

<sup>1</sup>GENERAL GOVERNMENT BY-LAWS

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## **GENERAL GOVERNMENT BY-LAWS**

### **ARTICLE 1 GENERAL PROVISIONS**

SECTION 1. These by-laws shall be designated as “By-laws of the Town of Nahant”.

SECTION 2. So far as the provisions of these by-laws are the same in effect as those of previously existing by-laws, they shall be construed as a continuation of such by-laws, but all other previously existing by-laws or portions thereof heretofore in force are hereby repealed. The repeal of a by-law heretofore adopted shall not affect any act done or any right accruing or accrued or established, or any action, suit or proceeding commenced in any civil case, or affect any punishment, penalty or forfeiture incurred under such a by-law.

SECTION 3. Words and phrases specifying or naming any officer or governmental body of the Town, shall be construed as including the lawful successor, or the person or persons having the powers and performing the duties of such officer or governmental body of the Town.

SECTION 4. When in any by-law anything is prohibited from being done without the license or permission of a certain officer or governmental body, the officer or governmental body shall have the power to license or permit such thing to be done.

SECTION 5. Whoever violates a provision of any by-law of the Town, shall, unless other provision is expressly made, be liable to a penalty not exceeding three hundred dollars for each offense. (Rev. 10-82)

SECTION 6. These by-laws may be amended at any Town Meeting, an article or articles for that purpose having been inserted in the warrant for such a meeting. (Rev. 4-29-95)

## ARTICLE II TOWN MEETINGS

SECTION 1. The Annual Town Meeting shall be held on the third Saturday in May of each year. All business, except the election of officers and the determination of such matters as by statute law are required to be elected or determined by official ballot, shall be considered at 12:30 p.m. For such consideration, a quorum of seventy-five (75) voters is required; however, a number less than the quorum may adjourn the meeting.

**(Rev. ATM 4-27-2019.)**

SECTION 2. The Annual Town Election shall be held on the last Saturday of April of each year. The polls shall be open at 7:00 a.m. and shall remain open until 8:00 p.m.

**(Rev. ATM 4-27-2019.)**

SECTION 3. The warrant for all Town Meetings shall contain a statement of all subjects to be acted upon at the meeting. When an article is petitioned for by the legal number of voters, there shall be appended thereto the name of the first person signing said petition and the words, et al. All petitions for insertions of articles in the warrant for the Annual Town Meeting shall be filed with the Board of Selectmen on or before the thirty-first (31<sup>st</sup>) day of January.

- A. The proponent of an article for consideration in the warrant at a Town Meeting may submit a written summary of the reasons supporting the proposed warrant article. If the summary is three hundred (300) words or less, and is submitted before January 31 for an Annual Town Meeting, or eight (8) weeks prior to a Special Town Meeting, the Advisory and Finance Committee shall cause the summary to be printed in its Report to the Voters for the Town Meeting. The Advisory and Finance Committee shall have sole discretion with respect to printing in its report any summary, which is submitted, that is not within the size or time requirements of this paragraph, or which is frivolous, defamatory or obscene. (Rev. 2-92) Rev. 4-29-95

SECTION 4. No person whose name is not upon the voting list of the Town, or who does not present a proper certificate from the Board of Registrars of Voters, shall enter upon the floor of the hall during any meeting, except at the discretion of the Moderator, who may give him permission to speak. To ensure the foregoing, the Town Clerk shall employ clerks and check-off lists, similar to the procedure used in all elections. They shall be stationed at the several entrances. It shall be the duty of the police officers to enforce this by-law under the direction of the Moderator. (Rev. 1-77)

SECTION 5. After the Meeting is called to order, the Town Clerk shall read the call for the Meeting, the direction of the Selectmen to the Constable and the Constable's return of service.

SECTION 6. Articles of the warrant shall be acted upon in the order in which they appear, unless otherwise determined by the vote of the Meeting.

SECTION 7. Every motion shall be presented in writing when so requested by the Moderator.

SECTION 8. If a motion is susceptible of division, it shall be divided and the question shall be put separately upon each part thereof, if seven (7) voters so request.

SECTION 9. When a question is under debate, no motion shall be in order except to indefinitely postpone, to refer, to recommit, the previous question and to amend, which several motions shall have precedence in the order named. However, the Meeting may order that the vote on any motion shall be taken by a "yes" and "no" ballot furnished by <sup>2</sup> the Town Clerk if, on a motion so made, there shall be twenty-five (25) or more voters in <sup>3</sup>the affirmative, and a motion so to vote shall be in order at any time and shall take precedence over any motion or amendment before the house except a motion under Section 15 (formerly 15-A) of this article. A motion to refer, to recommit and the previous question shall be decided without debate. No person shall speak upon the same question more than twice or more than ten (10) minutes at any one time, if another person wishes to speak on the same question. (Rev. 4-29-95)

SECTION 10. Any person, who represents another interested in any matter under discussion, shall disclose the fact of such representation before speaking thereon.

SECTION 11. When a question is put, the sense of the Meeting shall be determined by voice of the voters, and the Moderator shall declare the vote as it appears to him. If the division of the house is called for by seven or more voters, the Moderator shall request all persons in the house to be seated and may appoint tellers. The question shall then be distinctly stated, and those voting in the affirmative and negative, respectively, shall rise and stand in their places until counted by the Moderator or tellers, if any. No person shall be counted who does not comply with the request to occupy a seat, if seats are available. If there are not available seats, those standing shall be counted separately by a show of hands.

SECTION 12. A vote on any appropriation specifically for salaries and wages of officers and employees of the Town shall be taken by a “yes” or “no” ballot.

SECTION 13. If the declaration of a vote taken by “yes” or “no” ballots is immediately questioned by seven (7) or more voters, the Moderator shall verify the vote by a recount of the said ballots.

SECTION 14. No vote shall be reconsidered unless notice that said motion will be made is given within fifteen (15) minutes after such vote is declared, and a motion to reconsider it is made and voted on at the same Meeting before any adjournment thereof. Such a motion, if defeated, shall not be renewed. (Rev 4-29-95)

SECTION 15 (formerly 15-A). A vote on the original motion, as and if amended, under any article in the warrant, shall be postponed to an adjourned meeting if, on a motion to so postpone, there shall be twenty-five (25) or more votes in the affirmative. Such motion to postpone shall take precedence over any pending motion to amend and shall not be subject to postponement or to amendment, nor shall the vote thereon be subject to reconsideration or decision except by unanimous consent. After such postponement is moved, the original motion under the warrant, as and if amended, shall not be opened to amendment except by acceptance of such amendment by the mover of the original motion nor shall any amendment, except by acceptance thereof by the mover of the prior amendment, provided nevertheless that if the vote on the said original motion, as and if amended, is postponed by the same procedure. The adjourned meeting shall be held on a day and hour to be appointed by the Moderator, but not more than ten (10) days after the final action on all articles in the warrant, other than those upon which the voting has been postponed under this section. At such meetings, voting shall be by ballot. The checklist shall be used and the polls shall remain open at least four (4) hours. The Moderator shall appoint ballot clerks and tellers who shall receive such compensation, as the Selectmen shall determine. The Town Clerk shall prepare ballots for use at such adjourned meeting and cause to be printed thereon in the original order, the articles of the warrant, voting upon which has been postponed as herein provided and under each article the original motion thereon as and if amended, and there under successively the unaccepted amendments, as and if amended, upon which voting has been postponed hereunder. Spaces on an official ballot shall be printed to the right of each motion and amendment, if any, so that each voter may record his vote by an “X” in a “yes” or “no” square. In the event that more than one of the original motions and amendments under the same article shall receive more than a majority of the votes in the affirmative under said article, that one which receives the most votes shall be deemed to be adopted. (Rev. 4-29-95)

SECTION 16. No motion, the effect of which shall be to dissolve the meeting, shall be in order until every article in the warrant therefore has been duly considered and acted upon, but this shall not preclude postponement of any article to an adjourned meeting at a stated time and place.

SECTION 17. As soon as possible after the adjournment of any Town Meeting, on a vote to adjourn to another day, the Town Clerk shall cause to be posted in the same manner as the warrants for the Town Meeting, a statement of the day and hour to which adjournment was voted and a brief statement of the business remaining to come before said adjourned meeting.

SECTION 18. Town Meetings shall be regulated according to the rules of parliamentary practice contained in “Robert’s Rules of Order (revised)”, so far as they are applicable and not inconsistent with law or with these by-laws. **(Rev 4-28-2008) substituting “Roberts Rules of Order” revised with “Town Meeting Times” third edition.**

SECTION 19. For consideration of all business to be conducted at a Special Town Meeting, a quorum of seventy-five (75) voters is required; however, a number less than the quorum may adjourn the meeting. (Rev 4-26-80)  
Rev. 4-29-95

### **ARTICLE III**

#### **DUTIES OF TOWN OFFICERS**

SECTION 1. The Selectmen shall be agents of the Town to institute, prosecute, defend and compromise any and all claims, actions and proceedings on behalf of or against the Town, or in which the interests of the Town are or may be involved. The Selectmen shall have the general direction and management of the property and affairs of the Town in all matters not otherwise provided for by law or in these by-laws.

SECTION 2. The Town Administrator shall annually appoint and employ a member of the bar in good standing as Town Counsel, who shall hold office for the term of one year and until his successor is appointed and enters upon the performance of his duties. The Town Administrator shall in like manner fill any vacancy in said office and may employ special counsel to assist the Town Counsel if and when, in their judgment, necessity therefore shall rise. During his term as Town Counsel, he shall not hold any other office. He shall attend to all legal matters arising with the performance of the duties of any officer, board or committee, subject to the approval of the Town Administrator. He shall make a written report to the Town Administrator concerning the services rendered by him during the year, which shall be printed in the Annual Town Report.

SECTION 3. The Board of Assessors shall assign numbers to all buildings or parts thereof on or near the line of public or private ways within the Town, and a list of such numbers shall at all times be on file or in the office. Every occupant or owner of such building shall cause to be displayed upon some suitable portion thereof, facing such street or way, the proper street number of said building. No number other than the one shown on the list on file in the Assessor's office shall be displayed on any such building or part thereof.

## **ARTICLE IV**

### **FINANCIAL AFFAIRS**

SECTION 1. An audit of the accounts of the Town shall be made annually.

SECTION 2. The Town Accountant shall prescribe the methods of accounting and the forms to be used by the officers, boards and committees of the Town pertaining to their receipts and disbursements, and shall provide that such methods and forms shall conform to the requirements prescribed by law or any rules or regulations thereunder.

SECTION 3. If it shall seem advisable to the Town Collector that suit shall be instituted on any account due to the Town, except a tax account, he shall notify the Town Administrator, and he shall report to him from time to time, as he may direct, upon all uncollected accounts in his hands. The Town Administrator shall take such action with respect to all such accounts, as he deems prudent and consistent with the interests of the Town.

SECTION 4. The Town Collector shall, at least once in each week, pay over to the Town Treasurer all money received by him on every account, including any such sums received as interest on monies received by him on such accounts and deposited in any bank.

SECTION 5. Except as otherwise provided by law, the Treasurer shall have custody of bonds and other similar documents owned by the Town, except that the bonds given by the Treasurer and Collector of the Town shall be in the custody of the Town Administrator.

SECTION 6. Every officer of the Town, whether elected or appointed, shall be required to transmit to the Town Treasurer a list, description and payment of all monies received by any such officer by virtue of this office, except as otherwise provided by law. The aforesaid shall be completed within thirty (30) days of receipt of any such monies.

SECTION 7.

- A. The Town Collector shall annually furnish to each department, board or committee hereinafter referred to as the licensing authority that issues licenses or permits, including renewals and transfers, a list of each person, corporation or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges, for not less than a twelve (12)-month period, and that such



party has not filed in good faith a pending application for abatement of such tax or fee, or a pending petition before the Appellate Tax Board.

