

# GENERAL BY- LAWS



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# ARTICLE I

## GENERAL PROVISIONS

### *SECTION 1. TITLE OF BY-LAWS*

These by-laws shall be designated as “By-Laws of the Town of Swampscott”.

### *SECTION 2. EFFECT OF ENACTMENT AND REPEAL*

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 constitution of such by-laws, but all by-laws or portions thereof heretofore in force inconsistent herewith, are hereby repealed.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, nor any action, suit or proceeding commenced in any civil case, nor affect any punishment, penalty or forfeiture incurred under such a by-law.

### *SECTION 3. RULES OF CONSTRUCTION*

In the construction of all the by-laws of the town, the following rules of construction shall be observed unless such construction would be inconsistent with the manifest intent or context of the by-law:

TOWN - The word “town” shall mean the Town of Swampscott.

**SELECT BOARD** - The words “**Select Board**” or “**Member of Select Board**” shall mean the duly elected **Select Board** of the Town of Swampscott.

COMMONWEALTH - The word “Commonwealth” shall mean the Commonwealth of Massachusetts.

COMPUTATION OF TIME - In computing the time in which an act is to be done, the first day shall be excluded and the last day shall be included, but if the last day is a Sunday or a legal holiday, it shall be excluded.

COUNTY - The word “county” shall mean the County of Essex.

GENDER - A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations as well as to males.

JOINT AUTHORITY - Words purporting to give joint authority to three or more officers or other persons shall be construed as giving authority to a majority of such officers or persons.

NUMBER - A word importing the singular number only may extend and be applied to several persons and things as well as to one person and thing.

OWNER OR OCCUPANT - The owner or occupant of a building or land shall include any sole owner or occupant, and any joint tenant and tenant in common of the whole or any part of a building or lot of land.

PERSON - The word "person" shall extend and be applied to associations, firms, partnerships and bodies politic and corporate as well as individuals.

SIDEWALK - The word "sidewalk" shall mean a strip within the public way in front or on the side of a house or lot of land lying between the property line and the street.

STREET OR WAY - The words "street" or "way" shall include streets, avenues, roads, alleys, lanes, viaduct and all other public ways in the town, including any bridge which is a part thereof, all of which shall have been decreed, dedicated or accepted by the process of law.

TIME - Words used in the past or present tense include the future tense.

*SECTION 4. PENALTY FOR VIOLATIONS*

Whoever violates a provision of any by-laws of the town, shall unless other provision is expressly made, be liable to a penalty of not more than \$50.00 for each offense.

*SECTION 5. POWER TO ISSUE LICENSES AND PERMITS*

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

*SECTION 6. PROCESS OF AMENDMENT*

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 meeting.

*SECTION 7. TOWN CLERK MINISTERIAL CHANGES.*

The Town Clerk shall be authorized to assign to Bylaws adopted or amended by Town Meeting appropriate numbers or letters to Bylaw sections, subsections, paragraphs and subparagraphs where none are specifically approved by Town Meeting; and if such numbering or lettering is approved by Town Meeting, to make non-substantive editorial revisions to the same to ensure consistent and appropriate sequencing and numbering; and to make non-substantive editorial revisions to references regarding such numbering or lettering as contained within the Bylaws to ensure accuracy and conformity, where all such editorial revisions shall be identified with a footnote which describes the revision and the reason therefor.

## ARTICLE II

### TOWN MEETING

#### *SECTION 1. DATE OF TOWN ELECTIONS AND TOWN MEETING*

The annual town meeting shall be held on the last Tuesday in April in each year. (5/98) For the election of officers at said annual town meeting unless otherwise provided by law, polls shall be open at seven o'clock in the forenoon and shall remain open until eight o'clock at night. After the counting and declaration of votes for officers at an annual town meeting, said meeting shall be adjourned to the date established by the Town Charter at 7:15 p.m. at the Town Hall or such other place as may be designated by the **Select Board**, and at which time and at any further adjournment thereof, the remaining articles of the warrant shall be taken up. Each further adjournment thereof shall be made to the next succeeding and successive nights at 7:45 p.m., unless the meeting determines otherwise by the vote of two-thirds (2/3) of the members present and voting, as is necessary to conclude the annual town meeting.

#### *SECTION 2. WARRANT*

(a) 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 **Select Board** on or before the first Thursday of February prior to the Annual Meeting. All petitions for the laying out and acceptance of public ways shall be filed with the **Select Board** on or before the first Thursday of November preceding the Annual Town Meeting.

(b) Notice of every town meeting shall be given by posting attested copies of the warrant for the same in at least two public places in each precinct, and by mailing such warrant to each town meeting member as soon as said warrant is drawn and printed and not less than seven days before the day appointed for said meeting; provided, however, that the warrant for the Annual Town Meeting shall be mailed to each town meeting member not less than seven days prior to the date set for the business portion of the representative town meeting. (2003) Notice of any adjournment of any town meeting other than to the next succeeding night as provided in Section (a) shall be advertised by the town clerk at least once in a newspaper or newspapers published in Swampscott, and in case such adjournment is for a period of more than five days, notice shall be mailed to each town meeting member at least one day prior to the date set for the adjourned meeting. The validity of any proceedings taken at an adjourned town meeting shall not be affected by any defect in the notice of the adjournment.

(c) The Town Clerk shall prepare and furnish to each town meeting member an identification card. No person shall be admitted to the floor of the meeting at any time except upon presentation of his identification card or a pass signed by the Moderator or by the Chairperson of the **Select Board**.

*SECTION 3. RULES*

The proceeding of town meetings shall be governed by the rules of practice contained in "Town Meeting Time", except as the same may be modified by law or by these by-laws.

*SECTION 4. DECLARATION OF A VOTE*

If the Moderator's declaration of a vote has been immediately questioned by seven voters, in polling the members, the Moderator shall appoint tellers and members in the affirmative and in the negative respectively shall be requested to rise and stand until they are counted by the tellers, and the tellers shall make report of said count to the Moderator, who shall then announce the vote. Upon the request of thirty or more Town Meeting members, a roll call vote shall be taken in connection with final action upon any article in the warrant.

*SECTION 5. SUPER MAJORITY VOTING*

If more than a majority vote of a Town Meeting is required by law, a count shall be taken and the voter shall be recorded in the records by the Clerk; but if the vote is unanimous, a count need not be taken and the Clerk shall record the vote as unanimous. Notwithstanding the provisions of this section, on matters requiring a two-thirds vote by statute, a count need not be taken unless the vote so declared is immediately questioned by seven or more voters as provided in General Laws Chapter 39 Section 15. (5/99)

*SECTION 6. BALLOT VOTING*

Subject to the provisions of General Laws, Chap. 39, S15, the meeting may decide to vote by ballot upon any motion properly before it, and upon the request of two-thirds or more of the town meeting members present and voting, the meeting shall vote by ballot upon any motion properly before it to amend the recommendation of the Finance Committee. In any such case, the Moderator shall state the question, and the Town Clerk shall prepare and distribute the ballots to enable the town meeting members to vote "Yes" or "No" upon such question. Said ballots shall be collected and counted by the Moderator or such persons as he may then and there delegate, and the Moderator shall then announce the vote. When a vote is taken by such ballot, the meeting shall not then be polled under Section 4.

*SECTION 7. ADMISSIBLE MOTIONS DURING DEBATE*

When a question is under debate, no motion shall be received except a motion to adjourn the meeting, to vote by ballot, or by roll call, to lay on the table, to commit or refer, to amend, to postpone to a day certain, to limit or extend the limits of debate, or to postpone indefinitely, or a motion for the previous question, or a motion for leave to withdraw or modify a motion.

*SECTION 8. LIMIT ON SPEAKING*

No town meeting member shall speak upon the same question more than twice, nor more than ten minutes at one time without first obtaining permission of the meeting.

*SECTION 9. ORDER OF ARTICLES*

Articles in the warrant shall be acted upon in their order unless two or more articles relate to the same subject matter, when they may be considered jointly.

*SECTION 10. MOTION TO DISSOLVE MEETING*

No motion to dissolve a town meeting shall be in order until every article in the warrant therefor has been duly considered and acted upon.

*SECTION 11. MOTIONS SUBMITTED IN WRITING*

All motions submitted for the consideration of the meeting involving the expenditure of money, the creation of a debt, or the disposal of town property shall be in writing, except motions to adopt recommendations for the above-mentioned purposes which are contained in a written report. All other motions shall be in writing if required by the Moderator.

*SECTION 12. AMENDMENTS*

No motion or proposition, unless germane to the subject under consideration, shall be admitted under color of amendment.

*SECTION 13. CALL FOR DIVISION OF QUESTION*

Any member may call for a division of a question when the sense will admit it.

*SECTION 14. NON-DEBATABLE MOTIONS*

Motions to adjourn, to lay on the table, to take from the table, to vote by ballot or by roll call for the previous question shall be decided without debate.

*SECTION 15. MOTION TO RECONSIDER*

A motion to reconsider any vote must be made before the final adjournment of the meeting at which the vote was passed; provided, however, that such motion to reconsider shall not be made at an adjourned session of the meeting unless the same member has given notice of intention to make such a motion either at the session of the meeting at which the vote was passed or by written notice to the Town Clerk not more than forty-eight hours after the hour of adjournment of such session and not less than three hours before the hour to which adjournment has been voted. A vote shall not be reconsidered a second time or after a motion to reconsider it has failed to pass.

*SECTION 16. ATTENDANCE RECORD OF MEMBERS*

The Town Clerk shall keep a record of the attendance of Town Meeting members at each session of Town Meeting. Such record shall consist of lists by precinct designation of the names of Town Meeting members present and of those absent, shall be posted on the bulletin board at the Town Administration Building within twenty-four (24) hours from



the time of adjournment or dissolution of a Town Meeting for a period of thirty (30) days thereafter and shall be kept available for public inspection until publication of the next Annual Town Report. The Annual Town Report shall include a record of Town Meeting attendance by the Town Meeting members, including therein, by precinct designation, the names of the members present and the names of the members absent from any session of Town Meeting.

*SECTION 17. DISCLOSURE OF EMPLOYMENT AS AN ATTORNEY*

Any person who is employed as an attorney or who represents another in any matter under discussion at a Town Meeting or before any board or agency of the town shall disclose the fact of his or her employment before speaking thereon.

*SECTION 18. PETITION FOR RECONSIDERATION*

No person shall file a Petition for Reconsideration of any vote of the Town Meeting pursuant to Chapter Two, section 6, of the Town Charter without simultaneously filing with the Select Board a signed statement of financial expenditures incurred in connection therewith. The statement shall enumerate all payments or promises of payment of money or other things of value to any person or persons in consideration for procurement by the latter of signatures for each Petition. Such statement shall be available for examination by any resident of the Town from the time filed until thirty (30) days after the final adjournment of the Town Meeting. No person shall make or promise to make any such payment for an amount based upon the number of signatures obtained.

## ARTICLE III

### TOWN FINANCES

#### *SECTION 1. FISCAL YEAR DESIGNATION*

The financial year shall begin on the first day of July and shall end of the thirtieth day of June.

