recreation Center, 227 Huttleston Ave. The assigned officers are responsible for delivering the ballots and voting machines to the precincts in the morning, and back to the Town Hall at the end of the night, as well as to preserve order and to protect the election officers and supervisors from any interference with their duties.

In past elections, three (3) to four (4) officers have been assigned to work at the Recreation Center, depending on the expected turnout of the election. My recommendation for the Annual Town Election is to assign at least three (3) police officers to the polling location, two (2) inside the gymnasium to maintain order in the six precincts, and one (1) to assist with traffic in the parking lot.

**The following action is recommended:**

**MOTION:** Move to approve a sufficient number of police officers, but not less than three (3), at the polling location (Recreation Center, 227 Huttleston Ave.) for the April 1, 2024 Annual Town Election, to preserve order, and to protect the election officers and supervisors from any interference with their duties, and to aid in enforcing the laws relating to elections, as required by Section 72 of MGL Chapter 54.

Further, move to designate the Police Chief the authority to assign specific police officers according to scheduling and availability. The Town Clerk will advise the Police Chief on the location and time the officers are needed.



# Town of Fairhaven

DRAFT 4

3/20/2024

## WARRANT

The inhabitants qualified as Town Meeting Members shall meet on  
**Saturday, May 4, 2024 at 9:00 am**  
 in the Walter Silveira Auditorium at the Elizabeth I. Hastings Middle School  
 to Act on the following Articles in the Warrant:

### Majority Vote needed unless stated otherwise

#### ARTICLE 1: MEASURER OF WOOD AND BARK

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

*Petitioned by: Select Board*

**Motion: To adopt as written in the warrant**

Select Board:            Recommend \_\_\_

#### ARTICLE 2: TOWN REPORT

To receive the Annual Report of Town Officers.

*Petitioned by: Select Board*

**Motion: To receive the Annual Report of Town Officers**

Select Board:            Recommend \_\_\_

#### ARTICLE 3: REPORT OF COMMITTEES

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

*Petitioned by: Select Board*

**Motion: To adopt as written in the warrant**

Select Board:            Recommend \_\_\_

#### ARTICLE 4: BILL OF PRIOR YEAR-Paid from FY23 funds

To see if the Town will vote to pay the unpaid bills of a prior fiscal year. And others that may be brought forward, or take any other action relative thereto

*Petitioned by: Town Accountant*

<u>Vendor</u>	<u>Amount</u>	<u>Petitioner</u>
Stryker	\$2,191.90	Fire Department
GCG Associates, Inc.	\$195.00	Planning Department

**Motion: To approve as listed in the warrant, with funds coming from Surplus Revenue (Free Cash)**

Select Board:            Recommend \_\_\_

Finance Committee:    Recommend \_\_\_

**Vote Required: Four-Fifths (4/5) Majority**

**ARTICLE 5: FY24 GENERAL FUND ADJUSTMENTS** *(None at this time)*

To see if the Town will vote to amend Article 5A of the May 6, 2023 Town Meeting “General Fund Operating Budget-FY24” as follows, or take any action relative thereto:

1. Transfer from Surplus Revenue (Free Cash) as follows:

*Petitioned by: Town Administrator*

**Motion:** To amend “FY 24 General Fund Operating Budget” to transfer from Surplus Revenue (Free Cash) the amounts as written

Select Board: Recommend \_\_\_

Finance Committee: Recommend \_\_\_

**ARTICLE 6 TOWN OPERATING BUDGETS -FY25**

**6A: GENERAL FUND OPERATING BUDGET-FY25**

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds the amounts listed on the accompanying table to fund the Fiscal Year 2025 General Fund Operating Budget or take any other action relative thereto:

*Petitioned by: Town Administrator*

*See Appendix A, page ##### for full budget description*

<b>Dept. Name/Function Totals</b>	<b>FY2024 Budgeted</b>	<b>FY2025 Budget</b>
<b>GENERAL GOVERNMENT</b>		
General Government Salaries & Wages	\$915,265	\$1,090,839
General Government Operating Expenses	\$615,395	\$887,940
Subtotal General Government	\$1,530,660	\$1,978,779

**Motion:** To raise and appropriate the sum of \$1,978,779 to fund general government departments FY25 budget, which includes salaries and wages for appointed and elected officials and operating expenses.

Select Board: Recommend \_\_\_

Finance Committee: Recommend \_\_\_

	<b>FY2024 Budgeted</b>	<b>FY2025 Budget</b>
<b>MUNICIPAL FINANCE</b>		
Municipal Finance Salaries & Wages	\$699,564	\$749,946
Municipal Finance Operating Expenses	\$226,673	\$202,392
Subtotal Municipal Finance	\$926,237	\$952,338

**Motion:** To raise and appropriate the sum of \$952,338 to fund municipal finance departments FY25 budget, which includes salaries and wages for appointed and elected officials and operating expenses.

Select Board: Recommend \_\_\_

Finance Committee: Recommend \_\_\_

	<b>FY2024 Budgeted</b>	<b>FY2025 Budget</b>
<b>TOWN CLERK/ELECTIONS</b>		
Town Clerk/Elections Salaries & Wages	\$143,328	\$189,606
Town Clerk/Elections Operating Expenses	\$29,258	\$37,395

Subtotal Town Clerk/Elections	\$172,586	\$227,001
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**Motion: To raise and appropriate the sum of \$227,001 to fund Town Clerk/Elections departments FY25 budget, which includes salaries and wages for appointed and elected officials and operating expenses.**

Select Board:           Recommend \_\_\_\_  
 Finance Committee:   Recommend \_\_\_\_

	<b><u>FY2024 Budgeted</u></b>	<b><u>FY2025 Budget</u></b>
<b>PLANNING &amp; DEVELOPMENT</b>		
Planning & Development Salaries & Wages	\$239,700	\$240,433
Planning & Development Operating Expenses	\$42,435	\$33,496
Subtotal Planning & Development	\$282,135	\$273,929

**Motion: To raise and appropriate the sum of \$273,929 to fund Planning & Development departments FY25 budget, which includes salaries and wages for appointed and elected officials and operating expenses.**

Select Board:           Recommend \_\_\_\_  
 Finance Committee:   Recommend \_\_\_\_

	<b><u>FY2024 Budgeted</u></b>	<b><u>FY2025 Budget</u></b>
<b>TOTAL GENERAL GOVERNMENT</b>		
<b>TOTAL GENERAL GOVERNMENT Salaries &amp; Wages</b>	\$1,997,857	\$2,270,824
<b>TOTAL GENERAL GOVERNMENT Operating Expenses</b>	\$913,761	\$1,161,223
<b>TOTAL GENERAL GOVERNMENT</b>	\$2,911,618	\$3,432,047

	<b><u>FY2024 Budgeted</u></b>	<b><u>FY2025 Budget</u></b>
<b>PUBLIC SAFETY</b>		
Public Safety Salaries & Wages	\$7,798,141	\$9,256,462
Public Safety Operating Expenses	\$989,137	\$977,006.07
Subtotal Public Safety	\$8,787,278	\$10,233,468.07

**Motion: To raise and appropriate the sum of \$10,233,468.07 to fund Public Safety departments FY25 budget, which includes salaries and wages for appointed and elected officials and operating expenses.**

Select Board:           Recommend \_\_\_\_  
 Finance Committee:   Recommend \_\_\_\_

	<b><u>FY2024 Budgeted</u></b>	<b><u>FY2025 Budget</u></b>
<b>EDUCATION</b>		
Subtotal Fairhaven Public Schools	\$23,753,641	\$25,310,194
Subtotal New Bedford Regional Technical HS	\$2,397,000	\$2,636,000
Subtotal Bristol County Agricultural HS	\$235,000	\$316,000
SUBTOTAL TECHNICAL EDUCATION	\$26,385,641	\$28,262,194

**Motion: To raise and appropriate the sum of \$25,310,194 to fund the Fairhaven Public School district FY25 budget, with each item to be considered a separate appropriation.**

**Motion: To raise and appropriate the sum of \$2,636,000 to fund the New Bedford Regional Technical High School FY25 budget, with each item to be considered a separate appropriation.**

**Motion: To raise and appropriate the sum of \$316,000 to fund the Bristol County Agricultural**

**High School FY25 budget, with each item to be considered a separate appropriation.**

Select Board: Recommend \_\_\_  
 Finance Committee: Recommend \_\_\_

	<b>FY2024 Budgeted</b>	<b>FY2025 Budget</b>
<b>PUBLIC WORKS</b>		
Public Works Salaries & Wages	\$1,671,107	\$1,695,909
Public Works Operating Expenses	<u>\$2,634,961</u>	<u>\$2,814,232</u>
Subtotal Public Works	\$4,305,068	\$4,510,141

***Motion:* To raise and appropriate the sum of \$4,510,141 to fund public works departments FY25 budget, which includes salaries and wages for appointed and elected officials and operating expenses.**

Select Board: Recommend \_\_\_  
 Finance Committee: Recommend \_\_\_

	<b>FY2024 Budgeted</b>	<b>FY2025 Budget</b>
<b>HEALTH AND ENVIRONMENT</b>		
Board of Health Salaries & Wages	\$164,353	\$174,797
Board of Health Operating Expenses	<u>\$24,570</u>	<u>\$23,660</u>
Subtotal Board of Health	\$188,923	\$198,457

***Motion:* To raise and appropriate the sum of \$198,457 to fund Health and Environmental departments FY25 budget, which includes salaries and wages for appointed and elected officials and operating expenses.**

Select Board: Recommend \_\_\_  
 Finance Committee: Recommend \_\_\_

	<b>FY2024 Budgeted</b>	<b>FY2025 Budget</b>
<b>COMMUNITY SERVICES</b>		
Community Services Salaries & Wages	\$584,768	\$548,295
Community Services Operating Expenses	<u>\$1,681,025</u>	<u>\$1,709,020</u>
Subtotal Community Services	\$2,265,793	\$2,257,315

***Motion:* To raise and appropriate the sum of \$2,257,315 to fund Community Services departments FY25 budget, which includes salaries and wages for appointed and elected officials and operating expenses.**

Select Board: Recommend \_\_\_  
 Finance Committee: Recommend \_\_\_

	<b>FY2024 Budgeted</b>	<b>FY2025 Budget</b>
<b>NON-DEPARTMENTAL</b>		
Non-Departmental Salaries & Wages	\$750,000	\$0
Non-Departmental Operating Expenses	<u>\$10,911,560</u>	<u>\$11,319,792</u>
Subtotal Non-Departmental	\$11,661,560	\$11,319,792

***Motion:* To raise and appropriate the sum of \$11,319,792 to fund the Non-Departmental departments FY25 budget, which includes salaries and wages for appointed and elected officials and operating expenses.**

Select Board: Recommend \_\_\_  
 Finance Committee: Recommend \_\_\_



	<u>FY2024 Budgeted</u>	<u>FY2025 Budget</u>
<b>DEBT SERVICE</b>		
General Fund	\$1,131,020	\$1,094,605
<b>Subtotal Debt Service</b>		

**Motion: To raise and appropriate the sum of \$1,094,605 to fund debt services FY25 budget.**

Select Board: Recommend \_\_\_  
 Finance Committee: Recommend \_\_\_

**6B: WATER ENTERPRISE FUND OPERATING BUDGET**

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds the following amounts to fund the operating budget of the Water Enterprise Fund for Fiscal Year 2025 or take any other action relative thereto:

	<u>FY 2024 Budget</u>	<u>FY2025 Budget</u>
<b>Amounts Appropriated:</b>		
Salaries and Wages	704,809	807,523
Operating Expenses	2,083,300	2,095,338
Debt Service	<u>434,251</u>	<u>295,725</u>
<b>Subtotal Water Enterprise Appropriations</b>	<b>3,222,360</b>	<b>3,198,586</b>
<b>Transfer for Amounts Appropriated in the General Fund</b>	<b><u>536,795</u></b>	<b><u>536,795 ???</u></b>
<b>TOTAL WATER ENTERPRISE FUND OPERATING BUDGET</b>	<b>3,759,155</b>	<b>3,735,381</b>
<b>Funding Sources:</b>		
Water Revenue	3,465,000	3,500,000
Water Retained Earnings	<u>294,155</u>	<u>235,381</u>
<b>TOTAL FUNDING SOURCES</b>	<b>3,759,155</b>	<b>3,735,381</b>

*Petitioned by: Town Administrator and Board of Public Works*

**Motion: To raise and appropriate a sum of \$3,735,381 to fund the Water Enterprise Fund for fiscal year 2025**

Select Board: Recommend \_\_\_  
 Finance Committee: Recommend \_\_\_

**6C: SEWER ENTERPRISE FUND OPERATING BUDGET**

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds the following amounts to fund the operating budget of the Sewer Enterprise Fund for Fiscal Year 2025 or take any other action relative thereto:

	<u>FY 2024 Budget</u>	<u>FY2025 Budget</u>
<b>Amounts Appropriated:</b>		
Salaries and Wages	1,257,009	1,397,067
Operating Expenses	1,284,325	1,441,826
Debt Service	<u>775,465</u>	<u>956,904</u>
<b>Subtotal Sewer Enterprise Appropriations</b>	<b>3,316,799</b>	<b>3,795,797</b>
<b>Transfer for Amounts Appropriated in the General Fund</b>	<b><u>858,700</u></b>	<b><u>858,700 ???</u></b>
<b>TOTAL SEWER ENTERPRISE FUND</b>	<b>4,175,499</b>	<b>4,654,497</b>

<b>OPERATING BUDGET</b>		
<b>Funding Sources:</b>		
Sewer Revenue	4,175,499	4,554,497
Sewer Retained Earnings	<u>0</u>	<u>100,000</u>
<b>TOTAL FUNDING SOURCES</b>	<b>4,175,499</b>	<b>4,654,497</b>

*Petitioned by: Town Administrator and Board of Public Works*

***Motion:* To raise and appropriate a sum of \$4,654,497 to fund the Sewer Enterprise Fund for fiscal year 2025**

Select Board:           Recommend \_\_\_  
 Finance Committee:   Recommend \_\_\_

**6D: TOWN CABLE ENTERPRISE FUND OPERATING BUDGET**

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds the following amounts to fund the operating budget of the Town Cable Enterprise Fund for Fiscal Year 2025 or take any other action relative thereto:

	<u>FY 2024 Budget</u>	<u>FY2025 Budget</u>
<b>Amounts Appropriated:</b>		
Salaries and Wages	183,158	184,773
Operating Expenses	30,800	30,700
Debt Service	<u>0</u>	<u>0</u>
<b>Subtotal Town Cable Enterprise Appropriations</b>	<b>213,958</b>	<b>215,473</b>
<b>Transfer for Amounts Appropriated in the General Fund</b>	<b><u>16,422</u></b>	<b><u>24,671</u></b>
<b>TOTAL TOWN CABLE ENTERPRISE FUND OPERATING BUDGET</b>	<b>230,380</b>	<b>240,144</b>
<b>Funding Sources:</b>		
Town Cable Revenue	190,000	202,665
Town Cable Retained Earnings	<u>40,380</u>	<u>37,479</u>
<b>TOTAL FUNDING SOURCES</b>	<b>230,380</b>	<b>240,144</b>

*Petitioned by: Town Administrator*

***Motion:* To raise and appropriate a sum of \$240,144 to fund the Town Cable Enterprise Fund for fiscal year 2025**

Select Board:           Recommend \_\_\_  
 Finance Committee:   Recommend \_\_\_

**6E: SCHOOL CABLE ENTERPRISE FUND OPERATING BUDGET**

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds the following amounts to fund the operating budget of the School Cable Enterprise Fund for Fiscal Year 2025 or take any other action relative thereto:

	<u>FY 2024 Budget</u>	<u>FY2025 Budget</u>
<b>Amounts Appropriated:</b>		
Salaries and Wages	138,860	115,214
Operating Expenses	19,391	28,840
Debt Service	<u>0</u>	<u>0</u>
<b>Subtotal School Cable Enterprise Appropriations</b>	<b>158,251</b>	<b>144,054</b>

<b>Transfer for Amounts Appropriated in the General Fund</b>	<b><u>2,064</u></b>	<b><u>12,849</u></b>
<b>TOTAL SCHOOL CABLE ENTERPRISE FUND OPERATING BUDGET</b>	<b>160,315</b>	<b>156,903</b>
<b>Funding Sources:</b>		
School Cable Revenue	154,939	156,902
School Cable Retained Earnings	<u>5,376</u>	<u>0</u>
<b>TOTAL FUNDING SOURCES</b>	<b>160,315</b>	<b>156,902</b>

*Petitioned by: Town Administrator and School Committee*

***Motion:*** To raise and appropriate a sum of \$156,902 to fund the School Cable Enterprise Fund for fiscal year 2025

Select Board: Recommend Adoption

Finance Committee: Recommend Adoption

**ARTICLE 7: GENERAL FUND CAPITAL PLAN**

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds the following sums of monies to fund the capital equipment and projects listed below, or take any other action relative thereto:

<u>Line</u>	<u>Department/Project</u>	<u>Amount</u>	<u>Funding Source</u>
	<b>Public Works Department</b>		
1	Road Work	\$125,000	Free Cash
2	Tub Grinder/Recycling Center Relocation	\$300,000	Free Cash
3	Vehicle #12 Replacement	\$100,000	Free Cash
4	BPW Admin Building Floor Tile	\$45,000	Free Cash
5	Tractor Replacement	\$200,000	Free Cash
	<b>Fire</b>		
6	Gear Equipment	\$185,000	Free Cash
7	Replace Fire Prevention Vehicle	\$74,500	Free Cash
8	Used Bucket Truck	\$69,900	Free Cash
	<b>Police</b>		
9	Cruiser Replacement	\$140,306	Free Cash
	<b>School</b>		
10	Maintenance. Vehicle Replacement	\$58,500	Free Cash
	<b>Information Technology (IT)</b>		
11	IT Equipment	\$30,000	Free Cash
	<b>Total recommended General Fund Capital Budget</b>	<b>\$1,328,206</b>	

*Petitioned by: Town Administrator*

***Motion:*** To transfer a sum of \$1,328,206 from Surplus Revenue (Free Cash) to fund the capital projects as listed (items 1-11) for fiscal year 2025

Select Board: Recommend \_\_\_\_

Finance Committee: Recommend \_\_\_\_

**ARTICLE 8: WATER ENTERPRISE FUND CAPITAL PLAN**

**8A: WATER ENTERPRISE FUND CAPITAL BUDGET**

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds the

following sums of monies to fund the capital equipment and projects of the Water Enterprise Fund listed below, or take any other action relative thereto:

<u>Line</u>	<u>Project</u>	<u>Amount</u>	<u>Funding Source</u>
1	Portable Trailer	\$50,000	Water Retained Earnings

*Petitioned by: Board of Public Works*

**Motion: To transfer from Water Retained Earnings the sum of \$50,000 to fund the capital equipment and projects as listed.**

Select Board: Recommend \_\_\_

Finance Committee: Recommend \_\_\_

**8B: BORROWING AUTHORIZATION – WATER TOWER MAINTENANCE**

To see if the Town will vote to raise and appropriate or borrow the sum of \$1,000,000, or any other sum, for the purpose of funding the cost of the Sconticut Neck Water Tower Maintenance, including the payment of all costs incidental and related thereto; and that the Treasurer, with approval of the Select Board, is authorized to borrow such sum pursuant to Massachusetts General Law Chapter 44, section 8, or any other enabling authority, and to issue bonds or notes of the Town therefore.

<u>Line</u>	<u>Project</u>	<u>Amount</u>	<u>Funding Source</u>
1	Sconticut Neck Water Tower Maintenance	\$1,000,000	Borrowing

*Petitioned by: Board of Public Works*

**Motion: To borrow the sum of \$1,000,000 for funding the Sconticut Neck Water Tower Maintenance, the principal interest of which shall be repaid, in the first instance, through Water Enterprise Fund revenues.**

**Vote Required: Two-Thirds (2/3) Majority**

Select Board: Recommend \_\_\_

Finance Committee: Recommend \_\_\_

**ARTICLE 9 SEWER ENTERPRISE FUND CAPITAL PLAN**

**9A: SEWER ENTERPRISE FUND CAPITAL BUDGET**

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds the following sums of monies to fund the capital equipment and projects of the Sewer Enterprise Fund listed below, or take any other action relative thereto:

<u>Line</u>	<u>Project</u>	<u>Amount</u>	<u>Funding Source</u>
1	Inflow and Infiltration Study	\$250,000	Sewer Retained Earnings
2	4” Goodwin Pump	\$75,000	Sewer Retained Earnings

*Petitioned by: Board of Public Works*

**Motion: To transfer from sewer retaining earnings a sum of \$325,000 to fund the inflow and infiltration study and 4” Goodwin Pump equipment.**

Select Board: Recommend \_\_\_

Finance Committee: Recommend \_\_\_

**9B: BORROWING AUTHORIZATION – SOUTH STREET PUMP STATION PUMP REPLACEMENT**

To see if the Town will vote to raise and appropriate or borrow the sum of \$500,000, or any other sum,

for the purpose of funding the cost of the South Street Pump Station Pump Replacement, including the payment of all costs incidental and related thereto; and that the Treasurer, with approval of the Select Board, is authorized to borrow such sum pursuant to Massachusetts General Law Chapter 44, section 8, or any other enabling authority, and to issue bonds or notes of the Town therefore.