- B. The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers, of any party whose name appears on said list furnished to the licensing authority from the Town Collector; provided, however, that written notice is given to the party and the Town Collector, as required by applicable provisions of law, is given a hearing, to be held not earlier than fourteen (14) days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party. The Town Collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the licensing authority with respect to such license denial, revocation or suspension, shall be made only for the purposes of such proceeding and shall not be relevant to nor introduced in any other proceeding at law, except for any appeal from such license denial, revocation or suspension. Any license or permit denied, suspended or revoked under this section shall not be re-issued or renewed until the licensing authority receives a certificate issued by the Town Collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or municipal charges payable to the municipality as of the date of the issuance of said certificate.
- C. Any party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating such limitations to the license or permit and the validity of said license shall conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.
- D. The Board of Selectmen may waive such denial, suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its
- E. officers or stockholders, if any, or members of his immediate family, as defined in Section 1 of Chapter 268 of the Massachusetts General Laws in the business of activity conducted in or on said property. (Rev. 4-26-86)

## SECTION 8. Revolving Funds:

- A. This bylaw, adopted in accordance with General Laws Chapter 44, §53E½ establishes and authorizes revolving funds for use by the Town entities listed in connection with the operation of specific programs or activities that generate receipts to support all or some of the expenses of those programs or activities.
- B. Expenditure Limitations: An authorized department or agency head, board, committee or officer may incur liabilities against and spend monies without further appropriation from a revolving fund established hereunder, subject to the following:
- Fringe benefits of full-time employees whose salaries or wages are paid from the fund shall also be paid from the fund;
  - No liability shall be incurred in excess of the available balance of the fund; and
  - The total amount spent during a fiscal year shall not exceed the amount authorized by Town Meeting or any increased amount approved during that fiscal year by the Board of Selectmen and Finance Committee.
- C. Interest: Interest earned on monies credited to an authorized revolving fund shall be credited to the General Fund.
- D. Procedures and Reports. Except as provided in General Laws Chapter 44, §53E½ and this bylaw, revolving funds authorized hereunder shall be subject to all applicable state laws and regulations governing municipal funds. The Town Accountant shall include on the regular report to the entity authorized to expend each revolving fund a statement on the collections credited and the encumbrances and expenditures charged to such fund, as well as the balance available for expenditure
- E. Authorized Revolving Funds.
1. Each revolving fund authorized for use by a town department, board, committee, agency or officer.
  2. The department or agency head, board, committee or officer authorized to spend from each fund.
  3. The fees, charges and other monies charged and received by the department, board, committee, agency or officer in connection with the program or activity for which the fund is established that shall be credited to each fund by the Town Accountant.
  4. The expenses of the program or activity for which each fund may be used.
  5. Annual Spending limit of the fund

<b><u>FUND</u></b>	<b><u>REVENUE SOURCE</u></b>	<b><u>AUTHORITY TO SPEND FUNDS</u></b>	<b><u>USE OF FUNDS</u></b>
Council on Aging Revolving Fund	Council on Aging fees	Council on Aging	Activities for Seniors
Cemetery Revolving Fund	Burial opening fees, cremation fees, and grave stone-setting fees	Public Works Department	Maintenance, operation and capital improvements of the Greenlawn Cemetery
Board of Appeals Revolving Fund	FEES paid pursuant to the Zoning Act or Zoning By-laws	Board of Appeals	To pay for the expenses required for training, processing applications, holding hearings, etc.
Conservation Commission Revolving Fund	Filing Fees paid pursuant to the Wetlands Protection Act	Conservation Commission	To pay for consultant fees, expenses, etc. for administration and enforcement of the Wetlands Protection Act

(Rev. ATM 5-15-2021- AG approved 9-13-2021)

- (1) Vote to Establish Fiscal Year Expenditure Limits (Note: This action is not a by-law amendment)

And, further, to establish FY2022 fiscal year spending limits for such funds in the amounts indicated, with such limits to be applicable from fiscal year to fiscal year unless adjusted by Town Meeting prior to July 1 for the ensuing fiscal year, as follows:

<b><u>FUND</u></b>	<b><u>SPENDING LIMIT</u></b>
Council on Aging Revolving Fund	<u>\$15,000</u>
Cemetery Revolving Fund	<u>\$20,000</u>
Board of Appeals Revolving Fund	<u>\$10,000</u>
Conservation Commission Revolving Fund	<u>\$20,000</u>

(Rev. ATM 5-15-2021. AG approved Sept. 13, 2021)

## ARTICLE V RECORDS AND REPORTS

SECTION 1. All officers and governmental bodies of the Town shall cause records of their doings to be kept in suitable books. Said books shall, unless otherwise provided by law, be open to public inspection at any reasonable time, but shall remain during such inspection under supervision of the officer or governmental body having custody thereof.

SECTION 2. All officers and governmental bodies of the Town shall annually report thereon in writing in such manner as to give the citizens a fair and full understanding of the objects and methods of such activities, and make therein such recommendations, as they deem proper. Such reports shall be submitted to the Selectmen for inclusion in the Annual Town Report on or before the first day of February each year. (Rev 1-77)

SECTION 3. The annual report shall contain, in addition to the reports of officers and governmental bodies as herein before provided, the following financial reports:

- A. The amounts appropriated and the amounts expended from each appropriation for the preceding fiscal year, the amounts appropriated for the current fiscal year and the amounts expended from such appropriations during the first six months of such year and the amounts estimated to be expended from such appropriations during the second six months of such year, as required by Chapter 41, Section 60 of General Laws.
- B. List of payments made from the proceeds of loans as capital outlays for permanent improvement for the preceding fiscal year.
- C. Report of the collection of taxes, including all receipts, payments and abatements for the preceding fiscal year.
- D. Statement of all funds belonging to the Town or held for the benefit of its inhabitants for the preceding fiscal year.
- E. A statement of the liabilities of the Town on bonds, notes, certificates of indebtedness or otherwise and of indebtedness authorized but not incurred, and the purpose thereof, all for the preceding fiscal year.
- F. A statement of transfers made to or from any appropriation for the preceding fiscal year. In addition, the report shall include abstracts of the records of the meetings of the Town held since publication of the last Annual Report, a copy of the Warrant for the next Annual Town Meeting, and such matters as the said report is required by law to contain, or as may be inserted by the Selectmen under the discretion granted them by law. The annual report shall

be printed and a copy made available to every voter at least seven (7) days before the Annual Town Meeting.

- G. A list of all parcels of land sold by it, together with a description of the location, the square foot area of each parcel, the name and address of each purchaser, the amount of money for which each parcel was sold, and the assessed valuation and the amount of outstanding taxes of each parcel at the time of foreclosure by the Town.

SECTION 4. Any officer and governmental body adopting rules and/or regulations shall deliver a copy of same together with the effective date to the Town Clerk within ten (10) days after they take effect.

SECTION 5. The Town Clerk shall cause to be printed in a form suitable for insertion in the loose-leaf by-law binder all by-laws and standing votes of the Town and the rules and/or regulations adopted by any officer and governmental body. The printing shall be accomplished within ninety (90)-days of the effective date of said by-laws, votes or rules and/or regulations. The expense associated with said printing shall be paid from the Town Clerk's expense appropriation.

SECTION 6. The public records of all governmental bodies and Town officials shall be kept in the Town Hall, except for the following: records of the School Committee shall be kept in the offices of the school administrators and records of the Library Trustees shall be kept in the library. It shall be the responsibility of the Board of Selectmen to provide the proper storage space and facilities within the Town Hall, as requested by the various bodies and officials. It shall be the responsibility of the Town Clerk to know and maintain a record of the location of all storage areas and containers, their general contents and the body of officials to whom assigned.

## **ARTICLE VI**

### **APPOINTED COMMITTEES AND COMMISSIONS**

#### **SECTION 1. Notification of appointment**

The Town Clerk shall notify, in writing, all committees that may be appointed at any Town Meeting and the nature of the business upon which they are expected to act, and shall notify the chairmen of committees of votes of the Town pertaining to their respective committees.

#### **SECTION 2. Advisory and Finance Committee**

- A. An election or appointment to Town office or employment by the Town shall terminate membership on said committee.
- B. The Moderator of every Annual Town Meeting shall, after the declaration of the vote for Town Officers, appoint three (3) voters to be members of the Advisory and Finance Committee for the term of three (3) years from the adjournment of the Annual Town Meeting of that year. All vacancies shall be filled by the Moderator for the remainder of the unexpired term, by an appointment in writing sent to the Town Clerk. The term of office of outgoing members shall expire coincidentally with the adjournment of the Annual Town Meeting.
- C. The Advisory and Finance Committee shall, promptly after the adjournment of the Annual Town Meeting in each year, meet, organize by the choice of a chairman and a secretary, who shall notify the Town Clerk of such choice and thereafter shall meet from time to time at the call of the chairman or any three (3) members thereof.
- D. The Advisory and Finance Committee shall inform themselves concerning those affairs and interests of the Town, the subject matter of which generally is included in the warrants of its Town Meetings, and may consider any and all municipal questions affecting Town government and the conduct of Town affairs, for the purpose of making reports and recommendations thereon to the Town.
- E. It shall be the duty of the Selectmen, immediately after a warrant is drawn, to send a copy thereof to each member of the Advisory and Finance Committee shall consider the various articles therein and shall cause to be delivered, by mail or otherwise, a copy of each article in the warrant with their recommendations appended thereon, to every household in which there resides a registered voter in the Town, not less than seven (7) days before the date of the meeting.

**(Rev.4-2009)**

- F. In the performance of their duties, the Advisory and Finance Committee shall have access to all books, vouchers and other documents and papers belonging to the Town and it shall be the duty of all Town officers, employees and committees to furnish, on request from said committee, through its chairman, all the information they possess relating to any matter properly under their consideration. (Rev. 1-77)

### SECTION 3. **Insurance Committee**

- A. The Insurance Committee shall consist of three (3) members. To the extent possible, each of the persons appointed to the committee shall be knowledgeable and experienced in specifying and procuring insurance coverages.
- B. The Moderator of every Annual Town Meeting shall, after the declaration of the vote for Town officers, appoint one voter to be a member of the Insurance Committee for a term of three (3) years from the adjournment of the Annual Town Meeting of that year. All vacancies shall be filled by the Moderator for the remainder of the unexpired term, by an appointment in writing sent to the Town Clerk. The term of office of out-going members shall expire coincidentally with the adjournment of the Annual Town Meeting.
- C. It shall be the duty of the Selectmen to furnish the Insurance Committee with the replacement value of all Town properties. The Selectmen shall also notify the Insurance Committee immediately upon the subsequent acquisition or disposition of any properties.
- D. It shall be the duty of the Insurance Committee, no less than annually, to investigate and consider all insurance needs of the Town, including but not limited to fire, theft, vandalism, property damage, general, automobile and personal liability, and employee health and disability insurance and to report in writing its recommendations as to coverages and deductibles to the Board of Selectmen. (Rev. 10-82)



#### **SECTION 4. Memorial Day and Fourth and July Committees**

- A. The Memorial Day Committee shall consist of nine (9) or more members and the Fourth of July Committee shall consist of twelve (12) or more members, appointed as hereinafter provided. A chairman of each committee shall be appointed by the members of the respective committees.
- B. The Moderator of every Annual Town Meeting shall appoint three (3) or more voters to be members of the Memorial Day Committee and four (4) or more voters to be members of the Fourth of July Committee for a term of three (3) years from the adjournment of the Annual Town Meeting of that year. All vacancies shall be filled by the Moderator for the remainder of the unexpired term, by an appointment in writing sent to the Town Clerk. The term of office of out-going members shall expire coincidentally with the adjournment of the Annual Town Meeting.
- C. It shall be the duty of the Memorial Day Committee to plan and administer a program for the proper observance of Memorial Day, and the Fourth of July Committee to plan and administer a program for the proper observance of the Fourth of July.

#### **SECTION 5. Public Recreation Commission**

- A. The Moderator shall appoint a Public Recreation Commission of five (5) members, for the purpose of conducting and promoting recreation, play, sport and physical education. One (1) member shall serve for one (1) year, two (2) members for two (2) years and two (2) members for three (3) years, and thereafter each member shall serve for three (3) years.
- B. Immediately after their appointment, they shall meet and organize by electing one of their members chairman, and from their own membership appoint such other officers as may be necessary.
- C. The Recreation Commission shall conduct and supervise public playgrounds, playfields, indoor recreation centers and other recreation areas and facilities on properties under its control and on other public properties with the consent of the authorities thereof. It shall have the power to conduct any form of recreation or cultural activity that will employ the leisure time of the people in a constructive and wholesome manner.
- D. The Recreation Commission shall submit a budget to the Town for approval by the Town Meeting. The Committee may accept any gifts or bequests of

money or other personal property or any donation to be applied, principal or income, for their respective uses.

#### **SECTION 6. Youth Commission**

- A. The Selectmen shall appoint a Youth Commission of five (5) members for the purpose of carrying out programs, which may be designated or established to meet the opportunities, challenges and problems of the youth of the Town of Nahant. One (1) member shall serve for one (1) year, two (2) members for two (2) years and two (2) members for three (3) years. Thereafter, each member shall serve for three (3) years without pay. The commission membership shall, if feasible, include a member of the clergy, an attorney-at-law and a representative of the young people.
- B. Immediately after their appointment, they shall meet and organize by electing one of their members chairman, and from their own membership, appoint such other officers, as they may deem necessary. The Commission shall meet regularly.
- C. The Commission shall function in conjunction with any similar or related programs of any agency of the Town, the Commonwealth or any agency of the federal government. The Commission shall have the power to adopt reasonable rules and regulations for the proper conduct of any activities within its jurisdiction.
- D. The Youth Commission shall have the power to appoint and/or designate, from time to time, individuals, other than members of the Commission, to carry out the Commission's purposes.
- E. Annually, the Youth Commission may submit a budget to the Town for approval by the Town Meeting. The Commission may receive gifts of property, both real and personal, in the name of the Town, subject to the approval of the Board of Selectmen.