#### *SECTION 2. MONEY PAID FROM TOWN TREASURY*

No money except state and county taxes and principal and interest of town notes or bonds shall be paid from the town treasury except upon a warrant therefor, signed by the Town Administrator, or in his absence, by a majority of the **Select Board**.

#### *SECTION 3. AUDIT OF TOWN ACCOUNTS*

There shall be an annual audit of the town's accounts under the supervision of the Director of Accounts in the Department of Revenue in accordance with the provisions of Section 35 of Chapter 44 of the General Laws, as amended.

#### *SECTION 4. NO ADDITIONAL COMPENSATION WITHOUT PERMISSION OF SELECT BOARD*

No town officer and no salaried employee of the town or any agent of any such officer or employee, shall receive any compensation or commission for work done by him for the town, except his official salary, and fees allowed by law, without the permission of the **Select Board** expressed in a vote which shall appear on their records with the reason therefore.

#### *SECTION 5. MONEY RECEIVED REPORTED TO SELECT BOARD AND PUBLISHED*

All money received by any town officers or committees, or any person acting for or on behalf of the town, shall upon receipt thereof be paid as provided by the statutes of the Commonwealth; but in all cases, the money so received shall be reported to the **Select Board**, who shall publish the same in the Annual Town Report.

#### *SECTION 6. COLLECTION OF LIABILITIES TO THE TOWN*

Whenever any person incurs any liability to the town on any claim or demand, the department having charge thereof shall forthwith render a bill to said person and give notice in writing to the Collector of Taxes and to the Town Accountant, as to the name of the person liable therefore, his address, the amount and nature of such claim or demand, and all other information pertaining thereto that may assist the collection thereof. Upon receipt of such notice, the Collector of Taxes and the Town Accountant shall make appropriate entries in their respective books relating to such claim or demand. If said claim or demand is not paid within a reasonable time after a bill for the same has been sent, the Collector of Taxes, subject to the approval of the **Select Board**, shall take appropriate steps to collect the same,

and upon payment thereof he shall notify the Town Accountant and the department in charge of the matter and appropriate entries shall be made in their respective books pertaining to it. If any such claim or demand is paid in installments, the Collector of Taxes shall notify the Town Accountant of the receipt of such installment and the entries thereof, shall be made in their respective books.

*SECTION 7. COLLECTION OF WATER BILLS*

The Collector of Taxes shall have the sole authority to collect, receive, sue for all water bills and other sums due for the supply of water service furnished by the Town.

*SECTION 8. MGL CHAPTER 40, SECTION 57, RELATIVE TO GRANTING LICENSES*

Chapter 640 of the Acts of 1985, Commonwealth of Massachusetts, is hereby made a part of the Swampscott General By-Laws. (Adopted 5/5/87) Chapter 640. An Act Relative to the Granting or Renewing of Certain Licenses and Permits in Cities and Towns.

Be it enacted, etc., as follows:

Chapter 40, of the General Laws, as appearing in the 1984 Official Edition, is hereby amended by adding the following section: Section 57. Any city and town which accepts the provisions of this section may by by-law or ordinance deny any application for, or revoke or suspend any local license or permit including renewals and transfers issued by any board, officer, department for any person, corporation or business enterprise who has neglected or refused to pay any local taxes, fees, assessments, betterments or any other municipal charges. Such by-law or ordinances shall provide that:

(a) The tax collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as the tax collector, shall annually, and may periodically, furnish to each department, board, commission or division, hereinafter referred to as the licensing authority, that issues licenses or permits including renewals and transfers, a list of any 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, and that such party has not filed in good faith a pending application for an abatement of such tax 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 tax collector, provided, however, that written notice is given to the party and the tax collector, as required by applicable provisions of law, and the party 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 tax 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 or 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 reissued or renewed until the license authority receives a certificate issued by

the tax collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges, payable to the municipality as the date of 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 said limitations to the license or permit and the validity of said license shall be conditioned upon the satisfactory compliance of 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 **Select Board** may waive such denial, suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined in Section One of Chapter Two Hundred and Sixty-eight in the business or activity conducted in or on said property.

(e) This section shall not apply to the following licenses and permits: open burning; Section Thirteen of Chapter Forty-eight; bicycle permits; Section Eleven A of Chapter Eighty-five; sales of articles for charitable purposes, Section Thirty-three of Chapter One Hundred and One; children work permits, Section Sixty-nine of Chapter One Hundred and Forty-nine; clubs, associations, dispensing food or beverage licenses, Section Twenty-one E of Chapter One Hundred and Forty; dog licenses, Section One Hundred and Thirty-seven of Chapter One Hundred and Forty; fishing, hunting, trapping license, Section Twelve of Chapter One Hundred and Thirty-one; marriage licenses, Section Twenty-eight of Chapter Two Hundred and Seven theatrical events, public exhibition permits, Section One Hundred and Eighty-one of Chapter One Hundred and Forty.

(f) A city or town may exclude any local license or permit from this section by by-law or ordinance.

### *SECTION 9. DUE DATE FOR THE PAYMENT OF MUNICIPAL CHARGES AND BILLS*

The due date for the payment of municipal charges and bills other than taxes shall be 30 days from the date of mailing. Further that the rate of which interest shall accrue if such charges remain unpaid after such due dates shall be at the rate of which interest may be charged on tax bills under the provisions of Section 57 of Chapter 59, MGL. (5/89).

### *SECTION 10. FUNDING OF COLLECTIVE BARGAINING AGREEMENTS*

The Town Meeting shall not empower to fund any collective bargaining agreement not executed and filed in the Town Clerk's Office at least 21 days prior to convening of a regular or special Town Meeting. (5/6/98).

## ARTICLE IV

### DUTIES OF TOWN OFFICERS

#### *SECTION 1. SELECT BOARD'S DUTIES AND RESPONSIBILITIES; TOWN COUNSEL*

(a) The **Select Board** 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. They shall annually appoint an attorney or firm, in good standing before the Massachusetts Bar, as Town Counsel who shall hold office for the term of one year and until a successor is appointed and enters upon the performance of the duties. They 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 therefor shall arise. They may also appoint an Assistant Town Counsel to assist the Town Counsel in the performance of such duties as are hereinafter set forth, as they deem necessary.

(b) The **Select Board** may appoint an attorney who is a member in good standing of the Massachusetts Bar, or a Massachusetts law firm, to serve as Assistant Town Counsel for zoning and planning matters and, further, that said attorney need not be a resident of the Town of Swampscott. (1990).

#### *SECTION 2. DUTIES OF TOWN COUNSEL*

It shall be the duty of the Town Counsel to appear in and conduct the prosecution, defenses or compromise of said claims, actions, and proceedings and the prosecution of actions or proceedings by or on behalf of any town board or officer as such; to conduct proceedings brought by or against the Assessors before the Appellate Tax Board and to assist in the prosecution of said complaints for violation of any by-law of the town, when requested to do so by the board or officer enforcing the same; to conduct the defense of any action or proceedings brought against any town board, officer, or committee as such when the **Select Board**, having determined that any right or interests in the town are or may be involved therein, shall so request; to examine and report upon titles to all lands to be acquired by the town; to prepare or approve contracts, bonds, deeds and other legal instruments in which the town is a party or in which any right or interest of the town is involved; and generally to advise and act for the town boards, officers and committees upon and in legal matters touching the duties of their respective offices. Town Counsel and any special counsel shall make a written report to the **Select Board** concerning the services rendered during the year, which shall be printed in the Annual Town Report.

#### *SECTION 3. TOWN OFFICERS' ANNUAL REPORTS*

All town officers, boards and committees shall make an annual report in writing to the town. Such reports for the previous year shall be printed in the Annual Town Report, and to permit such printing shall be submitted to the Town Administrator no later than January fifth of each year.

*SECTION 4. MINUTES OF MEETINGS OF BOARDS, COMMISSIONS, AND COMMITTEES; ATTENDANCE*

(a) Each appointed board, commission and committee shall file the minutes of its meetings with the Town Clerk in the manner required by Massachusetts General Laws, Chapter 39, Section 23B, and such minutes shall include the names of the members present and absent within 40 days of the scheduled and posted meetings.

(b) The Chairman of such board, commission or committee, or the member thereof designated by the Chairman, shall report in writing to the appointing authority all cases in which a member attends less than 70% of the regular meetings of such board, commission or committee held in one calendar year and/or is absent without just cause from three (3) consecutive regular and/or special meetings. Forthwith thereafter the appointing authority may declare a vacancy on the board, commission or committee involved and appoint a successor to finish the term or task of the absent member. Said record of attendance and the attendance of elected officials shall be published in the Annual Town Report.

*SECTION 5. SELECT BOARD'S DUTY TO MAKE TOWN REPORTS AVAILABLE*

The **Select Board** shall annually, not less than seven days before the annual meeting, have copies of the town report for all citizens at the office of the **Select Board** in the Town Administration Building, 22 Monument Avenue, Swampscott, MA; the Town Clerk shall mail copies of said report, as soon as available, to all Town Meeting members and to other persons who may request same and remit an appropriate fee including postage. (5/88).

*SECTION 6. SELECT BOARD INSURE AGAINST LOSS OR DAMAGE OF ALL INSURABLE PROPERTY*

The **Select Board**, as agents for the town, shall have insured against loss or damage by fire, all insurable property of the town, both real and personal. Each department of the town shall annually on or before the first day of April, render a complete list of all town property, the real and personal under its control to the **Select Board**, together with the description of said property and its estimate of the replacement value thereof. The **Select Board** shall similarly contract for liability insurance on behalf of the town or its employees, as may be authorized by statute and vote of the town.

*SECTION 7. NOTIFICATION OF COMMITTEE MEMBERSHIP*

The Town Clerk shall immediately notify in writing the members of all committees that may be elected or appointed at any town meeting of their membership on the committee and of the nature of the business upon which they are expected to act. The Town Clerk shall also notify department heads, committee chairmen and town officers of all actions of the town pertaining to their respective departments, committees or offices. All appointed committees, commissions or boards shall be for a term of one year unless otherwise specified by the Massachusetts General By-Laws, town by-laws or the appointing authority.

*SECTION 8. SALE OF TOWN PROPERTY NOT EXCEEDING \$500*

Every Board or Officer in charge of a department may, with the written approval of the **Select Board**, sell any personal property or material belonging to the Town not required by said department and not exceeding \$500 in value.

## *SECTION 9. FORMS FOR SUBMITTING ANNUAL BUDGET*

- (a) All boards, department heads, committees and officers of the town shall submit the annual budget for each department on forms approved by the Town Administrator.
- (b) All bills and vouchers submitted to the Town Accountant for payment of any board, department heads, committees and officers shall contain thereon a reference to the section of the standard budget form to which the expenditure shall be charged.

## *SECTION 10. CONTRACTS*

- (a) For all contracts for the purchases or disposition of goods, supplies and or services; and for the constructing, reconstructing, alteration, remodeling, repair or demolition of public buildings or public work, or the disposition of real property will follow the appropriate sections of the General Law of the Commonwealth Chapter 30B, Chapter 30, 39M and/or Chapter 149 or such other laws and/or amendments enacted from time to time by the General Court of the Commonwealth of Massachusetts.