<u>Line</u>	<u>Project</u>	<u>Amount</u>	<u>Funding Source</u>
1	South Street Pump Station Pump Replacement	\$500,000	Sewer Retained Earnings

*Petitioned by: Board of Public Works*

**Motion: To borrow the sum of \$500,000 for funding the South Street Pump Station Pump Replacement, the principal interest of which shall be repaid, in the first instance, through Sewer Enterprise Fund revenues.**

**Vote Required: Two-Thirds (2/3) Majority**

Select Board: Recommend \_\_\_

Finance Committee: Recommend \_\_\_

**9C: SEWER CAPITAL STABILIZATION FUND**

To see if the Town will vote to transfer a \$2,328,760.07 from the Sewer Capital Improvements Stabilization Fund to Article 15A of the May 6, 2023 Town Meeting, or take any other action relative thereto:

*Petitioned by: Board of Public Works*

**Motion: To adopt as written in the warrant.**

Select Board: Recommend \_\_\_

Finance Committee: Recommend \_\_\_

**9D: SEWER ENTERPRISE FUND**

To see if the Town will vote to transfer a \$280,364.48 from the Sewer Enterprise Fund the Sewer Nitrogen Plant Article 15A of the June 18, 2022 Town Meeting, or take any other action relative thereto:

*Petitioned by: Board of Public Works*

**Motion: To adopt as written in the warrant.**

Select Board: Recommend \_\_\_

Finance Committee: Recommend \_\_\_

**ARTICLE 10 OTHER BUDGET ITEMS - APPROPRIATIONS**

**10A FUNDING OF ARTICLES**

To see if the Town will vote to raise and appropriate, and/or transfer from available funds, a sum of monies for the following purposes or take any action relative thereto.

*See Appendix B, page #### for Article Summary and Line Item Descriptions*

<u>Line</u>	<u>Fund</u>	<u>Amount</u>	<u>Source</u>
1	Transfer to Ambulance Stabilization Fund	70,000	Ambulance Fund
2	Transfer to Other Post-Employment Benefit (OPEB) Trust Fund	200,000	Free Cash
3	Capital Stabilization	150,000	Free Cash
4	Compensated Absences	300,000	Free Cash
5	Preventative Building Repairs	50,000	Free Cash
6	Grant Writing Consultant	60,000	Free Cash

7	Clerical Tuition (per Collective Bargaining Agreement)	10,000	Free Cash
8	Shellfish Propagation Program	17,250	Free Cash
9	FEMA 5% Match – Gear Equipment	12,000	Free Cash
10	Mannequin	2,450	Free Cash
11	Recreation Center Equipment	10,000	Free Cash
12	Recreation Center/Council on Aging Wall Divider	17,780	Free Cash
13	Highway Equipment	30,000	Free Cash
14	Leaf Vacuum	7,500	Free Cash
15	Basketball Hoops – Livsey Park	7,000	Free Cash
16	Utility Trailer	3,000	Free Cash
17	Breakroom Cabinets	1,200	Free Cash
18	Special Education Reserve Fund	34,801	Free cash
<b>Total</b>		<b>\$982,981</b>	

*Petitioned by: Town Administrator*

**Motion: To transfer from Surplus Revenue (Free Cash) the sum of \$982,981 to fund the Reserve line articles for the amount as written, except article 1, which is from Ambulance Reserve Fund**

Select Board: Recommend \_\_\_

Finance Committee: Recommend \_\_\_

**10B: INCREASE AND FUND COLA BASE FOR RETIREES**

To see if the Town will vote to raise and appropriate, borrow or transfer from Surplus Revenue (Free Cash) the amount of \$89,000 to increase the cost of living (COLA) base for retirees, beneficiaries, and survivors beginning July 1, 2024, from \$16,000 to \$17,000 consistent with the provisions of Chapter 188, Section 19 of the Acts of 2010.

**Article Summary and Description**

State law allows Massachusetts Municipal Retirement systems to increase the base pension amount upon which an annual cost of living adjustment (COLA) up to 3% can be applied. These increases in the base are required to be in increments of \$1,000 up to a maximum base amount of \$18,000. Currently the Fairhaven Retirement System's COLA base is set at \$16,000 and this article, if approved, would increase the base to \$17,000. This would result in an annual increase in pension benefits of \$510 per retiree. The average annual pension benefit for a Fairhaven retiree is \$26,967, so applying the additional \$510 would result in an increase of 1.8%, significantly below the current rate of inflation. It should also be noted that Town of Fairhaven employees do not participate in the Federal Government Social Security System which applies their annual COLA to the entire pension amount and not a portion of it as does the Fairhaven Retirement System.

*Petitioned by: Select Board*

**Motion: To transfer from available Surplus Revenue (Free Cash) \$89,000 to increase the cost of living (COLA) base for retirees, beneficiaries, and survivors beginning July 1, 2024, from \$16,000 to \$17,000 consistent with the provisions of Chapter 188, Section 19 of the Acts of 2010.**

Select Board: Recommend \_\_\_

Finance Committee: Recommend \_\_\_

**ARTICLE 11 STATE AID TO HIGHWAYS, CHAPTER 90**

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

*Petitioned by: Select Board of Public Works*

**Motion: To adopt as written in the warrant.**

Select Board: Recommend \_\_\_

Finance Committee: Recommend \_\_\_

**ARTICLE 12 MUNICIPAL FIBER OPTIC PROGRAM**

**12A: BORROWING AUTHORIZATION – FIBER OPTIC PROGRAM**

To see if the Town will vote to raise and appropriate or borrow the sum of up to \$20,645,527, or any other sum, for the purpose of funding the cost of a Town-wide Fiber Optic Internet System, including the payment of all costs incidental and related thereto; and that the Treasurer, with approval of the Select Board, is authorized to borrow such sum pursuant to Massachusetts General Law Chapter 44, section 8, or any other enabling authority, and to issue bonds or notes of the Town therefore.

*Petitioned by: Broadband Study Committee*

**Motion: To borrow the sum of up to \$20,645,527 for funding the cost of a Town-wide Fiber Optic Internet System, the principal interest of which shall be repaid, in the first instance, through [redacted].**

**Vote Required: Two-Thirds (2/3) Majority**

Select Board: Recommend \_\_\_

Finance Committee: Recommend \_\_\_

**12B: ESTABLISH A MUNICIPAL FIBER ENTERPRISE FUND**

To see if the Town will vote to accept the provisions of Massachusetts General Laws Chapter 44, Section 53F ½ establishing the Fairhaven Municipal Fiber as an Enterprise Fund effective for the fiscal year beginning July 1, 2025; or to take any other action relative thereto.

*Petitioned by: Broadband Study Committee*

**Motion: To accept the provisions of General Laws Chapter 44, Section 53F ½ establishing the Fairhaven Municipal Fiber as an Enterprise Fund effective for the fiscal year beginning July 1, 2025**

**Vote Required: Two-Thirds (2/3) Majority**

Select Board: Recommend \_\_\_

Finance Committee: Recommend \_\_\_

**ARTICLE 13 FY25 COMMUNITY PRESERVATION COMMITTEE APPROPRIATIONS**

To see if the Town will vote to appropriate or to reserve for later appropriation, and to authorize the Community Preservation Committee (CPC) to expend or reserve, from the Community Preservation Fund available funds and FY25 Estimated Receipts as set forth herein, the following amounts for community preservation purposes, with such expenditures to be subject to conditions to be specified in applications and award letters from the Community Preservation Committee, with each item considered a separate appropriation:

*See Appendix C, page ##### for Article Summary and Descriptions*

<b>PROPOSED FISCAL YEAR 2025 COMMUNITY PRESERVATION BUDGET</b>		
<b>APPROPRIATIONS</b>		<b>Recommended Amounts</b>
<b>Reserve for Appropriation</b>		
A.	Acquisition, creation, and preservation of Open Space, and its rehabilitation and restoration.	\$70,000
B.	Acquisition, creation, and preservation of Historic Resources	\$70,000
C.	Acquisition, creation, and preservation of Community Housing	\$70,000
D.	Emergency Reserve Account	<b>\$20,000</b>
<b>Total Reserves for Appropriation</b>		<b>\$230,000</b>
<b>Spending Appropriations</b>		
E.	FHS – Boiler Room Roof Replacement (\$92.7K Und. Bal.)	\$92,700
F.	Lib. – Electrical Upgrades (\$76k Est. Historic & \$309.7K Est. Receipts)	\$385,700
G.	Town Hall Repairs – Stairs and Exterior Caulking (\$30K Und. Bal.)	\$30,000
H.	BBC – Carvalho Woods Conservation Project (\$110K Und. Bal.)	\$110,000
I.	BPW – Phoenix Rail Trail Handicapped Accessible Tables (\$5K Est. Receipts)	\$5,000
J.	BPW – Macomber Park BMX Track (\$201K Und. Bal. & \$76K Est. O.S.)	\$277,000
K.	Cushman Park Pathways (19K Und. Bal.)	\$19,000
L.	FHA – Anthony Haven Window Replacement (\$100K Est. Housing)	\$100,000
M.	Town Hall Repairs - East Retaining Wall (\$150K Emergency Reserve)	\$150,000
<b>Administrative Spending Appropriation</b>		
N.	To fund the Community Preservation Committee’s annual expenses for: Personal Service; Purchase of Services; Supplies; Other charges/expenditures (Estimated Receipts)	\$13,400
<b>Total Recommended Spending Appropriations</b>		<b>\$1,182,800</b>

*Petitioned by: Community Preservation Committee*

**Motion:** To adopt as written in the warrant, including appropriations and allocations in the amounts specified and from the sources specified in the Article.

Select Board:       Recommend \_\_\_  
 Finance Committee:   Recommend \_\_\_

**ARTICLE 14: REVOLVING FUNDS**

To see if the Town will authorize or re-authorize the following Revolving Accounts under the provisions of Massachusetts General Law Chapter 44, Section 53 E ½ and to amend General Bylaws Section 2-6 to add new revolving funds under the following terms or take any other action relative thereto:

<b>Revolving Fund</b>	<b>Authorized to Spend</b>	<b>Revenue Source</b>	<b>FY25 Limit</b>
Hazardous Materials	Fire Chief	Disposal fees/charges	\$100,000



Sustainability	Sustainability Committee	Fees/charges	\$10,000
Hoppy's Landing	Select Board and/or Town Administrator	Fees/charges from users of Hoppy's Landing	\$25,000
Town Hall Auditorium	Town Administrator	Town Hall Auditorium rental fees	\$2,000
Park Utilities	Board of Public Works	User fees	\$2,000
Shellfish Mitigation	Marine Resources	Mitigation fees	\$25,000
Mooring Fees	Marine Resources	Mooring fees	\$2,000
Mattress Recycling	Board of Health	Fees from mattress disposal	\$1,000
Hoarding Remediation	Board of Health	Revenue from textile recovery boxes	\$1,000
Wellness	Wellness Committee	Fees, BCBS reimbursements, vendors	\$2,500
Supportive Social Day Program	Council on Aging Director	Receipts reserved for appropriation for supportive social day	\$175,000

*Petitioned by: Town Administrator*

**Motion: To adopt as written in the warrant**

Select Board:           Recommend \_\_\_  
 Finance Committee:   Recommend \_\_\_

**ARTICLE 15 CREATE AND TRANSFER TO A SPECIAL REVENUE FUND (SRF): OPIOID ABATEMENT FUNDS**

To see if the Town will vote to create and transfer Opioid Abatement Funds to a Special Revenue Fund (SRF). Per the Massachusetts, Department of Revenue (DOR), Division of Local Services (DLS) guidance. **Need specifics on language and references**

*Petitioned by: Town Accountant*

**Motion: To adopt as written in the warrant**

Select Board:           Recommend \_\_\_  
 Finance Committee:   Recommend \_\_\_

**ARTICLE 16 AMEND ARTICLE 11A MAY 6, 2023, LINE 4 DESCRIPTION**

To see if the Town will vote to amend Line 4 of Article 11A of the May 6, 2023 Town Meeting "Funding of Articles" for the description as follows: change "Personal Property Audits - Assessing Dept." to "Assessment Audits" to allow the remaining funds totaling \$5300 to be used on Real Estate audits if needed, or take any action relative thereto.

*Petitioned by: Assessors*

**Motion: To adopt as written in the warrant**

Select Board:           Recommend \_\_\_  
 Finance Committee:   Recommend \_\_\_

**ARTICLE 17 ASSESSMENT OF NEW CONSTRUCTION**

To see if the Town will vote to adopt Section 40 of Chapter 653 of the Acts of 1989, to allow the assessment of new buildings, structures, or other physical improvements that occurred between January 2nd and June 30th, for the fiscal year beginning July 1st.

*Petitioned by: Assessors*

**Motion: To adopt as written in the warrant**

Select Board:           Recommend \_\_\_  
 Finance Committee:   Recommend \_\_\_

**ARTICLE 18 AMEND BYLAWS CHAPTER 119**

To see if the Town will vote to amend Bylaws, Chapter 119, Section 3 Acceptance of Fee Schedule as outlined below by replacing existing language with language in bold.

§ 119-3. Acceptance of fee schedule.

The following is the fee schedule pertaining to Fire Department permits:

Type of Permit or Item Fee
Ammunition storage license <del>\$30.00</del> <b>\$50.00</b>
Annual radio box fee <del>\$200.00</del> <b>\$250.00</b>
ANSUL system <del>\$30.00</del> <b>\$50.00</b>
Blasting permits <del>\$30.00</del> <b>\$50.00</b>
Bonfire permits \$30.00
Copy of fire report \$20.00
Copy of records (2IE) (depends on amount copied) <del>\$5.00/\$10.00</del> <b>\$20.00</b>
Copy of SARF report \$20.00
Flammable liquids, solids and gases permit <del>\$30.00</del> <b>\$50.00</b>
Fuel oil storage/waste oil storage <del>\$30.00</del> <b>\$50.00</b>
Initial master box/radio box connection <del>\$150.00</del> <b>\$250.00</b>
Inn/hotel inspections (quarterly) \$50.00
Install/alter oil burner equipment <del>\$30.00</del> <b>\$50.00</b>
Install/removal of underground tanks \$50.00
LP gas storage permit <del>\$30.00</del> <b>\$50.00</b>
Vent-free fireplace <del>\$30.00</del> <b>\$50.00</b>
Research fee <del>\$20.00</del> <b>\$25.00</b>
Smoke detector permits/inspections <del>\$30.00</del> <b>1-2 Family \$50.00 / 3-5 Family \$100.00</b>
Smokeless/black powder permits <del>\$30.00</del> <b>\$50.00</b>
Sprinkler permit <del>\$30.00</del> <b>\$100.00</b>
Supervised fireworks permit <del>\$30.00</del> <b>\$100.00</b>
Tank truck inspection <del>\$30.00</del> <b>\$50.00</b>
Welding/cutting storage permit <del>\$30.00</del> <b>\$50.00</b>

*Petitioned by: Fire Department*

**Motion: To adopt as written in the warrant**

Select Board:           Recommend

Finance Committee:    Recommend

**ARTICLE 19 AMEND BYLAWS 87, 206 AND 405**

To see if the Town will vote to amend Bylaws, Chapter 87, Chapter 205 and Chapter 405 as outlined below by striking some of the existing language and adding underlined language.

*See Appendix D, page ##### for Full Bylaw with amendments*

Article Description:

The current animal bylaws in the Town of Fairhaven were adopted at the annual town meeting March 22, 1969. The current animal bylaws do not properly outline animal law and what should be enforced by the animal control officers. The newly proposed bylaws, if adopted, would align the town with

Massachusetts General Laws (MGLs) and better cover the town’s liability when enforcing the updated MGLs. This proposal would benefit the police and animal control officers when dealing with animal complaints and hopefully better outline animal laws for the residents of Fairhaven. These updated and expanded bylaws give clearer understanding of what an animal control officer shall enforce within the town, put the town in compliance with Massachusetts General Law, and explain the laws pet owners need to follow. The proposed bylaws would authorize the animal control officers to enforce both the code and MGL chapter 140 sections 136A to 174F, inclusive.

*Petitioned by: Police Department, Animal Control*

**Motion: To adopt as written in the warrant**

Select Board:           Recommend \_\_\_  
Finance Committee:   Recommend \_\_\_

**ARTICLE 20 AMEND BYLAWS STORMWATER MANAGEMENT**

To see if the Town will vote to amend Bylaws, Chapter 194 Stormwater Management as outlined below by striking some of the existing language and adding underlined language.

*See Appendix E, page ##### for Full Bylaw with amendments*

*Petitioned by: Board of Public Works, Planning Director, Conservation Agent*

**Motion: To adopt as written in the warrant**

Select Board:           Recommend \_\_\_  
Finance Committee:   Recommend \_\_\_

**ARTICLE 21 AMEND BYLAWS ZONING**

To see if the Town will vote to amend Bylaws, Chapter 198 as outlined below by striking some of the existing language and adding underlined language.

*See Appendix F, page ##### for Full Bylaw with amendments*

Article Description:

Massachusetts General Law 40A(5) provides that a zoning bylaw can be enacted by a simple majority vote rather than a 2/3 supermajority if the bylaw:

- a. Allows accessory dwelling units either within the principal dwelling or within a detached structure on the same lot as of right
- b. Changes dimensional standards such as lot coverage, setbacks and parking to allow for the construction of additional residential units on a particular parcel or parcels of land.

*Petitioned by: Board of Public Works, Planning Director, Conservation Agent*

**Motion: To adopt as written in the warrant**

Select Board:           Recommend \_\_\_  
Finance Committee:   Recommend \_\_\_

**ARTICLE 22 BYLAW FLOW NEUTRAL**

BYLAW – BEING DRAFTED BY BPW ENGINEER

*See Appendix G, page ##### for Full Bylaw with amendments*

*Petitioned by: Board of Public Works*

**Motion: To adopt as written in the warrant**

Select Board: Recommend \_\_\_  
Finance Committee: Recommend \_\_\_

**ARTICLE 23 TREE BYLAWS**

**23A: AMEND BYLAWS, CHAPTER 76 TREE WARDEN**

To see if the Town will vote to amend Bylaws, Chapter 76, § 1 as outlined below by striking some of the existing language and adding underlined language.

**Chapter 76: Tree Warden**

Section 76-1. Appointment; duties; qualifications; term

The Tree Warden shall be appointed by the Town Administrator with the approval of the Select Board, and shall exercise the duties of Tree Warden ~~and of insect pest control~~. Such Tree Warden shall be a Massachusetts Tree Wardens and Foresters Association Tree Warden qualified by training and experience in the field of ~~arboriculture and licensed with the Department of Food and Agriculture in accordance with the provisions of MGL c. 132B, § 10~~ Urban Forestry Management. The term of such appointment shall be for three years.

*Petitioned by: Public Works, Conservation and Sustainability, Planning and Tree Warden*

**Motion: To adopt as written in the warrant**

Select Board: Recommend \_\_\_  
Finance Committee: Recommend \_\_\_

**23B: NEW BYLAW, CHAPTER 88 PUBLIC SHADE TREE**

To see if the Town will vote to establish Bylaw Chapter 88 Public Shade Tree

*See Appendix H, page ##### for Full Bylaw with amendments*

*Petitioned by: Public Works, Conservation and Sustainability, Planning and Tree Warden*

**Motion: To adopt as written in the warrant**

Select Board: Recommend \_\_\_  
Finance Committee: Recommend \_\_\_

**ARTICLE 24 CITIZENS PETITION – STREET LIGHT**

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds a sum of money for the installation and maintenance of the following street light on pole 30412, across from Bass Creek Road, or take any action relative thereto:

*Petitioned by: Connie Hilton*

**Motion: To be provided by petitioner**

Select Board: Recommend \_\_\_  
Finance Committee: Recommend \_\_\_

**ARTICLE 25 CITIZENS PETITION – LEGISLATION FOR A RESTAURANT/ALL ALCOHOL LICENSE**

To see if the Town will vote to amend authorize the Select Board of the Town of Fairhaven to petition the

General Court for the passage of legislation authorizing the issuance of a Restaurant/All Alcohol License to Southcoast Pickleball LLC of 4 David Drawn Blvd. in the Town of Fairhaven, notwithstanding any limitations on the number of licenses issued under the provisions of Chapter 138 of the Massachusetts General Laws as amended. This license is non-transferable to another location, but the licensing authority may grant the license to a new applicant at the same location.