## **SECTION 7. Council On Aging**

- A. The Selectmen shall appoint a Council on Aging, consisting of nine (9) members, for the purpose of which may be designated or established to meet the problems and/or requirements of the elderly population of the Town of Nahant. Three (3) members shall serve for one (1) year, three (3) members shall serve for two (2) years and three (3) members shall serve for three (3) years, and thereafter, each shall serve for three (3) years.
- B. They shall meet and organize by electing one of their members chairman and from their own membership may appoint such other officers as they deem necessary. The council shall meet regularly.
- C. The Council shall function in conjunction with any similar or related programs of any agency of the Town, the Commonwealth, or any agency of the federal government. The Council shall have the power to adopt reasonable rules and regulations for the proper conduct of any activity within its jurisdiction.
- D. Annually, the Council on Aging may submit a budget to the Town for approval by the Town Meeting. The Council may receive gifts of property, both real and personal, in the name of the Town, subject to the approval of the Board of Selectmen, such gifts to be managed and controlled by the Council on Aging for the purpose of this by-law. (Rev. 3-73)

## **SECTION 8. Capital Program Committee**

- A. A committee, to be known as the Capital Program Committee, is hereby established under M.G.L., Ch. 41, Sect. 106B, composed of two (2) members of the Advisory and Finance Committee, appointed by it, and four (4) additional members to be appointed by the Moderator. The members from the Advisory and Finance Committee shall be appointed for one (1) year terms. The other members shall be appointed for four (4) year terms, such that one shall expire each year. None shall be a Town officer or Town employee. The Town Accountant shall be ex-officio member without the right to vote. A member who ceases to reside in the Town or who accepts employment for it shall resign. A vacancy shall be filled for the unexpired term in the manner of the original appointment. The committee shall choose its own officers. It may spend such sums as shall annually be appropriated for its use.
- B. The committee shall study proposed capital out-lays involving the acquisition of land or an expenditure of \$20,000, having a useful life of at least five (5) years. All officers, board members and committees, including the Selectmen and the School Committee shall, by September 1<sup>st</sup> of each year, give to said committee, on forms prepared by it, information concerning all project anticipated by them to need Town Meeting action during the ensuing six (6) years. The Committee shall consider the relative need, timing and cost of these expenditures and the effect each will have on the financial position of the Town. No expenditure shall be voted for a capital outlay, which is not reflected in the committee's report, unless that committee shall first have submitted a report explaining the omission. Notwithstanding for the foregoing, nothing shall limit the authority of the Board of Selectmen or School Committee to offer a warrant article at any Annual or Special Town Meeting, or right of the Town to vote such an appropriation.
- C. The committee shall transmit its recommendations to the appropriate office, board, agency or department involved in the proposed capital improvement. These shall constitute a capital improvement program. The report of this program shall, as to items planned for the ensuing fiscal year, be given to the Advisory and Finance Committee by February 1<sup>st</sup> of each year for its review and possible inclusion in the budget. The text and tables of a capital program for the following five (5) years shall be published with the Advisory and Finance Committee report.
- D. Such capital program shall be presented to the Annual Town Meeting for acceptance in principle, subject to final action of a subsequent meeting or meetings. The original shall be deposited with the Town Clerk. (Rev. 8-89)

## **SECTION 9. Harbor and Marine Advisory Committee**

- A. The Harbor and Marine Advisory Committee shall consist of five (5) voters. All shall serve without pay. In addition, the Harbormaster and Wharfinger shall serve as ex officio members, but may not vote or hold office.
- B. Following the Town Meeting that enacts this section, the Moderator and Selectmen, jointly, shall appoint one (1) member for one (1) year, two (2) members for two (2) years and two (2) members for three (3) years. Thereafter, the Moderator and the Selectmen, jointly, shall make appointments for three (3) year terms, such terms to commence on the first day of May in that year.
- C. The Moderator and the Selectmen shall fill any vacancy on the committee, jointly, for the remainder of the unexpired term by an appointment in writing sent to the Town Clerk, the chairman and the appointee. A vacancy shall be declared if a member fails to attend three (3) successive meetings without communicating with the chairman or secretary.
- D. Immediately after their appointment, they shall organize by electing a chairman, a secretary and other officers, as they deem necessary. The committee shall meet at least quarterly for the conduct of business.
- E. The Harbor and Marine Advisory Committee shall inform themselves concerning those affairs, interests and activities relating to the beaches, harbor wharf area and waters surrounding the Town for the purpose of making recommendations and reports thereon to the Town or any of its agencies or officials. Further, they shall develop and continually update a master plan for the maintenance, improvement and public use of the beaches, harbor, wharf area and surrounding waters.
- F. The committee shall keep accurate records of its meetings and actions and shall file an annual report with the Board of Selectmen for insertion in the Annual Town Report.
- G. Annually, the committee may submit a budget to the Town for approval by the Town Meeting (Rev. 4-84 and 4-89)

## SECTION 10. Town of Nahant Open Space Committee

- A. There shall be established an Open Space Committee consisting of seven (7) voting members who reside in Nahant who shall be sworn to the faithful performance of their duties by the Town Clerk.
- B. The Open Space Committee shall be appointed by the Town Moderator. Committee members shall serve two (2) year staggered terms, with the majority of the first members appointed for a two (2) year term, and the remaining initial members appointed to a one (1) year term. Thereafter each member shall serve for two (2) years or until a successor has been appointed.
- C. The membership shall consist of individuals with experience, training or an expressed interest in open space planning and management, land conservation, grant writing, communications, and other related areas.
- D. The Open Space Committee shall have the following responsibilities and duties:
  - (a) Implement the Nahant Open Space and Recreation Plan in accordance with the goals and tasks identified in such Plan and update the plan when required upon the expiration of the then-current plan.
  - (b) Work with the Board of Selectmen, Town Administrator, and other Town officials, boards, committees and commissions for the conservation, preservation, acquisition, maintenance, and management of town lands and open space areas.
  - (c) Develop community education and communication tools regarding the value and use of the Town's open space areas.
  - (d) Encourage philanthropy and private efforts to promote and preserve open spaces.
  - (e) Act as a resource and advocate for the Town's open spaces.
- E. The Open Space Committee shall choose its own officers, may adopt rules of procedure regarding its functioning and operation, and may appoint subcommittees of its members to undertake its responsibilities and duties.
- F. The Open Space Committee may submit a budget to the Town for approval by the Town Meeting. The Committee may accept any gifts or bequests of money or other personal property or any donation to be applied, principal or income, for their respective uses.

ATM 5/20/2023 - Article 22. - approved amendment to the General Town's bylaws.  
AG amendment approval 8/28/2023 Case # 11033

## ARTICLE VII

### **PRIVATE WAYS**

SECTION 1. The Board of Selectmen may, subject to appropriation and to the Board's determination that such repairs are required by public necessity, direct such repairs to private ways as are allowed by General Laws, Chapter 40, Section 6N to be made, including, without limiting, the foregoing, the paving and repaving of bituminous concrete and other surfaces of said ways and the improvement of surface drainage therefrom. No abutters on said ways need petition of such repairs, nor shall there be any requirement that said ways have been open to the public for any period of time. No betterment assessments shall be charged for said repairs, nor shall any cash deposit be required for same. In the event that any damages, of whatever type or description, are caused by such repairs, the liability of the Town therefore shall be one dollar (\$1.00). (Rev 4-79) (Rev. 4-97)

**ARTICLE XVI :**

**GENERAL BYLAW - Storm Water By law**

**Adopted ATM 2022**

**PART I: STORMWATER GENERAL PROVISIONS**

**SECTION 1. PURPOSE**

**SECTION 2. DEFINITIONS**

**SECTION 3. AUTHORITY**

**SECTION 4. RESPONSIBILITY FOR ADMINISTRATION**

**SECTION 5. WAIVERS**

**SECTION 6. RULES AND REGULATIONS**

**SECTION 7. ENFORCEMENT**

**SECTION 8. SEVERABILITY**

**PART II: LAND DISTURBANCE**

**SECTION 1. APPLICABILITY**

**SECTION 2. REVIEW OR PERMIT**

**SECTION 3. CONSENT TO ENTRY ONTO PROPERTY**

**SECTION 4. INSPECTION AND SITE SUPERVISION**

**SECTION 5. SURETY**

**SECTION 6. FINAL REPORTS**

**SECTION 7. CERTIFICATE OF COMPLETION**

**PART III: DISCHARGES TO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM**

**SECTION 1. APPLICABILITY**

**SECTION 2. PROHIBITED ACTIVITIES AND EXEMPTIONS**

**SECTION 3. ADDITIONAL PROHIBITED POLLUTANTS**

**SECTION 4. EMERGENCY SUSPENSION OF STORM DRAINAGE SYSTEM ACCESS**

**SECTION 5. NOTIFICATION OF SPILLS**



## **PART I: STORMWATER GENERAL PROVISIONS**

### **SECTION 1. PURPOSE**

**The purpose of this Bylaw is to safeguard the health, safety, and welfare of the general public and protect the natural resources of the Town of Nahant, including the water bodies and groundwater by regulating illicit connections and discharges to the storm drain system, and by controlling the adverse effects of runoff and preventing soil erosion and sedimentation resulting from site construction and development.**

**A. The harmful impacts of soil erosion and sedimentation from stormwater runoff are:**

- 1. Impairment of water quality and flow in lakes, ponds, streams, rivers, coastal waters, wetlands, groundwater, and drinking water supplies;**
- 2. Contamination of drinking water supplies;**
- 3. Contamination of downstream coastal areas;**
- 4. Alteration or destruction of aquatic and wildlife habitat;**
- 5. Flooding; and**
- 6. Overloading or clogging of municipal catch basins and storm drainage systems.**

**B. The objectives of this bylaw are:**

- 1. To require practices that eliminate soil erosion and sedimentation and control the volume and rate of stormwater runoff resulting from land disturbance activities;**
- 2. To ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process and are implemented and maintained;**
- 3. To require practices to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;**
- 4. To require practices to control the flow of stormwater from new and redeveloped sites into the Town of Nahant storm drainage system in order to prevent flooding and erosion;**

5. To protect ground water and surface water from degradation;
6. To promote groundwater recharge;
7. To prevent and reduce pollutants from entering the Town of Nahant municipal separate storm sewer system (MS4) and to minimize discharge of pollutants from the MS4;
8. To prohibit illicit connections and unauthorized discharges to the MS4 and require their removal;
9. To ensure adequate long-term operation and maintenance of structural stormwater best management practices so that they work as designed;
10. To comply with the state and federal statutes and regulations relating to stormwater discharges including total maximum daily load (TMDL) requirements and with the General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts, issued by the U.S. Environmental Protection Agency and the Massachusetts Department of Environmental Protection ("MS4 Permit");
11. To establish the Town of Nahant legal authority to ensure compliance with the provisions of this bylaw through inspection, monitoring, and enforcement;
12. To establish decision-making processes surrounding the land development activities that protect the integrity of the watershed and preserve the health of wetland and water resources;
13. To require that new development, redevelopment and all land conversion activities maintain the after-development runoff characteristics equal to or less than predevelopment runoff characteristics to provide recharge and to reduce flooding, stream bank erosion, siltation, nonpoint source pollution, property damage, and to maintain the integrity of stream, channels and aquatic habitats;
14. To establish construction/alteration and post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quality and quantity;
15. To establish design criteria for measures to minimize nonpoint source pollution from stormwater runoff which would otherwise degrade water quality;
16. To establish design and application criteria for the construction and use of structural stormwater control facilities that can be used to meet minimum construction/alteration and post-development stormwater management, stormwater site

design practices or "low impact development" practices, such as reducing impervious cover and the preservation of open space and other natural areas, to the maximum extent practicable;

17. To establish provisions for the long-term responsibility for and maintenance of structural stormwater control facilities and nonstructural stormwater management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety;

18. To establish provisions to ensure that there is an adequate funding mechanism, including surety, for the proper review, inspection, and long-term maintenance of stormwater facilities implemented as part of this bylaw; and

19. To establish administrative procedures and fees for the submission, review, approval, or disapproval of stormwater management plans, and for the inspection of approved active projects and long-term follow-ups.

## **SECTION 2. DEFINITIONS**

**ABUTTER:** The owner(s) of land directly abutting the activity.

**ADMINISTRATIVE LAND DISTURBANCE APPROVAL:** Review and approval by the Town of Nahant Conservation Commission of a land disturbance activity that does not require a Land Disturbance Permit because of its size, location, and/or scope.

**AGRICULTURE:** The normal maintenance or improvement of land agricultural or aquacultural use, as defined by the Massachusetts Wetlands Protection Act G.L. c. 131, § 40, and its implementing regulations.

**APPLICANT:** Any person, 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 or Administrative Land Disturbance Approval for proposed land disturbance activity.

**AS-BUILT DRAWING:** Drawings that completely record and document applicable aspects and features of conditions of a project following construction using Stormwater Management Plans derived from a Land Disturbance Permit.

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

**CERTIFIED PROFESSIONAL IN EROSION AND SEDIMENT CONTROL (CPESC):** A

**certified**

**Specialist in soil erosion and sediment control.** This certification program, sponsored by the Soil and Water Conservation Society in cooperation with the American Society of Agronomy, provides the public with evidence of professional qualifications.

**CLEAN WATER ACT:** The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) as hereafter amended.

**CLEARING:** Any activity that removes the vegetative surface cover.

**COMMON PLAN OF DEVELOPMENT:** - A "larger common plan of development or sale" is a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan.

**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.

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

**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 qualified professional engineer (PE) 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 disturbing activities.

**ESTIMATED HABITAT OF RARE WILDLIFE AND CERTIFIED VERNAL POOLS.**  
**Habitats**

Delineated for state-protected rare wildlife and certified vernal pools for use with the Wetlands Protection Act Regulations (310 CMR 10.00) and the Forest Cutting Practices Act Regulations (304 CMR 11.00).

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

**GRUBBING:** The act of clearing land surface by digging up roots and stumps

**ILLICIT CONNECTION:** A surface or subsurface drain or conveyance which allows an illicit discharge into the municipal storm drain system, including without limitation sewage, process wastewater, or wash water, and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this by-law.