The provisions of this section will be deemed to be complied with when purchasing supplies, materials, goods or services made under the provision of Section 22A and 22B of Chapter 7 of the Massachusetts General Laws when one political sub division, as defined in said sections complies with the provisions of the General Laws so defined, or when purchases are made from a vendor pursuant to a contract with the Commonwealth for the item or items being purchased. (5/96).

- (b) A contract in proper form shall thereupon be prepared and, with the specifications, submitted to the **Select Board**, or, upon delegation by the **Select Board**, to the Town Administrator, and shall not be valid until countersigned by said Board or Administrator. Upon said countersignature, one of the contracts, including the bond, properly executed, together with a copy of the specifications, shall be deposited with the Town Accountant.
- (c) Every contract shall be accompanied by security as defined in the appropriate statutes of the Commonwealth of Massachusetts Chapter 30B, Chapter 30, 39M and/or Chapter 149, or such other laws and/or amendments enacted from time to time by the Great and General Court of the Commonwealth of Massachusetts. (5/96).

## *SECTION 11. ENGINEERING SERVICES*

The engineering services of the Town shall be under the jurisdiction of the Director of Public Works who shall serve as the Town Engineer unless another person shall be appointed Town Engineer. The Town Engineer shall have charge of all engineering pertaining to the town and who shall preserve, arrange and index all plans, surveys, field notes, records, documents and other information relating to the engineering work of the Town so that the same may be readily accessible for public use. The Town Engineer shall furnish proper lines and grades whenever public ways or sidewalks are being constructed or repaired. No water pipes shall be laid in any street or way, nor shall any other public work be done in or upon the same, nor shall any such street or way be accepted by the Town until such street or way has been built in conformity with the plan duly approved by the Planning Board and on file in the office of the Town Engineer.

*SECTION 12. ADDRESS NUMBERING – SPECIFICATIONS AND FINES*

- (a) The Town Engineer 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 be at all times on file in his office.
- (b) It shall be the duty of every owner and/or occupant of each house; building and/or other structure within the town of Swampscott to place thereon the number of said house, building or structure.
- (c) The size, color, location and visibility of said numbers shall be as follows:
  - 1. The minimum height of said number shall be three and one-half (3-1/2) inches in height.
  - 2. In order to be visible from the road, street or way, the number(s) shall be of a contrasting color from the background onto which it is placed.
  - 3. The number(s) shall be affixed to the front door, or as close to the front door as possible; or if the front door does not face the road, street or way, such number(s) shall be affixed in a manner to be easily read from such road, street or way.
- (d) Where there are multiple houses, buildings or structures, located off the road on private ways, roads or lanes, the number(s) shall be placed at the following locations:
  - 1. The number(s) shall be affixed to a post at the entrance to said private way, road or lane;
  - 2. If the house, building or structure is so far off the public way causing the numbers to be unidentifiable, a post with the number(s) affixed thereto shall also be placed at the entrance to the driveway leading to the house, building or structure.
- (e) Any person, firm or corporation found not to be in compliance with the provisions of this section, shall be liable to pay a fine not to exceed twenty (\$20.00) dollars for each violation. A separate offense shall be deemed committed to one each day during or on which a violation occurs or continues. All building, fire, electrical, or health inspectors or their designees, in addition to the police department, shall be enforcing officers for the provisions of this section. (5/5/97).

*SECTION 13. TOWN OFFICERS REQUIRED TO TRANSMIT DESCRIPTION OF PAYMENT/FEES*

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 fees received by any such officer by virtue of his office. The listing, description and payment of such fees shall be transmitted to the Town Treasurer within thirty days of receipt of any such fee by any such officer.

*SECTION 14. DIRECTOR OF VETERAN SERVICES*

The Director of Veterans' Services shall be an ex-officio member of all committees concerned with the proper commemoration of the services of Swampscott Veterans of all wars.



*SECTION 15. TOWN EMPLOYEE PHYSICAL EXAMINATIONS*

Every person to be employed by the town in a position included in the retirement system shall first pass a physical examination before becoming an employee. Such examination shall be to the extent required by the Retirement Board and shall be made by a physician designated by said Board, and the cost of the same shall be paid by the town from the same source from which the compensation of the employees is payable, provided, however, that this shall not apply to persons hired for emergency or temporary purposes.

*SECTION 16. TOWN PROPERTY DISPOSAL REQUIREMENTS*

(a) No real property or interest therein, held in the name of the Town, shall be conveyed, abandoned or otherwise disposed of unless authorized by a two-thirds vote of the Town Meeting.

(b) Notice that a Town Meeting warrant article will propose disposition of town property under section 17. (a) of this by-law shall be published in a newspaper in the local area not less than fourteen days prior to the Town Meeting at which such article shall be acted upon.

(c) The disposition of Town Property under this by-law is governed by the procedures contained in Massachusetts General Laws Chapter 30B.

(d) The use of the proceeds resulting from the disposition of Town Property under this by-law is governed by Massachusetts General Laws Chapter 44 section 63.

*SECTION 17. CAPITAL IMPROVEMENTS COMMITTEE*

(a) The Town Moderator shall establish and appoint a committee to be known as the Capital Improvement Committee, composed of five (5) voters who are residents of the Town for a term of three (3) years each, the terms of no more than two (2) of which shall expire in any one year. The Town Administrator shall be an ex-officio, non-voting member of the Committee. The Town Moderator may also appoint one other ex-officio non-voting member to the Committee. On or before the first day of July in each year the Moderator shall appoint to the Committee one (1) or two (2) members (as the case may be) to serve until the final adjournment of the Annual Town Meeting in the third year thereafter, and until his/her successor is appointed, who shall serve for the unexpired term of his/her predecessor. If any member of the Committee ceases to be a resident and/or voter of the Town, he/she shall forthwith cease to be a member of the Committee. The Committee shall choose its own officers.

(b) The Committee shall study articles for proposed capital projects and improvements involving major non-recurring tangible assets and projects which 1) are purchased or undertaken at intervals of not less than three (3) years; 2) have a useful life of at least three (3) years and 3) cost over \$20,000. All officers, boards, departments, and committees, including the Select Board and School Committee shall, by December 31 of each year, give to the Committee, on forms prepared by it, information concerning all anticipated projects requiring Town Meeting action during the ensuing six (6) years including all capital improvement article requests for the Annual Town Meeting. The Committee shall consider the relative need, impact, timing and cost of these expenditures and the effect each will have on the financial position of the Town.

No appropriation shall be voted for a capital improvement requested by a department, board or commission, unless the proposed capital improvement has been submitted to the Committee for consideration. The Committee shall report its findings to the Finance Committee as part of the Finance Committee's budget deliberations.

(c) The Committee shall prepare an annual report recommending a Capital Improvement budget for the next fiscal year, and a Capital Improvement Program including recommended capital improvements for the following five fiscal years. The report shall be submitted to the Town Meeting for its consideration and approval. The Board shall submit its approved Capital Budget to the Annual Town Meeting for adoption by the Town, or take any action relative thereto. (Adopted 5/92).

*SECTION 18. SUPERINTENDENT OF SCHOOLS AND TOWN ADMINISTRATOR  
PROVIDE REVENUE AND EXPENSE REPORT*

The Superintendent of Schools and the Town Administrator shall provide to the Town Clerk, within 30 days of the end of each quarter, a consolidated year-to-date revenue and expenditure report against budget. The Town Clerk shall make the reports available to Town residents in a manner the Town Clerk deems appropriate. (Adopted 5/06)

# ARTICLE V

## STREETS AND SIDEWALKS

### *SECTION 1. DRIVING ON A SIDEWALK*

No person shall drive, wheel, propel or draw along any sidewalk a vehicle, except children's carriages or sleds or carriers used by postal workers in the delivery of mail or snow plowing equipment.

### *SECTION 2. EXCAVATION OF A PUBLIC STREET OR WAY*

No persons except employees in the Department of Public Works in the lawful performance of their duties shall make or cause to be made any excavation in a public street or way, for any purpose whatever, without having first obtained written permission from the Director of Public Works. When an excavation is made in a street for any purpose, the person or persons by whom or for whom such excavation has been made, shall cause a rail or other sufficient fence to be placed so as to enclose such excavation and the dirt, gravel or other material thrown there from, and such fence shall be maintained the whole time that such excavation continues.

Such fence, excavation, and material excavated shall be lighted by a lantern, lanterns or other proper and sufficient light, from the beginning of twilight throughout the whole of every night during the entire time that such excavation or obstruction exists.

### *SECTION 3. EXCAVATION AND TRENCH SAFETY*

For the purposes of complying with, and setting policies relative to, 520 Code of Massachusetts Regulations 14.00, Excavation and Trench Safety, the trench permitting authority for the town will be the Director of Public Works or his designee.

### *SECTION 4. OBSTRUCTIONS ON PUBLIC STREETS AND SIDEWALKS*

(a) No person shall obstruct a public street or sidewalk by placing or causing to be placed therein any article, including snow, or anything whatsoever and suffer the same to remain in such position, without first having obtained written permission from the **Select Board** or their designee.

(b) Tent signs may be placed with the permission of the **Select Board** on public sidewalks so as not to obstruct or impede pedestrian traffic and will be promptly removed after the advertised event. These tent signs will be restricted to a size of 30 inches by 28 inches. (5/93)

(c) The owner or any other person having the care of any building or lot of land abutting upon any street or public place within the Town where there is a sidewalk, shall clear sidewalks and any abutting curb cuts or ramps of snow and ice a minimum of 3 feet in width within 24 hours after the snow ceases to fall for residential properties and within 12 hours after the snow ceases to fall for non-residential properties. If the sidewalk becomes covered with ice that cannot be readily removed, the owner shall place sand, salt or similar material on the sidewalk so as to render it safe for pedestrians.... (5/19)

(d) No person shall lay, throw, or place or cause to be placed any snow or ice on any portion of any street or sidewalk within the Town, which has been cleared or plowed for travel. No snow shall be plowed across any public way by any private plow to deposit snow from one property to another. No snow shall be deposited in such a way as to obstruct the operation of any fire hydrant, including Fire Department connections to buildings, cisterns and dry hydrants.

(e) This bylaw shall be enforceable through the non-criminal disposition procedure provided for in Article XII of the Town's General Bylaws, and/or Article XXIV, Administration of Fines for Certain Violations. The penalty for violation shall be:

First offense: warning

Second and subsequent offenses: \$50.00

The Swampscott Police Department shall be authorized to enforce this bylaw.

(f) The **Select Board** may promulgate regulations to implement this bylaw. Waivers shall be available for disabled, elderly and others with special needs or circumstances as promulgated by the **Select Board**.

(g) To the extent that any particular provision of this bylaw is determined to be invalid, such invalidation shall not affect the validity of any other provision.