*Petitioned by: Southcoast Pickleball, LLC-verifying name*

**Motion: To be provided by petitioner**

Select Board: Recommend \_\_\_  
Finance Committee: Recommend \_\_\_

**ARTICLE 26 CITIZENS PETITION – REVOKE ARTICLE 22 § 5**

To see if the Town will vote to revoke Article 22 of the May 6, 2023 Town Meeting “Amend bylaws, Chapter 83 Alcoholic Beverages and Drugs”

We, the undersigned voters and I come as a whole to address the recent ban on the sale of alcohol containers less than less than 100ml. We are unhappy with the bylaw change that was put into place at the annual town meeting on May 6, 2023. I petition for the Town of Fairhaven to revoke Article 22: Section 5, Prohibit Sale of Plastic Alcohol “Nip” Bottles. In addition, I petition the members of Town to put the issue on the ballot and let the voters decide on it.

*Petitioned by: Stevie Pimental and Robert C. Santos*

**Motion: To be provided by petitioner**

Select Board: Recommend \_\_\_  
Finance Committee: Recommend \_\_\_

**ARTICLE 27 OTHER BUSINESS**

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

And you are hereby directed to serve this warrant by posting an attested copy thereof on or near the front or main entrance of the polling place for all Precincts at the Fairhaven Recreation Center, 227 Huttleston Avenue, seven days at least prior to the date of the meeting.

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***NOTE: Calendar Year (CY) 2023 Salaries can be found in the 2023 Annual Report***

**LIST OF APPENDICES**

*Appendix A, Article 6A General Fund Operating Budget - Page [redacted]*

*Appendix B, Article 10A Funding of Articles - Page [redacted]*

*Appendix C, Article 13, FY25 Community Preservation Committee Appropriations, Project Summary and Descriptions - Page [redacted]*

*Appendix D, Article 19 Amend Bylaws Chapter 87, Chapter 206 and Chapter 405 - Page [redacted]*

*Appendix E, Article 20 Amend Bylaw Stormwater Management - Page [redacted]*

*Appendix F, Article 21 Amend Zoning Bylaw - Page [redacted]*

*Appendix G, Article 22 Create Bylaw, Flow Neutral - Page [redacted]*

*Appendix H, Article 23B, Create Bylaw Chapter 88 Public Shade Tree - Page [redacted]*

DRAFT

**APPENDIX A - Article 6A General Fund Operating Budget**

*Will be entered once final updates added*

DRAFT

**APPENDIX B - Article 10A Funding of Articles**

*Will be entered once final updates added*

DRAFT



**DESCRIPTIONS**  
**2024 ANNUAL TOWN MEETING WARRANT**  
**CPC FY25 COMMUNITY PRESERVATION PROGRAM**

- A. Open Space Reserve: This is to reserve at least the minimum 10% of anticipated revenues to remain in compliance with the Community Preservation Act.
- B. Historic Preservation Reserve: This is to reserve at least the minimum 10% of anticipated revenues to remain in compliance with the Community Preservation Act.
- C. Community Housing Reserve: This is to reserve at the least the minimum 10% of anticipated revenues to remain in compliance with the Community Preservation Act.
- D. Emergency Reserve Account: A reserve account for emergencies that need funds but fall outside of the normal CPC Application and Review process. Projects would still need to be approved by Town Meeting.
- E. Fairhaven High School Boiler Room Roof Replacement project: Replacement of the boiler room's existing ballasted EPDM roof with a new PVC roof.
- F. Millicent Library Electrical Upgrade project: An upgrade to an 800 amp electrical system, the creation of a new main electrical room, and the replacement and relocation of the electrical panels as necessary.
- G. Town Hall Stairs and Exterior Caulking Repairs project: Repairs to the Town Hall front stairs and the exterior caulking of the building.
- H. BBC Carvalho Woods Conservation Project: For the Town, by and through the Conservation Commission, to purchase a conservation restriction (\$80,000) and pay for project costs and public access enhancements (\$30,000) on a 5.92 acre vacant lot at 144 Shaw Road. The CR would permanently protect the lot and allow for the creation of a walking trail from the Phoenix Bike Path near the north of the property to Shaw Road and the existing Carvalho Farm trail to the south.
- I. BPW Phoenix Rail Trail Handicapped Accessible Tables project: Add two handicapped accessible tables at rest areas along the Phoenix Rail Trail / Bike Path.
- J. BPW Macomber Park BMX Track project: Create a new BMX bike track along the north side of Macomber Park.
- K. Cushman Park Pathways project: Extend the paved path that goes around Cushman Park to the north and east sides, alongside the running track.
- L. Fairhaven Housing Authority – Anthony Haven Window Replacement project: Replace 75 windows to preserve the integrity of the public housing complex with 24 one-bedroom apartments for seniors over 60 and handicapped/disabled tenants.
- M. Town Hall Repairs – East Retaining Wall project: Repair the Town Hall East Retaining Wall along the Walnut Street Side of the building. The repair would require disassembling the wall and accompanying wrought iron fence and sidewalk, rebuilding the stonework, fence, and sidewalk, and installing a new drainage system to mitigate future issues.
- N. Administrative services and operating expenses: Administrative.

## Chapter 87. Animals

[HISTORY: Adopted by the Town of Fairhaven as follows: Part 1 by the Annual Town Meeting 3-22-1969 by Art. 69 (Ch. XVIII of the 1934 Bylaws). Amendments noted where applicable.]

### GENERAL REFERENCES

Animals — See Ch. 405.

Rodent infestation — See Ch. 461.

#### Part 1. ~~Dogs~~ Animals

[Adopted 3-22-1969 ATM by Art. 69 (Ch. XVIII of the 1934 Bylaws)]

#### § 87-1. Definitions.

As used in this Article I, the following terms mean:

**ADOPTION** - The delivery of a cat, dog or other domestic animal to a person 18 years of age or older for the purpose of taking care of the cat, dog or other domestic animal as a pet.

**DOG OFFICER** **ANIMAL CONTROL OFFICER** - The person or persons employed by the Town as its enforcement officer and shall include any police officer or constable of said town authorized to enforce sections 136A to 174F, inclusive, of Massachusetts General Laws, Chapter 140, as amended, and also this Chapter 87 of the Code.

#### **AT LARGE**

Off the premises of the owner and not under the control of the owner or a member of his/her immediate family, either by leash, cord, chain or otherwise. Any animal found to be outside of its natural habitat and not under the owner's control shall be deemed to be at large.

#### **ATTACK**

Aggressive physical contact initiated by an animal.

#### **COMMERCIAL BOARDING OR TRAINING KENNEL**

An establishment used for boarding, holding, day care, overnight stays or training of animals that are not the property of the owner of the establishment, at which such services are rendered in exchange for consideration and in the absence of the owner of any such animal; provided, however, that "commercial boarding or

training kennel" shall not include an animal shelter or animal control facility, a pet shop licensed under Section 39A of Chapter 129, of the Massachusetts General Laws, a grooming facility operated solely for the purpose of grooming and not for overnight boarding or an individual who temporarily, and not in the normal course of business, boards or cares for animals owned by others.

#### **COMMERCIAL BREEDER KENNEL**

An establishment, other than a personal kennel, engaged in the business of breeding animals for sale or exchange to wholesalers, brokers or pet shops in return for consideration.

#### **DANGEROUS DOG**

A dog that either: (i) without justification, attacks a person or domestic animal causing physical

injury or death; or (ii) behaves in a manner that a reasonable person would believe poses an unjustified imminent threat of physical injury or death to a person or to a domestic or owned animal.

### **DOMESTIC ANIMAL**

An animal designated as domestic by regulations promulgated by the department of fish and game.

### **DOMESTIC CHARITABLE CORPORATION KENNEL**

A facility operated, owned or maintained by a domestic charitable corporation registered with the Department or an animal welfare society or other nonprofit organization incorporated for the purpose of providing for and promoting the welfare, protection and humane treatment of animals, including a veterinary hospital or clinic operated by a licensed veterinarian, which operates consistent with such purposes while providing veterinary treatment and care.

### **EUTHANIZE**

To take the life of an animal by the administration of barbiturates in a manner deemed acceptable by the American Veterinary Medical Association Guidelines on Euthanasia.

### **HEARING AUTHORITY**

The town Select Board member, the officer in charge of the animal commission, the chief or commissioner of a police department, the chief or commissioner's designee or the person charged with the responsibility of handling dog complaints in a town or city.

### **KENNEL**

A pack or collection of dogs on a single premises, including a commercial boarding or training kennel, commercial breeder kennel, domestic charitable corporation kennel, personal kennel or veterinary kennel, and also any premises wherein any person, partnership or corporation engages in the business of boarding, breeding, buying, selling for hire, training for a fee, or selling dogs, or engages in training dogs for guard or sentry purposes, or every pack or collection of more than four dogs three months old or over owned or kept on a single premises irrespective of the purpose for which they are maintained.

### **LICENSED PERIOD**

From January 1 to December 31 each year.

### **LICENSING AUTHORITY**

The Town Clerk of the Town of Fairhaven.

### **LIVESTOCK or FOWL**

A fowl or other animal kept or propagated by the owner for food or as a means of livelihood, deer, elk, cottontail rabbit, northern hare, pheasant, quail, partridge and other birds and quadrupeds determined by the Department of Fisheries, Wildlife and Environmental Law Enforcement to be wild and kept by, or under a permit from, the Department in proper houses or suitable enclosed yards; provided, however, that livestock or fowl shall not include dogs, cats or other pets.

### **NUISANCE DOG**

a dog that: (i) by excessive barking or other disturbance, is a source of annoyance to a sick person residing in the vicinity; or (ii) by excessive barking, causing damage or other interference, a reasonable person would find such behavior disruptive to one's quiet and peaceful enjoyment; or (iii) has threatened or attacked livestock, a domestic animal or a person, but such threat or attack was not a grossly

disproportionate reaction under all the circumstances.

## **DOG POUND**

Any premises designated by action of the Town for the purpose of impounding dogs and caring for all dogs found running at large in violation of this Part 1.

## **OWNER/KEEPER**

Any person, group of persons or corporation owning or keeping or harboring a dog or dogs an animal or animals.

## **PERSONAL KENNEL**

A pack or collection of more than three dogs, three months old or older, owned or kept under single ownership for private, personal use; provided, however, that breeding of personally owned dogs may take place for the purpose of improving, exhibiting or showing the breed or for use in legal sporting activity or for other personal reasons; provided, further, that selling, trading, bartering or distributing such breeding from a personal kennel shall be to other breeders or individuals by private sale only and not to wholesalers, brokers or pet shops; provided, further, that a personal kennel shall not sell, trade, barter or distribute a dog not bred from its personally owned dog; and provided, further, that dogs temporarily housed at a personal kennel, in conjunction with an animal shelter or rescue registered with the Department, may be sold, traded, bartered or distributed if the transfer is not for profit.

## **RESTRAINT**

**[Amended 5-4-1996 ATM by Art. 34]**

A dog shall be considered under restraint within the meaning of this Part 1 if: A.

The animal is within the property limits of its owner or keeper; or

B.

The animal is under the immediate control of its owner or custodian on a leash or chain affixed to the collar or harness of the animal.

[Amended 10-16-2002 STM by Art. 9]

## **SHELTER**

Any premises designated by action of the Town for the purpose of impounding animals and caring for all animals found running at large in violation of this Part 1. A public animal control facility or other facility which is operated by an organization or individual for the purpose of protecting animals from cruelty, neglect or abuse.

## **VETERINARY KENNEL**

A veterinary hospital or clinic that boards dogs for reasons in addition to medical treatment or care; provided, however, that "veterinary kennel" shall not include a hospital or clinic used solely to house dogs that have undergone veterinary

treatment or observation or will do so only for the period of time necessary to accomplish that veterinary care.

§ 87-2. ~~Enforcement~~ Animal Control Officer.

~~The provisions of this Part 1 shall be enforced by the Dog Officer or Dog Officers and any police officer or constable of said town.~~

A. The board of selectmen shall appoint an Animal Control Officer and as many Assistant Animal Control Officers as they determine necessary to enforce this article, and said individual(s) shall enforce this article and perform such other duties as the board of selectmen may determine. Compensation, hours

and conditions of employment for the Animal Control Officer(s) under this article shall be governed by the Code or applicable collective bargaining agreement.

B. The provisions of MGL c. 140, § 151, regarding the training and duties of the Animal Control Officer shall apply and are expressly incorporated into this article. C. The provisions of MGL c. 140, §§ 151 and 151A, regarding the warrant to the Animal Control Officer pertaining to enforcement, recordkeeping and to the killing and/or transfer of any dogs shall apply and are expressly incorporated in this article. No Animal Control Officer shall be a licensed animal dealer registered with the United States Department of Agriculture, and no Animal Control Officer, either privately or in the course of carrying out his official assignments as an agent for this town, shall give, sell, or turn over any animal which may come into his custody to any business or institution licensed or registered as a research facility or animal dealer with the United States Department of Agriculture. Whoever violates the provisions of this subsection shall be punished by a fine of not more than \$1,000.

D. The provisions of MGL c. 140, §§ 151B, 151C, 152, 153 and 156, as amended, regarding the confinement, execution and recordkeeping thereof regarding dogs and animals, shall apply and are expressly incorporated in this article.

#### § 87-3. Restraint.

~~The owner shall keep his/her dog under restraint at all times.~~

A. As provided in MGL c. 140, § 167, the board of selectmen shall have the power to order that all dogs shall be restrained from running at large during such times as shall be prescribed by the order. Once passed, a certified copy of the order shall be posted in at least two public places in the town or, if a daily newspaper is published in the town, by publishing a copy once in that newspaper. Following publication board of selectmen may issue a warrant to a police officer or constable in a town, who shall, not sooner than 24 hours after the publication of the notice, euthanize all dogs in a humane manner that are found running at large contrary to the order. Notwithstanding the foregoing, a police officer or constable may, in the officer's or constable's discretion, hold any such dog for not more than seven days. If the owner of the dog claims it and pays to the officer or constable a penalty of \$40 for each day that the dog has been held, the dog shall be returned to its owner. The amount shall be paid over to the town.

B. The passage by the board of selectmen of the bylaw containing this section of the code shall constitute an order that no owner or keeper of any dog shall permit

such dog to run at large at any time. The provisions of this section shall not be intended to apply to dogs participating in any dog show, nor to seeing-eye dogs properly trained to assist blind persons for the purpose of aiding them in going from place to place, nor to any dogs properly trained and under control of and aiding the deaf, nor to any dogs being trained or actually being used for hunting purposes, nor in any area officially designated for off-leash activities, also known as a "dog park."

#### § 87-4. Impoundment fees.

[Amended 5-5-1987 ATM by Art. 16]

Any dog impounded hereunder may be reclaimed as herein provided upon payment by the owner to the ~~Dog Officer~~ Animal Control Officer of the sum of ~~\$4~~ \$40 for each day such dog is kept.[1]

[1]

*Editor's Note: See Ch. 206, Part 1, Animal Control Fees, for the current animal control fee structure.*

#### § 87-5. Confinement of ~~certain~~ dogs.

A. The owner shall confine within a building or secure enclosure every ~~fiere~~, dangerous or vicious dog and not

take such dog out of such building or secure enclosure unless such dog is securely muzzled and upon a leash. The ~~Dog Officer~~ Animal Control Officer may ~~destroy~~ apprehend any such dog which is found not to be so confined and without such a muzzle.

~~B. The owner shall confine within a building or secure enclosure any dog that has been impounded more than twice by the Dog Officer and not take such dog out of such building or secure enclosure unless such a dog is well secured by a leash. Failure to do so may result in such dog being taken permanently. The Animal Control Officer shall seek out, catch and confine all dogs within the town which are not licensed, collared or harnessed, or tagged, as required under MGL c. 140, § 151A, and to enter and prosecute a complaint for failure to comply with this code against the owners or keepers of such dogs, if known, and to euthanize or cause to be euthanized only by the administration of barbiturates in a manner deemed acceptable by the American Veterinary Medical Association Guidelines on Euthanasia, or by gunshot in case of emergency, each such dog not licensed, collared or harnessed, or tagged after being detained by or for the officer for a period of 10 days; provided, however, that after 10 days, the animal control officer may make available for adoption any dog found free of disease. Before delivery of a dog so adopted, the animal control officer shall require the purchaser to show identification and to procure a license and tag for the dog from the clerk of the city or town wherein the dog is to be kept. Dogs detained under this section shall be confined in a place suitable for the detention and care of dogs and kept in a sanitary~~

condition, or they may be placed in the care of the holder of a kennel license or of a domestic charitable corporation incorporated exclusively for the purpose of protecting animals from cruelty, neglect or abuse. The commissioner from time to time shall cause such places wherein animals are detained under this section to be inspected and shall make necessary orders in relation thereto. An animal control officer having custody of a detained dog or cat shall be allowed a sum determined by the town per day for the care of the dog or cat, payable by the owner or keeper, if known, otherwise by the town.

#### § 87-6. Violations and penalties.

[Amended 5-10-1978 ATM by Art. 28; 1-11-1979 STM by Art. 2; 5-4-1996 ATM by Art. 34]

- A. Penalties for the violation of any provision of this Part 1 shall be assessed and collected in accordance with the procedure established under MGL c. 140, § 173A (Noncriminal Disposition of Complaints for Violation of Dog Control Laws); provided, however, that notwithstanding the schedule of fines provided under said law, the fine for the first violation shall be \$25, and the fine for the second and each subsequent violation shall be \$50, except as provided in § 87-9. offense committed by a person shall be \$50. The fine for a second offense shall be \$100. The fine for a third offense shall be \$300. For a fourth or subsequent offense, the fine shall be \$500 and the municipality may order the animal spayed or neutered. Payment shall be made only by money order or check.
- B. Proceedings under this section shall not be deemed criminal; and no person notified to appear before the clerk of a district court as provided herein shall be required to report to any probation officer, and no record of the case shall be entered in the probation records.
- C. If a person notified to appear, as hereinbefore provided, fails to appear or pay the fine within twenty-one days of the sending of the notice, or having appeared, does not desire to avail himself of the procedure established by this section, the clerk shall issue the complaint and the procedure established for criminal cases shall be followed. If any person fails to appear in accordance with the summons issued upon such complaint, the clerk of the court shall send such person, by registered mail, return receipt requested, a notice that the complaint is pending and that, if the person fails to appear within twenty-one days from the sending of such notice, a warrant for his arrest will be issued.

#### § 87-7. License fee.

[Added 5-1-1982 ATM by Art. 10]

~~In addition to the dog license fee described in MGL c. 140, § 139, a fee of \$1 shall be paid to the Town for each license issued therefor. The foregoing shall take effect with the license period commencing April 1, 1983.~~

A. The fee for every dog license and kennel license shall be provided in Chapter 119, Fees.

B. No fee shall be charged for a license issued for a service animal as defined by the Americans with Disabilities Act or regulations promulgated thereunder. No fee

shall be charged for a license for a dog owned by a person aged 70 years or over. No license fee or portion thereof shall be refunded because of the subsequent death, loss, spaying or removal from the commonwealth or other disposal of the dog, nor shall a license fee or portion thereof paid by mistake be paid or recovered after it has been paid over.

§ 87-8. Licensing of dogs.

[Added 5-4-1985 ATM by Art. 41]

~~A person who at the commencement of a license period (the time between April 1 and the following March 31 of any year, both dates inclusive) becomes the owner or keeper within the Town of Fairhaven of a dog six months old or over which is not duly licensed and the owner or keeper of a dog when it becomes six months old during a license period shall cause it to be registered, numbered, described and licensed on or before June 10 of the current license period and until the end of such license period, and the owner of a dog so registered, numbered, described and licensed during any license period, in order to own or keep such dog after the beginning of the succeeding license period, shall, before the beginning thereof, cause it to be registered, numbered, described and licensed for such period. as provided by MGL c. 140, § 137. The registering, numbering, describing and licensing of a dog shall be done in the office of the Town Clerk on a form prescribed and supplied by the Town Clerk, and shall be subject to the condition expressed therein that the dog which is subject of the license shall be controlled and restrained from killing, chasing or harassing livestock or fowl. as provided by MGL c. 140, § 137.~~

A. The Town Clerk shall not grant a license for a dog unless the owner of the dog provides the licensing authority with a veterinarian's certification that the dog has been vaccinated in accordance MGL c. 140, § 145B, certification that such dog is exempt from the vaccination requirement under MGL c. 140, § 145B or a notarized letter from a veterinarian that either of these certifications was issued relative to such dog.