**ILLICIT DISCHARGE:** Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Part III, §2D. The term does not include a discharge in compliance with an NPDES stormwater discharge permit or resulting from fire-fighting activities and other activities exempted pursuant to Part III, §2D(1) of this bylaw.

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

**LAND DISTURBANCE PERMIT:** A permit issued by the Stormwater Authority pursuant to this bylaw prior to commencement of Land Disturbing Activity.

**LAND DISTURBING ACTIVITY:** Any activity that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material; results in an increased amount of runoff or pollutants; measurably changes the ability of a ground surface to absorb waters; involves clearing, grading, or excavating, including grubbing; or results in an alteration of drainage characteristics.

**LOW IMPACT DEVELOPMENT or LID:** Site planning and design strategies that use or mimic natural processes that result in the infiltration, evapotranspiration or use of stormwater in order to protect water quality and associated aquatic habitat. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site drainage that treat stormwater as a resource rather than a waste product. LID practices include but are not limited to bioretention facilities, rain gardens, vegetated rooftops, rain barrels and permeable pavement.

**MASSACHUSETTS ENDANGERED SPECIES ACT:** (G.L. c. 131 A) 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, 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 Policy addresses

**stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.**

**MUNICIPAL 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 Nahant.

**MS4 PERMIT:** General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts, issued by the U.S. Environmental Protection Agency and the Massachusetts Department of Environmental Protection.

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

**NONPOINT SOURCE POLLUTION:** Pollution from many diffuse sources caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and man-made pollutants finally depositing them into a water resource area.

**NON-STORMWATER DISCHARGE:** Discharge to the municipal storm drain system not composed entirely of stormwater.

**OPERATION AND MAINTENANCE PLAN:** A plan 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 point source discernable, confined and discrete conveyance into waters of the Commonwealth.

**OUTSTANDING RESOURCE WATERS (ORWs):** Waters designated by Massachusetts Department of Environmental Protection as ORWs. These waters have exceptional sociologic, recreational, ecological and/or aesthetic values and are subject to more stringent requirements under both the Massachusetts Water Quality Standards (314 CMR 4.00) and the Massachusetts Stormwater Management Standards. 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.

**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 discernable confined, and discrete 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:** Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, construction waste and residues including discarded building materials, concrete truck wash out, chemicals, litter, and sanitary waste and industrial, municipal and agricultural waste discharged into water.

**PRE-CONSTRUCTION:** All activity in preparation for construction.

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

**REDEVELOPMENT:** Development, rehabilitation, expansion, demolition or phased projects that disturb the ground surface or increase the impervious area on previously developed sites.

**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:** Stormwater runoff, snow melt runoff, and surface water runoff and

**drainage.**

**STORMWATER AUTHORITY:** The Town of Nahant Planning Board, its employees, or agents designated to enforce this bylaw unless another entity is specifically designated in this bylaw.

**STORMWATER MANAGEMENT PLAN:** A plan required as part of the application for a Land Disturbance Permit. A document containing narrative, drawings, details, and reporting requirements developed by a qualified professional engineer (PE), which describes structural and non-structural best management practices designed to control the discharge of pollutants from impervious surfaces and onsite activities as well as the volume and peak rate of surface runoff from a site on an ongoing basis after construction has been completed.

**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:** Section 303(d) of the Clean Water Act authorizes the EPA to assist states, territories and authorized tribes in listing impaired waters and developing Total Maximum Daily Loads (TMDLs) for these waterbodies. A TMDL establishes the maximum amount of a pollutant that a waterbody can accept and still meet water quality standards for protecting public health and maintaining the designated beneficial uses of those waters for drinking, swimming, recreation, and fishing. A TMDL includes Waste Load Allocations for point source discharges, Load Allocations for nonpoint sources and/or natural background and must include a margin of safety and account for seasonal variations.

**TSS:** Total Suspended Solids.

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

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

**WETLAND RESOURCE AREA.** Areas specified in the Massachusetts Wetlands Protection Act G.L. c. 131, § 40 and in the Town of Nahant Wetlands Protection Bylaw.

### **SECTION 3. AUTHORITY**



**This 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**

**Nothing in this Bylaw is intended to replace the requirements of any other bylaw that has been made or may be adopted by the Town of Nahant.**

#### **SECTION 4. RESPONSIBILITY FOR ADMINISTRATION**

**A. The Stormwater Authority shall administer, implement, and enforce this bylaw unless another entity is specifically designated in this bylaw. Any powers granted to or duties imposed upon the Stormwater Authority may be delegated in writing by the Stormwater Authority to its employees or agents.**

#### **SECTION 5. PERMIT WAIVERS**

**A. Any person seeking a permit waiver must submit a written waiver request to the Stormwater Authority through the Town Clerk. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of the bylaw does not further the purposes or objectives of this bylaw. All waiver requests shall require a public hearing.**

**B. The Stormwater Authority, or its authorized agent, may waive strict compliance with any requirement of this bylaw or the rules and regulations promulgated hereunder, where such action is:**

- 1. Allowed by federal, state and local statutes and/or regulations and the MS4 Permit, and**
- 2. In the public interest, and**
- 3. Not inconsistent with the purpose and intent of this bylaw.**

**C. Public Hearing. The Stormwater Authority shall hold a public hearing within sixty-five (65) days of the receipt by Town Clerk of a complete waiver request and shall take final action within ninety (90) days from the time of the close of the hearing unless such time is extended by agreement between the applicant and the Stormwater Authority. If, in the opinion of the Stormwater Authority or its authorized agent, additional time or information**

is required for review of a waiver request, the Stormwater Authority may continue a hearing to a date certain, as announced at the meeting. In the event the applicant objects to a continuance or fails to provide the requested information, the waiver request shall be denied. Notice of the public hearing shall be given by publication, posting, and by certified mail at the applicant's expense to abutters at least fourteen (14) days prior to the hearing. The Stormwater Authority shall make the waiver request available for inspection by the public during business hours at the Nahant Town Hall.

## **SECTION 6. RULES AND REGULATIONS**

Except with regard to Administrative Land Disturbance Approvals, the Stormwater Authority shall adopt and periodically amend rules and regulations to effectuate the purposes, terms, conditions, definitions, enforcement, fees, procedures, and administration of this bylaw. With regard to Administrative Land Disturbance Approvals, the Conservation Commission shall adopt and periodically amend rules and regulations to effectuate the purposes, terms, conditions, definitions, enforcement, fees, procedures, and administration of this bylaw. Failure by the Stormwater Authority or the Conservation Commission to promulgate such rules and regulations shall not have the effect of suspending or invalidating this bylaw. The Rules and Regulations shall identify requirements for Administrative Land Disturbance Approval and Land Disturbance Permit procedures; Stormwater Management Plans; Operation and Maintenance Plans, etc. as required by this bylaw and consistent with or more stringent than the relevant requirements of the most recent MS4 Permit.

## **SECTION 7. ENFORCEMENT**

**A.** Unless another entity is specifically designated in this by-law, the Stormwater Authority or an authorized agent of the Stormwater Authority shall enforce this bylaw and any associated regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

### **B. Orders**

**1.** Except with regard to Administrative Land Disturbance Approvals, the Stormwater Authority or an authorized agent of the Stormwater Authority may issue a written order to enforce the provisions of Part II of this bylaw or any associated regulations or permit. With regard to Administrative Land Disturbance Approvals, the Conservation Commission or an authorized agent of the Conservation Commission may issue a written order to enforce the provisions of Part II of this bylaw or any associated regulations or permit. A violation includes, without limitation, failure to obtain a Land Disturbance Permit or Administrative Land Disturbance Approval for an activity subject to this bylaw, or failure to follow the requirements of such Approval or Permit and the related Stormwater Management Plan, Erosion and Sedimentation Control Plan, or Operations and Maintenance Plan or any other authorization issued pursuant to this bylaw or regulations issued hereunder. The

**written order may require the violator to remediate the non-compliance and/or any adverse impact caused by it, including without limitation:**

- (a) A requirement to cease and desist from the land-disturbing activity until there is compliance with the bylaw and provisions of the land-disturbance permit;**
- (b) Maintenance, installation or performance of additional erosion and sediment control measures;**
- (c) Monitoring, analyses, and reporting of control measure performance;**
- (d) Remediation of erosion and sedimentation resulting directly or indirectly from the land-disturbing activity;**
- (e) Construction, reconstruction, repair or maintenance of stormwater BMPs or any other aspect of the post-construction stormwater management system.**
- (f) Remediation of adverse impacts resulting from improper construction or operation of the post-construction stormwater management system.**
- (g) A requirement to eliminate discharges, directly or indirectly, into the MS4, a watercourse or into the Waters of the Commonwealth.**

**2. The Conservation Commission or its authorized agent may issue a written order to enforce the provisions of Part III of this bylaw or any associated regulations, which may include:**

- (a) Elimination of illicit connections or discharges to the MS4;**
- (b) Performance of monitoring, analyses, and reporting;**
- (c) Cessation of unlawful discharges, practices, or operations;**
- (d) Implementation of measures to minimize the discharge of pollutants until such time as the illicit connection or discharge shall be eliminated; and**
- (e) Remediation of any adverse impacts of an illicit discharge or connection.**

**3. If the enforcing person determines that abatement or remediation of erosion and sedimentation 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 Nahant may, at its discretion, undertake such work, and the property owner shall reimburse the Town of Nahant for expenses incurred.

(a) Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner shall be notified of the costs incurred by the Town of Nahant, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Stormwater Authority within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the Stormwater Authority affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the cost shall become a municipal charges lien against the property owner pursuant to G.L.Ch. 40§58 for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate, as provided in G.L. Ch. 59, § 57, after the thirty first day following the day on which the costs were due.

C. Criminal Penalty. Any person who violates any provision of this bylaw, regulation, order or permit issued thereunder, shall be punished by a fine of not more than \$100.00 per offense. Each day or part thereof that such violation occurs or continues shall constitute a separate offense. The Stormwater Authority or the Conservation Commission, where appropriate, 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.

D. Non-Criminal Penalty. As an alternative to criminal prosecution or civil action, the Town of Nahant may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch.40,§ 21 D. and Article XIII (Non-Criminal Disposition of Violations) within the Police Bylaws of the Town of Nahant, in which case the Stormwater Authority or the Conservation Commission, where appropriate, shall be the enforcing person.

E. Entry to perform duties under this bylaw. To the extent permitted by local, state, or federal 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.

F. Appeals. The decisions or order of the Stormwater Authority or the Conservation Commission shall be final. Further relief shall be to a court of competent jurisdiction.

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

## **SECTION 8. SEVERABILITY**

The provisions of this bylaw are hereby declared to be severable. If any provision, paragraph, sentence, or clause of this bylaw shall be held invalid for any reason, all other provisions shall continue in full force and effect.

## **PART II: LAND DISTURBANCE**

### **SECTION 1. APPLICABILITY**

**A. Part II of this bylaw shall apply to all construction activity or land disturbance that individually or as part of a Common Plan of Development result in disturbance of land in excess of the thresholds below.**

**1. Administrative Land Disturbance Approval from the Nahant Conservation Commission is required for any project disturbing between 600 and 43,559 square feet of land.**

**2. A Land Disturbance Permit from the Stormwater Authority is required for any project disturbing of one or more acres of land.**

**B. Construction activities that are exempt are:**

**1. Normal maintenance and improvement of land in agricultural or aquacultural use as defined by the Massachusetts Wetlands Protection Act regulations 310 CMR 10.04 and MGL Chapter 40A, section 3;**

**2. 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 100 cubic yards of soil material, or alteration of drainage patterns;**

**3. The construction of fencing that will not substantially alter existing terrain or drainage patterns;**

**4. Normal maintenance of Town-owned public land, ways, and appurtenances;**

**5. Maintenance, reconstruction, or resurfacing of any public way; and the installation of drainage structures or utilities within or associated with public ways that have been approved by the appropriate authorities provided that written notice be filed with the Stormwater Authority fourteen (14) days prior to commencement of activity;**

- 6. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or the original purpose of the site; and**
- 7. Activities that are subject to jurisdiction under the Wetlands Protection Act and demonstrate compliance with the Massachusetts Stormwater Management Policy and compliance with the MS4 Permit requirements as reflected in an Order of Condition issued by the Town of Nahant Conservation Commission.**

## **SECTION 2. APPROVAL OR PERMIT**

- A. Administrative Land Disturbance Approval or a Land Disturbance Permit must be obtained prior to the commencement of any construction activity or land disturbance for which such a approval or permit is required. An applicant seeking an approval shall file an appropriate application with the Conservation Commission in a form and containing information as specified in this bylaw and in regulations adopted by the Conservation Commission. An applicant seeking a 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.**
- B. Each permit application must be accompanied by the appropriate application fee as established by the Stormwater Authority. Applicants shall pay the application fee before the review process commences. The Stormwater Authority is authorized to retain a Registered Professional Engineer (PE) or other professional consultant to advise the Stormwater Authority on any or all aspects of the application and/or the project's compliance with conditions of a Review or Permit. The Stormwater Authority may require the applicant to pay reasonable costs to be incurred by the Stormwater Authority for the employment of outside consultants pursuant to Stormwater Authority regulations as authorized by G.L. c. 44, § 53G.**
- C. Required submittals to obtain a Land Disturbance Permit shall include (without limitation) an Erosion and Sedimentation Control Plan, a Stormwater Management Plan, and an Operation and Maintenance Plan. To obtain a Land Disturbance Permit, the applicant must show that site design, construction site stormwater runoff control and post-construction stormwater management will meet the standards set by the Stormwater Authority in its regulations, rules and/or guidance, which shall be at least as stringent as the relevant requirements of the Massachusetts Stormwater Policy and the MS4 Permit and may also address relevant environmental considerations including (without limitation) protection of aquifers and sensitive water bodies, climate resilience, and prevention of flooding.**
- D. The Land Disturbance Permit shall include measures to ensure adequate long-term operation and maintenance of stormwater management design features and BMPs. The Stormwater Authority may impose requirements including (without limitation) the following:**