#### *SECTION 5. REMOVAL OF A VEHICLE IMPEDING SNOW REMOVAL*

Any vehicle on a public way in the town interfering with the work of removing or plowing snow, or removing ice there from, may be removed by or under the direction of the Director of Public Works to a public garage or any convenient place. The Director of Public Works shall, within a reasonable time, notify the Chief of Police of the removal of any such vehicle and of the place to which it has been removed and the Chief of Police or his designee shall give like notice to the registered owner of the vehicle. The owner, before being permitted to remove the vehicle, shall establish his right to do so and pay to the town or the keeper of the place of storage, the cost of removal and any storage fees.

#### *SECTION 6. DISORDERLY PERSONS/LOITERING*

No person shall behave himself in a disorderly manner, in any street, lane, beach, alley or public place in the town, or near any dwelling house or other building therein; or upon any door step, portico or other projections from any building to the annoyance or disturbance of any person. No person with one or more other persons shall stand or loiter in a group on any sidewalk, in a public street, or in any public place in the town in such manner as to obstruct the free passage of foot travelers or , and may, after a request to move on made by any police officer.

#### *SECTION 7. DISCHARGE OF WATER ONTO SIDEWALKS*

No water from any conductor, gutter or pipe, shall be allowed to discharge on any sidewalk in the town in such manner as to flow over the sidewalk. The penalty shall not be less than \$50.00 per day.

*SECTION 8. DISCHARGE OF FIREARMS*

(a) No person shall fire or discharge a gun or firearm on any public street of the town, except to a military exercise or review duly authorized by the military authorities of the Commonwealth, or on such occasion as the Select Board shall specially permit, or in the lawful defense of his person. This by-law shall not apply to the action of any law enforcement officer in execution of his duties. Any person in violation of this by-law shall be subject to a fine of not less than \$200.00 for each such offense.

(b) No person while on private property shall lawfully discharge a firearm without consent of the owner unless the use and discharge of such firearm is for the lawful defense of the life or property of the person so using and discharging such firearm; provided, however, that this by-law shall not apply to the action of any law enforcement officer in the execution of his duties. Any person violating this by-law shall be subject to a fine not less than \$200 per offense.

*SECTION 9. ARTICLES LEFT ON STREET, WAY OR SIDEWALK OVERNIGHT*

No person for any cause, shall leave any wagon, cart, boat, trailer or any unregistered vehicle, wood, coal or other articles in any street, way or sidewalk, and suffer the same to remain overnight, without maintaining a sufficient light over or near the same throughout the night.

*SECTION 10. DEPOSIT OF TRASH, ETC., ON PUBLIC STREET OR SIDEWALK*

No person, unless by leave of the officers of the town having charge of the repairs of highways, shall throw or deposit in any street or on any sidewalk, any ashes, dirt, rubbish or filth of any kind, or any animal or vegetable substance. The penalty shall not be less than \$50.00 per day.

*SECTION 11. DUMPING IN CATCH BASINS*

No person shall put or cause to be put in any catch basin in any roadway or street, any filth, sewage, slops or dirty water. The penalty shall not be less than \$50.00 per day.

*SECTION 12. TRANSPORTATION OF DIRT, SOIL, ETC.*

Any vehicle, truck or trailer transporting dirt, soil, sand, small pebbles or stones, leaves, rubbish, debris or gravel on any town way or way to which the public has access, must have the load properly covered.

*SECTION 13. GAMES ON STREETS AND SIDEWALKS*

No person shall play at any game in which a ball or puck is used or shoot with bow and arrow or throw stones or other missiles in any street or on any sidewalk within the town.

*SECTION 14. DOOR TO DOOR SALES*

No person, either by himself or by his employees, traveling either by foot, wagon, automobile, motor truck or any other type of conveyance, from place to place, from house to house, street to street, taking or attempting to take orders

for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether such person has, carries or exposes for sale, a sample of the subject of such sale or whether he is collecting advance payments on such sales or not, within the corporate limits of the Town of Swampscott shall do so without first registering his or her name and residence with the Chief of Police, and receiving a record number and identification card from the said Chief of Police and concurrently registering with the **Select Board**. Said person shall be subject to the rules and regulations as are established, and as amended from time to time, by the said Board entitled the "Regulations for Hawkers and Peddlers."

## *SECTION 15. DOGS*

(a) **NO DOGS AT LARGE:** No person owning, harboring, or having custody and control of a dog shall permit such dog to be at large in the Town of Swampscott, elsewhere than on the premises of the owner, except it be on the premises of another person with the knowledge and assent of such other person.

(b) **DUTY TO CONTROL OR RESTRAIN:** Any dog elsewhere shall at all times (24 hours a day) be controlled or restrained by any chain or leash and be under the direct control and supervision of its owner or his designee. **Violations of this paragraph of the Bylaw shall be subject to a fine of \$100 per offense.**

(c) **DOGS ON PUBLIC BEACHES:** Dogs are allowed on public beaches for the purpose of exercise and play only between October 1 and May 20 and the following restrictions apply; Dogs must be accompanied by the owner/keeper at all times. Dogs must be leashed to and from the high-water mark. From the high-water mark to the water's edge dogs may be off the leash, but under direct control and supervision of the owner/keeper. The pooper/scooper by-law will apply to the water's edge. Seeing eye and hearing assist dogs are exempt. The owner/keeper will be responsible for the behavior and actions of the dog. Public safety and the safety and well-being of other dogs will be observed at all times. Harassment of wildlife is forbidden. Any dog deemed a nuisance, safety or health hazard by the Animal Control Officer will be barred from all public beaches. Any owner/keeper who willfully returns a dog to any public beach for any purpose that has been previously barred will be fined by the Animal Control Officer. Fines established for violation of this by-law are as follows: first offense, \$25.00; second and subsequent offense, \$50.00. Signs shall be erected on all public beaches of the Town of Swampscott stating "NO DOGS ALLOWED ON BEACHES BETWEEN MAY 20 AND OCTOBER 1"

**(d) DOGS ON PUBLIC PROPERTY:** For all Town-owned properties not addressed in Section (c) of this Bylaw, the Board of Health may enact regulations relating to dogs on Town-owned land, which may include, but are not limited to, restricting or prohibiting dogs on certain properties at certain times; provided, however, that no such prohibition or restriction shall apply to service animals performing tasks for persons with disabilities as defined in the Americans with Disabilities Act.

(e) **DUTY TO DISPOSE:** It shall be the duty of each person who owns, possesses or controls a dog to remove and dispose of any feces left by his/her dog on any sidewalk, street, park, public areas or private property of another. **The Board of Health may enact regulations to effectuate the purposes of this Bylaw. Said regulations may include a schedule of fines for implementing this Section. A copy of said regulations shall be filed with the office of the Town Clerk.**

(f) DUTY TO POSSESS MEANS OF REMOVAL: No person who owns, possess or controls such dog shall appear with such dog on any sidewalk, street, park, public area or private property of another without the means of removal of any feces left by such dog.

(g) METHOD OF REMOVAL AND DISPOSAL: For the purposes of this regulation the means of removal shall be any tool, implement or other device carried for the purpose of picking up and containing such feces, unexposed to said person or the public. Disposal shall be accomplished by transporting such feces to a place suitable and regularly reserved for the disposal of human feces or specifically reserved for the disposal of canine feces, and so disposing of said feces.

(h) FINES FOR VIOLATION: **Unless otherwise specified herein**, fines for violations of this by-law, in accordance with Massachusetts General Laws Chapter 140, is \$50.00 per offense. (2000)

(i) EXEMPTION: This **Bylaw** shall not apply to **service animals performing tasks for persons with disabilities as defined in the Americans with Disabilities Act**. (5/19)

(j) SEVERABILITY: The provisions of this section are severable and if any of the provisions of this section shall be held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

(k) EXCESSIVE BARKING: It shall be unlawful for any dog owner to allow excessive, complaint provoking barking on the part of the dog. Violations of this by-law shall subject the dog owner to a \$25.00 for the first offense and a fine of \$50.00 for each subsequent offense.

(l) DOG LICENSING FEES: Notwithstanding the provisions of MGLA Chapter 140, Section 137 or any other provision of law to the contrary, the annual fees to be charged by the Town of Swampscott for the issuance of licenses for dogs shall be:

- Neutered males or spayed females.....\$10.00
- Male or females .....\$25.00
- Kennel License .....\$50.00 (2000)

Further, should any owner or keeper of a dog fail to license that dog before December 31 (or the first business day after December 31), that owner or keeper shall pay a late fee of \$5.00 before obtaining said license, excepting a dog brought into Town as provided in Section 138 of Chapter 140, MGLA. (5/89) (Amended 5/04)

(m) FINES FOR PICKING UP AND TRANSPORTING UNLICENSED DOGS: A fine of \$50.00 per day is established for any owner of an unlicensed dog not accompanied by the owner that has to be picked up by the Animal Control Officer and transported to the animal hospital and/or kennel. (5/93)

*SECTION 16. VEHICLE PARKING, PRIVATE WAYS AND PROPERTY*

- (a) It shall be unlawful to obstruct or park a vehicle so as to block a private way from access for fire apparatus to any building.
- (b) It shall be unlawful to obstruct or park a vehicle in any fire lane hereby established and adopted as part of the Town of Swampscott Fire Prevention Code, Section 28.16, said fire lane to be a distance of not less than twenty (20) feet from the curbing of a sidewalk in a shopping center, theater, residential complex, health center, school, and public buildings or similar locations, said lanes to be marked at said locations.
- (c) It shall be unlawful to obstruct or park a vehicle in any parking space designated as reserved for vehicles owned and operated by disabled veterans or handicapped persons.
- (d) Any object or vehicle blocking or so parked as to obstruct any fire lane, any parking space reserved or designated for disabled veterans or handicapped persons, or any private way in violation of Section (a), (b) or (c) of this by-law may be removed or towed by the town at the expense of the owner and without liability to the town.
- (e) Any person whether he be the owner or operator of any vehicle involved in a violation of either Section (a), (b) or (c) of this by-law and for being found guilty by a court having jurisdiction thereof shall be subject to the fine established by the **Select Board** pursuant to Massachusetts General Laws.
- (f) Subject to established parking regulations, overnight parking of registered motor vehicles is permitted on all public roads at any time during the year, and overnight parking is permitted in designated off-street public parking areas, but only in accordance with rules to accommodate day-time uses of said off-street parking areas. Except that, any permitted parking may be prohibited in accordance with other provisions of these bylaws, when necessary to allow fire and police personnel to carry out their lawful duties; and, during declared snow events.

A snow event is declared when blue lights located throughout the town on street poles are blinking; when notification is sent to all households through the town's automatic telephone call system; and/or when official announcements are made through major media outlets. The town may remove any vehicle impeding snow removal in accordance with Article V, Section 5 of these bylaws.

*SECTION 17. WEAPONS WITH BLADES*

No person, except as provided by law, shall carry on his person or have under his control in a vehicle, any saber, sword or weapon of like or similar nature; and knife having any type of blade in excess of 2.5 inches or other object or tool so redesigned, fashioned, prepared or treated that the same may be used to inflict bodily harm or other injury to another, except those persons actually engaged in hunting or fishing or employment which requires the use of a knife with a blade in excess of 2.5 inches, and while going directly to and/or returning directly from such activities.