B. The owner or keeper of a licensed dog shall cause it to wear around its neck or body a collar or harness of leather or other suitable material to which shall be securely attached a tag in a form prescribed by and issued by the Town Clerk when a license is issued. Such tag shall state the following: Town of Fairhaven, year of issue and tag number. If any such tag shall be lost, the owner or keeper of such dog shall forthwith secure a substitute tag from the Town Clerk at a cost as provided in Chapter 119, Fees. This section shall not apply where it is otherwise provided by law, nor shall it apply to a person having a kennel license.

§ 87-9. ~~Statutory authority; assessment of penalties~~ Sanitary disposal of dog excrement.

[Added 5-4-1985 ATM by Art. 41]

~~This section and preceding § 87-8 are enacted pursuant to authority of MGL c. 140, §§ 173 and 173A. Penalties for the violation of § 87-8 hereof shall be assessed and collected in accordance with the procedure established under said § 173A (Noncriminal Disposition of Complaints for Violation of Municipal Dog Control Laws); provided, however, that the fine for any violation of § 87-8 hereof, including the first offense, will~~

be the sum of \$25. No person owning or having custody or control of a dog shall permit such dog to defecate on any public street or sidewalk of the Town, including the Town wharves, or on any public park, beach or

grounds of a public building, including school grounds, unless such person picks up the dog waste and disposes of it in a sanitary manner, including lawful disposal as solid waste or sewage. This section shall not apply to the visually impaired in custody or control of a Seeing Eye dog, or to any person unable to comply with the requirements of this section due to a physical disability. This section may be enforced by the Animal Control Officer, the Board of Health Agent, and any other person so designated by the Board of Health or the Select Board.

[1]

*Editor's Note: A regulation adopted by the Board of Health on 7-8-2015 provided that each violation of this section shall be punishable by a fine of \$100 per offense.*

~~§ 87-10. Sanitary disposal of dog excrement Nuisance or Dangerous Dogs. [Added 11-23-1998 STM by Art. 17; amended 6-14-2021 ATM by Art. 46] No person owning or having custody or control of a dog shall permit such dog to defecate on any public street or sidewalk of the Town, including the Town wharves, or on any public park, beach or grounds of a public building, including school grounds, unless such person picks up the dog waste and disposes of it in a sanitary manner, including lawful disposal as solid waste or sewage. This section shall not apply to the visually impaired in custody or control of a Seeing Eye dog, or to any person unable to comply with the requirements of this section due to a physical disability. This section may be enforced by the Dog Officer, the Board of Health Agent, and any other person so designated by the Board of Health or the Select Board.~~

[1]

*Editor's Note: A regulation adopted by the Board of Health on 7-8-2015 provided that each violation of this section shall be punishable by a fine of \$100 per offense.*

A. Under MGL c. 140, § 157 any person may file a complaint in writing to the hearing authority that a dog owned or kept in the town is a nuisance dog or a dangerous dog; provided, however, that no dog shall be deemed dangerous: (i) solely based upon growling or barking or solely growling and barking; (ii) based upon the breed of the dog; or (iii) if the dog was reacting to another animal or to a person and the dog's reaction was not grossly disproportionate to any of the following circumstances:

(1) the dog was protecting or defending itself, its offspring, another domestic animal or a person from attack or assault;

(2) the person who was attacked or threatened by the dog was committing a crime upon the person or property of the owner or keeper of the dog;

(3) the person attacked or threatened by the dog was engaged in teasing, tormenting, battering, assaulting, injuring or otherwise provoking the dog; or

(4) at the time of the attack or threat, the person or animal that was attacked or threatened by the dog had breached an enclosure or structure in which the dog was kept apart from the public and such person or animal was not authorized by the owner of the premises to be within such enclosure including, but not limited to, a gated,

fenced-in area if the gate was closed, whether locked or unlocked; provided, however, that if a person is under the age of 7, it shall be a rebuttable presumption that such person was not committing a crime, provoking the dog or trespassing.

B. The hearing authority shall investigate or cause the investigation of the complaint, including an examination under oath of the complainant at a public hearing in the municipality to determine whether the dog is a nuisance dog or a dangerous dog. Based on credible evidence and testimony presented at the public hearing, the hearing authority shall: (i) if the dog is complained of as a nuisance dog, either



dismiss the complaint or deem the dog a nuisance dog; or (ii) if the dog is complained of as a dangerous dog: (A) dismiss the complaint; (B) deem the dog a nuisance dog; or (C) deem the dog a dangerous dog.

C. If the hearing authority deems a dog a nuisance dog, the hearing authority may further order that the owner or keeper of the dog take remedial action to ameliorate the cause of the nuisance behavior.

D. If the hearing authority deems a dog a dangerous dog, the hearing authority shall order 1 or more of the following:

(i) that the dog be humanely restrained; provided, however, that no order shall provide that a dog deemed dangerous be chained, tethered or otherwise tied to an inanimate object including, but not limited to, a tree, post or building;

(ii) that the dog be confined to the premises of the keeper of the dog; provided, however, that "confined" shall mean securely confined indoors or confined outdoors in a securely enclosed and locked pen or dog run area upon the premises of the owner or keeper; provided further, that such pen or dog run shall have a secure roof and, if such enclosure has no floor secured to the sides thereof, the sides shall be embedded into the ground for not less than 2 feet; and provided further, that within the confines of such pen or dog run, a dog house or proper shelter from the elements shall be provided to protect the dog;

(iii) that when removed from the premises of the owner or the premises of the person keeping the dog, the dog shall be securely and humanely muzzled and restrained with a chain or other tethering device having a minimum tensile strength of 300 pounds and not exceeding 3 feet in length;

(iv) that the owner or keeper of the dog provide proof of insurance in an amount not less than \$100,000 insuring the owner or keeper against any claim, loss, damage or injury to persons, domestic animals or property resulting from the acts, whether intentional or unintentional, of the dog or proof that reasonable efforts were made to obtain such insurance if a policy has not been issued; provided, however, that if a policy of insurance has been issued, the owner or keeper shall produce such policy upon request of the hearing authority or a justice of the district court; and provided further, that if a policy has not been issued the owner or keeper shall produce proof of efforts to obtain such insurance;

(v) that the owner or keeper of the dog provide to the licensing authority or animal control officer or other entity identified in the order, information by which a dog may be identified, throughout its lifetime including, but not limited to, photographs, videos,

veterinary examination, tattooing or microchip implantations or a combination of any such methods of identification;

(vi) that unless an owner or keeper of the dog provides evidence that a veterinarian is of the opinion the dog is unfit for alterations because of a medical condition, the owner or keeper of the dog shall cause the dog to be altered so that the dog shall not be reproductively intact; or

(vii) that the dog be humanely euthanized.

No order shall be issued directing that a dog deemed dangerous shall be removed from the town in which the owner of the dog resides. The town shall not regulate dogs in a manner that is specific to breed.

E. Within 10 days after an order issued under subsections (A) to (D), inclusive, the owner or keeper of a dog may bring a petition in the district court within the judicial district in which the order relative to the dog was issued or where the dog is owned or kept, addressed to the justice of the court, praying that the order be reviewed by the court or a magistrate of the court. After notice to all parties, the magistrate shall, under MGL c. 221, § 62C, review the order of the hearing authority, hear the witnesses and affirm the order unless it shall appear that it was made without proper cause or in bad faith, in which

case the order shall be reversed. A party shall have the right to request a de novo hearing on the complaint before a justice of the court.

F. (1) Pending an appeal by an owner or keeper under subsection (E), a hearing authority may file a petition in the district court to request an order of impoundment at a facility the municipality uses to shelter animals for a dog complained of as being a dangerous dog. A municipality shall not incur liability for failure to request impoundment of a dog under this subsection. (2) A justice of a district court, upon probable cause to believe that a dog is a dangerous dog or that a dog is being kept in violation of this section or in violation of an order issued under this section by a hearing authority or a court, may issue an order: (i) of restraint; (ii) of confinement of the dog as considered necessary for the safety of other animals and the public; provided, however, that if an order of confinement is issued, the person to whom the order is issued shall confine the dog in accordance with clause (ii) of subsection (E); or (iii) of impoundment in a humane place of detention that the municipality uses to shelter animals; or (iv) any other action as the court deems necessary to protect other animals and the public from the dog.

G. A justice of the district court shall hear, de novo, an appeal filed under subsection (E). Based upon credible evidence and testimony presented at trial, the court shall, whether the dog was initially complained of as a nuisance dog or as a dangerous dog: (i) dismiss the complaint; (ii) deem the dog a nuisance dog; or (iii) deem the dog a dangerous dog. The decision of the court shall be final and conclusive upon the parties.

H. If a court affirms an order of euthanasia, the owner or keeper of the dog shall reimburse the town for all reasonable costs incurred for the housing and care of such dog during its impoundment and throughout the appeals process, if any.

Unpaid costs shall be recovered by the municipality in which the owner or keeper of the dog resides on behalf of the hearing authority by any of the following methods: (i) a lien on any property owned by the owner or keeper of the dog; (ii) an additional, earmarked charge to appear on the vehicle excise of the owner or keeper of the dog; or (iii) a direct bill sent to the owner or keeper of the dog.

All funds recovered by a municipality under this subsection shall be transferred to the organization or entity charged with the responsibility of handling dog complaints and impoundment. If the organization or entity falls under the management or direction of the municipality, costs recovered shall be distributed at the discretion of the municipality.

If the court overturns an order of euthanasia, the town shall pay all reasonable costs incurred for the housing and care of the dog during any period of impoundment.

I. If an owner or keeper of a dog is found in violation of an order issued under this section, the dog shall be subject to seizure and impoundment by a law enforcement or animal control officer. If the keeper of the dog is in violation, all reasonable effort shall be made by the seizing authority to notify the owner of the dog of such seizure. Upon receipt of such notice, the owner may file a petition with the hearing authority, within 7 days, for the return of the dog to the owner. The owner or keeper shall be ordered to immediately surrender to the licensing authority the license and tags in the person's possession, if any, and the owner or keeper shall be prohibited from licensing a dog within the commonwealth for 5 years. A hearing authority that determines that a dog is dangerous or a nuisance or that a dog owner or keeper has violated an order issued under this section shall report such violations to the issuing licensing authority within 30 days.

J. Orders issued by a hearing authority shall be valid throughout the commonwealth unless overturned under subsection (E) or (G).

§ 87-11. ~~Excessive barking or other disturbance~~ Incorporation of statutory provisions.

[Added 5-5-2001 by Art. 6]

~~A. Upon written complaint, the Police Department or Animal Control Officer may take cognizance that a dog owned or harbored in the Town is a nuisance by reason of excessive barking or other disturbance or that by such barking or other disturbance is a source of annoyance to any person. The Police Department or Animal Control Officer shall investigate said complaint and inform the person owning or harboring such dog in writing to abate the nuisance.~~

~~B. If the Police Department or the Animal Control Officer shall issue two such warnings to a person in one calendar year, the Police Department or Animal Control Officer shall fine the person \$50 for each successive offense. It shall be in the discretion of the Police Officer or Animal Control Officer issuing the fine to pursue a violation of this section under criminal or noncriminal disposition.~~

Except as specifically modified in this article, the provisions of the applicable sections of MGL c. 140 shall be incorporated into and apply to this article, as well as any other section of Massachusetts General Laws referenced herein.

§ 87-12

Chaining or tethering.

A. No person owning or keeping a dog shall chain or tether a dog for longer than 5 hours in a 24-hour period and outside from 10:00 p.m. to 6:00 a.m., unless the tethering is for not more than 15 minutes and the dog is not left unattended by the owner, guardian or keeper. A tethering employed shall not allow the dog to leave the owner's, guardian's or keeper's property. The tether shall be designed for dogs and no logging chains or other lines or devices not designed for tethering dogs shall be used. No chain or tether shall weigh more than 1/8 of the dog's body weight. Nothing in this section shall be construed to prohibit a person from walking a dog on a hand-held leash. No dog under the age of 6 months shall be tethered outside for any length of time.

B. A person owning or keeping a dog may confine such dog outside, subject to the restrictions in this section, through the use of any of the following methods:

1. inside a pen or secure enclosure, if the following conditions are met:

a. the pen or secure enclosure shall have adequate space for exercise with a dimension of at least 100 square feet; provided, however, that commercial dog kennels with pens intended for the temporary boarding of dogs shall be exempt from this requirement;

b. the pen or secure enclosure is constructed with chain link or other similar material as determined by the Building Inspector, with all 4 sides enclosed; and

c. the minimum height of the fence shall be adequate to successfully confine the dog;

2. a fully fenced, electronically fenced or otherwise securely enclosed yard, wherein a dog has the ability to run but is unable to leave the enclosed yard; or

3. a trolley system or a tether attached to a pulley in a cable run, if the following conditions are met:

a. only 1 dog shall be tethered to each cable run;

b. the tether shall be attached to a properly fitting collar or harness worn by the dog, with enough room between the collar and the dog's throat through which 2 adult fingers may fit; provided, however, that a choke collar and a pinch collar shall not be used to tether a dog to a cable run;

c. there shall be a swivel on at least 1 end of the tether to minimize tangling of the tether;

d. the tether and cable run must each be at least 10 feet in length. The cable must be mounted at least 4 feet but not more than 7 feet above ground level; and

e. the length of the tether from the cable run to the dog's collar or harness shall allow continuous access to clean water and appropriate shelter at all times as described in subsection C.; provided, however, that a trolley system or tether shall be of appropriate configuration to confine the dog to the owner's, guardian's or keeper's property, to prevent the trolley system or tether from extending over an object to an edge that could result in injury to or strangulation of the dog and to prevent the trolley system or tether from becoming tangled with other object or animals.

C. A person owning or keeping a dog confined outside in accordance with subsection B. shall provide the dog with access to clean water and appropriate dog shelter. The dog shelter shall allow the dog to remain dry and protected from the elements and shall be fully enclosed on at least 3 sides, roofed and have a solid floor. The entrance to the shelter shall be flexible to allow the dog's entry and exit, and sturdy enough to block entry of weather elements. The shelter shall contain clean bedding and shall be small enough to retain the dog's body heat and large enough to allow the dog to stand, lie down and turn comfortably. The enclosure shall be structurally sound and in good repair. Suitable drainage shall be provided so that water, ice or waste is not standing in or around the shelter.

D. A person shall not leave a dog outside when a weather advisory, warning or watch is issued by a local, state or federal authority or when outside environmental conditions including, but not limited to, extreme heat, cold, wind, rain, snow or hail pose an adverse risk to the health or safety of the dog based on the dog's breed, age or physical condition, unless the tethering is for not more than 15 minutes.

E. An exception to a restriction on outdoor confinement under this section that is reasonably necessary for the safety of a dog shall be made for a dog that is: (i) present in a camping or recreational area pursuant to the policy of the camping or recreational area; or (ii) actively engaged in conduct that is directly related to the business of shepherding or herding cattle or other livestock or engaged in conduct that is directly related to the business of cultivating agricultural products.

F. No person owning or keeping a dog shall subject the dog to cruel conditions or inhumane chaining or the tethering at any time. For the purposes of this subsection, "cruel conditions and inhumane chaining or tethering" shall include, but not be limited to, the following conditions:

1. filthy and dirty confinement conditions including, but not limited to, exposure to excessive animal waste, garbage, dirty water, noxious odors, dangerous objects that could injure or kill a dog upon contact or other circumstances that could cause harm to a dog's physical or emotional health;

2. taunting, prodding, hitting, harassing, threatening or otherwise harming a tethered or confined dog; and

3. subjecting a dog to dangerous conditions, including attacks by other animals.

G. A person who violates this section shall, for a first offense, be issued a written warning or punished by a fine of not more than \$50, for a second offense, be punished by a fine of not more than \$200 and for a third or subsequent offense, be punished by a fine of not more than \$500, and be subject to impoundment of the dog in a local shelter at the owner's, keeper's or guardian's expense pending compliance with this section, or loss of ownership of the dog.

H. A special police officer appointed by the colonel of the state police at the request of the Massachusetts

Society for the Prevention of Cruelty to Animals and the Animal Rescue League of Boston under MGL c. 22C, § 57 may enforce this section following the same procedures relating to notice and court procedure in MGL c. 40, § 21D for the non-criminal disposition of a violation, if an animal control officer contacted by either of these agencies in response to a violation of this section is unresponsive or unavailable.

The town shall enforce this section through its animal control officers or police officers in a manner consistent with the disposition provisions in MGL c. 40, § 21D.

§ 87-13 Confinement of an animal in a motor vehicle.

- A. A person shall not confine an animal in a motor vehicle in a manner that could reasonably be expected to threaten the health of the animal due to exposure to extreme heat or cold.
- B. After making reasonable efforts to locate a motor vehicle's owner, an animal control officer, as defined in MGL c. 140, § 136A, law enforcement officer or firefighter may enter a motor vehicle by any reasonable means to protect the health and safety of an animal. An animal control officer, law enforcement officer or firefighter may enter the motor vehicle for the sole purpose of assisting the animal and may not search the vehicle or seize items found in the vehicle unless otherwise permitted by law.
- C. An animal control officer, law enforcement officer or firefighter who removes or otherwise retrieves an animal under this section shall leave written notice in a secure and conspicuous location on or in the motor vehicle bearing the officer's or firefighter's name and title and the address of the location where the animal may be retrieved. The owner may retrieve the animal only after payment of all charges that have accrued for the maintenance, care, medical treatment and impoundment of the animal.
- D. An animal control officer, law enforcement officer or firefighter who removes or otherwise retrieves an animal from a motor vehicle under subsection B., and the agency or municipality that employs the officer or firefighter shall be immune from criminal or civil liability that might otherwise result from the removal.
- E. After making reasonable efforts to locate a motor vehicle's owner, a person other than an animal control officer, law enforcement officer or firefighter shall not enter a motor vehicle to remove an animal to protect the health and safety of that animal in immediate danger unless the person: (i) notifies law enforcement or calls 911 before entering the vehicle; (ii) determines that the motor vehicle is locked or there is no other reasonable means for exit and uses not more force than reasonably necessary to enter the motor vehicle and remove the animal; (iii) has a good faith and reasonable belief, based upon known circumstances, that entry into the vehicle is reasonably necessary to prevent imminent danger or harm to the animal; and (iv) remains with the animal in a safe location in reasonable proximity to the vehicle until law enforcement or another first responder arrives.
- F. A person who removes an animal from a motor vehicle pursuant to subsection E. shall be immune from criminal or civil liability that might otherwise result from the removal.
- G. A violation of subsection A. shall be a civil infraction punishable by a fine of not more than \$150 for a first offense, by a fine of not more than \$300 for a second offense and by a fine of not more than \$500 for a third or subsequent offense. H. Nothing in this section shall preclude prosecution under MGL c. 272, § 77.

The town shall enforce this section through its animal control officers or police officers in a manner consistent with the disposition provisions in MGL c. 40, § 21D.

Chapter 194

Stormwater Management

[HISTORY: Adopted by the Special Town Meeting of the Town of Fairhaven 5-4-2019 by Art. 12. Amendments noted where applicable.]

GENERAL REFERENCES

Wetlands — See Ch. 192.

Zoning — See Ch. 198.

Subdivision of land — See Ch. 322.

§ 194-1 GENERAL PROVISIONS

§ 194-1.1 Authority.

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

§ 194-~~21~~.2 Purpose.

A. The purpose of this ~~chapter~~ bylaw is to ~~provide protect for the public health, safety, and general welfare, and environment by regulating illicit connections and discharges 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 nonstormwater discharges to the storm drainage system and controlling the adverse effects of construction site stormwater runoff and post-construction runoff to the maximum extent practicable as required by federal and state law. This chapter 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.~~ Stormwater runoff is potentially a major cause of:

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

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

~~C~~B. The objectives of this ~~chapter~~ bylaw are to:

- (1) ~~Regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user;~~
- (2) To P~~rohibit~~ prohibit illicit connections and unauthorized discharges to the municipal separate storm sewer system (MS4) and require their removal;
- (3) To P~~rotect~~ 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~~

- (73) ~~To 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) ~~To 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) ~~To establish provisions for the~~ Ensure adequate long-term operation responsibility for, and maintenance of structural stormwater control facilities and nonstructural stormwater best management practices to ensure that they continue to function as designed, are maintained, and pose not threat to public safety;
- (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) ~~To 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~~ To ensure compliance with the provisions of this chapter bylaw through inspection, monitoring and enforcement; and.
- (17) ~~Support Chapter 198, § 198-31 (Earth removal regulations), Chapter 198, § 198-31.1 and Chapter 322, § 322-26 (Stormwater management).~~

§ 194-1.3 **Definitions.**

For the purposes of this chapter, the following shall mean:

**ABUTTER**

The owner(s) of land abutting the lot or lots on which activity regulated by this chapter 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 individual, partnership, association, firm, company, corporation, trust, authority, agency, department, or political subdivision, of the Commonwealth or the Federal government to the extent permitted by law requesting a Land Disturbance Permit for proposed land-disturbance activity.