1. A requirement that funds for future operation and maintenance be set aside in a dedicated fund or escrow account;
  2. A permanent permit condition requiring compliance with an Operation and Maintenance Plan;
  3. A permanent permit condition requiring that the property owner submit an annual report or certification regarding operation and maintenance;
  4. A requirement to record the Operation and Maintenance Plan (or notice thereof);
  5. A requirement that a legal instrument be put in place establishing responsibility for operation and maintenance of a stormwater BMP serving more than one lot; and
  6. A requirement that an easement be recorded allowing the Town to access a stormwater BMP to remedy any operational failure or maintenance problem.
- D. Information requests. The applicant shall submit all additional information requested by the Stormwater Authority to issue a decision on the application.
- E. Actions by the Stormwater Authority may include:
1. Approve the Land Disturbance Permit Application and issue a permit if it finds that the proposed plan will protect water resources and meets the objectives and requirements of this bylaw;
  2. Approve the Land Disturbance Permit application and issue a permit with conditions, modifications or restrictions that the Stormwater Authority determines are required to ensure that the project will protect water resources and meets the objectives and requirements of this bylaw; or
  3. Disapprove the Land Disturbance Permit Application and deny the permit if it finds that the proposed plan will not protect water resources or fails to meet the objectives and requirements of this bylaw.
- F. Failure of the Stormwater Authority or the Conservation Commission to take final action upon an Application within the time specified above shall be deemed to be approval of said application. Upon certification by the Town Clerk that the allowed time has passed without the Stormwater Authority's or the Conservation Commission's action, the Land Disturbance permit shall be issued by the Town Clerk.

### **SECTION 3. CONSENT TO ENTRY ONTO PROPERTY**

**By signing the approval or permit application, an applicant consents to the entry of members of the Stormwater Authority (or the Conservation Commission, where appropriate) or its authorized agents in or on the site while the application is under review to verify the information in the application, and at any time after a Review or Permit is issued to inspect for compliance with Review or Permit conditions.**

#### **SECTION 4. INSPECTION AND SITE SUPERVISION**

**The Conservation Commission or its designated agent shall make inspections to verify and document compliance with the Administrative Land Disturbance Approval. The Stormwater Authority or its designated agent shall make inspections to verify and document compliance with the Administrative Land Disturbance Permit.**

#### **SECTION 5. SURETY**

**The Stormwater Authority may require the permittee to post before the start of land disturbance activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be approved by town counsel and be in an amount deemed sufficient by the Stormwater Authority to ensure that the work will be completed in accordance with the permit. If the project is phased, the 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 Stormwater Authority has received the final report as required by Section 6 and issued a certificate of completion.**

**If the permittee defaults on any obligations imposed by the Land Disturbance Permit, the Stormwater Authority may (after notification of the permittee) inform the holder of the security (and the municipal treasurer if the treasurer is not holding the funds) of the default, in which event the Town shall be entitled to the security funds.**

#### **SECTION 6. FINAL REPORTS**

**Upon completion of the work and no later than two (2) years after completion of construction, the permittee shall submit a report (including certified as-built construction plans), as outlined in Subdivision Regulations, Section IV.B.8.a, from a Professional Engineer (P.E.) surveyor, or Certified Professional in Erosion and Sediment Control (CPESC), certifying that all erosion and sediment control devices, and approved changes and modifications, have been completed in accordance with the conditions of the approved permit. 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). Any discrepancies should be noted in the cover letter.**



## **SECTION 7. CERTIFICATE OF COMPLETION**

**The issuing authority will issue a letter certifying completion upon receipt and approval of the final reports and/or upon otherwise determining that all work of the permit has been satisfactorily completed in conformance with this bylaw.**

## **PART III: DISCHARGES TO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM**

### **SECTION 1. APPLICABILITY**

**A. Part III of this bylaw shall apply to all direct or indirect discharges to the municipal storm drain system and to any activities that might obstruct the municipal storm drain system.**

### **SECTION 2. PROHIBITED ACTIVITIES AND EXEMPTIONS**

**A. Illicit discharges. No person shall commence, allow, conduct, or continue any illicit discharge to the municipal storm drain system.**

**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 consent from the Conservation Commission.**

**D. Exemptions and Special Considerations.**

**1. Discharge or flow resulting from fire-fighting activities, unless the Conservation Commission determines that such discharge or flow is a significant source of pollutants to Waters of the United States;**

**2. The following categories of non-stormwater discharges are allowed unless the Conservation Commission, EPA, or the MassDEP identifies any category or individual**

**discharge of non-stormwater discharge below as a significant contributor of pollutants to the MS4; then that category or individual discharge is not allowed, but rather constitutes an “illicit discharge”:**

- (a) Water line flushing**
- (b) Landscape irrigation**
- (c) Diverted stream flows**
- (d) Rising groundwater**
- (e) Uncontaminated groundwater infiltration (as defined at 40 CFR § 35.2005(20))**
- (f) Uncontaminated pumped groundwater**
- (g) Discharge from potable water sources**
- (h) Foundation drains**
- (i) Air conditioning condensation**
- (j) Irrigation water, springs**
- (k) Water from crawl space pumps**
- (l) Footing drains**
- (m) Lawn watering**
- (n) Individual resident car washing**
- (o) Flows from riparian habitats and wetlands**
- (p) De-chlorinated swimming pool discharges (i.e., having less than one ppm chlorine by, for example, letting the water stand for seven (7) days) provided the pool is drained in such a way as not to cause a nuisance.**
- (q) Street wash waters**

**(r) Residential building wash waters without detergents**

**3. Special Considerations for Discharges from Sump Pumps and Other Pumped Discharges from Flooded Basements.** It is recognized that, as a practical matter, sump pumps and pumped discharges from flooded basements are discharged indirectly to the municipal storm drain system. Such discharges to the sanitary sewer are prohibited under the Town of Nahant Sewer Bylaws. Direct connection of such discharges to the municipal storm sewer will only be allowed under exceptional circumstances upon written application to the Conservation Commission and written approval by the Conservation Commission. The application must demonstrate that other options, such as dry wells, are not feasible. Indirect discharges must not contain a pollutant, cause excessive depth of water on a street or sidewalk, or cause icing or other nuisance. The Conservation Commission is hereby empowered to prohibit such indirect discharges.

**A. Inspections.** To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Conservation Commission or its designee may enter upon privately owned property for the purpose of making or causing to be made such examinations, surveys or sampling as the Conservation Commission deems reasonably necessary to ensure compliance with this bylaw.

**SECTION 3. ADDITIONAL PROHIBITED POLLUTANTS**

**B. Pet Waste:** The Town of Nahant is subject to a Pathogen TMDL, and because dog feces are 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. However, this provision shall not be applicable to a person using a helping dog or other helping animal registered as such. Persons walking dogs must carry with them a device designed to properly dispose of dog feces including, but not limited to, a bag or “pooper scooper.” For specific requirements and penalties for violations see the Nahant Police By-Laws, Section 13. Control of Dogs.

**SECTION 4. EMERGENCY SUSPENSION OF STORM DRAINAGE SYSTEM ACCESS**

The Conservation Commission or its authorized agent may suspend municipal storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the Conservation Commission may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

**SECTION 5. NOTIFICATION OF SPILLS**

**Notwithstanding other requirements of local, state, or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants to the municipal drainage system, the person shall take all necessary steps to ensure containment and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the municipal fire and police departments and MassDEP if necessary. In the event of a release of nonhazardous material, the reporting person shall notify the authorized enforcement agency no later than the next business day. The reporting person shall provide to the Conservation Commission written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on site a written record of the discharge and the actions taken to address it and prevent its recurrence. Such records shall be retained for at least three years.**

ATM 4/21/2022

Warrant Article 28. (General) approved *amendment* to the Town's bylaws.

AG amendment approval 8/22/2022 Case # 10578

## Article XVII

### STRETCH ENERGY CODE

Adopted 4-28-2018 ATM

#### § \_\_\_\_-1 Definitions

#### § \_\_\_\_-2 Purpose

#### § \_\_\_\_-3 Applicability

#### § \_\_\_\_-4 Stretch Code

#### § \_\_\_\_-1 Definitions

**International Energy Conservation Code (IECC)** - The International Energy Conservation Code (IECC) is a building energy code created by the International Code Council. It is a model code adopted by many state and municipal governments in the United States for the establishment of minimum design and construction requirements for energy efficiency, and is updated on a three-year cycle. The baseline energy conservation requirements of the MA State Building Code are the IECC with Massachusetts amendments, as approved by the Board of Building Regulations and Standards.

**Stretch Energy Code** - Codified by the Board of Building Regulations and Standards as 780 CMR Appendix 115.AA of the Massachusetts building code, the Stretch Energy Code is an appendix to the Massachusetts building code, based on further amendments to the International Energy Conservation Code (IECC) to improve the energy efficiency of buildings built to this code.

#### § \_\_\_\_-2 Purpose

The purpose of 780 CMR 115.AA is to provide a more energy efficient alternative to the Base Energy Code applicable to the relevant sections of the building code for new buildings.

#### § \_\_\_\_-3 Applicability

This code applies to residential and commercial buildings. Buildings not included in this scope shall comply with 780 CMR 115.AA, as indicated.

#### § \_\_\_\_-4 Stretch Code

The Stretch Code, as codified by the Board of Building Regulations and Standards as 780 CMR Appendix 115.AA, including any future editions, amendments or modifications, is herein incorporated by reference into the Town of NAHANT General Bylaws, ARTICLE XVII.

The Stretch Code is enforceable by the inspector of buildings and effective as of July 1, 2018  
**Article XVIII**

## **WETLANDS PROTECTION**

**Adopted 7-27-2018 STM**

### **ARTICLE WETLANDS PROTECTION**

#### **Section 1. Purpose**

The purpose of this by-law is to protect the wetlands, water resources, and adjoining land areas in Nahant by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon resource area values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention including coastal storm flowage, water quality, water pollution control, fisheries, shellfish, land containing shellfish, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture, recreation, and aesthetic values deemed important to the community (collectively, the “resource area values protected by this by-law”). This by-law is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act (G.L. ch. 131, s.40) and Regulations thereunder (310 CMR 10.00).

#### **Section 2. Definitions**

Except as otherwise provided in this by-law or in regulations of the Conservation Commission, the definition of terms in this by-law and the regulations shall be as set forth in the Wetlands Protection Act or anything relative thereto (G.L. ch. 131, s. 40) and Regulations (310 CMR 10.00).

The following definitions shall apply in the interpretation and implementation of this by-law.

Alter – shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by the by-law:

- a. Removal, excavations, or dredging of soil sand, gravel, or aggregate materials of any kind.
- b. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics.

- c. Drainage or other disturbance of water level or water table.
- d. Dumping, discharging, or filling with any material which may degrade water quality.
- e. Placing of fill or removal of material, which would alter elevation.
- f. Driving of piles, erection, or repair of buildings, or structures of any kind.
- g. Placing of obstructions or objects in water.
- h. Destruction of plant life including cutting of trees.
- i. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters.
- j. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or ground water.
- k. Incremental activities, which have, or may have, a cumulative adverse impact on the resource areas protected by this by-law.

Coastal Wetlands – are land under the ocean; coastal beaches; coastal dunes; barrier beaches; coastal banks; rocky intertidal shores; salt marshes; land under salt ponds; land containing shellfish; banks of land under the ocean, ponds, streams, rivers, lakes, or creeks that underlie anadromous/catadromous fish run (“fish run”); land subject to tidal action; and estimated habitats for rare wildlife (for coastal wetlands).

Freshwater Wetlands – are riverine wetlands (including rivers, freshwater banks, streams, creeks; estuaries); marshes; wet meadows; bogs; and swamps that meet *at least one* of the following requirements:

- 1. Fifty percent or more of the natural vegetative community consists of obligate or facultative wetland plant species, as included or identified in generally accepted scientific or technical publications (such as, the Wetlands Plant List, Northeast Region for the National Wetlands Inventory, U.S. Fish and Wildlife Service).
- 2. The presence of a hydrologic regime that indicates a wet condition in which the soils are annually saturated.
- 3. The presence of hydric soils associated with wetlands as defined in Delineating Bordering Vegetated Wetlands, a publication written and distributed by the MA Department of Environmental Protection, Division of Wetlands and Waterways (1995) or as amended.
- 4. Where the natural vegetative community has been destroyed, as for example by landscaping or agricultural use, or in violation of this by-law, the Commission may determine the area to be a Freshwater Wetland on the basis of annual soil saturation or soil analysis alone or may defer the determination until the natural vegetation has re- grown.
- 5. Further freshwater wetlands are vernal pools; banks; rivers; streams; creeks; reservoirs; lakes; ponds of any size; and quarry pits and motions which may or may not contain any of the above cited vegetative and hydric requirements.