Any person found in the act of violating this section may be arrested without a warrant by any officer authorized to serve criminal process, and shall be punished by a fine of not more than \$50 upon conviction.



*SECTION 18. TEMPORARY REPAIRS OF PRIVATE WAYS*

The Town will make temporary repairs of private ways and such temporary repairs shall be made to the following extent and conditions:

- (a) Minor repairs, to include minor paving, patching and regrading for drainage shall be at the discretion of the Director of Public Works.
- (b) Repairs must be required by public necessity
- (c) Betterment charges shall be assessed for said repairs to be determined by the Director of Public Works
- (d) The Town accepts no liability on account of damages caused by such repairs
- (e) A cash deposit shall be required for said repairs at the discretion of the Director of Public Works.

*SECTION 19. CONSUMPTION OF ALCOHOLIC BEVERAGES IN PUBLIC*

- (a) No person shall have in his possession alcoholic beverages as defined in Chapter 138, Section 1 of the Massachusetts General Laws., on any public playground, public school yard, public beach or public park.
- (b) No person shall consume alcoholic beverages as defined above, on any sidewalk, a public way or any way to which the public has the right of access or any place to which the public has access as invitees or license, beach or any town owned property without written approval of the Board or Committee having charge of such premises or property and no person shall have in his or her possession any alcoholic beverage where he or she is a trespasser.
- (c) No person other than those employed on the premises, a police officer, a municipal employee in the course of his employment or a person engaged in a proper purpose associated with the property shall drive or operate a motor vehicle as defined in Chapter 90, Section 1 of the Massachusetts General Laws or in any public playground, public school yard, public beach or any town owned property.
- (d) Any person found in the act of violating this section may be arrested without a warrant.

# ARTICLE VI

## JUNK DEALERS, PAWNBROKERS AND DEALERS IN SECOND-HAND ARTICLES

### *SECTION 1. PAWN BROKER LICENSE*

No person shall carry on the business of pawnbroker, or dealer in, or keeper of a shop for the purchase, sale or barter of junk, old metals or second-hand articles in the town, unless he is duly licensed therefore by the **Select Board**.

### *SECTION 2. LICENSE TO PURCHASE JUNK OR METAL*

No person shall engage in buying or collecting junk or old metal or second-hand articles, from place to place within the town unless he is duly licensed therefore by the **Select Board**.

### *SECTION 3. PAWN SHOP RECORDS*

Every keeper of such shop shall keep a book in which he shall record the time of receiving any article as a pawn or purchasing any article, a description of the same, the name, age and residence of the person from whom and the day and hour when he received or purchased it, and the book shall at all times be open to the inspection of the **Select Board** and any person by them respectively authorized to make such inspection including any member of the Swampscott Police Department. The person from whom the article is received or purchased shall be photographed and that photograph shall be retained in said record book. At the time of the transaction positive identification shall be required in the form of a picture identification card issued by a government agency. Keeping a photocopy of that picture identification with the record of the transaction shall satisfy the requirement that a photograph be retained. A legible and correct list containing an accurate description, including all distinguishable marks and numbers of all articles taken in shall be delivered to the Chief of Police or his designee every month on the first business day before 10:00 a.m.

### *SECTION 4. WAITING PERIOD FOR SALE OF ARTICLES*

No article received as a result of barter or purchase shall be sold until a period of at least two weeks from the date of purchase or receipt of the same shall have elapsed. Articles deposited in pawn with a licensed pawnbroker shall, unless redeemed, be retained on the premises for at least four months after the date of deposit after which he may sell the article at public auction, apply the proceeds thereof in satisfaction of the debt or demand and the expense of the notice and sale, and pay any surplus to the person entitled thereto on demand. No such sale of any article deposited in pawn shall be made unless, not less than ten days prior to the sale, written notice of the intended sale shall have been sent by certified mail to the person entitled to payment of any surplus, addressed to his residence as appearing on the records of such pawnbroker. Proof of certified mail shall be kept on file for one year after the date of sale.

### *SECTION 5. PAWN SHOP PURCHASES FROM MINORS*

No keeper of a shop for the purchase, sale, or barter of junk, old metals or second-hand articles, and no junk collector shall directly or indirectly receive by way of barter or exchange, any articles aforesaid, or purchase any said article from any minor, knowing or having reason to believe him to be such.

*SECTION 6. INSPECTION OF SHOP AND ARTICLES BY SELECT BOARD*

Every such shop and all articles of merchandise therein, shall be exhibited to the Select Board, or to any member of said board, or to any person respectively authorized by said board or any member thereof to examine such shop or articles of merchandise, whenever a demand is made by any of them for such exhibition.

## ARTICLE VII

### CEMETERIES

#### *SECTION 1. MANAGEMENT BY THE DEPARTMENT OF PUBLIC WORKS*

The Department of Public Works shall have the care, superintendence and management of the public cemeteries in the town and may make rules and regulations concerning the same which the Board of Health is not authorized by law to make, and which are not repugnant to any law of the Commonwealth or in contravention of any vote of the town. All moneys raised by the town or appropriated for the care, improvement, or embellishment of said public cemeteries, shall be expended by the Board of Public Works.

#### *SECTION 2. PUBLIC BURIAL SPACE*

The Department of Public Works shall keep set apart and reserved, a sufficient portion of the cemetery as a public burial place for the use of the inhabitants of Swampscott, free of charge and may also lay out any portion in said cemetery in suitable lots or other subdivisions for family or other burial places, with all necessary paths and avenues, in conformity with the plans heretofore adopted by the town; may plant and embellish the same with trees, shrubs and flowers, and other rural ornaments; shall keep the said cemetery suitably enclosed by a wall or fence; shall maintain in good repair a receiving tomb, and may cause to be erected such other structures as may be necessary or convenient for the use of the cemetery.

#### *SECTION 3. DEEDS FOR RIGHTS OF BURIAL*

The Director of Public Works shall have the authority to grant and convey to any person or persons by deed or certificate duly executed in the name of the Town of Swampscott, the sole and exclusive right of a burial, and of erecting tombs, cenotaphs and other monuments in any of the designated lots or subdivisions of the cemetery. Such deeds or certificates shall be recorded in a book kept for that purpose in the office of the Town Clerk.

#### *SECTION 4. PERPETUAL CARE FUND*

Any funds, moneys, or securities contributed for the use of said cemetery or burial lot therein, shall be paid to the Town Treasurer, unless otherwise provided by law, to be kept by him separate and apart from other funds of the town, and subject to the order of the Department of Public Works. Such proceeds shall be used for no other purpose than the care, improvement and embellishment of said cemetery, and any balance remaining at the end of any financial year over and above the annual expenditures may be invested by the Department of Public Works as a "Perpetual Care Fund", the income of which shall be applied solely to the care of said cemetery. A detailed account of the receipts and expenditures and of the investments of the fund shall be included in the Annual Report.

#### *SECTION 5. DEPARTMENT OF PUBLIC WORKS DUTIES AND RECORD KEEPING*

It shall be the duty of the Department of Public Works to have entire control of the town tomb, and superintend all interments in the cemetery, keeping accurate record of same.

# ARTICLE VIII

## EMERGENCY MANAGEMENT

### *SECTION 1. DEPARTMENT OF EMERGENCY MANAGEMENT*

There is hereby established a Department of Emergency Management (hereinafter called the "department"). It shall be the function of the department to have charge of emergency management and civil defense as defined in Section 1, Chapter 639, Acts of 1950 and to perform emergency management and civil defense functions as authorized or directed by said chapter or by any and all executive orders or general regulations promulgated hereunder, and to exercise any authority delegated to it by the governor under said Chapter 639.

### *SECTION 2. DIRECTOR OF EMERGENCY MANAGEMENT*

The department shall be under the direction of an Emergency Management Director (hereinafter called the "director") who shall be appointed as prescribed by law. The director shall have direct responsibility for the organization, administration and operation of the department, subject to the direction and control of the appointing authority. The director may, within the limits of the amount appropriated therefore, appoint such experts, clerks and other assistants as the work of the department may require and remove them, and may make such expenditures as may be necessary to execute effectively the purposes of Chapter 639, Acts of 1950.

The director shall also have authority to appoint district coordinators and may accept and may receive, on behalf of the town, services, equipment, supplies, materials or funds by way of gift, grant or loan, for purposes of emergency management and civil defense, offered by the federal government or any agency or officer thereof or any person, firm or corporation, subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer. The director shall cause appropriate records to be kept of all matters relating to such gifts, grants or loans.

### *SECTION 3. EMERGENCY MANAGEMENT ADVISORY COUNCIL*

There is hereby established an Emergency Management Advisory Council (hereinafter called the "council"). Said council shall serve without pay and shall consist of the Emergency Management Director, such other department heads and such other persons as the authority appointing said director may deem necessary. Such member of said council as said appointing authority shall designate shall serve as chairman of said council. Said council shall serve subject to the direction and control of the appointing authority and shall advise said appointing authority and the director on matters pertaining to emergency management and civil defense.

### *SECTION 4. POLICE AID TO OTHER CITIES AND TOWNS*

The Police Department is hereby authorized to go to aid another city or town at the request of said city or town in the suppression of riots or other forms of violence therein.

*SECTION 5.           TERMINATION OF BY-LAW*

This by-law shall remain in force during the effective period of Chapter 639, Acts of 1950 and any act in amendment or continuation thereof or substitution therefore.

*SECTION 6.           DEFINITION*

All reference to Chapter 639, Acts of 1950, as now in force, shall be applicable to any act or acts in amendment or continuation of or substitution for said Chapter 639.

# ARTICLE IX

## USES OF LAND

### *SECTION 1. BARRIERS AROUND EXCAVATED SITES*

The owners of land which has been excavated shall erect barriers or take other suitable measures within five (5) days after the Director of Public Works has notified them in writing that such excavation constitutes a hazard to the safety of the public. Any person violating this by-law shall be subject to the payment to the town of a fine not to exceed \$200 for each such offense.

### *SECTION 2. REMOVAL OF SOIL, LOAM, SAND OR GRAVEL*

The removal of soil, loam, sand or gravel from land not in public use in any of the residential districts of the town, as defined and shown on the Town Zoning Map, is prohibited, except in cases of excavation preparatory to immediate construction or alteration of the residential property or, for the removal of less than 600 cubic yards of said materials, upon application to and with express permission from the Building Inspector, subject to appeal to the Zoning Board of Appeals. Any person violating the provisions of this by-law shall be subject to a penalty of payment to the town of a \$50.00 fine for the first offense, \$100.00 fine for the second offense and \$200.00 fine for each subsequent offense.