**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 chapter.

## **CLEAN WATER ACT**

The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), ~~and any subsequent amendments thereto as hereafter amended.~~

## **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 to alter the existing vegetation and/or underlying soil of a site, such as clearing, grading, site preparation (e.g., excavation, cutting, and filling), soil compaction, and movement and stockpiling of top soils.~~

## **~~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 (302 CMR 16.00).~~

## **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 MGL c. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.~~

## **~~ILLEGAL DISCHARGE~~**

~~Any direct or indirect nonstormwater discharge to the storm drain system, except as exempted in this chapter.~~

## **ILLICIT CONNECTION**

~~A surface or subsurface~~ 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 nonstormwater discharge, including without limitation 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~~ was previously allowed, permitted, or approved by an authorized enforcement agency before the effective date of this chapter, 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 before the effective date of the Stormwater Management Bylaw.

## **ILLICIT DISCHARGE**

Direct or indirect discharge to the municipal storm drain system or a watercourse or the waters of the commonwealth that is not composed entirely of stormwater, except for projects exempted by this chapter or by regulations issued thereunder. The term does not include a discharge in compliance with an NPDES stormwater discharge permit or resulting from firefighting activities exempted pursuant to §194-9.B.D.(1) of the Stormwater Management Bylaw.

## **IMPERVIOUS SURFACE**

Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, ~~and~~ rooftops, structures, artificial turf and compacted gravel or soil.

## **IMPOUNDMENT**

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

## **INDUSTRIAL ACTIVITY**

Activities subject to NPDES industrial permits as defined in 40 CFR 122.26(b)(14).

## **INFEASIBLE**

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

## **INFILTRATION**

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

## **LAND-DISTURBING ACTIVITY ~~or LAND DISTURBANCE~~**

Any activity, ~~including without limitation:~~ clearing, grubbing, grading, digging, cutting, excavation of soil, placement of fill, and construction that causes a change in the position or location of soil, sand, rock,

gravel, or similar earth material.

### **LAND USE OF HIGHER POTENTIAL POLLUTANT LOAD (LUHPPL)**

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

### **LOAD ALLOCATION or WASTE LOAD ALLOCATION**

The maximum concentration or mass of a pollutant which can be discharged to a waterway from nonpoint 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 or on a recorded plan.

### **MASSACHUSETTS ENDANGERED SPECIES ACT**

MGL 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 § 40 and the Massachusetts Clean Waters Act, MGL c. 21, §§ 23 through 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.

### **MASSACHUSETTS STORMWATER MANAGEMENT STANDARDS**

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

### **MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAIN SYSTEM**

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

### **NEW DEVELOPMENT**

Any construction activities or land alteration resulting in disturbance on an area that has not previously been developed to include impervious cover.

### **NONSTORMWATER DISCHARGE**

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

### **OFF-SITE COMPLIANCE**

An approach whereby pollutant removal practices are implemented at redevelopment or retrofit sites at another location in the same HUC12 watershed, as the original project, as approved by the Stormwater

Authority.

## **OPERATION AND MAINTENANCE PLAN**

A plan ~~describing~~ setting up the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to ensure that it continues to function as designed.

## **OUTFALL**

The point at which stormwater flows out from a discernible, confined point source or 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 Surface 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 any the municipal storm sewer, water works drain system or any sewage treatment works, or into any water, watercourse or waters of the commonwealth. Pollutants shall include without limitation:

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

## **PRE-CONSTRUCTION**

All activity in preparation for construction.

## **PREMISES**

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

## **PRIORITY HABITAT OF RARE SPECIES**

~~Habitats delineated for rare plant and animal populations protected pursuant to the Massachusetts Endangered Species Act and its regulations.~~

## **PROCESS WASTEWATER**

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

## **RECHARGE**

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

## **REDEVELOPMENT**

~~Development, rehabilitation, expansion, demolition or phased projects that disturb the ground surface, including impervious surfaces, on previously developed sites. The creation of new areas of impervious surface or new areas of land disturbance on a site constitutes development, not redevelopment, even where such activities are part of a common plan which also involves redevelopment. Redevelopment includes maintenance and improvement of existing roadways, including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems and repaving; and remedial projects specifically designed to provide improved stormwater management, such as projects to separate storm drains and sanitary sewers and stormwater retrofit projects. Any construction, land alteration or improvement of impervious surfaces resulting in earth disturbance that does not meet the definition of new development.~~

## **RESPONSIBLE PARTIES**

~~Owners, 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. Runoff from precipitation or snow melt and surface water runoff and drainage.~~

## **STORMWATER AUTHORITY**

A panel consisting of the Town of Fairhaven Board of Public Works Superintendent, Conservation Agent, and Director of Planning and Economic Development, or their designee.

## **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 nonstructural 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. A plan required as part of the application for a Land Disturbance Permit.

## **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.

## **TOXIC OR HAZARDOUS MATERIAL OR WASTE**

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

## **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 human-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 MGL c. 131, § 40, and in the Town of Fairhaven Wetlands Protection Bylaw.~~

## **WETLANDS**

Tidal and nontidal 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 MGL c. 131, § 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. As specifically defined in the Massachusetts Wetlands Protection Act but generally include 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) environments, including freshwater marshes around ponds and channels (rivers and streams), brackish and salt marshes; common names include marshes, swamps & bogs.~~

~~§ 194-51.4~~ **Responsibility for Administration.**

~~The Board of Public Works Stormwater Authority shall administer, implement and enforce this chapter bylaw. Any powers granted to or duties imposed upon the Board of Public Works Stormwater Authority through this chapter may be delegated in writing by the Board of Public Works Stormwater Authority to its employees or agents of the Town. The process for approval will be determined based on statutory authority.~~

~~§ 194-7.J5.~~ **Waivers.**

- ~~(1) Following a public hearing in accordance with the Stormwater Regulations on a waiver request, the Board of Public Works Stormwater Authority may waive strict compliance with any requirement of this chapter bylaw or the rules and regulations promulgated hereunder, where:~~
  - ~~(a) Such action is allowed by federal, state, and local statutes and/or regulations; and~~
  - ~~(b) Is in the public interest; and~~
  - ~~(c) Is not inconsistent with the purpose and intent of this chapter bylaw.~~
- ~~(2) 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 chapter does not further the purposes or objectives of this chapter bylaw.~~
- ~~(3) All waiver requests shall be discussed and voted on at the public hearing for the project.~~
- ~~(4) If, in the Board of Public Works Stormwater Authority's opinion, additional time or information is required for review of a waiver request, the Board of Public Works Stormwater Authority 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.~~

~~§ 194-20 1.6.~~ **Compliance with provisions of EPA's general permit for MS4s in Massachusetts.**

~~This chapter shall be implemented by the Board of Public Works in accordance with the requirements of the EPA's 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 chapter, so long as they are not less stringent than those in the MS4 general permit for Massachusetts.~~

~~This bylaw is intended to further the objectives of and to act in concert with any existing federal, state or local laws concerning storm water discharges in the Town of Fairhaven, including but not limited to the requirements of the United States Environmental Protection Agency's most recent General Permit for MS4s, and nothing in this bylaw is intended to limit or restrict the authority of any board, commission or officer of the Town to act in accordance with any federal, state and local laws within their jurisdiction, and in the event of a conflict, the more stringent requirements will control.~~

~~§ 194-61.7~~ **Regulations.**

~~The Board of Public Works Stormwater Authority may adopt, and periodically amend, rules, regulations, and/or written guidance relating to the terms, conditions, definitions, enforcement, fees, procedures and administration of the Stormwater Bylaw by majority vote after conducting a public hearing to receive comments. Such hearing shall be advertised in a newspaper of general local circulation, once in each of two successive weeks, the first publication being at least fourteen (14) days prior to the hearing date. to effectuate the purposes of this chapter. Failure by the Board of Public Works Stormwater Authority to promulgate issue such rules, or and regulations, or a legal declaration of their invalidity by a court, shall not act to suspend or invalidate the effect of this~~

chapter. 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 Stormwater Authority~~, without the requirement for a public hearing as detailed in this ~~chapter~~ bylaw. Administrative review approval shall comply with all other provisions of this ~~chapter~~ bylaw.

#### **§ 194-211.8 Severability.**

~~If any provision, paragraph, sentence, or clause of this chapter 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.~~

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

### **§194-2 – DISCHARGES TO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)**

#### **§194-2.1.A. Applicability**

Article II of this bylaw shall apply to all discharges of water entering the municipally owned storm drainage system or going, directly or indirectly, into a watercourse, or into the waters of the Commonwealth, that is generated on any developed or undeveloped lands except as explicitly exempted in this bylaw or where the Stormwater Authority has issued a waiver in accordance with Article I Section 5.

#### **§ 194-4 Applicability.**

~~B.— Discharge prohibitions.~~

~~(1) Prohibition of illegal discharges: No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater. 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 chapter if the person connects a line conveying sewage to the MS4, or allows such a connection to continue. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:~~

~~(a) Water line flushing;~~

~~(b) Flow from other potable water sources;~~

~~(c) Landscape irrigation or lawn watering;~~

~~(d) Diverted stream flows;~~

~~(e) Rising groundwater;~~

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

~~(g) Uncontaminated pumped groundwater (e.g., sump pump), provided that where a pump intake exists inside a structure, the operator seeks a permit from the Board of Public Works prior to discharge and thereafter discharges in accordance with the requirements of the permit and applicable laws and regulations;~~

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

~~(i) Noncommercial washing of vehicles;~~

~~(j) Springs, natural riparian habitat or wetland flows;~~

~~(k) Discharge from swimming pool water (if dechlorinated typically less than one ppm chlorine), provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;~~

~~(l) Discharge from street sweeping;~~

~~(m) Firefighting activities;~~

~~(n) Dye testing is an allowable discharge, but requires a verbal notification to the Board of Public Works prior~~

- to the time of the test;
- (o) ~~Discharges specified in writing by the Board of Public Works as being necessary to protect public health, safety, welfare, or the environment; and~~
  - (p) ~~The prohibition shall not apply to any nonstormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharge is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.~~
- (2) ~~Suspension of MS4 access.~~
- (a) ~~Suspension due to the detection of illicit discharge. Any person discharging to the MS4 in violation of this chapter 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.~~
  - (b) ~~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.~~
  - (c) ~~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.~~
- (3) ~~Industrial or construction activity discharges: Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Board of Public Works prior to the allowing of discharges to the MS4.~~
- C. ~~Exempt activities. The following activities are exempt from the requirements of this chapter:~~
- (1) ~~Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act (MGL c. 131, § 40) and its associated regulations (310 CMR 10.00).~~
  - (2) ~~Repair of septic systems when required by the Board of Health for the protection of public health and compliance with Subsection B.~~
  - (3) ~~Normal maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling, provided such maintenance does not include the addition of more than 50 cubic yards of soil material, construction of any walls, alteration of existing grades by more than one foot in elevation, or alteration of drainage patterns.~~
  - (4) ~~The construction of fencing that will not alter existing terrain or drainage patterns.~~
  - (5) ~~Construction of utilities other than drainage (gas, water, electric, telephone, etc.) that will not alter terrain or drainage patterns.~~

#### **194-4.2.1.B. ~~Discharge prohibitions Prohibited Activities; Exemptions.~~**

- (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 stormwater. 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 chapter if the person connects a line conveying sewage to the MS4, or allows such a connection to continue. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:~~



- A. Illicit discharges. No person shall dump, discharge, spill, cause or allow to be discharged any pollutant or non-stormwater discharge into the municipal separate storm sewer system (MS4), onto an impervious surface directly connected to the MS4, or, directly or indirectly, into a watercourse, or into the waters of the Commonwealth.
- B. Illicit connections. No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.
- C. Obstruction of municipal storm drain system. No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior written consent from the Stormwater Authority.
- D. Exemptions.
  - (1) Discharge of flow resulting from fire-fighting activities.
  - (2) The following non-stormwater discharges or flows are exempt from the prohibition of non-stormwaters provided that the source is not a significant contributor of a pollutant to the municipal storm drain system or, directly or indirectly, into a watercourse, or into the waters of the Commonwealth:
    - (a) Water line flushing;
    - (b) Flow from other potable water sources, with the exception of landscape irrigation and lawn watering;
    - (c) ~~Landscape irrigation or lawn watering;~~
    - (d) Diverted stream flows;
    - (e) Rising groundwater;
    - (f) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(b)(20), or uncontaminated pumped groundwater (e.g. sump pump), provided that where a pump intake exists inside a structure, the operator seeks a permit from the Stormwater Authority prior to discharge and thereafter discharges in accordance with the requirements of the permit and applicable laws and regulations to be issued by the Stormwater Authority;
    - (g) ~~Uncontaminated pumped groundwater (e.g., sump pump), provided that where a pump intake exists inside a structure, the operator seeks a permit from the Board of Public Works prior to discharge and thereafter discharges in accordance with the requirements of the permit and applicable laws and regulations;~~
    - (h) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air-conditioning condensation;
    - (i) ~~Noncommercial washing of vehicles;~~
    - (j) Springs, natural flow from riparian habitat or and wetlands flows;
    - (k) Discharge from ~~dechlorinated~~ swimming pool water (~~if dechlorinated typically less than one ppm chlorine~~), provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
    - (l) Discharge from street sweeping;
    - (m) ~~Firefighting activities;~~
    - (n) ~~Dye testing is an allowable discharge, but requires a~~ provided verbal notification to the Board of Public Works Stormwater Authority prior to the time of the test;
    - (o) Discharges specified in writing for which advanced written approval has been received from the Stormwater Authority by the Board of Public Works as being necessary to protect public health, safety, welfare, or the environment; and
    - (p) ~~The prohibition shall not apply to any Nonstormwater 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.~~

### **§194-2.2. Additional Prohibited Pollutants**

Pet Waste: Dog feces is a major component of stormwater pollution; it shall be the duty of each person who owns, possesses, or controls a dog to remove and properly dispose of any feces left by the dog on any public or

private property neither owned nor occupied by said person. It is prohibited to dispose of dog feces in any public or private storm drain, catch basin, wetland, or water body or on any paved or impervious surface. Persons walking dogs must carry with them a device designed to dispose of dog feces including, but not limited to, a plastic bag or "pooper scooper." For specific requirements and penalties for violations see General Bylaw Article 87 Animals and Chapter 405 Animals.

### **§194-4(2)(e)2.3 Emergency Suspension of Storm Drainage System Access**

The Board of Public Works Stormwater Authority may, without prior notice, suspend MS4 discharge storm drain access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of pollutants which presents or may that present imminent and substantial danger risk of hard to the public health, safety, welfare or to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator In the event any person fails to comply with an emergency suspension order issued in an emergency, the Board of Public Works Stormwater Authority may take all reasonable such steps as deemed necessary to prevent or minimize damage harm to the MS4 or waters of the United States, or to minimize danger to persons public health, safety, welfare or the environment.

### **§ 194-182.4 Notification of spills.**

Notwithstanding other requirements of local, state or federal 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 at that facility or operation which are resulting in or may result in illegal discharges or pollutants discharging into stormwater, the storm to the municipal drainage system, or water of the United States Commonwealth, 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 oil or hazardous materials, said person shall immediately notify emergency response agencies the Municipal Fire and Police Departments. of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, said person shall notify the Board of Public Works authorized enforcement agency in person or by phone or facsimile no later than the next business day. The reporting person shall provide to the Stormwater Authority written confirmation of all telephone, facsimile or in-person notifications. 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 thereafter. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the facility owner or operator of such establishment the facility 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.

### **§ 194-192.5 Enforcement.**

The Board of Public Works Stormwater Authority or an its authorized agent of the Board of Public Works shall enforce this chapter bylaw and any, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations. The Town may enforce this Bylaw or enjoin violations thereof through any lawful process, and the election of one remedy by the Town shall not preclude enforcement through any other lawful means.

- A. Civil relief. If a person violates the provisions of this bylaw, or any associated regulations, permit, notice, or order issued thereunder, the Stormwater Authority may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.
- B. Orders.
- (1) The Board of Public Works Stormwater Authority or an its authorized agent of the Board of Public Works may issue a written order to enforce the provisions of this chapter bylaw or the any regulations thereunder, which may include:
- (a) That unlawful discharges, practices or operations shall A requirement to cease and desist from the violating activity until there is compliance with the chapter and any existing permits.
- (b) Maintenance, installation or performance of additional erosion and sedimentation control measures That measures shall be taken to minimize the discharge of pollutants until such time as the illicit connection

- shall be eliminated.
- (c) Performance of Monitoring, analyses, and reporting.
  - (d) Remediation of erosion and sedimentation resulting directly or indirectly from the land-disturbing activity.
  - (e) The elimination of illicit connections or discharges to the MS4.
  - (f) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property in connection therewith.
- (2) 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. Said orders shall specify a deadline by which the required action shall be completed and the Stormwater Authority or its designee may further advise that, should the violator or property owner fail to perform the required action or remediation within the specified deadline, the Town may, at its option, undertake such work, at the owner and/or violator's sole costs and expense, that it deems necessary to protect public health, safety and welfare.
  - (3) Within 360 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 Stormwater Authority within 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 30 days following a decision of the Board of Public Works Stormwater Authority affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in MGL c. 59, § 57 after the 31st day at which the costs first become due.
  - (4) Such special assessment shall constitute a lien for the purpose of MGL c. 40, § 58. [Amended 11-12-2019 STM by Art. 12]
- C. Criminal penalty. Any person who violates any provision of this chapter bylaw, or regulation, order or permit issued thereunder, shall be punished by a fine of not more than \$300 for each offense. may be penalized by indictment or on complaint brought in a court of competent jurisdiction. Except as may be otherwise provided by law and as the court may see fit to impose, the maximum penalty for each violation or offense shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.
  - D. Noncriminal disposition. As an alternative to criminal prosecution or civil action, the Town of Fairhaven may elect to utilize the noncriminal 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. Any person who violates any provision of this bylaw, regulation, order or permit issued thereunder may be penalized by non-criminal disposition as set forth in MGL c. 40, § 21D. Each day or part thereof that such violation occurs or continues shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.
  - E. Appeals. All decisions or orders of the Board of Public Works Stormwater Authority shall be final. Further relief shall be to a court of competent jurisdiction.
  - F. Remedies not exclusive. The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law. Entry to perform duties under this bylaw. To the extent permitted by law, or if authorized by the owner or other party in control of the property, the Stormwater Authority, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this bylaw and regulations and may make or cause to be made such examinations, surveys or sampling as the Stormwater Authority deems reasonably necessary.

### **§194-2.6. Transitional Provisions**

Residential property owners with illicit discharges, connections and/or obstructions to the MS4 shall have a period of 60 days from the effective date of this bylaw to remove such discharges, connections and/or obstructions, unless immediate removal is required for the protection of public health, safety, welfare or the environment. The Stormwater Authority may extend the time for compliance by regulation or by waiver in accordance with Section 6 of this Bylaw.

### **§194-73– STORMWATER MANAGEMENT AND 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.

#### **§194-3.1. Applicability**

- A. Applications. An application shall be made to the Board of Public Works in a form and containing information as specified in this chapter and in the regulations adopted by the Board of Public Works and shall be accompanied by payment of the appropriate application and review fees. Article III of this Bylaw shall apply to all activities that result in disturbance of 5,000 square feet of land or more that drains to the municipal separate storm sewer system (MS4) or waters of the Commonwealth. Except as authorized by the Stormwater Authority or as otherwise provided in this Bylaw, no person shall perform any activity that results in disturbance of 5,000 square feet of land or more. There are two levels of reviews based on the amount of proposed land to be disturbed as part of a single project and they are as follows:
- 1) Administrative Land Disturbance Review is required for projects disturbing between 5,000 square feet and 20,000 square feet of land.
  - 2) A Land Disturbance Permit is required for disturbance of greater than (20,000 square feet of land or for a proposed use that is listed as a land use of higher potential pollutant loads as defined in the Massachusetts Stormwater Management Standards
- B. 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. Exemptions:
- 1) Maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling conducted in such a way as not to cause a nuisance;
  - 2) Construction of fencing that will not substantially alter existing terrain or drainage patterns;
  - 3) Construction of utilities other than drainage (gas, water, sewer, electric, telephone, etc.) which will not alter terrain or drainage patterns or result in discharge of sediment to the MS4;
  - 4) Normal maintenance and improvement of land in agricultural or aquacultural use; and
  - 5) Disturbance or redevelopment of land that is subject to jurisdiction under the Wetlands Protection Act that demonstrate compliance with the Massachusetts Stormwater Management Standards and the Town of Fairhaven Stormwater Management Regulations as reflected in a valid Order of Conditions issued by the Conservation Commission.
  - 6) Disturbance of land or redevelopment that are subject to jurisdiction under a special permit or approval of a subdivision plan through the Town Zoning Bylaw and demonstrate compliance with the Massachusetts Stormwater Management Standards and Stormwater Handbook and the Town of Fairhaven Stormwater Management Regulations as reflected in a valid decision issued by the Planning Board.