Land Subject to Coastal Storm Flowage – as defined in the MA Wetlands Protection Act Regulations (310 CMR 10.04), means land subject to any inundation caused by coastal storms up to and including that caused by the 100-year storm, surge of record or storm of record, whichever is greater.

Land Subject to Flooding – means land subject to periodic inundation by ground water or surface water.

Land Subject to Tidal Action – as defined in the MA Wetlands Protection Act Regulations (310 CMR 10.04), means land subject to the periodic rise and fall of a coastal water body, including spring tides.

Native Plants – means those plants recognized as native in *The Vascular Plants of Massachusetts: A County Checklist, First Revision (2011)* by Melissa Dow Cullina, Bryan Connolly, Bruce A Sorrie and Paul Somers (a MA Division of Fisheries and Wildlife (Natural Heritage & Endangered Species Program), or as amended.

Wetlands Resource Area – is any wetland resource area deemed significant to the protection of the values specified in this by-law, and includes any wetland (defined herein) and lands within 100 feet of any wetland.

Wetland – is any freshwater or coastal wetland; land subject to flooding or inundation by groundwater or surface water; or lands subject to coastal storm flowage or flooding.

### **Section 3. Jurisdiction**

Except as permitted by the Conservation Commission or as provided in this by-law, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter within the following resource areas: any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; dunes; estuaries; the ocean; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; lands subject to tidal action, coastal storm flowage, or flooding; and lands within 100 feet of above cited resource areas (collectively the “resource areas protected by this by-law”). Said resource areas shall be protected whether or not they border surface waters.

### **Section 4. Exemptions and Exceptions**

The applications and permits required by this by-law shall not be required for work performed for normal maintenance or improvement of land in agricultural and aquacultural use as defined by the Wetlands Protection Act regulations at 310 CMR 10.04.

The applications and permits required by this by-law shall not be required for mosquito control work conducted by the State Reclamation and Mosquito Control Board (SRMCB) or a Mosquito Control District (MCD) pursuant to G.L. ch. 252.



The applications and permits required by this bylaw shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Conservation Commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Conservation Commission.

The applications and permits required by this by-law shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Conservation Commission prior to commencement of work or within 24 hours after commencement; provided that the Conservation Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Conservation Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Conservation Commission for review as provided by this by-law. Upon failure to meet these and other requirements of the Conservation Commission, the Conservation Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

The application and permits required by this by-law shall not be required for the following, to the extent that they take place within 100 feet outside of a wetland (as defined herein):

- a. the mowing of existing lawns; planting native trees, shrubs or groundcover; mulching existing trees, shrubs or groundcover; pruning or maintenance of trees; cutting down of trees or planting of turf lawns, unless the extent of the tree cutting or turf lawn planting and/or its proximity to the Wetland Resource Areas protected by this by-law will adversely impact such resource areas;
- b. the repair or maintenance or improvement of any existing structure or building, unless the extent or proximity of said work to the Wetland Resource Areas protected by this by-law will adversely impact such resource areas; and
- c. any other activity qualifying as a “minor activity” under the regulations promulgated pursuant to the Wetlands Protection Act, G.L. ch. 131, s. 40, at 310 CMR 10.02(2)(b)2.

Other than stated in this by-law, the exceptions provided in the Wetlands Protection Act (G.L. ch. 131 s. 40) and regulations (310 CMR 10.00) shall not apply under this by-law.

### **Section 5. Applications for Permits and Requests for Determination (RFD)**

Written application shall be filed with the Conservation Commission to perform activities affecting resource areas protected by this by-law. The permit application shall include such information and plans as are deemed necessary by the Conservation Commission to describe proposed activities and their effects on the resource areas protected by this by-

law. No activities shall commence without receiving and complying with a permit issued pursuant to this by-law.

The Conservation Commission in an appropriate case may accept as the permit application and plans under this by-law the Notice of Intent (NOI) and plans filed under the Wetlands Protection Act on anything relative thereto (G.L. ch. 131, s. 40) and Regulations (310 CMR 10.00).

Any person desiring to know whether or not a proposed activity or an area is subject to this by-law may in writing request a determination from the Conservation Commission. Such a Request for Determination (RFD) shall include information and plans as are deemed necessary by the Conservation Commission.

At the time of a permit application or RFD, or application for a Certificate of Compliance the applicant shall pay a filing fee specified in Regulations of the Conservation Commission. The fee is in addition to that required by the Wetlands Protection Act on anything relative thereto (G.L. ch. 131, s. 40) and Regulations (310 CMR 10.00). The fee shall be deposited in a dedicated account, for use only for wetlands protection activities, from which the Conservation Commission may withdraw funds with the approval of the Board of Selectmen.

Pursuant to G.L. ch.44, s. 53G and regulations promulgated by the Conservation Commission, the Conservation Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists or other experts in order to aid in the review of proposed projects. Refusal to deposit funds to this account may result in the Conservation Commission voting to deny the application and/or project. Such funds shall be deposited with the town treasurer, who shall create an account specifically for this purpose. Expenditures from this account shall be made only in connection with the review of a specific project or projects for which a consultant fee has been collected from the applicant. Any funds remaining in the account after the Conservation Commission has rendered a decision will be returned to the applicant. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.

## **Section 6. Notice and Hearings**

Any person filing a permit application with the Conservation Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters within 100 feet of the property line of the parcel or parcels of land where the proposed activity is to take place at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, including any in another municipality or across a body of water. The notice to abutters shall have enclosed a copy of the permit application or request, with plans, or shall state where copies may be examined and obtained by abutters. The applicant shall obtain a certified list of names and addresses of all persons required to be notified from the Nahant Board of Assessor's Office. The applicant shall file with the Conservation Commission an affidavit of service signed by the person serving the notices, the certified list of names and addresses from the Nahant Board of

Assessor's Office and a copy of the notices mailed and delivered. When a person requesting a determination is other than the owner of the property where the activity is proposed, the request (RFD) or permit application (NOI) shall also be mailed or delivered to the owner by the applicant and proof of service shall be filed with the Conservation Commission. The Conservation Commission shall send a copy of the notice of hearing and a copy of the determination or permit to both the owner and applicant.

The Conservation Commission shall conduct a public hearing on any permit application or RFD, with written notice given at the expense of the applicant, five business days prior to the hearing, in a newspaper of general circulation in the municipality.

The Conservation Commission shall commence the public hearing within twenty-one (21) days from receipt of a completed permit application or RFD unless an extension is authorized in writing by the applicant.

The Conservation Commission shall issue its permit or determination in writing within twenty-one (21) days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.

The Conservation Commission in an appropriate case may combine its hearing under this by-law with the hearing conducted under the Wetlands Protection Act or anything relative thereto (G.L. ch.131, s. 40) and Regulations (310 CMR 10.00)

The Conservation Commission shall have the authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Conservation Commission in its discretion, or comments and recommendations of other boards and officials.

### **Section 7. Areas of Rare & Endangered Species Habitat and Priority Natural Vegetation Community**

Any disturbance of areas where rare and endangered species habitats or priority natural vegetation communities are documented either by the Natural Heritage & Endangered Species Program or by observation, including anadromous and catadromous fish runs, shall require notification to the MA Division of Fisheries & Wildlife. For any project proposed within such an area, the Conservation Commission shall require that the applicant submit a copy of the RFD and/or the NOI to the MA Division of Fisheries & Wildlife, at the same time as the RFD and/or NOI is submitted to the Conservation Commission. The applicant shall submit a copy of any response received from the MA Division of Fisheries & Wildlife to the Conservation Commission.

The Conservation Commission may require a wildlife habitat study of the project resource area, to be paid for by the applicant, whenever it deems appropriate, regardless of the amount or type of alteration proposed. The decision shall be based upon the Conservation Commission's estimation of the importance of the habitat area or priority natural vegetation community considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife "corridors" in the area, or possible presence of rare species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act Regulations (310 CMR 10.60).

### **Section 8. Coordination with Other Boards**

Any person filing a permit application, RFD, or NOI with the Conservation Commission shall, as required in the discretion of the Conservation Commission, provide a copy thereof to the Board of Selectmen, Planning Board, Board of Appeals, Public Health Department, Harbormaster, Public Works Department, or Building Inspector.

### **Section 9. Permits and Conditions**

If the Conservation Commission, after a public hearing, determines that the activities which are subject to the permit application or the land and water uses which will result therefrom are likely to have a significant individual or cumulative effect upon the resource area values protected by this by-law, the Conservation Commission, within twenty-one (21) days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the commission shall impose conditions which the Conservation Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions. The Conservation Commission shall take into account the cumulative adverse effects of loss, degradations, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.

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

To prevent wetlands loss, the Conservation Commission shall require applicants to avoid wetlands alteration wherever feasible; shall minimize wetlands alteration; and, where alteration is unavoidable, shall require mitigation. The Conservation Commission may authorize or require replication of wetlands as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication. Lands adjacent to resource areas, are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality and loss of wildlife habitat. The Conservation

Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover within, or in some instances up to the full extent of the area within 100 feet outside of any wetland.

A permit shall expire three years from the date of issuance. Notwithstanding the above, the Conservation Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work. Provided that annual notification of time and location of work is given to the Conservation Commission, any permit may be renewed once for an additional one-year period, provided that a request for a renewal is received in writing by the Conservation Commission prior to expiration. Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land. For good cause the Conservation Commission may revoke or modify a permit or determination issued under this by-law after notice to the holder of the permit or determination, notice to the public, abutters, and town boards, pursuant to section 6 above, and a public hearing.

The Conservation Commission in an appropriate case may combine the permit or determination issued under this by-law with the Order of Conditions or Determination of Applicability issued under the Wetlands Protection Act on anything relative thereto (G.L. ch. 131, s. 40) and Regulations (310 CMR 10.00).

No work proposed in any permit application shall be undertaken until the permit issued by the Conservation Commission with respect to such work has been recorded in the Registry of Deeds or, if the land affected is registered land, in the Registry section of the Land Court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Conservation Commission that the permit has been recorded.

### **Section 10. Regulations**

After a public notice and public hearing, the Conservation Commission shall promulgate rules and regulations to effectuate the purposes of this by-law effective when voted and filed with the Town Clerk. Failure by the Conservation Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act on anything relative thereto to suspend or invalidate the effect of this by-law.

The Conservation Commission may establish, in its regulations, design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, and other work limits for protection of wetland resource areas, including without limitation strips of continuous, undisturbed vegetative cover. At a minimum these regulations shall define key terms in this by-law not inconsistent with the by-law and procedures governing the amount of filing fees.

### **Section 11. Security**

As part of a permit issued under this by-law, in addition to any security required by any other municipal or state board, agency, or official the Conservation Commission may require that the performance and observance of the conditions imposed thereunder

(including conditions requiring mitigation work) be secured wholly or in part by one or more of the methods described below:

- a. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Conservation Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit.
- b. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

## **Section 12. Compliance**

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this by-law, or cause, suffer, or allow such activity, or leave in place unauthorized fill or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this by-law.

The Conservation Commission, its agents, officers, and employees, may enter upon the land where the proposed work is to be done in response to a request for a prior determination, or for the purpose of carrying out its duties under this by-law, and may, or cause to be made such examination or survey as deemed necessary.

The Conservation Commission shall have the authority to enforce this by-law, its regulation, and permits issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, non-criminal citations under G.L. ch. 40, s. 21D, and civil and criminal court actions. Any person who violated provisions of this by-law may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

Upon request of the Conservation Commission, the Town Counsel may take legal action for enforcement under civil law. Upon request of the Conservation Commission, the Chief of Police may take legal action for enforcement under criminal law.

Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Conservation Commission in enforcement, including without limitation, the authority to issue orders to stop work.

Any person who violates any provision of this by-law, or regulations, or permits issued there under, shall be punished by a fine of not more than \$300.00 each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the by-law, regulations, or permits violated shall constitute a separate offense.

As an alternative to criminal prosecution in a specific case, the Conservation Commission may issue citations with specific penalties pursuant to the non-criminal disposition procedure set forth in G.L. ch.40, s. 21D, which has been adopted by the Town in Article XIII of Nahant's Police by-Law.

### **Section 13. Burden of Proof**

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

### **Section 14. Appeals**

A decision of the Conservation Commission shall be reviewable in the Superior court in accordance with G.L. ch.249, s. 4.

### **Section 15. Severability**

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

**ARTICLE XIX:**  
**NON COMPOSTABLE SHOPPING BAG REDUCTION**

**Adopted 5-16-2021 ATM**

**Section 1. Purpose**

The production and use of thin-film, single-use checkout bags have been shown to have significant detrimental impacts on the environment, including, but not limited to, contributing to the potential death of marine animals through ingestion, suffocation, and entanglement; contributing to pollution of the land environment; creating a burden to solid waste collection and recycling facilities; clogging storm drainage systems; and requiring the use of millions of barrels of crude oil nationally for their manufacture. The purpose of this by-law is to eliminate the usage of thin-film, single-use plastic bags by all Retail Establishments in the Town of Nahant thereby promoting the health and safety of the citizens of the Town through the preservation of the environment.

**Section 2. Definitions**

The following words shall, unless context clearly indicates otherwise, have the following meanings:

ASTM D6400 - The American Society for Testing and Materials (ASTM) International "Standard Specification for Compostable Plastics" which includes those plastics and



products made from plastics that are designed to be composted under aerobic conditions in municipal and industrial aerobic composting facilities.