### *SECTION 3. TRIMMING OR CUTTING DOWN OF TREES*

No person shall be permitted to either cut down or trim any tree which is situated in or within an unaccepted way which is open to public use without first obtaining permission from the Conservation Commission and the Department of Public Works. Any action taken by the Commission and the Department shall be final. (Adopted 5/91)

### *SECTION 4. THE PRESERVATION OF HISTORICALLY SIGNIFICANT BUILDINGS*

#### (a) INTENT AND PURPOSE

This by-law is enacted for the purpose of preserving and protecting significant buildings within the Town of Swampscott that constitute or reflect distinctive features of the architectural, cultural, economic, political or social history of the town and to limit the detrimental effect of demolition on the character of the town. Through this bylaw, owners of preferably preserved buildings are encouraged to seek out alternative options that will preserve, rehabilitate or restore such buildings and residents of the town are alerted to impending demolitions of significant buildings. By preserving and protecting significant buildings, streetscapes and neighborhoods, this bylaw promotes the public welfare by making the town a more attractive and desirable place in which to live and work. To achieve these purposes the Historical Commission is authorized to advise the Building Inspector with respect to demolition permit applications. The issuance of demolition permits is regulated as provided by this by-law.

#### (b) DEFINITIONS

For the purposes of this by-law, the following words and phrases shall have the meanings set forth below:

1. APPLICANT - Any person or entity who files an application for a building permit involving the demolition of a building or structure as further defined herein. If the applicant is not the owner of the premises upon which the building is situated, the owner must indicate on or with the application his/her assent to the filing of the application.
2. APPLICATION - An application for a building permit involving the demolition of a building or structure as defined herein..
3. BOARD OF SURVEY - the board that is ordered to respond under Massachusetts General Laws Chapter 143 Section 8, when an owner of a building or structure fail to take action on a notice that the building or structure is unsafe. The board shall consist of the Town Engineer, the Fire Chief, and one disinterested person to be appointed by the Building Inspector.
4. BUILDING - Any combination of materials forming a shelter for persons, animals, or property.
5. BUILDING INSPECTOR - The person occupying the office of Building Inspector or otherwise authorized to issue demolition permits.
6. BUSINESS DAY - a day that is not a Saturday, Sunday or a recognized municipal or federal holiday.
7. CHAIRPERSON - the head of the Commission, the person performing the functions of the chairperson in the event that no one holds that title, or any other person to whom the chairperson has delegated authority to act according to this ordinance.
8. COMMISSION - The Swampscott Historical Commission or its designee.
9. DEMOLITION - Any act of pulling down, destroying, removing, dismantling or razing a building or any part thereof, including but not necessarily limited to commencing the work of total or substantial destruction with the intent of completion of the same. Demolition shall also include significantly altering the shape of the roof, or removal of significantly integral components of the building or structure such as a turret. For purposes of this section, the term “demolition” shall not include the ordinary maintenance or repair of any building or structure, interior renovations, or removal or demolition of any ancillary portion of a structure such as porches, decks, windows, etc...provided that in the instance of demolition of said ancillary portions for the purpose of repair or replacement, said repair or replacement shall be done using like-kind or better materials which determination shall be made by the Inspector of Buildings.
10. DEMOLITION PERMIT - Any permit issued by the Building Inspector, which authorizes the demolition of a building, as defined herein, excluding a building permit issued solely for the demolition of the interior of a building.
11. FINAL DETERMINATION - a decision made by the Commission in accordance with Section (d) 3.C.



of this chapter.

12. INITIAL DETERMINATION - any determination made by the Commission in accordance with Section (d) 3.A. of this chapter.
13. OWNER - the person with legal title to a building or structure. Where the term "owner" is used, it shall include the owner's legally authorized representative.
14. PERSON - a private individual, firm, corporation, partnership, association, trust or society.
15. PREFERABLY PRESERVED - Any significant building which the Commission determines, following a public hearing, that it is in the public interest to be preserved rather than demolished. A preferably preserved building is subject to the nine-month demolition delay review period of this bylaw.
16. SIGNIFICANT BUILDING OR STRUCTURE - Any building or structure within the town which is in whole or in part seventy-five years or more old (at the time of the request for the demolition permit) and which:
  - a. Is-listed on, or is within an area listed on, the National Register of Historic Places; or which is the subject of a pending application for listing on the National Register, or
  - b. Is or has been designated by the Commission to be eligible as a significant building or structure after a factual finding that the building or structure is either:
    - i. Importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic or social history of the Town of Swampscott or the Commonwealth of Massachusetts; or
    - ii. Historically or architecturally significant (in terms of period, style, method of building or construction, or association with a reputed architect or builder) either by itself or in the context of a group of buildings or structures, or
    - iii. Listed in the Swampscott Historical Commission Survey, originally published in 1986, as periodically amended. A copy is available for review at Town Hall and the Swampscott Public Library.

and therefore it is in the public interest to be preserved or rehabilitated rather than to be demolished. The Commission shall make its determinations using industry standard historical guidelines whenever applicable.

- c. With the exception of a structure which can be classified under 16(a) above additions, outbuildings or other structures relating to the significant building, that are less than 75 years

old are exempted from this by-law, with sufficient documented proof of age as determined by the Inspector of Buildings.

In determining the age of a building and/or structure, the Inspector of Buildings shall use the Town Accessors database and/or MACRIS. In instances where there is a discrepancy between the Accessor's database and MACRIS, MACRIS shall prevail.

17. STRUCTURE - any constructed, erected, or placed material or combination of materials in or upon the ground, excluding sidewalks and paving on streets, driveways, parking areas, and patios.
18. VOLUNTARILY - any act(s) done by design or intention, which is proposed, intended, or not accidental.

(c) COMPUTATION OF TIME

For the purposes of computing any period of time regarding the demolition review process, excluding age of the building or structure, the day of the act after which the designated period of time begins to run is excluded: The last day shall be included, unless it is a Saturday, Sunday, or municipal or federal holiday, in which case, the period runs to the next business day.

For the purpose of calculating the age of a building or structure, any point on a calendar year shall be counted as a complete year; e.g.: a building or structure built in June 1930 shall be considered 75 years old on January 1, 2005.

(d) PROCEDURE

1. Upon receipt of permit application, the Building Inspector will immediately date stamp the application. If the Building Inspector can determine with certainty that the building or structure does not meet the criteria in Section 16 in regard to its age, or if the proposed demolition is excluded under Section (b) 9, then the permit may be issued according to current laws.
2. If the building or structure is not excluded under Section (b) 9 and does not meet the Section (b) 16 criteria, then the Inspector shall notify the Historical Commission in writing within seven (7) business days, that he/she has received a demolition permit request, attaching a copy of the application to the notice. The Building Inspector shall also forward copies of the notice to the applicant and the owner (if different).
3. Commission's Determinations
  - a. Initial Determination: The Commission shall make a written determination of whether the building or structure to be demolished is significant within forty-five (45) days after receipt of the written notice from the Building Inspector, or sixty (60) days after the receipt of the application by the Building Inspector, whichever shall first occur, and complete the following:

If the Commission determines that the building or structure is not significant, the Commission shall so notify the Building Inspector, the applicant, the owner (if different) and the Town Clerk in writing. The applicant shall not be required to take any further action in regard to this Bylaw.

If the Commission determines that the building or structure is significant, the

Commission shall so notify the Building Inspector, the applicant, the owner (if different) and the Town Clerk of their determination in writing.

If the Commission fails to respond to the Building Inspector's notice within forty five (45) days of receipt of the written notice from the Building Inspector, or within sixty (60) days of the receipt of the application by the Building Inspector, which ever shall first occur, the Building Inspector may grant the demolition permit.

- b. **Public Hearing:** The Commission shall hold a public hearing on the initial determination and the application within (45) days of filing the initial determination with the Town Clerk. The Town of Swampscott shall give public notice of the hearing by publishing the time, place and purpose of the hearing in a local newspaper and in a conspicuous place in town hall for a period of not less than seven (7) days prior to the hearing. The Town of Swampscott shall also send notice of the public hearing to applicant and owner (if different), and abutters by certified mail, at least seven (7) days prior to the hearing, as defined in Chapter 40A of Massachusetts General Laws.

The applicant for demolition permit may voluntarily submit to the Commission a demolition plan that may include:

A brief description of the type of building or structure and the reason for the proposed demolition, with supporting data.

A scaled plot plan showing the location of the significant building or structure on the property and with reference to neighboring properties.

Photographs of all elevations of the building or structure in the context of its surroundings.

- c. **Final Determination:** Within ten (10) days of the close of the public hearing the Commission shall file a written final determination with the Town Clerk. The Commission shall simultaneously send a copy of the final determination to the Building Inspector and send copies to the applicant and the owner (if different) by certified mail. If the Commission determines that demolition of the significant building or structure would be detrimental to the architectural, cultural, political, economic, or social heritage of the Town, such building or structure shall be considered as preferably preserved.

If the Commission determines that the building is not preferably preserved, the Commission shall so notify the Building Inspector and applicant and owner (if different) in writing. The Building Inspector may then issue the demolition permit.

- 4. If the Commission determines that the building is preferably preserved, the Commission shall notify the Building Inspector and applicant and owner (if different) in writing. No demolition permit may then be issued for a period of nine (9) months from the date of the determination. If the Commission does not so notify the Building Inspector in writing within ten (10) days of the public hearing, the Building Inspector may issue the demolition permit.

Upon a determination by the Commission that any building which is the subject of an application is a preferably preserved building, no building permit for new construction or alterations on the premises shall

be issued for a period of nine (9) months from the date of the determination. During this period, the applicant is encouraged to locate a purchaser for the building or structure who is willing to preserve, restore or relocate the building or structure.

No permit for demolition of a building determined to be a preferably preserved building shall be granted until all approvals necessary for the issuance of a building permit are obtained; including without limitation any necessary zoning variances or special permits, and all appeals from the granting of such approvals must be concluded.

The Building Inspector may issue a demolition permit or a building permit for a preferably preserved building within the nine months if the Commission notifies the Building Inspector in writing that the Commission finds that the intent and purpose of this bylaw is served even with the issuance of the demolition permit or the building permit.

Following the nine-month review period, the Building Inspector may issue the demolition permit.

Prior to the commencement of the demolition process, the property owner shall allow the Commission to make a proper photographic record of the interior and exterior of the building, and allow for salvage of any unique architectural detail that would otherwise be lost during the demolition process.

5. Emergency Demolition and Unsafe Structure

- a. Emergency Demolition: If after an inspection, the Building Inspector finds that a building or structure subject to this bylaw is found to pose an immediate threat to public health or safety due to its deteriorated condition and that there is no reasonable alternative to the immediate demolition of the building or structure, then the Building Inspector may issue an emergency demolition permit to the owner of the building or structure. The Building Inspector shall then prepare a report explaining the condition of the building and the basis for his decision, which shall be forwarded to the Commission.
- b. Unsafe Structure: In the event that a Board of Survey is convened to consider the condition of a building or structure under Massachusetts General Laws Chapter 143, Section 8, the Chairperson shall be notified to accompany the Board during its inspection.