The Stormwater Authority is authorized to enact regulations to effectuate the purposes of this bylaw, including but not limited to regulations outlining the application requirements for the different levels of review specified in Section A hereof. Any person that fails to follow the requirements of a Land Disturbance Permit and the related Erosion and Sedimentation Control Plan, and Operations and Maintenance Plan issued under the Stormwater Management Regulations shall be in violation of the Town of Fairhaven

## Bylaws.

### §194-4 Applicability:

~~This chapter 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 chapter. The discharge of any substance other than stormwater into the municipal stormwater system is hereby prohibited except in compliance with this chapter.~~

#### ~~A. Regulated land disturbance activities.~~

##### ~~(1) Regulated activities shall include, but not be limited to:~~

- ~~(a) Land disturbance of greater than 40,000 square feet, associated with construction or reconstruction of structures;~~
  - ~~(b) Development or redevelopment involving multiple separate activities in discontinuous locations or on different schedules if the activities are part of a larger common plan of development that all together disturbs 40,000 square feet or more of land;~~
  - ~~(c) Paving, repaving or other change in surface material over an area of 40,000 square feet or more causing a significant reduction of permeability or increase in runoff;~~
  - ~~(d) Construction of a new drainage system or alteration of an existing drainage system or conveyance serving a drainage area of more than 40,000 square feet;~~
  - ~~(e) Any other activity altering the surface of an area exceeding 40,000 square feet that will, or may, result in increased stormwater runoff flowing from the property into a public way or the municipal storm drain system; or~~
  - ~~(f) Construction or reconstruction of a structure or structures with more than 40,000 square feet of roof drainage, or combined roof and surface drainage.~~
- ~~(2) Erosion and sedimentation control requirement. A project which includes land disturbance of less than 40,000 square feet shall be considered to be in conformance with this chapter if soils or other eroded matter have been or will be prevented from being deposited onto adjacent properties, rights-of-way, public storm drainage systems, or wetlands or watercourses. The design, installation, and maintenance of erosion and sediment control operations and facilities shall adhere to the standards specified in the regulations to this chapter.~~
- ~~(3) Exempted projects. Notwithstanding the provisions of above, the procedural requirements of this chapter 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 chapter.~~

### §194-7. H. — Action 3.2. Approval and/or Permit

An applicant seeking an approval and/or permit shall file an appropriate application with the Stormwater Authority in a form and containing information as specified in this bylaw and in regulations adopted by the Stormwater Authority. Approval or permit must be obtained prior to the commencement of land disturbing or redevelopment activity based on thresholds described in the Stormwater Management Regulations.

~~The Board of Public Works may:~~

- ~~(1) 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 chapter;~~
- ~~(2) 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 chapter; or~~
- ~~(3) 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 chapter. 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.

~~I. 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.~~

**§194-3.3F.** ~~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. Entry to perform duties under this bylaw. To the extent permitted by law, or if authorized by the owner or other party in control of the property, the Stormwater Authority, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this bylaw and regulations and may make or cause to be made such examinations, surveys or sampling as the Stormwater Authority deems reasonably necessary.~~

#### **§ 194-113.4 Inspection and site supervision.**

~~A. Pre-construction 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.~~

~~B. 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 working days before each of the following events:~~

- ~~(1) Erosion and sediment control measures are in place and stabilized;~~
- ~~(2) Rough grading has been substantially completed;~~
- ~~(3) Final grading has been substantially completed;~~
- ~~(4) Bury inspection: prior to backfilling of any underground drainage or stormwater conveyance structures;~~
- ~~(5) Close of the construction season; and~~
- ~~(6) Final landscaping (permanent stabilization) and project final completion.~~

~~C. Permittee inspections. The permittee or his/her agent shall conduct and document inspections of all control measures no less than weekly or as specified in the permit, and prior to and following anticipated storm events. The purpose of such inspections will be to determine the overall effectiveness of the control plan, and the need for maintenance or additional control measures. The permittee or his/her agent shall submit monthly reports to the 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.~~

~~D. 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 may enter upon privately owned property for the purpose of performing their duties under this chapter 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.~~

The Stormwater Authority or its designated agent shall make inspections of the work subject to this Bylaw to determine compliance with the Bylaw and regulations and orders of the Stormwater Authority.

### **§ 194-123.5 Surety.**

The ~~Board of Public Works~~ Stormwater Authority may require the permittee applicant to post, before the start of land or construction-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~~ the Stormwater Authority, and be in an amount deemed sufficient by the ~~Board of Public Works~~ Stormwater Authority to insure that the work will be completed in accordance with the permit. If the project is phased, the ~~Board of Public Works~~ Stormwater Authority may release part of the bond as each phase is completed in compliance with the permit, but the bond may not be fully released until the ~~Board of Public Works~~ Stormwater Authority has received the final report as required by § 194-13.6 and issued a certificate of completion.

### **§194-3.6. Final Reports**

#### **§ 194-133.6 Final reports.**

~~Upon completion of the work, the permittee shall submit a report (including certified as-built construction plans) from a registered professional engineer (PE), 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.~~

- A. Administrative Land Disturbance Review: Upon completion of work, the applicant shall submit a written notice to the Stormwater Authority with photographic evidence that the work has been completed in accordance with the approved plan.
- B. Land Disturbance Permit: No later than two (2) years upon completion of work, the applicant shall submit a Final Report, including a topographical as-built plan stamped by a MA Professional Land Surveyor (PLS) and a MA Registered Professional Engineer (P.E.) as applicable, certifying that the site has been developed in substantial compliance with the approved plan including all permanent erosion control devices, stormwater management facilities and, and any approved changes and modifications. Any discrepancies from the approved plan should be noted in the cover letter. The as-built drawings must depict all on site controls, both structural and non-structural, designed to manage the stormwater associated with the completed site (post construction stormwater management). The final report shall also include documentation to verify the stormwater management system has been properly operated and maintained in accordance with the approved O&M Plan.

### **§194-3.197. Enforcement**

1. The ~~Board of Public Works~~ Stormwater Authority or ~~an its~~ authorized agent of the Board of Public Works shall enforce this ~~chapter~~ bylaw and any; regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations. The Town may enforce this Bylaw or enjoin violations thereof through any lawful process, and the election of one remedy by the Town shall not preclude enforcement through any other lawful means.

- A. Civil relief. If a person violates the provisions of this bylaw, or any associated regulations, permit, notice, or order issued thereunder, the Stormwater Authority may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.
- B. Orders.
  - (1) The ~~Board of Public Works~~ Stormwater Authority or ~~an its~~ authorized agent of the Board of Public Works may issue a written order to enforce the provisions of this ~~chapter~~ bylaw-or any regulations thereunder, which may include:
    - (a) A requirement to cease and desist ~~from the violating land-disturbing~~ activity until there is compliance with the ~~chapter and any existing permits~~ bylaw and provisions of the Land Disturbance Permit.
    - (b) Maintenance, installation or performance of additional erosion and sedimentation control measures.
    - (c) Monitoring, analyses, and reporting.
    - (d) Remediation of erosion and sedimentation resulting directly or indirectly from the land-

disturbing activity.

~~(e) The elimination of illicit connections or discharges to the MS4.~~

~~(f) 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. Said orders shall specify a deadline by which the required action shall be completed and the Stormwater Authority or its designee may further advise that, should the violator or property owner fail to perform the required action or remediation within the specified deadline, the Town may, at its option, undertake such work, at the owner and/or violator's sole costs and expense, that it deems necessary to protect public health, safety and welfare.~~

C. Within 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 Stormwater Authority within 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 30 days following a decision of the Board of Public Works Stormwater Authority affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in MGL c. 59, § 57 after the thirtieth (30) day at which the costs first become due.

D. Criminal penalty. Any person who violates any provision of this ~~chapter~~bylaw, or regulation, order or permit issued thereunder, shall be punished by a fine of not more than \$300 for each offense. may be penalized by indictment or on complaint brought in a court of competent jurisdiction. Except as may be otherwise provided by law and as the court may see fit to impose, the maximum penalty for each violation or offense shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

D. Noncriminal disposition. ~~As an alternative to criminal prosecution or civil action, the Town of Fairhaven may elect to utilize the noncriminal 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. Any person who violates any provision of this bylaw, regulation, order or permit issued thereunder may be penalized by non-criminal disposition as set forth in MGL c. 40, § 21D. Each day or part thereof that such violation occurs or continues shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.~~

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

F. Remedies not exclusive. ~~The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law.~~

~~197-7 C. 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 chapter.~~

~~D. 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.~~

~~E. 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 45 days to elapse after receipt of the application materials without submission of a report thereon.

G. ~~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 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 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 14 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.

#### **§ 194-8 Erosion and sedimentation control plan.**

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

- ~~(1) Keep disturbed areas small: no more than 60 feet in width and 100 feet in length of a single lot, or five acres of the overall tract at one time. Said plan shall identify design issues and methods employed to address such items as topography, soils, vegetation, steep slopes, wetlands and water bodies.~~
- ~~(2) Stabilize and protect disturbed areas quickly: Exposed areas and stockpiles shall be revegetated 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.~~
- ~~(3) Keep stormwater runoff velocities low: Velocities of runoff should be in the range of two to 10 feet per second. The removal of the existing vegetative cover during the development and the resulting increase in impermeable surface area after development will increase both the volume and velocity of runoff. These increases must be taken into account when providing for erosion control.~~
- ~~(4) Protect disturbed areas from stormwater runoff: Conservation measures can be utilized to prevent water from entering and running over the disturbed area. Diversions and other control practices to intercept runoff from higher elevations, store or divert it away from vulnerable areas, and direct it towards stabilized outlets should be utilized. Selected measures should be identified on the plan and in text.~~
- ~~(5) Retain sediment within site area: The best way to control sediment is to prevent erosion; however, sediment can be retained by two methods:
  - ~~(a) Filtering runoff as it flows and detaining sediment; or~~
  - ~~(b) Detain runoff for a period of time so that the soil particles settle out.~~~~

#### **§ 194-9 Stormwater management plan.**

~~The stormwater management plan shall contain sufficient information to describe the nature and purpose of the proposed development, pertinent conditions of the site and the adjacent areas, and proposed best management practices for the permanent management and treatment of stormwater. The stormwater management plan shall contain sufficient information for the 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 chapter.~~

A. ~~The plan shall meet the standards defined in § 198-31.1A. [Added 6-14-2021 ATM by Art. 59]~~

B.—The plan shall utilize the twenty-four-hour rainfall data taken from the NOAA Atlas 14, [https://hdsc.nws.noaa.gov/hdsc/pfds/pfds\\_map\\_cont.html](https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html) (or most current data from NOAA), and Type III storm. ~~[Added 6-14-2021 ATM by Art. 59]~~

~~§ 194-10 Operation and maintenance plans.~~

A.—An operation and maintenance plan (O&M plan) for the permanent stormwater management system is required at the time of application for all projects. The maintenance plan shall be designed to ensure compliance with this chapter 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 chapter. Stormwater management easements shall be provided by the property owner(s) in areas and as necessary to carry out the required maintenance.

B.—Changes to operation and maintenance plans.

(1)—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.

(2)—The maintenance schedule in the maintenance agreement may be amended to achieve the purposes of this chapter by mutual agreement of the Board of Public Works and the responsible parties. Amendments must be in writing and signed by all responsible parties.

~~§ 194-14 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 chapter. The certificate of completion shall be recorded at the Registry of Deeds by the owner(s).

~~§ 194-15 Monitoring of discharges.~~

A.—Applicability. This section applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.

B.—Access to facilities.

(1)—The Board of Public Works shall be permitted to enter and inspect facilities subject to regulation under this chapter as often as may be necessary to determine compliance with this chapter. 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.

(2)—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 stormwater, and the performance of any additional duties as defined by state and federal law.

(3)—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 stormwater discharge.

(4)—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.

- (5) ~~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.~~
- (6) ~~Unreasonable delays in allowing the Board of Public Works access to a permitted facility is a violation of a stormwater discharge permit and of this chapter. A person who is the operator of a facility with an NPDES permit to discharge stormwater 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 chapter.~~
- (7) ~~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 chapter, 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 chapter 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 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 stormwater, the storm drain system, or waters of the United States. 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 nonstructural BMPs. Further, any person responsible for a property or premises which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and nonstructural 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 stormwater 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.~~

**§198-16 Use Regulation Schedule**

Use Regulation Schedule									
Activity or Use	District								
	RR & RA	RB	RC	P	B	I	AG	MU14	WRP16
Accessory apartment/ inlaw apartment	<u>AY</u>	<u>AY</u>	<u>AY</u>	N	N	N	<u>AY</u>	Y	Y
Accessory apartment to a business	N	N	N	N	<u>AY</u>	<u>AY</u>	N	Y	Y

**§198-32.1 Accessory dwelling units**

Purpose. For the purpose of promoting the development of affordable rental housing, dwelling conversions may be allowed by special permit of the Planning Board pursuant to §198-16 subject to the standards and conditions listed below:

198-32.1.A: Dwelling conversions shall not be allowed unless the lot meets the minimum lot size in § 198-18 or 22,500 square feet, whichever is greater.

198-32.1.B: Units created through dwelling conversions shall not be less than 1,000 be no larger in floor area than one half the floor area of the principal dwelling or 900 square feet, whichever is smaller, not including areas of the basement, attic or garage

198-32.1.C: The applicant shall illustrate to the Planning Board that the requirements of the State Building Code are met.

198-32.1.D: Site requirements:

- (1) No expansion to the existing structure
- (2) No portion of the basement, attic or garage may be used for dwelling purposes.

**§198-27 Parking Area Designation and Location**

198-27.C(1): No off-street parking area for five or more cars shall be located within the required front, side or rear yard setback areas, except for properties within the Business, Mixed Use, Industrial, or Apartment/Multi-Family zoning districts. If no side or rear yard setback is required the minimum parking setback shall be six feet from the property line, except in the case(s) where there is a joint access or a shared parking area.

**I. Proposed Changes Requiring 2/3 Supermajority Vote**

**§198-15.C.(2) (Use Regulations):** Where any proposed use, or expansion of a use otherwise permitted [Y] or authorized [A] in an Apartment/Multifamily [RC], Park [P], Wetland Resource Protection District [WRP], Business [B], Mixed Use [MU] or Industrial [I] District results in a requirement of a total of five or more parking spaces for the previously existing and new demand combined pursuant to the provisions of § 198-27 of this chapter, such use shall be deemed authorized by special permit granted by the Planning Board pursuant to the provisions of § 198-29 of this chapter upon review by the Planning Board of the site development plan.

**§198-16 Use Regulation Schedule**

Use Regulation Schedule										
		District								
Activity or Use	RR & RA	RB	RC	P	B	I	AG	MU14	WRP16	
<u>Health care including medical, dental offices and clinics</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>Y</u>	<u>A</u>	<u>N</u>	<u>Y</u>	<u>N</u>	
<u>Shipping Containers</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>Y</u>	<u>N</u>	<u>N</u>	<u>N</u>	
<u>Storage Units</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>A</u>	<u>A</u>	<u>N</u>	<u>N</u>	<u>N</u>	
Body art establishment	N	N	N	N	<u>YA19</u>	<u>YA19</u>	N	<u>NY</u>	N	
Artist studio/gallery	N	N	N	N	Y	Y	N	<u>AY</u>	A	
Private dock or pier <sup>11</sup>	<u>AY</u>	<u>AY</u>	<u>AY</u>	<u>AY</u>	<u>AY</u>	<u>AY</u>	<u>AY</u>	<u>AY</u>	<u>AY</u>	
Semidetached dwelling	N	Y	Y	N	N	N	N	<u>NY</u>	N	

19A body art establishment shall not be located within 1,000 feet of an exterior property line of a school or church as determined by the Building Inspector. (Reserved)

**§198-19 Fences**

§198-19.B No boundary fence, or wall or hedge shall exceed six feet in height, and no boundary fence, wall, hedge, or other landscape feature which obstructs vision shall exceed 42 inches in height within any required front yard area or within 20 feet of the street, whichever is the lesser requirement.

**§198-29 Special Permit for certain intensive nonresidential and multifamily site developments:**

198-29.A(5) And in the Mixed Use (MU) District a Any addition of gross floor area, or any reduction in the number of available parking spaces on the site within the Mixed Use (MU) District shall be subject to a special permit under this section if the proposed parking does not meet the numerical minimum required by § 198-27B

198-29.B. Submittal. Application for a special permit shall require the filling of one copy of a special permit application and 10 2 prints of the site plan drawn to an adequate scale. A digital copy of the application materials is also required.

## **§198-29.6 Solar photovoltaic energy facilities (SPEF)**

198-29.6.F: Application for special permit review. Submittal application for special permit review shall require the filling of one copy of a site plan review application and 10 2 prints of the site plan drawn to an adequate scale to convey all required information as well as a digital copy of application materials. Such plan(s) shall contain the following for an application to be considered complete.

198-29.G(8) Clear cutting of trees and natural vegetation, within five years, shall be prohibited for the construction, operation and maintenance of the solar photovoltaic facility.

## **§198-32.2 Docks and Piers**

B. Applicability. Any application to construct a dock and/or pier shall comply with this section. The Zoning Board of Appeals shall be the special permit granting authority (SPGA) in the Rural Residence Districts (RR), Single Residence Districts (RA), General Residence (RB) and Agricultural (AG) Districts. The Planning Board shall be the SPGA in the Apartment/Multi-Family (RC), Park (P), Wetland Resource Protection District (WRP), Business (B), Mixed Use (MU) and Industrial Districts (I). **[Amended 5-6-2006 ATM by Art. 9]**

D. Waiver of compliance. The SPGA having jurisdiction may, in special and appropriate cases, grant a waiver to the above requirements when in their judgment such action is in the public interest and not inconsistent with the purpose and intent of the zoning bylaw.

## **§198-33 Definitions and word use**

### **Artisan Food and Beverage**

Small scale production or preparation of food and beverages made on site with limited to no automation, and may include direct sales to or consumption by consumers. Examples include uses such as small-batch bakeries, microbreweries (15,000 barrels per year or less), brewpubs, artisan distilleries (10,000 barrels per year or less) as regulated by the Commonwealth, small batch candy shops and local cheese makers. Uses should allow outdoor seating or patio as an accessory use depending on the zoning district.

### **Artisan Manufacturing**

Application, teaching, making, or fabrication of crafts or products by an artist, artisan, or craftsman either by hand or with minimal automation and may include direct sales to consumers. Includes uses that employ activities and processes such as small-scale fabrication, welding, and coating that are typically not permitted in non-industrial zoning districts.

### **CoworkING Space**

A shared workspace where members can rent desks or other workspaces and facilities, and interact and collaborate with each other as part of a community. Rules for membership and participation in the coworking space are explicit, transparent and are available to the public. Coworking spaces may host classes or networking events for current and prospective members. Fabrication tools are limited to those which do not generate noise or pollutants in excess of what is customary within a typical office environment.

### **MAKER SPACE**

A coworking space that gives members access to fabrication tools similar to those found in machine shops or other industrial sites

### **Small Scale Indoor Recreation**

Establishment that provides amusement, entertainment or physical fitness that occur indoors for a fee or admission charge. May require membership and/or cater to walk in customers. May also include food or beverage service. Such uses are not limited to: arcades, art/dance/exercise studio; bowling alleys; drama/voice/instrument instructional studio; health club/fitness center; ice and roller skating; rock climbing; indoor hockey, lacrosse or soccer; laser tag; martial arts studio; indoor swimming pool; tennis, handball, badminton, pickleball, racquetball; golf simulation.

## **SHIPPING CONTAINER**

“Shipping container” means a unit originally used for the transport, shipping, or hauling of materials or goods by land, sea, or air; capable of being moved or mounted by rail, truck, or boat. This definition includes steel sea or oceangoing containers marked with the American Bureau of Shipping’s emblem or meeting the International Standard Organization’s standards which can be detached from a trailer, chassis or frame, and which were formerly used for transporting sea or oceangoing cargo. This definition includes the terms “portable moving/storage unit/container/pod” and “cargo/oceangoing/transport container. In addition, this definition applies to any structure designed to imitate the look of a shipping container.”

## **§Chapter 65: Planning Board**

### **§65-1 Board established.**

There shall be a Planning Board of eight members under the provisions of MGL c. 41, § 81A, with all of the powers and duties provided therein. Two members shall be elected at each annual town election for a term of four 3 years.