ASTM D7081 - ASTM International "Standard Specification for Biodegradable Plastics in the Marine Environment" which includes those plastics and products that are designed to be biodegradable under the marine environmental conditions of aerobic marine waters or anaerobic marine sediments, or both.

Carryout Bag - A bag provided by a Retail Establishment to a customer at the point of sale for the purpose of removing products purchased therein. Carryout bags shall not include those bags, whether plastic or not, intended for the use by a customer for placing loose produce or other bulk food items to carry to the point of sale or checkout area of the store.

Compostable Plastic Bag - A plastic bag that conforms to the current ASTM D6400 specifications for compostability; is certified and labeled as meeting the ASTM D6400 standard specifications by a recognized verification entity.

Marine Degradable Plastic Bag - A plastic bag that conforms to the current ASTM D7081 standard specification for marine degradability.

Recyclable Paper Bag - A paper bag that is one-hundred (100) percent recyclable including the handles; contains at least forty (40) percent post-consumer recycled paper content; and displays the words "recyclable" and "made from 40% post-consumer recycled content" (or other applicable amount) in a visible manner on the outside of the bag.

Retail Establishment - Any commercial business facility that sells goods directly to the consumer including but not limited to grocery stores, pharmacies, liquor stores, restaurants, barber shops, "mini-marts," and retail stores and vendors selling clothing, food and personal items.

Reusable Bag - A bag with handles that is specifically designed for multiple reuse and is either made of cloth or other washable fabric; or made of durable plastic three mils in thickness, or of some other durable material; does not contain lead, cadmium, or any other heavy metal in toxic amounts.

Thin-Film, Single-Use Plastic Bags - Those bags typically with handles, constructed of high-density polyethylene, low-density polyethylene, linear low-density polyethylene, polyvinyl chloride, polyethylene terephthalate, polypropylene (other than woven and non-woven polypropylene fabric) if said film is less than 3.0 mils (0.0762mm) in thickness and which do not meet the ASTM D6400 and ASTM D7081 standard specifications.

### **Section 3. Thin-film, Single-Use Plastic Bags Prohibited**

- a. No Retail Establishment in the Town of Nahant shall provide Thin-Film, Single-Use Plastic Bags to customers.
- b. If a Retail Establishment provides Carryout Bags to customers, the bags must be one of the following:
  1. Recyclable Paper Bag;
  2. Reusable Bag;
  3. A Compostable Plastic Bag made from a polymer which meets the specifications of ASTM D6400; or
  4. A Marine Degradable Plastic Bag made from a polymer which meets the specifications of ASTM D7081.

### **Section 4. Enforcement; violations and penalties.**

The Board of Selectmen, and persons designated by the Board of Selectmen, shall have the authority to administer and enforce this by-law

Whoever violates any provision of this by-law may be penalized by the non-criminal disposition process set forth in Article XIII of the Nahant Police By-Laws. The following penalties apply:

- 1st offense: Warning
- 2nd offense: \$ 25.00
- 3rd offense: \$ 50.00
- 4th offense: \$100.00
- 5th and subsequent offenses, absent any mitigating circumstances: \$300.00.

Each day on which a violation exists shall be deemed to be a separate offense.

### **Section 5. Severability; effective date.**

Each section of this by-law shall be construed as separate to the end that if any section, sentence, clause or phrase thereof shall be held invalid for any reason, the remainder of that by-law and all other by-laws shall continue in full force.

This by-law shall take effect six (6) months following the effective date of this by-law to allow time for Retail Establishments to use their existing inventory of plastic checkout bags and to convert to alternative packaging materials.

## **Section 6. Regulations.**

The Board of Selectmen may adopt and periodically amend rules and regulations to effectuate the purposes of this by-law. Prior to the adoption and subsequent amendment to the rules and regulations, if any, the Board of Selectmen shall hold a public hearing. Notice of the time and place of the hearing, and of the subject matter, sufficient for identification, shall be published in a newspaper of general circulation in the Town once in each of two (2) successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing. A copy of the adopted regulations shall be made available at the office of the Town Clerk and as otherwise deemed appropriate by the Board of Selectmen. Failure by the Board of Selectmen to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.”, or take any other action relative thereto.

## **ARTICLE XX**

### **Personnel By-Laws Job Classification and Salary Plan**

(re-numbered October 2021- duplicate Article #'s)

#### **Section 1 Application**

**SUBSECTION A.** All Town departments and all positions in the Town services, other than the School Committee and positions under its control, shall be subject to the provisions of this by-law, provided, however, that the compensation of elected officers of the Town shall be established annually by vote of the Town Meeting.

#### **SUBSECTION 2. PERSONNEL BOARD**

**SUBSECTION A.** There is hereby established a Personnel Board, as authorized by Section 108c of Chapter 41 of the General Laws, which shall administer the provisions of this by-law. The Board shall consist of three members appointed by the Moderator, acting with the advice of the Chairman of the Board of Selectmen and the Chairman of the Advisory and Finance Committee. The term of office of the members of the Personnel Board shall be three years beginning July 1. Initial appointments to the Personnel Board shall be for periods of one year, two years, and three years, respectively.

No elected or appointed officer of the Town of Nahant and no person employed by the Town of Nahant shall be eligible for service upon the Personnel Board.

**SUBSECTION B.** The Personnel Board shall serve without pay, but may submit an annual expense budget to the Town for consideration.

**SUBSECTION C.** Forthwith after appointment and thereafter annually, the board shall meet and organize by electing a chairman and clerk. A majority of the board shall constitute a quorum for the transaction of business.

**SUBSECTION D.** The Board shall maintain written descriptions of the job titles subject to this by law, describing the essential characteristics, requirements and the general duties. The descriptions shall not be interpreted as complete or limiting definitions and employees shall continue to perform duties assigned by superiors. In addition, a copy of the policy statement outlined in section 3 (d) shall be maintained by the Board.

**SUBSECTION E.** The Personnel Board, from time to time, shall review all positions subject to this by-law and, it deems necessary, shall recommend to the Board of Selectmen and the Advisory and Finance Committee, adding new positions or reclassifying existing positions. Such reviews shall be so scheduled as to cover all such positions at intervals of not more than three years.

**SUBSECTION F.** The Personnel Board shall, from time to time, review the pay schedules. It shall keep informed as to pay rates and policies for positions subject to this by-law and shall recommend to the Board of Selectmen and the Advisory and Finance Committee any action deemed desirable to maintain a fair and equitable pay level.

**SUBSECTION G.** The Personnel Board shall have the authority to decide all questions relating to interpretation of this by-law, provided, however, that no action shall become effective unless or until funds have been appropriated and are available. An appeal may be taken by any employee aggrieved by a decision of the Personnel Board to the next Annual Town Meeting.

**SUBSECTION H.** The Personnel Board may, from time to time, issue, amend or revoke administrative orders for the purpose of giving effect to the provisions of this by-law, and for the purpose of giving effect to the provisions of such other by-laws, and votes to the Town, pertaining to personnel administration, as said board may be responsible for administering and/or enforcing.

1 Such orders shall be numbered in sequence, and said board shall maintain, in the office of the Selectmen, a file of all such orders issued, said file to be open to public inspection. Such orders shall include a reference to the section and paragraph of the by-

law that determine the actions, and shall, without delay, be delivered to the Board of Selectmen, the Town Administrator and the head of the department or board involved.

**SUBSECTION I.** Except as otherwise provided by law, the Personnel Board shall have access to all facts, figures, records, and other information relating to the personnel of Town departments, other than the School Department, and the same shall be furnished forthwith by any such department, whenever so requested by the Personnel Board, in such form as said board may require.

### **SECTION 3. Personnel Records and Reports**

**SUBSECTION A.** A personnel record of all Town employees, including both elected and appointed employees, shall be kept by the Administrator in his office. Said record shall contain all the vital statistics and other pertinent records and report data of each and every person employed by the Town. It shall be the duty of each Town officer and employee to furnish to the Town Administrator forthwith upon his request, all data needed for the completion of this record, and such personnel records and reports as the Personnel Board may require.

**SUBSECTION B.** Each department head shall submit to the Town Administrator weekly, in such form as the Personnel Board shall prescribe, a report of all officers and employees of the department absent from duty during the calendar week immediately preceding, specifying in each case whether the officer or employee was absent on vacation leave, on leave of absence, on occupation sick leave, on non-occupation sick leave, on bereavement leave, on jury duty, on personal leave, or on military leave, or specifying the nature of his absence if it was not one of the foregoing reasons.

**SUBSECTION C.** The Personnel Board, in consultation with other Town Officers and agencies concerned, shall have the authority to standardize the administrative forms and

records used in Town personnel administration, other than those whose format is regulated by statute or by state supervising municipal administrations.

**SUBSECTION D. Personnel Policy Statement**

The ADMINISTRATOR shall maintain a policy statement regarding, but not limited to:

Sick Leave

Vacation

Jury Duty

Service in the Armed Forces or the Reserve Component Thereof

Holidays

Equal Opportunity Employment

Such Policy Statement shall be available to all employees and kept in a location freely accessible to all affected employees. A copy of the Policy Statement shall be provided to the Personnel Board for annual review within two weeks of the close of each calendar year.

**SUBSECTION 4. Medical Examination of Job Applicants**

**SUBSECTION A.** Every applicant for permanent appointive employment shall be certified by a practicing physician, designated by the Town, as to his or her physical fitness to perform the duties of the position to which such applicant seeks appointment, and as to any physical condition of the applicant which might adversely affect the insurance coverage of the Town under Chapter 152 of the General Laws or the group insurance of other Town employees.

2 If the Personnel Board deems such action necessary for the protection of the Town, it may require any applicant for temporary or part time appointive employment by the Town, who is to be employed for thirty days or more, or any temporary or part-time appointive employee who has been employed by the Town for thirty days and has not been so certified to be certified by a physician designated by the Town as to his or her physical fitness to do the work required by the Town, and as to the presence of any condition detrimental to such insurance coverage. Such certification shall be in such form as the said board shall determine. The cost of any physical examination required by this section shall be paid by the Town, and shall be charged to the appropriation of the

department in which the applicant seeks employment, or shall be charge to such special appropriation as the Town may make for the purpose of this section.

**SUBSECTION B** All such certificates shall be retained by the Town Administrator and filed in the individual's personnel record.

## **SECTION 5 Job Classification and Salary Plan**

**SUBSECTION A.** There is hereby established a classification and salary plan, hereinafter called the Plan, for the Town of Nahant, under authority of Section 108A of Chapter 41 of the General Laws, and all other acts hereto enabling, for positions in the service of the Town, classifying certain employees, whether full-time, temporary or part-time, other than those filled by popular election, those covered by collective bargaining agreements and those under the direction and control of the School Committee, into groups and classes doing substantially similar work, or having substantially equal responsibilities.

**SUBSECTION B.** (See Chart of Classification and Salaries, revised from time to time by vote at the Annual Town Meeting.)

**SUBSECTION C.** There is hereby established a record of the employee classification and salaries, hereinafter called the Record, as set forth in collective bargaining agreements entered into by the Town, other than those under the direction and control of the School Committee.

**SUBSECTION D.** (See record of employee classification and salaries, revised from time to time to reflect changes in collective bargaining agreements entered into by the Town, other than those under the direction and control of the School Committee.)

**SUBSECTION E.** The Personnel Board shall annually report its recommendations with respect to the Plan and Record to the Advisory and Finance Committee and to the Board

of Selectmen. The Advisory and Finance Committee shall annually report such recommendations, together with its own comments thereon, to the residents of the Town.

## **SECTION 6. Salary Schedule**

**SUBSECTION A.** The Plan sets forth the job classification, the grade assigned to it, the minimum step rate and successive step rate increases, concluding with a maximum step rate. Salary range of a group shall be the salary range for all positions classified in such group.

**SUBSECTION B.** Each regular, full time employee subject to the Plan shall serve one year at step one and one year in each intermediate step until reaching the maximum.

**SUBSECTION C.** Each employee subject to the Plan, who occupies a position for which a single rate has been established by the Plan, shall not be eligible for step rate increases.

**SUBSECTION D.** No board, officer, or head of a department shall fix the salary of any employee in a position so classified, except in accordance with the Plan.

**SUBSECTION E.** No person shall be appointed, employed, or paid as an employee in any position, or permitted to perform duties under any title other than as provided in the Plan. The job title in the Plan shall be the official title for the position and shall be used in all administrative and employment records.

**SUBSECTION F.** Except as otherwise provided by law, the overtime compensation system shall be determined by the Board of Selectmen.

## **SECTION 7 Classification of Town Employees**

**SUBSECTION A.** An employee promoted or reclassified to a higher-rated position or grade shall enter it at the minimum step rate for the appropriate compensation grade, provided, however, that if his existing rate is the same or higher than the minimum for the higher-rated position, he shall be moved to the next higher step above his present salary.



**SUBSECTION B.** When a person already in the employ of the Town is transferred to another position having a maximum rate of compensation lower than the rate of compensation being received by him in his former position, he shall enter the new position at its maximum rate.

**SUBSECTION C.** When an employee transfers from one department to another, but does not change his salary grade, he shall enter his new position at the minimum step rate.