6. Enforcement

- a. The Commission and/or the Building Inspector are each specifically authorized to institute any and all actions and proceedings, in law or equity, including non-criminal disposition in accordance with G.L. c.40, §21D and Article XII, Section 2 of the Town By-laws, as they may deem necessary and appropriate to obtain compliance with the requirements of this bylaw or to prevent a threatened violation thereof.
- b. Anyone who voluntarily demolishes a building or structure without first obtaining a demolition

permit in accordance with the provisions of this bylaw shall be subject to a fine of not more than ten percent of the assessed property value. No building permit shall be issued for a period of two years from the date of the demolition on the subject parcel of land or any adjoining parcels of land under common ownership and control unless the building permit is for the faithful restoration or unless otherwise agreed to by the Commission.

*SECTION 5: HISTORIC DISTRICTS ACT.*

If any of the provisions of this by-law conflict with the Historic Districts Act, Massachusetts General Law, Chapter 40C, that act shall prevail.

*SECTION 6: SEVERABILITY*

In case any section, paragraph or part of this by-law be for any reason declared invalid or unconstitutional by any court, every other section, paragraph, and part shall continue in full force and effect.

*SECTION 7: LOCAL HISTORIC DISTRICT*

The Town of Swampscott hereby establishes a Local Historic District, to be administered by an Historic District Commission as provided for under Massachusetts General Laws Chapter 40C, as amended.

**A. PURPOSE**

The purpose of this By-law is to promote the cultural, economic, educational and general welfare of the inhabitants of the Town of Swampscott through: 1.) the preservation and protection of the distinctive characteristic of buildings and places significant in the history and development of Swampscott; 2.) maintaining and improving the settings of these buildings and places; and 3.) the encouragement of design compatible with buildings existing in the area, so as to continue to maintain the historic center, fishing, cultural, commercial and residential character and other qualities which distinguish the town as a desirable community for its residents and visitors.

**B. DEFINITIONS**

The terms defined in this section shall be capitalized throughout "Section 7: Local Historic District." Where a defined term has not been capitalized, it is intended that the meaning of the term be the same as the meaning ascribed to it in this section unless another meaning is clearly intended by its context. As used in "Section 7: Local Historic District," the following terms shall have the following meaning:

**ALTERATIONS, TO ALTER**

As applied to a building or structure, a change or rearrangement in the structural parts or in the existing facilities, or an enlargement whether by extending on a side or by increasing in height, or the moving from one (1) location or position to another.

**BUILDING**

A structure enclosed within exterior walls or firewalls, built, erected, and framed of a combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals, or

property. For the purposes of this definition, "roof" shall include an awning or any similar covering, whether or not permanent in nature.

#### CERTIFICATE

A Certificate of Appropriateness, a Certificate of Non-Applicability, or a Certificate of Hardship as set forth in this By-law.

#### COMMISSION

The Historic District Commission as established in this By-law.

#### CONSTRUCTION, TO CONSTRUCT

The act or the fact of building, erecting, installing, enlarging, moving and other similar activities.

#### DISPLAY AREA

The total surface area of a sign, including all lettering, wording, designs, symbols, background and frame, but not including any support structure, or bracing incidental to the sign. The DISPLAY AREA of an individual letter sign or irregular shaped sign shall be the area of the smallest rectangle into which the letters or shape will fit. Where sign faces are placed back to back and face in opposite directions, the DISPLAY AREA shall be defined as the area of one face of the sign.

#### DISTRICT

The Local Historic District as established in this By-law consisting of one or more DISTRICT areas.

#### EXTERIOR ARCHITECTURAL FEATURE

Such portion of the exterior of a BUILDING or STRUCTURE as is open to view from a public way or ways, including but not limited to architectural style and general arrangement and setting thereof, the kind and texture of exterior building materials, and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures.

#### PERSON AGGRIEVED

The applicant; an owner of adjoining property; an owner of the property within the same DISTRICT area; an owner of property within 100 feet of said DISTRICT area; and any charitable corporations in which one of its purposes is the preservation of historic places, structures, buildings or districts.

#### SIGNS

Any symbol, design, or device used to identify or advertise any place of business, product, activity or person.

#### STRUCTURE

A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, tent, reviewing stand, platform, bin, fence, sign, flagpole, recreational tramway, mast for radio antenna or the like.

#### TEMPORARY STRUCTURE or BUILDING

A BUILDING not to be in existence for a period of more than two years. A STRUCTURE not to be in existence for a period of more than one year. The COMMISSION may further limit the time periods set forth herein as it deems appropriate.

### **C. DISTRICT**

The DISTRICT shall consist of one or more DISTRICT areas as listed in “4.8.13.0. Appendices” of this By-law.

### **D. COMMISSION**

1. The DISTRICT shall be overseen by a COMMISSION consisting of five members, to be appointed by the **Select Board**, one member initially appointed for one year, two for two years, two for three years, and each successive appointment to be made for three years.
2. The COMMISSION shall include among its members, if possible, one member from two nominees solicited from the Swampscott Historical Society, one member from two nominees solicited from the chapter of the American Institute of Architects covering Swampscott, and one property owner from within the DISTRICT areas. If within thirty days after submission of a written request for nominees to any of the organizations herein named insufficient nominations have been made, the **Select Board** may proceed to make appointments as it desires.
3. The **Select Board** may appoint up to two alternate members to the COMMISSION. Each alternate member shall have the right to act and vote in the place of one regular member should such regular member be absent from a meeting or be unwilling or unable to act or vote. Said alternate members shall initially be appointed for terms of two or three years, and for three year terms thereafter.
4. Each member and alternate member shall continue to serve in office after the expiration date of his or her term until a successor is duly appointed.
5. Meetings of the COMMISSION shall be held at the call of the Chairman, at the request of two members and in such other manner as the COMMISSION shall determine in its Rules and Regulations.
6. Three members of the COMMISSION shall constitute a quorum.

### **E. COMMISSION POWERS AND DUTIES**

1. The COMMISSION shall exercise its powers in administering and regulating the CONSTRUCTION and ALTERATION of any STRUCTURES or BUILDINGS within the DISTRICT as set forth under the procedures and criteria established in this By-law. In exercising its powers and duties hereunder, the COMMISSION shall pay due regard to the distinctive characteristics of each BUILDING, STRUCTURE and DISTRICT area.
2. The COMMISSION may adopt, and from time to time amend, reasonable Rules and Regulations not inconsistent with the provisions of this By-law or M.G.L. Chapter 40C, setting forth such forms and procedures as it deems desirable and necessary for the regulation of its affairs and the conduct of its business, including requirements for the contents and form of applications for CERTIFICATES, fees, hearing procedures, and other matters. The COMMISSION shall file a copy of any such Rules and Regulations with the office of the Town Clerk.

3. The COMMISSION, after a public hearing duly posted and advertised at least 14 days in advance in a conspicuous place at Town Hall and in a newspaper of general circulation, may adopt and from time to time amend guidelines which set forth the designs for certain EXTERIOR ARCHITECTURAL FEATURES which are, in general, suitable for the issuance of a CERTIFICATE. No such design guidelines shall limit the right of an applicant for a CERTIFICATE to present other designs to the COMMISSION for approval.
4. The COMMISSION shall within 30 days of the beginning of each fiscal year hold an organizational meeting and elect a Chairman, a Vice Chairman and Secretary, and file notice of such election with the office of the Town Clerk.
5. The COMMISSION shall keep a permanent record of its resolutions, transactions, decisions and determinations and of the vote of each member participating therein.
6. The COMMISSION shall undertake educational efforts to explain to the public and property owners the merits and functions of a DISTRICT.

#### **F. ALTERATIONS AND CONSTRUCTION PROHIBITED WITHOUT A CERTIFICATE**

1. Except as this By-law provides, no BUILDING or STRUCTURE or part thereof within a DISTRICT shall be CONSTRUCTED or ALTERED in any way that affects the EXTERIOR ARCHITECTURAL FEATURES as visible from a public way, unless the COMMISSION shall first have issued a CERTIFICATE with respect to such CONSTRUCTION or ALTERATION.
2. No building permit for CONSTRUCTION of a BUILDING or STRUCTURE or for ALTERATION of an EXTERIOR ARCHITECTURAL FEATURE within a DISTRICT and no demolition permit for demolition or removal of a BUILDING or STRUCTURE within a DISTRICT shall be issued by the Town or any department thereof until a CERTIFICATE as required under this By-law has been issued by the COMMISSION.

#### **G. PROCEDURES FOR REVIEW OF APPLICATIONS**

1. Any person who desires to obtain a CERTIFICATE from the COMMISSION shall file with the COMMISSION an application for a CERTIFICATE of Appropriateness, of Non-Applicability or of Hardship, as the case may be. Seven (7) copies of the application packages shall be filed with the Town Clerk; one for the Town Clerk, one for the Building Department, and five for the COMMISSION. Applications shall be in the form specified by the COMMISSION, which may include plans and elevations signed by an architect or draftsman, drawn to scale, detailed enough to show architectural design of the structure and its relation to the existing building, and other materials deemed necessary by the COMMISSION. Plot and site plans should be filed when application for CERTIFICATES are made for improvements affecting appearances, such as walls, fences, steps and paving. In the case of demolition or removal, the application must include a statement of the proposed condition and appearance of the property thereafter.



2. The COMMISSION shall determine within fourteen (14) days of the filing of an application for the CERTIFICATE whether said application involves any EXTERIOR ARCHITECTURAL FEATURES which are within the jurisdiction of the COMMISSION.
3. If the COMMISSION determines that an application for a CERTIFICATE does not involve any EXTERIOR ARCHITECTURAL FEATURES, or involves an EXTERIOR ARCHITECTURAL FEATURE which is not subject to review by the COMMISSION under the provisions of this Bylaw, the COMMISSION shall forthwith issue a CERTIFICATE of Non-Applicability.
4. If the COMMISSION determines that such application involves any EXTERIOR ARCHITECTURAL FEATURE subject to review under this By-law, it shall hold a public hearing on the application, except as may otherwise be provided in this By-law. The COMMISSION shall hold such a public hearing within forty-five (45) days from the date of the filing of the application. At least fourteen (14) days before said public hearing, public notice shall be given by posting in a conspicuous place at Town Hall. Such notice shall identify the time, place and purpose of the public hearing. Concurrently, a copy of said public notice shall be mailed to the applicant, to the owner of the property under consideration if different from applicant, to the owners of all adjoining properties and of other properties deemed by the COMMISSION to be materially affected thereby, all as they appear on the most recent applicable tax list, to the Planning Board, to any person filing a written request for notice of hearings, such request to be renewed yearly in December, and to such other persons as the COMMISSION shall deem entitled to notice.
  1. A public hearing on an application for a CERTIFICATE need not be held if such hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application for a CERTIFICATE may be waived by the COMMISSION if the COMMISSION determines that the EXTERIOR ARCHITECTURAL FEATURE involved, or its category, is so insubstantial in its effect on the DISTRICT that it may be reviewed by the COMMISSION without a public hearing. If the COMMISSION dispenses with a public hearing on an application for a CERTIFICATE, notice of such application shall be given to the owners of all adjoining property and of other property deemed by the COMMISSION to be materially affected thereby as above provided, and ten (10) days shall elapse after the mailing of such notice before the COMMISSION may act upon such application.
5. Within sixty (60) days after the filing of an application for a CERTIFICATE, or within such further time as the applicant may allow in writing, the COMMISSION shall issue a CERTIFICATE or disapproval. In the case of a disapproval of an application for a CERTIFICATE, the COMMISSION shall set forth in its disapproval the reasons for such disapproval. The COMMISSION may include in its disapproval specific recommendations for changes in the applicant's proposal with respect to the appropriateness of design, arrangement, texture, material and similar features which, if made and filed with the COMMISSION in a subsequent application, would make the application acceptable to the COMMISSION.
6. The concurring vote of a majority of the members shall be required to issue a CERTIFICATE.