### **§65-3 Powers and duties.**

The duties of such Board shall be such as are stated in MGL c. 41, §§ 81A to 81J, and further to consider and advise upon municipal improvements, either at the request of other officials of the town or upon its own initiative. The Board shall meet at regular intervals. It may also hold public meetings. It shall at all times have access to all public documents or information in the possession of any town official or department. It shall examine the plans for the exterior of any public building, monument or similar feature and for the development and treatment of the grounds about the same before the adoption thereof, and may make such recommendations thereon as it may deem needful. It may make investigations and studies relative to new street and park developments. It may provide for public lectures and other educational work in connection with its recommendations. Said Board may incur expenses necessary to the carrying on of its work within the amount of its annual appropriation. The Planning Board is a special permit granting authority pursuant to MGL c. 40A§9

### **§306-1 Fee schedule of Planning Board Charges.**

#### **§ 306-1 Fee schedule of Planning Board charges.**

All fees due at time of application unless so noted. All expenses for advertising and notice to abutters by certified mail, return receipt, shall be borne by the applicant.

A. Form A, Approval of a plan not requiring approval.

- (1) One hundred dollars for adjusting existing lot lines without creating new lots.
- (2) One hundred fifty dollars plus \$50 per lot, for the creation of new lots, plus a \$40 per lot geographic information system (GIS) mapping fee.

B. Form B, Preliminary Subdivision Plan.

(1) Five hundred dollars.

C. Form C, Definitive Subdivision Plan.

(1) Five hundred dollars plus \$100 per lot (if a preliminary plan was filed), an engineering fee of \$2,500 and a GIS mapping fee of \$40 per lot.

(2) One thousand dollars plus \$100 per lot (if no preliminary plan was filed), an engineering fee of \$2,500 and a GIS mapping fee of \$40 per lot.

(3) Plan revision: one revision allowed with original application fee; 50% of original fee paid due for second and additional revisions at the time revision is submitted.

D. Special permit fees.

(1) Two hundred fifty dollars for plans of less than 2,500 square feet new or renovated floor space, plus an engineering fee of \$2,500.

(2) For plans of more than 2,500 square feet \$250, plus:

(a) For new floor space: \$0.10 per square foot for the first 30,000 square feet of new floor space and \$0.01 per square foot for new floor space above 30,000 square feet, plus an engineering fee of \$2,500.

(b) For renovated floor space: \$0.025 per square foot for the first 30,000 square feet and \$0.01 per square foot for floor space above 30,000 square feet, plus an engineering fee of \$2,500.

(c) For plans creating new floor space and renovating: apply the new floor space calculation first, followed by the renovation calculation up to a combined 30,000 square feet, then \$0.01 per square foot for all space above 30,000 square feet, plus an engineering fee of \$2,500.

(3) Plan revision: one revision allowed with original application fee; revision fee of \$0.01 per square foot due for second and additional revisions at the time revision is submitted.

E. Rezoning application fee: \$250.

F. Repetitive petition fee: \$250.

G. Street discontinuance fee: \$250.

H. Zoning regulation books: \$10.

I. Subdivision regulation books: \$10.

J. Zoning maps: \$5.

**§316 Procedural Rules**

316-2.C Rezoning applications: Requests for Zoning Map amendments shall be accompanied by 10 2 prints and a digital copy of a plan to scale, clearly showing the proposed amendment referenced for location on the Town Zoning Map and relevant district and property bounds, structures and natural features. The request shall also be accompanied by a written description of the proposed change, suitable for legal advertisement, plus a check made out to the Town of Fairhaven to cover the appropriate fees found in the fee schedule.

316-3.B Plans not requiring subdivision approval: The mylar, six two prints, two copies of application Form A, a digital copy of the plan and application and required fee (See Chapter **306**, Fees.) shall be filed with the



Planning Board's agent. The date of the next regular Planning Board meeting thereafter shall be the date of submission.

316-4.A.(2) Subdivision plans: This preliminary plan should be submitted to the Planning Board for approval. This means filing a digital copy of the plan and application Form B, 10 2 sets of plans, the application Form B and required fee (See Chapter **306** Fees.) with the Planning Board's agent, a digital copy print of the plan with the Board of Health and a notice stating the date of submission and a copy of Form B with the Town Clerk (MGL c. 41, § 81S). The filing with the Town Clerk may be by delivery or by registered mail. The day of the next regular Planning Board meeting after filing with the Planning Board's agent will be the date of submission.

316-4.A.(5): When it is ready, the plan is submitted to the Planning Board for approval. This means filing with the Planning Board's agent the original Mylar, a digital copy of the plan and Form C, 10 2 prints of each, a copy of application Form C, and required fee (See Chapter **306**, Fees.) to pay for the hearing notices and a list of all abutters taken from the latest tax lists. A copy of Form C must be filed by delivery or by registered mail with the Town Clerk. (See MGL c. 41, 81T.) One print of the plan is also to be filed with the Board of Health

316-4.A.(7): Following the hearing, the Planning Board will act on the plan. (Section **322-14I** of Chapter **322**, Subdivision of Land, covers this.) The security is either a covenant agreement (See Form D.) prohibiting building permits or the sale of any lots until the improvements serving that lot are complete or a bond covering the cost of improvements not yet made allowing the Town to use the bond to complete improvements if the developer should fail to do so or fail to do so quickly as agreed upon (MGL c. 41, § 81U.) After it has security and after a twenty-day appeal period following approval, the Planning Board will sign the plan. You must then give them 210 prints and a digital copy of it

316-4.B(3): Upon receipt of a definitive plan, the Planning Board must set up a public hearing (§ **322-14** of Chapter **322**, Subdivision of Land). The Planning Board shall determine the date and advertise the notice of hearing in each of two weeks, the first at least 14 days prior to the hearing. The Planning Board will mail a copy of the advertisement, certified mail, to the applicant and to each abutter within 300 feet (See § **322-4** of Chapter **322**, Part **2**, Definitions.), as taken from the most recent tax list.

316-4.B(5): Following the hearing, the Board must act on the plan then notify the applicant of your action by registered mail and file a copy of your action with the Town Clerk (§ **322-14I(1)** of Chapter **322**, Subdivision of Land) as well as mail a notice of the decision to parties in interest. The definitive plan is approved by default if not acted on by the Planning Board within 135 days of submission where no preliminary plan was submitted or within 90 days of submission where a preliminary plan was acted on by the Planning Board (MGL c. 41, § 81U).

316-5.B.(6)(b)[1] Street acceptances: One set of originals, and 10 2 sets of prints, and a digital copy of the plans and documents.

316-5.B [11] [g]: All plans must be accompanied by a CD-ROM or DVD digital copy containing geographic data in accordance with the Standard for Digital Plan Submittals to Municipalities (Version 1.0) issued by the Office of Geographic and Environmental Information (MassGIS).

316-7.B.(2) Special Permit Required: Ten Two copies of the plans and specifications as well as a digital copy of the plan and application needed for the decision by the special permit granting authority (SPGA), if any.

316-7.E.(3): Mailed, certified return receipt to parties in interest which shall include the applicant, abutters, owners of land directly opposite on any public or private street or way, the owners of the land within 300 feet of

the property line, Planning Board of every abutting city or town. (The Assessors shall certify the names and addresses of parties in interest.)

#### 316-8 Unaccepted street discontinuance

316-8.B.(1)(b): Ten Two prints of the survey of the street to be discontinued and legal description. A marked-up copy of the Assessors Map is acceptable. Please note that if a survey is not submitted and the discontinuance is approved, than a survey will be required as a condition of approval. A digital copy of all application material is also required.

316-8.D(3): Mailed, certified return receipt, to parties in interest which shall include the applicant, abutters, owners of land directly opposite on any public or private street or way and the owners of the land within 300 feet from the exterior bounds of the proposed street discontinuance. (The Assessors shall certify the names and addresses of parties in interest.)

#### 316-9: Accepted street discontinuance

316-9.B.(1)(b): Ten Two prints and a digital copy of the survey of the street to be discontinued and legal description.

316-9.D(3): Mailed, certified return receipt, to parties in interest which shall include the applicant, abutters, owners of land directly opposite on any public or private street or way and the owners of the land within 300 feet radius from the exterior bounds of the proposed street discontinuance. (The Assessors shall certify the names and addresses of parties in interest.)

#### 316-10 Repetitive Petition

316-10.B(2): The request for a repetitive petition shall include a plan of the site, a copy of the Board of Appeals decision and documentation illustrating how the request is materially different from the request denied by the Board of Appeals. A digital copy of all application materials is required.

316-10.D(3): Mailed, certified return receipt, to parties in interest which shall include the applicant, abutters, owners of land directly opposite on any public or private street or way and the owners of the land within 300 feet of the property line. (The Assessors shall certify the names and addresses of parties in interest.)

#### **§322-12 ANR Submission; contents/ action**

322-12.B: The applicant shall submit to the Planning Board's agent a Mylar and/or the original reproducible plan and six two prints of the plans accompanied by two copies of a completed application Form A and the appropriate fee, together with any necessary evidence to show that the plan does not require approval. A digital copy of the plan and Form A application are also required.

322-12.E: The applicant shall submit a CD-ROM or DVD digital copy containing geographic data in accordance with the Standard for Digital Plan Submittals to Municipalities (Version 1.0) issued by the Office of Geographic and Environmental Information (MassGIS).

#### 322-13 Preliminary Plan Submission; contents; approval

322-13B(1): 10 2 prints of the plans, accompanied by two copies of a completed application Form B and the appropriate fee. A digital copy of the plan and Form B is also required.

322-13B(1): The applicant must also file a print or digital copy of the plan with the Board of Health, and must file with the Town Clerk a notice of the date of submission and a copy of the completed application Form B

322-14 Definitive Plan Submission; contents; approval procedures; guarantees

322-14.B(1)(a): The applicant shall submit 10 2 prints of the plans, accompanied by two copies of a completed application Form C and the appropriate fee. A digital copy of the plan and Form C is also required

322-14.B(2): The applicant must also file a print of the plan or digital copy with the Board of Health, and must file with the Town Clerk a notice of the date of submission and a copy of the completed application Form C.

322-14.K: After endorsement, the applicant shall submit a CD-ROM or DVD digital copy containing geographic data in accordance with the Standard for Digital Plan Submittals to Municipalities (Version 1.0) issued by the Office of Geographic and Environmental Information (MassGIS).

DRAFT

**APPENDIX G - Article 22 Create Bylaw, Flow Neutral**

***Public Works to supply through their engineer***

DRAFT

**Chapter 88: Fairhaven Public Shade Trees**

**Purpose:**

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

**§88-1 Definitions:**

Accepted Street: A street or road that has been accepted by and is now owned by the Town.

Alter – To change the condition of any aspect of a Public shade tree or its immediate environment.

Critical Root Zone – The critical root zone of a tree is also referred to as a tree protection zone.

Essentially, it is an invisible or imaginary circle that runs along or just outside the drip line of a tree.

This area is important to a tree because it is where the most critical tree roots are located beneath the ground.

Tree Warden– The appointed agent of the Town having primary enforcement responsibilities under this chapter and MGL c. 87 and charged with the responsibility for review, notification and record keeping required pursuant to this chapter.

Diameter at Breast Height (DBH) – The standard measure of tree having at least four (4) inches in diameter at a height of four and one-half (4.5) feet above the existing grade at the base of the tree. If the tree splits into multiple trunks below four and one-half (4.5) feet above the existing grade, the DBH shall be considered to be the measurement taken at the narrowest point beneath the split.

Imminent or High-Risk Tree - A tree that has structural defects in the roots, stem, or branches that may cause the tree or parts of the tree to imminently or have a high likelihood of failing, where such failure may cause property damage or personal injury per International Society of Arborists latest edition Risk Assessment Handbook.

Pruning– The selective removal of plant parts, such as branches, buds, or roots to improve the tree's healthy growth.

Public Shade Tree – Trees, shrubs, bushes, and all other woody vegetation on land lying between property lines on either side of all streets, avenues, or ways within the Town other than a State Highway, and all trees, shrubs, bushes, and as further defined in Massachusetts General Laws Chapter 87, §1.

Public shade trees are commonly called Street trees. When it appears in any proceeding in which the ownership of or rights in a tree are material to the issue, that, from length of time or otherwise, the boundaries of the highway cannot be made certain by records or monuments, and that for that reason it is doubtful whether the tree is within the highway or a park or on land surrounding a public building, it shall be taken to be public property until the contrary is shown.

Public Way –Any street or highway that is open to the public and is controlled and maintained by state or municipal government.

Remove (including full and partial tree removal) – The cutting down of any Public Shade Tree or Town

Tree and all other acts which cause the actual removal or the effective removal through direct or indirect actions resulting in the death or damage of a public tree, including, but not limited to, excessive or improper pruning.

Town Trees – All trees, other than public shade trees, located on Town lands, including parks, schoolyards, conservation lands, and any other land owned by the Town.

Trimming – Cutting back of plant material for reason other than health concerns, e.g. for shape or appearance.

## **§88-2 Protection of Public Shade Trees and Town Trees:**

### **1) Tree Warden:**

- A. The Tree Warden shall have the primary care and control of all public shade trees, shrubs and growths in the town. This includes public shade trees in the Right of Way of streets, except those within a state highway. The Tree Warden shall also have the primary care and control of town trees if so requested in writing by the town board or department with authority over that Town land.
- B. The Tree Warden shall be a Massachusetts Tree Wardens and Foresters Association qualified Tree Warden.
- C. The Tree Warden shall enforce all the provisions of MGL Chapter 87 and this bylaw and any other town policies regarding public shade trees and town-owned trees other than those residing on Conservation Commission land.
- D. The Tree Warden shall adhere to the regulations for the care, preservation, maintenance and removal of public shade trees, or other trees under their control, as established in this bylaw.
- E. The Tree Warden may designate a qualified Deputy Tree Warden with the approval of the Town Administrator.

### **2) Permitting:**

- A. The town will have an approved permitting policy in regard to working on or around public shade trees. The policy will be approved by the Select Board.

### **3) Intended or Negligent Damage to Public Shade Trees**

- A. The town will have a fine schedule for damage, whether intended or due to negligence to public shade trees. The fine schedule will be approved by the Select Board.

### **4) Planting:**

- A. The Tree Warden will be responsible for planting public shade trees. The species planted will be selected from the University of Massachusetts Forestry Department recommendations as well as the Massachusetts Department of Conservation and Recreation's guidelines.
- B. Every public shade tree removed by the town or any other entity will be replaced on a one-for-one basis at least. Under special circumstances where there are very few trees in a given area if a tree is removed a two-for-one may be required by the Tree warden. If the tree removed is in such a location that does not support the replanting of a tree then another local site can be utilized.
- C. Public shade trees and all town-owned trees will be planted utilizing best management practices per the latest edition of ANSI A300 standards.

### **5) Maintenance:**

- A. Pruning and Trimming Standards: All pruning and trimming of public shade trees will be done to the latest edition of the International Society of Arborists 300 standards.

**Form submission from: Select Board Public Comment and Concern Form**

1 message

fairhavenma via fairhavenma <cmsmailer@civicplus.com>  
Reply-To: fairhavenma <cmsmailer@civicplus.com>  
To: Select Board <selectboard@fairhaven-ma.gov>

Tue, Mar 12, 2024 at 12:10 PM

Submitted on Tuesday, March 12, 2024 - 12:10pm  
Submitted by anonymous user: 2601:18e:c201:9110:35ab:fa0c:22de:5e60  
Submitted values are:

==Please provide the following information:==

Name: Douglas Brady  
Email: [bradydoug@aol.com](mailto:bradydoug@aol.com)  
Address: 97 Pleasant Street  
Phone: 508-991-8673

How do you prefer to be contacted? Email  
Is this item time sensitive? Yes  
Topic you wish to discuss with the Board:  
I am following up from my public comments at the Select Board meeting on 03-12-24

To be VERY CLEAR ... This request has nothing to do with the past, present or future TA. To imply or insinuate otherwise would be a false narrative.

I request that on your next agenda there be an Action Item to have a discussion of a review of the current Town Administrator Act By-Law. The request must first appear on the agenda so that a proper discussion can ensue.

We are currently updating our town bylaws as some are noted on the Town Warrant. The Town Administrator Act should be included in a review. Does the by-law need any tweaking or changes? If any changes are suggested they must be approved by Town Meeting.

This or any recommended changes does not affect the current contract with the TA, but could potentially affect a future contract which is due in April 2025.

This IS NOT about the person no matter who holds the title, but about a review of the Town Administrator Act by-law itself.

This is a win-win for the town and residents to have an independent committee appointed by the Select Board charged with reviewing the Town Administrator Act By-law and make recommendations. This task must be completed before a potential fall town meeting.

There are NO negatives to this request and we ensure the by-law is in the best interest of the people and town before a new contract is approved.

The position of TA does not have to be vacant to have a review of the Town Administer Act By-law and again... would NOT affect the current status.

I request this discussion to be on your next meeting agenda:

- It will take two weeks to appear on the agenda if approved by the Chair.
- If the Select Board decides to proceed with a committee review, then they would have to request letters of public interest, another two weeks
- I would be thirty days just to form a committee which has to have recommendations within six months.
- I ask that you to commit to putting this action item on your next agenda to start the discussion process and being proactive now vs. rushing last minute.

I am emailing each Select Board Member separately as to avoid any meeting law violations. I look forward to each of your responses with your input and comments.

Thank you

Doug Brady  
97 Pleasant Street

The results of this submission may be viewed at:  
<https://www.fairhaven-ma.gov/node/318/submission/13906>

**§ A502-6. Town Administrator.**

**AN ACT ESTABLISHING THE POSITION OF 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. The executive powers of the town of Fairhaven shall be vested in the board of selectmen, who shall have all the powers given to boards of selectmen by the General Laws, except for those executive powers granted to the town administrator.

The board of selectmen shall serve as the chief goal-setting and policy-making agency of the town of Fairhaven. The duties and responsibilities for day-to-day management of the town shall be delegated to the town administrator. The board shall act through the adoption of policy directives and guidelines which shall be implemented by the town administrator and the officers and employees appointed by, or under the authority of, the board. Individual selectmen shall not purport to represent the board or exercise the authority of the board except when specifically authorized by the board.

The board of selectmen shall:

- (a) enact rules and regulations to implement policies and to issue interpretations;
- (b) exercise, through the town administrator, general supervision over all matters affecting the interests or welfare of the town;
- (c) 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. [Amended by Ch. 269, Acts of 2020, approved 1-6-2021]
- (d) have general administrative oversight of such boards, committees and commissions appointed by the board of selectmen;
- (e) have the responsibility and authority for licenses and other quasi-judicial functions as provided by the General Laws and by the by-laws of the town of Fairhaven;
- (f) issue all town meeting warrants;
- (g) review the annual proposed budget submitted by the town administrator and make recommendations with respect to the annual proposed budget as the board deems advisable; provided, however, that the town administrator shall present the budget to the town meeting, incorporating the recommendations of the board of selectmen;
- (h) appoint, and may re-appoint, and enter into a contract for the employment of a town administrator for a term of not more than 3 years, who shall be a person with executive and administrative qualifications and especially fitted by education, training and experience to perform the duties of the office; provided, that the town may from time to time, by by-law, establish such additional qualifications as it deems necessary and appropriate;



- (i) remove the town administrator at any time, for just cause following a formal procedure including a written intent to dismiss, a written response and a public hearing, to be completed within 30 days after the issuance of a written intent to dismiss, in accordance with the terms of the town administrator's contract;
- (j) set the compensation for the town administrator, not to exceed an amount appropriated by the town meeting; and
- (k) designate a qualified person as acting town administrator to perform the duties of the office during any vacancy exceeding 30 days, caused by the town administrator's absence, illness, suspension, removal or resignation; provided, that the appointment of an acting town administrator shall be for a period not to exceed 180 days.

SECTION 2. The town administrator shall be the chief administrative officer of the town of Fairhaven and shall act as the agent for the board of selectmen. The town administrator shall be responsible to the board of selectmen for coordinating and administering all town affairs under the jurisdiction of the board of selectmen.

The town administrator's powers and duties shall include those outlined in subsections (a) to (aa), inclusive.

- (a) Consult and advise the board of selectmen regarding its policies and implement those policies.
- (b) Attend all meetings of the board of selectmen, except when excused, and consult with and advise the board of selectmen on all matters that come before the board.
- (c) Attend all town meetings and advise the town meeting on all warrant articles within the jurisdiction of the board of selectmen.
- (d) Attend all finance committee meetings, except when excused by the board of selectmen, and keep the finance committee informed on all matters under the jurisdiction of the town administrator that come before the committee.
- (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. [Amended by Ch. 269, Acts of 2020, approved 1-6-2021]
- (f) Review and advise the board of selectmen on all warrants for the payment of town funds as prepared by the town accountant in accordance with section 56 of chapter 41 of the General Laws.
- (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. [Amended by Ch. 269, Acts of 2020, approved 1-6-2021]

(h) Administer the town's insurance policies, including the ability to settle claims; provided, however, that all insurance contracts and claims settlements shall receive the approval of the board of selectmen.