**SUBSECTION D.** Upon recommendation of a department head or board, supported by evidence in writing, of special reasons and exceptional circumstance satisfactory to the Personnel Board, said Personnel Board may authorize an entrance higher than the minimum rate for a position established by vote of the Town, and such other variances in the Plan, as it may deem necessary for the proper functioning of the services of the Town, provided, however, that no action shall be taken by the Board unless such recommendation is made within thirty days of the commencement of employment, and provided further, however, that no employee shall by variance be moved from one grade to another. No variance shall become effective unless or until necessary funds have been appropriated and are available.

## **SECTION 8 CONFLICTING BY-LAWS REGULATIONS OR COLLECTIVE BARGAINING AGREEMENTS**

If any provision of this by-law shall conflict with any civil service law or regulation applicable to any position, or any other law, it shall be deemed modified by the law or regulation sufficiently only to end the conflict. The invalidity of any provision hereof shall not be construed to invalidate any other provision hereof. This by-law shall not be construed as a means of extending or enriching benefits or conditions of employment delineated in the several existing collective bargaining agreements.

## **SECTION 9. Equal Employment Opportunity**

The Town of Nahant is an equal opportunity employer.

## **ARTICLE XXI**

### **TREES**

#### **Bylaw Added ATM 2021**

#### **Section 1: Public shade trees; Definition**

**Section 1.** All trees within a public way or on the boundaries thereof including trees planted in accordance with the provisions of section 7 shall be public shade trees; and 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, it shall be taken to be within the highway and to be public property until the contrary is shown.

##### **1a Definition of Public Shade Trees**

In addition to the definition recited in M.G.L. c. 87, § 1, Public Shade Trees are herein defined as trees on land lying between property lines on either side of all streets, avenues or ways within the Town and in public parks having individual names, and all areas owned by the Town, or to which the public has free access as a park.

##### **1b Intent and purpose of Nahant Tree By-Laws**

The preservation of the tree canopy and the planting of replacement trees is intended to enhance the quality of life and the environment of the Town; to reduce energy consumption; to protect air quality; to provide protection from glare and heat; to baffle noise; to reduce topsoil erosion and stormwater runoff; to preserve and enhance habitat for wildlife; to protect and increase property values; to combat climate change through carbon sequestration; to provide natural privacy for neighbors; to enhance the overall appearance of the Town; and to acknowledge the intrinsic value of the mature trees within our community.

#### **Section 2: Powers of Tree Wardens**

Section 2. The tree warden of a town may appoint and remove deputy tree wardens. He and they shall receive such compensation as the town determines or, in default thereof, as the selectmen allow. He shall have the care and control of all public shade trees, shrubs and growths in the town, except those within a state highway, and those in public parks or open places under the jurisdiction of the park commissioners, and shall have care and

control of the latter, if so requested in writing by the park commissioners, and shall enforce all the provisions of law for the preservation of such trees, shrubs and growths. He shall expend all money appropriated for the setting out and maintenance of such trees, shrubs and growths, and no tree shall be planted within a public way without the approval of the tree warden, and in towns until a location therefor has been obtained from the selectmen or road commissioners. He may make regulations for the care and preservation of public shade trees and establish fines and forfeitures of not more than twenty dollars in any one case for violation thereof; which, when posted in one or more public places, and, in towns, when approved by the selectmen, shall have the effect of town by-laws.

## **2a Creation of a Nahant Tree Task Force**

There is hereby created and established a Nahant Tree Task Force which shall consist of five volunteer residents who will be named by the Superintendent of the Department of Public Works to serve him for the purpose of developing and/or updating annually an inventory of all Public Shade Trees along with a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. This written plan shall be presented every year to the Superintendent of the Department of Public Works and to the Tree Warden for their convenience.

## **Section 3: Cutting of public shade trees; public hearing; damages to fee owner**

**Section 3.** Except as provided by section five, public shade trees shall not be cut, trimmed or removed, in whole or in part, by any person other than the tree warden or his deputy, even if he be the owner of the fee in the land on which such tree is situated, except upon a permit in writing from said tree warden, nor shall they be cut down or removed by the tree warden or his deputy or other person without a public hearing and said tree warden or his deputy shall cause a notice of the time and place of such hearing thereof, which shall identify the size, type and location of the shade tree or trees to be cut down or removed, to be posted in two or more public places in the town and upon the tree at least seven days before such hearing and published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than seven days before the day of the hearing or if no such local newspaper exists then in accordance with the provisions of section six of chapter four; provided, however, that when a public hearing must be held under the provisions of this section and under section fifteen C of chapter forty prior to the cutting or removal of a tree, such hearings shall be consolidated into a single public hearing before the tree warden and the planning board, or if there is no planning board, the selectmen of a town or the city council of a city, and notice of such consolidated public hearing shall be given by the tree warden or his deputy as provided herein. Any person injured in his property by the action of the officers in charge of the public shade trees as to the trimming, cutting, removal or

retention of any such tree, or as to the amount awarded to him for the same, may recover the damages, if any, which he has sustained, from the town under chapter seventy-nine.

#### **Section 4: Cutting down or removing public shade trees; approval of selectmen or mayor**

**Section 4.** Tree wardens shall not cut down or remove or grant a permit for the cutting down or removal of a public shade tree if, at or before a public hearing as provided in the preceding section, objection in writing is made by one or more persons, unless such cutting or removal or permit to cut or remove is approved by the selectmen or by the mayor.

#### **Section 5: Cutting down, trimming or removing bushes and small trees**

**Section 5.** Tree wardens and their deputies, but no other person, may, without a hearing, trim, cut down or remove trees, less than one and one half inches in diameter one foot from the ground, and bushes, standing in public ways; and, if ordered by the mayor, selectmen, road commissioners or highway surveyor, shall trim or cut down trees and bushes, if the same shall be deemed to obstruct, endanger, hinder or incommode persons traveling thereon or to obstruct buildings being moved pursuant to the provisions of section eighteen of chapter eighty-five. Nothing contained in this chapter shall prevent the trimming, cutting or removal of any tree which endangers persons traveling on a highway, or the removal of any tree, if so ordered by the proper officers for the purpose of widening the highway and nothing herein contained shall interfere with the suppression of pests declared to be public nuisances by section eleven of chapter one hundred and thirty-two, including the Dutch elm disease.

#### **Section 6: Penalty for violation of Sec. 3, 4 or 5**

**Section 6.** Violations of any provision of the three preceding sections shall be punished by forfeiture of not more than five hundred dollars to the use of the city or town.

#### **Section 7: Planting of shade trees**

**Section 7.** Cities and towns may appropriate money for the purpose of acquiring and planting shade trees in public ways. The tree warden, or a private organization acting with the written consent of the tree warden, may plant shade trees acquired with public or private funds in a public way, or if he deems it expedient, upon adjoining land at a distance not exceeding 20 feet from the layout of such public way for the purpose of

improving, protecting, shading or ornamenting the same; provided, however, that the written consent of the owner of such adjoining land shall first be obtained.

#### **7a Spacing of Public Shade Trees**

When considering the planting of Public Shade Trees, the spacing of Public Shade Trees will be in accordance with the following size classes: small trees no taller than 30 feet, medium trees 30-45 feet, and large trees taller than 45 feet. No trees may be planted closer together than the following: small trees, 30 feet; medium trees, 40 feet; large trees, 50 feet unless otherwise approved by the Tree Warden. No Public Shade Tree shall be planted closer than 10 feet of any fire hydrant.

#### **7b Tree Topping**

Except as authorized by the Tree Warden, it shall be unlawful as a normal practice for any person, firm, or Town department to top any Public Shade Tree or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from these By-Laws.

#### **7c Removal of Stumps**

Where practical, all stumps of public shade trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground. Where full stump removal is not practical, the stump will be cut square the ground, no greater than 4” above the ground surface. The practicality of stump removal will be determined by the Tree Warden.

### **Section 8: Signs or marks on shade trees**

**Section 8.** Whoever affixes to a tree in a public way or place a notice, sign, advertisement or other thing, whether in writing or otherwise, or cuts, paints or marks such tree, except for the purpose of protecting it or the public and under a written permit from the officer having the charge of such trees in a city or from the tree warden in a town, or from the department in the case of a state highway, shall be punished by a fine of not more than fifty dollars. Tree wardens shall enforce the provisions of this section; but if a tree warden fails to act in the case of a state highway within thirty days after the receipt by him of a complaint in writing from the department, the department may proceed to enforce this section.

### **Section 9: Injury to trees on state highways**

**Section 9.** Whoever without authority trims, cuts down or removes a tree, shrub or growth, within a state highway or maliciously injures, defaces or destroys any such tree, shrub or growth shall be punished by imprisonment for not more than six months, or by a fine of not more than five hundred dollars to the use of the commonwealth.

### **Section 10: Injury to trees of another person**

**Section 10.** Whoever willfully, maliciously or wantonly cuts, destroys or injures a tree, shrub or growth which is not his own, standing for any useful purpose, shall be punished by imprisonment for not more than six months or by a fine of not more than five hundred dollars.

### **Section 11: Injury to shrubs, trees or fixtures**

**Section 11.** Whoever wantonly injures, defaces or destroys a shrub, plant or tree, or fixture of ornament or utility, in a public way or place or in any public enclosure, or negligently or willfully suffers an animal driven by or for him or belonging to him to injure, deface or destroy such shrub, plant, tree or fixture, shall be punished by a fine of not more than five hundred dollars, and shall in addition thereto be liable to the town or any person for all damages to its or his interest in said shrub, plant, tree or fixture caused by such act.

Whoever by any other means negligently or willfully injures, defaces or destroys such a shrub, plant, tree or fixture shall likewise be liable to the town or any person for all damages to its or his interest in said shrub, plant, tree or fixture caused by such act.

### **Section 12: Powers and duties of tree wardens in cities**

**Section 12.** The powers and duties conferred and imposed upon tree wardens in towns by this chapter shall be exercised and performed in cities by the officers charged with the care of shade trees within the limits of the highway.

### **Section 13: Performance of maintenance and tree removal work by utility submission and approval of vegetation management and hazard tree removal plans; submission of utility tree maintenance standards and specifications.**

### **Section 13.**

(a) For the purposes of this section, "utility" shall mean a company engaging in the distribution of electricity or owning, operating or controlling distribution facilities; provided, however, that a distribution company shall not include any entity which owns or operates plant or equipment used to produce electricity, steam and chilled water, or an affiliate engaged solely in the provision of such electricity, steam and chilled water, where the electricity produced by such entity or its affiliate is primarily for the benefit of hospitals and nonprofit educational institutions, and where such plant or equipment was in operation before January 1, 1986.

(b) A utility may, or at the request of the tree warden shall, submit an annual vegetation management plan describing the maintenance work to be performed in a municipality. The plan shall include, but not be limited to, a map of the circuits where the maintenance work will be performed, the tree maintenance standards that will be followed and any foreseeable variance from those standards. The plan shall comply with local ordinances and regulations. The plan shall be submitted not less than 90 days prior to the date the utility proposes to begin its maintenance work. Upon receipt of the plan, the tree warden, or a designee thereof, shall notify the utility within 60 days, in writing, whether or not the plan has been approved. Upon receipt of written notification that the plan has been approved, or approved with modifications agreed to by both parties, a utility shall be exempt from the requirements of sections 3 and 5 for the work described in the approved plan.

(c) A utility may, or at the request of the tree warden shall, submit an annual hazard tree removal plan describing hazard tree removal work to be performed in a municipality. The plan shall include, but not be limited to, the specific trees that the utility has identified as a hazard and proposes to remove. The plan shall comply with local ordinances and regulations. The plan shall be submitted not less than 90 days prior to the date a utility proposes to begin tree removal. Upon receipt of the plan, the tree warden, or a designee thereof, shall notify the utility within 60 days, in writing, whether or not the plan has been approved. Upon receipt of written notification that the plan has been approved, or approved with modifications agreed to by both parties, the utility shall be exempt from the requirements of sections 3 and 5 for the work described in the approved plan.

(d) If a tree warden fails to notify a utility whether a vegetation management plan or hazard tree removal plan has been approved within 60 days of the warden's receipt of the plan, the utility may request a decision by the selectmen, mayor or chief administrative officer of the municipality.

(e) Notwithstanding approval of a vegetation management plan or hazard tree removal plan, a utility shall notify a tree warden, in writing, not less than 14 days prior to beginning maintenance work or tree removal work in a municipality. If a local ordinance or regulation requires more than 14 days' notice, the utility shall comply with such ordinance or regulation. The notice provided shall include the

date on which the utility will begin work and the phone number of the person or persons supervising the work in the field.  
(Rev. ATM May 2021; Article 35)

## ARTICLE XXII

### KEEPING ANIMALS BYLAW

Added ATM 2021

#### SECTION 1. Animals.

The total number of mammals, reptiles, and birds per dwelling unit shall be limited to 10(pets or other). All such animals shall be kept as to not create a public nuisance by noise, insects, order and/or appearance of property.

Owners of such animals having ponds and pools for the purpose of keeping waterfowl, or troughs for watering of such animals must provide insect control to reduce the possibility of Triple E and other insect, bird and animal borne viruses.

A waste control plan shall be filed with the Town Health Inspector for farm type animals(such as pigs, goats, horses) for elimination/ removal of fecal waste. Fecal waste shall not be stored or spread on owner's property or disposed of in the Town's composting site.

Enforcement of the bylaw shall be the jurisdiction of the Animal Control Officer and/or the Health Inspector. Any person in violation of this section shall be subject to the penalties set forth in Police Bylaws Article II, Section 6.  
(Rev. ATM May 2021 Article 42)