(i) With the approval of the board of selectmen, appoint and remove all department heads under the direct control of the town administrator. Each department head, with the approval of the town administrator, shall appoint and remove all department staff within their respective departments. All appointments shall be based entirely on merit and fitness. All appointments and terminations shall be conducted in accordance with the General Laws, personnel policies, by-laws of the town of Fairhaven and any applicable employment contracts; provided, that fire department appointments shall also be subject to section 42 of chapter 48 of the General Laws.

(j) With the approval of the board of selectmen, reorganize any departmental structures under the jurisdiction of the town administrator.

(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. [Amended by Ch. 269, Acts of 2020, approved 1-6-2021]

(l) With the approval of the board of selectmen, establish compensation packages for all town employees under the jurisdiction of the town administrator, not subject to a collective bargaining agreement. Such compensation shall not exceed the amount appropriated therefor by town meeting and shall be subject to all applicable laws and by-laws.

(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. [Amended by Ch. 269, Acts of 2020, approved 1-6-2021]

(n) Report on the probable amount required to be levied and raised by taxation to defray all expenses and liabilities of the town together with an estimate of the necessary tax rate.

(o) Establish calendar dates by which the proposed budget, revenue statement and tax rate estimate are to be submitted to the board of selectmen.

(p) Submit annually to the board of selectmen a 5-year capital improvements program, or the same as approved by a formal capital planning committee, to include: (i) a list of all capital improvements and supporting data proposed to be undertaken during the next 5 years; (ii) cost estimates, methods of financing and recommended time schedule; and (iii) the estimated annual cost of operating and maintaining any facility to be constructed or acquired.

(q) Advise the board of selectmen at least monthly, of all departmental year-to-date revenues.

(r) Direct action as deemed necessary to ensure that all operating and capital budgets under the direct control of the town administrator are maintained in accordance with the town meeting vote that approved those budgets and coordinate efforts with the governing bodies of those departments not under the direct supervision of the town administrator to ensure that those operating and capital budgets are maintained in accordance with the town meeting vote that approved those budgets.

(s) Keep and complete records of the office of the town administrator and annually submit to the board of selectmen, unless requested to do so more frequently, a full report of the operations of the office.

(t) Be responsible for coordination of operational and strategic planning for the town.

(u) Serve as the procurement officer for the town, establish and enforce procurement policies and guidelines in accordance with applicable state laws.

(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. [Amended by Ch. 269, Acts of 2020, approved 1-6-2021]

(w) Prepare the application of all town warrants for approval by the board of selectmen.

(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. [Amended by Ch. 269, Acts of 2020, approved 1-6-2021]

(y) Delegate and direct any qualified town official or employee to carry out any duty that is within the authority of the town administrator.

(z) During a temporary absence, with the approval of the board of selectmen, the town administrator may designate a qualified administrative employee or officer to exercise the powers and perform the duties of the town administrator.

(aa) Perform any other duties or tasks assigned by the board of selectmen, assigned by the town meeting or mandated by applicable state law.

SECTION 3. The town administrator of the town of Fairhaven shall have access to all municipal books, papers and documents or information necessary for the proper performance of the duties of the town administrator. The town administrator may, without notice, cause the affairs of any division or department under the town administrator's supervision, or the conduct of any officer or employee thereof, to be examined.

SECTION 4. All laws, by-laws, votes, rules and regulations, whether enacted by authority of the town of Fairhaven or any other authority, which are in force in the town on the effective date of this act, not inconsistent with this act, shall continue in full force and effect.

SECTION 5. No contract existing, and no action at law or suit in equity, or other proceeding pending, on the effective date of this act shall be affected by this act.

SECTION 6. The town of Fairhaven shall be governed by this act. To the extent that this act modified or repeals existing General Laws and special acts or the by-laws of the Town of Fairhaven, this act shall govern.

SECTION 7. This act shall not impair the rights or obligations of any person holding a town office, or employed by the town, on its effective date, except those duties assigned by this act to another officer or employer, and except those duties which are subsequently assigned to another officer or employee pursuant to this act. No person who continues in the permanent full-time service or employment of the town shall forfeit their pay, grade or time in service as a result of this act.

SECTION 8. This act shall take effect upon its acceptance by the town of Fairhaven by a vote at the town meeting.

Approved, November 25, 2014.



**Monday, March 25, 2024**  
**Correspondence**



247 Station Drive, SW-1038  
Westwood, MA 02090

**Michael Babineau**  
Supervisor  
Electric Transmission  
Vegetation Management

Certified mail-return receipt requested

February 28, 2024

Dear Municipal Official:

This letter is to inform you that Eversource Energy, Eastern MA intends to selectively apply herbicides in 2024 along the power line rights-of-way that pass through your municipality. This treatment is conducted as a component of an integrated vegetation management program that uses the appropriate mechanical and/or herbicides treatments to control vegetation in order to encourage the growth of healthy early successional ecological communities that benefit wildlife while allowing for the safe delivery of electricity to our customers.

Eversource Energy, Eastern MA's 2023-2027 *Five-year Vegetation Management Plan (VMP) for Eastern, MA* is posted at the following websites:

<https://www.mass.gov/service-details/rights-of-way-vegetation-management-vmmps-yops-and-notice>

<https://www.eversource.com/content/residential/about/reliability/vegetation-management/transmission-system-vegetation-management/transmission-vegetation-management-projects>

If you would like a hard copy, please contact us with this request.

Eversource Energy, Eastern MA's 2024 *Yearly Operational Plan (YOP) for Eastern MA* is also posted at the above websites. If you would like a hard copy, please contact us with this request.

Please review the YOP map(s) that locate the ROW corridors and the plotted location of known sensitive areas including public and private drinking water supplies. **If there are any additional sensitive areas located on or near the ROW's, please advise us as soon as possible so a permanent record can be established, and appropriate field protective actions implemented. We particularly rely on this process to collect corrections to the public wells and to record the location of private wells.** The enclosed maps will be updated with any new information that is received by Eversource Energy, Eastern MA and posted at the above website.

The herbicides are listed in Section VII of the YOP and will be selectively applied to target vegetation by experienced, Massachusetts' licensed/certified applicators that walk along the ROWs using backpack equipment.

The foliage treatments will take place between June 1<sup>st</sup> and October 18<sup>th</sup> along with cut surface treatments (CST). Fall CST, basal treatments or sensitive foliar treatments may be necessary and are scheduled between October 1<sup>st</sup> and December 31<sup>st</sup> in areas along the ROWs that might not have received a foliage treatment or to trees over 12 feet tall. The exact time is dependent upon weather conditions and field crew progress.

In compliance with 333 CMR 11.06-11.07, No herbicide applications will occur before the conclusion of the 45-day YOP review period, the 21-day treatment notice and the 48-hour newspaper notice. At the end of these review periods, which can run concurrently, no application shall commence more than ten days before nor conclude more than ten days after the treatment periods listed above.

SELECT BOARD

2024MAR11 11:0811:08



247 Station Drive, SW-1038  
Westwood, MA 02090

**Michael Babineau**  
Supervisor  
Electric Transmission  
Vegetation Management

February 28, 2024

## **45 Day Yearly Operational Plan Public Notice, Review and Comment Period**

Dear Municipal Officials:

In compliance with 333 CMR 11.06, *45 Day Yearly Operational Plan Public Notice, Review and Comment*, please review Eversource Energy, Eastern MA's 2024 Yearly Operational Plan for Eastern, MA - .

Posted at the listed websites, Eversource Energy, Eastern MA's *Yearly Operational Plan (YOP) for Eastern, MA* details specific information pertaining to the intended 2024 program:

<https://www.mass.gov/service-details/rights-of-way-vegetation-management-vmmps-yops-and-notice>

<https://www.eversource.com/content/residential/about/reliability/vegetation-management/transmission-system-vegetation-management/transmission-vegetation-management-projects>

Please review the enclosed maps that locate the rights-of-way and the location of known *sensitive areas*. If there are any additional *sensitive areas* located on or near the right-of-way, please advise us as soon as possible, so we may establish permanent records and implement appropriate field protective actions. We particularly rely on this process to collect corrections to the public wells and to record the locations of private wells. The enclosed maps will be updated with any new information that is received by Eversource Energy, Eastern MA and posted at the above website. If you would like a hard copy of the YOP please contact us with this request.

Also please review the enclosed copy of the Environmental Monitor Notice, published under the Massachusetts Environmental Policy Act (MEPA) also located at:

<https://ceaonline.eea.state.ma.us/EEA/MEPA-eMonitor/home>

Enclosures: 21 Day Letter  
Environmental Monitor Notice  
2024 Yearly Operational Plan Maps

Notice Sent to: Chief Elected Municipal Official  
Board of Health  
Conservation Commission  
Municipal Water Supplier  
Massachusetts Pesticide Bureau

THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources

225 Turnpike Road, 3<sup>rd</sup> Floor, Southborough, MA 01772  
617-626-1700 fax: 617-626-1850 www.mass.gov/agr



Maura T. Healey  
GOVERNOR

Kimberley Driscoll  
LIEUTENANT  
GOVERNOR

Rebecca L. Tepper  
SECRETARY

Ashley E. Randle  
COMMISSIONER

Notice

**This Notice serves only to address the public comment period deadline extension.**

Pursuant to the provisions of the Rights-of-Way Management Regulations, 333 CMR 11.00, to apply herbicides to control vegetation along rights-of-way (ROW), a five-year Vegetation Management Plan (VMP) and a Yearly Operational Plan (YOP) must be approved by the Massachusetts Department of Agricultural Resources (MDAR). Eversource Energy, Eastern MA (Central, Eastern, and Southeastern MA) holds a current VMP, therefore, notice of receipt of a YOP and procedures for public review is hereby given as required by Section 11.06 (3).

Eversource Energy, Eastern MA has submitted a YOP to MDAR in February 2024.

In 2024 Eversource Energy, Eastern MA will conduct an Integrated Vegetation Management (IVM) program on their transmission and distribution lines. The intended vegetation control program will be consistent with Eversource Energy, Eastern MA's VMP (approved by MDAR in 2023). In accordance with the guidelines set forth in Eversource Energy, Eastern MA's VMP for Central, Eastern, and Southeastern, MA and YOP, herbicides will be selectively applied to target vegetation by licensed/certified applicators carrying backpack or handheld application equipment for the IVM program.

Eversource Energy, Eastern MA's YOP identifies the following 32 municipalities as locations where they intend to use herbicides to treat their electric Rights-of-Way in 2024:

Eastern MA (EMA) municipalities:				
Abington	Canton	Holbrook	New Bedford	Wareham
Acushnet	Carver	Kingston	Norfolk	Weymouth
Avon	Dartmouth	Marion	Plymouth	Whitman
Bellingham	Duxbury	Marshfield	Randolph	Woburn
Braintree	Fairhaven	Mattapoisett	Sharon	
Brockton	Franklin	Medway	Stoughton	
Burlington	Freetown	Millis	Walpole	

Eversource Energy, Eastern MA will only use herbicides recommended by MDAR for use in regulated sensitive areas for their IVM program. Pursuant to 333 CMR 11.04, no herbicides will be sprayed within any designated "no spray sensitive area" instead mechanical only methods will be used to control vegetation.

Public notification, by certified mail, will be provided to each "affected" municipality at least twenty-one days prior to any herbicide application.



A failure by the city/town to respond to the applicant's submission of the YOP within the forty-five day period will be automatically considered by MDAR to indicate agreement by the municipal officials with the regulated Sensitive Area demarcations provided by the applicant in their YOP.

Any questions or comments on the information provided in this *Notice* and the procedures established for the municipal review outlined above should be addressed to:

Clayton Edwards  
Rights of Way Program  
Massachusetts Department of Agriculture Resources  
Pesticide Bureau  
225 Turnpike Rd., 3<sup>rd</sup> Floor  
Southborough, MA 01772

Any questions or comments regarding the YOP should be addressed to:

Michael Babineau, Supervisor  
Eversource Energy  
Transmission Vegetation Management  
247 Station Drive, SW-1038  
Westwood, MA 02090-9230  
781-441-3798 (office)

**COMMENT PERIOD ENDS AT THE CLOSE OF BUSINESS (5pm) ON April 22, 2024**

Bob Espindola

Committee Liaison Report 3-25-2024

I'd like to thank Josh Boyer from Coastline Elderly Services for extending the invitation to our Board and Administration to join in on their "March for Meals" awareness campaign as well as Gerami Pacheco, and the staff and COA Director Martha Reed for hosting the event and for their collective patience as Ms. Ellison, Mr. Murphy and I helped package the meals (I think our "help" actually slowed them down : ) We then were able to deliver some meals and meet some of the people who benefit from the program. It was very enjoyable and the packet of information they shared with us states that they "serve over **414,000 meals per year** to elder households throughout our service area and the impact that it has on individuals, with **63%** of surveyed consumers saying that **Meals on Wheels is their main meal of the day**"



#### MMA Digitizing Records webinar

I attended a Massachusetts Municipal Association webinar on Digitizing records. I thought the webinar was Excellent and I would highly recommend that anyone responsible for managing the Towns digitizing efforts view the webinar that can be found at the link below. Also in the link below you can find two Power Point presentations used by the presenters from MMA and from IT Director for the City of Watertown.

There were lots of good tips about;

- How make all the files saved searchable for a more user friendly experience later
- How to set up for public access to public records.
- Rules around when to make sure you do not destroy certain original documents even if you now have them saved electronically as these are "public property"
- Requirements for storing e-files in multiple locations
- Pro's and cons of various file storage systems and cost factors
- How to implement systematic file storage systems for easier future reference
- How to start using systematic file storage now so that even while you are working to digitize older records you are starting to store things now in a sensible manner that will make for less work down the road.



MAR  
19  
2024

MUNICIPAL GOVERNMENT

# MMA webinar reviews guidelines for digitizing municipal records

Home → News → Municipal Government

<https://www.mma.org/mma-webinar-reviews-guidelines-for-digitizing-municipal-records/>

**The BROADBAND COALITION (MBC)** Our February guest speaker, Gigi Sohn, was gracious enough to connect us with Ellie Devilliers, Executive Director of Maple Broadband and President & Chair of the Vermont CUD Association (VCUDA). Maple Broadband is one of the Vermont “Communication Union Districts” (CUD’s) that have been very successful and have driven the explosion of Broadband development in Vermont. David Lanagan from Senator Markey’s office joined us again as Senator Markey’s office is very interested in this concept and there are people in Massachusetts currently studying the Vermont model to see if it is something that could be adopted in Massachusetts.

In Vermont, there are nine CUD’s, serving groups of communities numbering from 18 to 54 in number. I believe that if Massachusetts were to adopt this, or a similar model, it would really help advance Broadband development in the state.

A CUD is a “Special Purpose Municipality” with revenue bond authority but not taxing authority. Under this model, all assets are owned by the CUD Municipality but they typically use a traditional RFP to select a commercial partner to operate the CUD infrastructure. I have attached selected slides from her presentation and she also shared a link to a documentary about their success story.

[Connected Documentary: Full Film - YouTube](#)

# Vermont Communications Union Districts

Developed under the direction of hundreds of community volunteers.



**NORTHWEST  
FIBERWORX**



**Lamoille FiberNet**  
Communications Union District

Chittenden  
County CUD

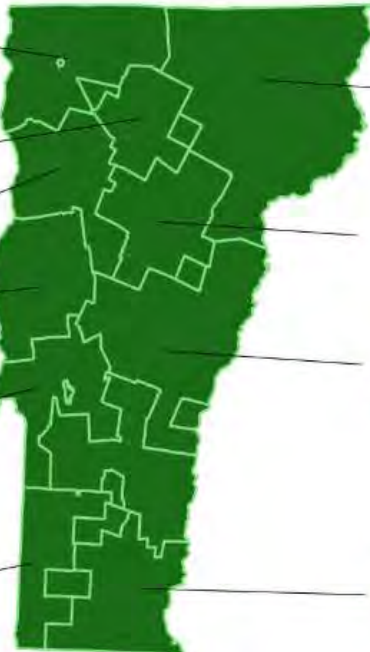


**MAPLE  
BROADBAND**



**OtterCreek**  
communications  
union district

SoVT CUD



**CVFIBER**

**ECFiber**



**DV Fiber**

empowering our connection to the future



## VCUDA

*The Vermont Communications Union Districts Association serves to unite the interests of Vermont's municipal internet networks, devising ways to share resources and voicing CUD consensus on critical policy issues.*

January 31, 2023

Ellie de Villiers, Chair of VCUDA  
chair@vcuda.org

# About the Communications Union Districts

- Each CUD organized as a result of **towns electing to join a CUD**.
- Each **town** appoints **representatives to participate directly in the CUD governance**.
- **A CUD is a special-purpose municipality**. (with revenue bond authority, but not taxing authority)
- **Committed to universal service** - will reach to every on-grid address starting with the currently unserved and underserved.
- **Accountable and Transparent** – municipal governance assures grassroots involvement, transparency, and accountability.
- **Public Ownership** - All assets funded by the CUD are owned by the CUD municipality.
- **Private Partnership** - CUD typically use a traditional RFP to select a commercial partner to operate the CUD infrastructure.

Communications union districts (CUDs) were created ... to coordinate and implement creative and innovative solutions in their respective territories, particularly where existing providers are not providing adequate service that meets the needs of their residents and businesses ...

Vermont Act 71 2021  
Findings and Intent (13)

Some variation on public/private partnerships, but core principles are consistent.

**CUDs are Mission-Driven.**

## CUDs: public entities building strong businesses



- Minimize costs
  - Transparent competitive procurement
- Build service revenues
  - Generate revenues by serving customers
  - Revenues from denser areas support lower revenues from rural areas
- Funding/financing
  - Grant funding
  - Minimizing debt service / interest rates
- Capital directed to stakeholder benefit
  - Strong human resources with public accountability
  - Profits go to completing **availability** (infrastructure) and
  - Increasing **affordability** for those in need
  - This is how we bridge the digital divide

**Public entities = open meetings, town-appointed governance, publicly owned and controlled assets**



# 2023 Success Examples



**Maple Broadband connected its first customers in January 2023 in Cornwall and Salisbury, and it now has active service across 112 miles.** Service is active in portions of 7 towns and a total of 1,332 addresses passed. Maple Broadband is on target to finish its Phase 1 build in early 2024. Collectively, Maple Broadband and Waitsfield and Champlain Valley Telecom (WCVT) brought fiber service to 3,813 addresses passed in 2023. In 2024 Maple Broadband plans to bring service to portions of Vergennes, Ferrisburgh, Waltham, Monkton, and New Haven, and additional portions of Orwell.



**NEK has achieved 2,352 homes passed, 203 miles served, and 179 customers served across 8 towns.** In 2023, to bring high-speed, reliable internet to unserved and underserved communities, NEK Broadband put in place the additional staff, funding, and infrastructure needed to continue delivering on its promise. NEK Broadband secured a \$17.5 million grant from the USDA primarily for Essex County which will start construction in 2024.

[Connected Documentary: Full Film - YouTube](#)

**SRPEDD. My last meeting with SRPEDD will be Wednesdaynight. I will send the Board information about the meeting since I will not be on the Board for the Next Board meeting.**

## **LIVABLE STREETS COMMITTEE**

(Notes courtesy of Will Gardner)

The Committee cancelled the meeting this month since it was scheduled for the same time as the Candidates night last Thursday and some members wanted to attend the Candidates night.

I was able to ride with the Bike Bus group again on Friday morning, where 13 children and one toddler in a bike trailer were accompanied by 4 adults in sub-freezing weather. This diehard group, that have been riding all through the winter, will be soon joined by a much larger group in the spring, where, last year, they reached a peak of 50 students and 10 parents making the trek from Pleasant Street crossing near the old Rogers School to Wood school and back at the end of the day. To put that in perspective, that is about 12% of the student population riding their bikes to school and home.

In an effort to increase the Bike Bus even further, Will Gardner extended his morning ride down Sconticut Neck Road to see the road width and crossing points to consider organizing a second group of students to ride into school from Sconticut Neck starting at Seaview Ave, near Yia Yia's.

Join Liveable Streets Bike and Brew series continues in April with a great, casual ride from the Fairhaven Rec Center to Mattapoissett's Inn on Shipyard Park! Will and Myles have had their eyes on

this route since they first started Bike & Brew, and now that the weather is warming and the Inn is reopening for spring, they're excited to make it happen.

We'll meet on Saturday April 6 at 1pm at the Rec Center, then ride down the Phoenix Bike Trail, over Mattapoissett's recently-completed Shining Tides extension, and to the Inn on Shipyard Park for drinks & snacks. It should be half an hour of easy riding each way.

Please invite friends, family, neighbors, and feel free to post this event in any community groups that you're a part of! We welcome riders of all ages, abilities, and addresses (you don't have to live in Fairhaven to join us).

Reminders: Riders under 17 must wear a helmet. At each stop, riders are responsible for their own bikes. Follow the link below for more information

<https://facebook.com/events/s/april-bike-brew-coastal-connec/910731600738016/>