7. In issuing CERTIFICATES, the COMMISSION may, as it deems appropriate, impose certain conditions and limitations, and may require architectural or plan modifications consistent with the intent and purpose of this By-law.
8. If the COMMISSION determines that the CONSTRUCTION or ALTERATION for which an application for a CERTIFICATE of Appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the DISTRICT, the COMMISSION shall issue a CERTIFICATE of Appropriateness.
9. If the CONSTRUCTION or ALTERATION for which an application for a CERTIFICATE of Appropriateness has been filed shall be determined to be inappropriate and therefore disapproved, or in the event of an application for a CERTIFICATE of Hardship, the COMMISSION shall determine whether, owing to conditions especially affecting the BUILDING or STRUCTURE involved, but not affecting the DISTRICT generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant and whether such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this By-law. If the COMMISSION determines that owing to such conditions failure to approve an application will involve substantial hardship to the applicant and approval thereof may be without such substantial detriment or derogation, the COMMISSION shall issue a CERTIFICATE of Hardship.
10. The COMMISSION shall send a copy of its CERTIFICATES and disapprovals to the applicant and shall file a copy of its CERTIFICATES and disapprovals with the office of the Town Clerk and the Inspector of Buildings. The date of issuance of a CERTIFICATE or disapproval shall be the date of the filing of a copy of such CERTIFICATE or disapproval with the office of the Town Clerk.
11. If the COMMISSION should fail to issue a CERTIFICATE or a disapproval within sixty (60) days of the filing of the application for a CERTIFICATE, or within such further time as the applicant may allow in writing, the COMMISSION shall thereupon issue a CERTIFICATE of Hardship Due to Failure to Act.
12. Each CERTIFICATE issued by the COMMISSION shall be dated and signed by its chairman or such other person designated by the COMMISSION to sign such CERTIFICATES on its behalf.
13. A PERSON AGGRIEVED by a determination of the COMMISSION may, within twenty (20) days of the issuance of a CERTIFICATE or disapproval, file a written request with the COMMISSION for a review by a person or persons of competence and experience in such matters, acting as arbitrator and designated by the regional planning agency, the Metropolitan Area Planning Council. The finding of the person or persons making such review shall be filed with the Town Clerk within forty-five (45) days after the request, and shall be binding on the applicant and the COMMISSION, unless a further appeal is sought in the Superior Court as provided in Chapter 40C, Section 12A. The filing of such further appeal shall occur within twenty (20) days after the finding of the arbitrator has been filed with the office of the Town Clerk.

14. A PERSON AGGRIEVED by a determination of the COMMISSION who does not request a review under Section G (13) may, within twenty days after the filing of the notice of such determination with the Town Clerk, appeal to the Superior Court, as provided in Chapter 40C, Section 12A.

#### **H. CRITERIA FOR DETERMINATIONS**

1. In deliberating on applications for CERTIFICATES, the COMMISSION shall consider, among other things, the historic and architectural value and significance of the site, BUILDING or STRUCTURE; the general design, proportions, detailing, mass, arrangement, texture, and material of the EXTERIOR ARCHITECTURAL FEATURES involved; and the relation of such EXTERIOR ARCHITECTURAL FEATURES to similar features of BUILDINGS and STRUCTURES in the surrounding area.
2. In the case of new CONSTRUCTION or additions to existing buildings or STRUCTURES, the COMMISSION shall consider the appropriateness of the scale, shape and proportions of the BUILDING or STRUCTURE both in relation to the land area upon which the BUILDING or STRUCTURE is situated and in relation to BUILDINGS and STRUCTURES in the vicinity. The COMMISSION may in appropriate cases impose dimensional and setback requirements in addition to those required by applicable statute or bylaw.
3. When ruling on applications for CERTIFICATES on solar energy systems as defined in Section IA of Chapter 40A, the COMMISSION shall consider the policy of the Commonwealth of Massachusetts to encourage the use of solar energy systems and to protect solar access.
4. The COMMISSION shall not consider interior arrangements or architectural features not subject to public view from a public way.

#### **I. EXCLUSIONS**

1. The COMMISSION shall exclude from its purview the following:
  1. TEMPORARY BUILDINGS, STRUCTURES, or SIGNS subject, however, to conditions pertaining to the duration of existence and use, location, lighting, removal and similar matters as the COMMISSION may reasonably specify.
  2. Terraces, walks, driveways, sidewalks and similar STRUCTURES, provided that any such STRUCTURE is substantially at grade level.
  3. Flagpoles, sculpture, mailboxes (freestanding or attached), window boxes, house numbers, and garden furniture.
  4. Storm windows and storm doors, screen windows and screen doors, and window air conditioners.
  5. The color of paint.

6. The color of materials used on roofs.
  7. Signs of not more than two (2) square feet in DISPLAY AREA in connection with use of a residence for a customary home occupation or for professional purposes, provided only one such sign is displayed in connection with each residence and if illuminated is illuminated only indirectly; and one sign in connection with the nonresidential use of each BUILDING or STRUCTURE which is not more than six (6) square feet in DISPLAY AREA, consists of letters painted on wood without symbol or trademark and if illuminated is illuminated indirectly.
  8. Landscaping with plants, trees, shrubs or other vegetation.
  9. Photovoltaic (PV) Solar Panels.
2. Upon request the COMMISSION shall issue a CERTIFICATE of Non-Applicability with respect to CONSTRUCTION or alteration in any category not subject to review by the COMMISSION in accordance with the above provisions.
  3. Nothing in this By-law shall be construed to prevent the ordinary maintenance, repair or replacement of any EXTERIOR ARCHITECTURAL FEATURE within a DISTRICT which does not involve a change in design, material or the outward appearance thereof, nor to prevent landscaping with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, nor construed to prevent any CONSTRUCTION or ALTERATION under a permit duly issued prior to the effective date of this By-law.

#### **J. CATEGORICAL APPROVAL**

The COMMISSION may determine from time to time after a public hearing, duly advertised and posted at least fourteen (14) days in advance in a conspicuous place at Town Hall, that certain categories of EXTERIOR ARCHITECTURAL FEATURES, STRUCTURES or BUILDING under certain conditions may be CONSTRUCTED or ALTERED without review by the COMMISSION without causing substantial derogation from the intent and purpose of this By-law.

#### **K. ENFORCEMENT AND PENALTIES**

1. The COMMISSION shall determine whether a particular activity is in violation of this By-law or not, and the COMMISSION shall be charged with the enforcement of this By-law.
2. The COMMISSION, upon a written complaint of any resident of Swampscott, or owner of property within Swampscott, or upon its own initiative, shall institute any appropriate action or proceedings in the name of the Town of Swampscott to prevent, correct, restrain or abate violation of this By-law. In the case where the COMMISSION is requested in writing to enforce this By-law against any person allegedly in violation of same and the COMMISSION declines to act, the COMMISSION shall notify, in writing, the party requesting such enforcement of any action or refusal to act and the reasons therefore, within twenty one (21) days of receipt of such request.

3. Whoever violates any of the provisions of this By-law shall be punishable by a fine of up to \$300.00 for each offense. Each day during any portion of which such violation continues to exist shall constitute a separate offense.
4. The COMMISSION may designate the Inspector of Buildings of the Town of Swampscott to act on its behalf and to enforce this By-law under the direction of the COMMISSION.

#### **L. VALIDITY AND SEPARABILITY**

The provisions of this By-law shall be deemed to be separable. If any of its provisions, sections, subsections, sentences or clauses shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this By-law shall continue to be in full force and effect.

#### **M. APPENDICES**

Appendix 1:

##### Frederick Law Olmsted Local Historic District

The Frederick Law Olmsted Local Historic District shall be a DISTRICT area under this By-law. The location and boundaries of the Frederick Law Olmsted Local Historic District are defined and shown on the "Local Historic District Map of the Town of Swampscott," on file with the Town Clerk. The delineation of the DISTRICT area boundaries is based on the parcel boundaries then in existence and shown therein, except as amended

Appendix 2:

##### Swampscott Fish House Local Historic District

The Swampscott Fish House Local Historic District shall be a DISTRICT area under this By-law. The location and boundaries of the Swampscott Fish House Local Historic District are defined and shown on the "Local Historic District Map of the Town of Swampscott," on file with the Town Clerk. The delineation of the DISTRICT area boundaries is based on the parcel boundaries then in existence and shown therein, except as amended.

Appendix 3:

##### Swampscott Railroad Depot Local Historic District

The Swampscott Railroad Depot Local Historic District shall be a DISTRICT area under this By-law. The location and boundaries of the Swampscott Railroad Depot Local Historic District are defined and shown on the "Local Historic District Map of the Town of Swampscott," on file with the Town Clerk. The delineation of the DISTRICT area boundaries is based on the parcel boundaries then in existence and shown therein, except as amended.

Appendix 4:

##### Swampscott Cemetery and Andrews Chapel Local Historic District

The Swampscott Cemetery and Andrews Chapel Local Historic District shall be a DISTRICT area under this Bylaw. The location and boundaries of the Swampscott Cemetery and Andrews Chapel Local Historic

District are defined and shown on the “Local Historic District Map of the Town of Swampscott,” on file with the Town Clerk. The delineation of the DISTRICT area boundaries is based on the parcel boundaries then in existence and shown therein, except as amended. **(5/5/14 ATM)**

# ARTICLE X

## GAS INSPECTION AND PERMIT

### *SECTION 1. RULES AND REGULATIONS*

The present Rules and Regulations of the Gas Regulatory Board of the Commonwealth of Massachusetts and any amendments thereto shall be the rules and regulations under which the Gas Inspector will operate.

### *SECTION 2. PERMITS FROM GAS INSPECTOR*

All gas fitters installing gas appliances and piping in the Town of Swampscott must obtain a permit from the Gas Inspector before commencement of work, except in those instances where gas heated plumbing fixtures or appliances are installed by the same plumber who installs gas piping.

## ARTICLE XI

### DANCE

No owner, lessor, or other person in charge of a building shall allow a dance to be held in which the public is invited and admission is charged unless a permit is issued by the **Select Board**.



## ARTICLE XII

### NON-CRIMINAL ENFORCEMENT OF BY-LAWS AND REGULATIONS

#### *SECTION 1. NON-CRIMINAL ENFORCEMENT OF HEALTH, FIRE AND BUILDING REGULATIONS*

The Board of Health and/or Health Officer, the Office of Inspector of Buildings and/or the Building Inspector and the Fire Department and/or the Fire Chief or their respective designees are authorized to enforce Chapter 40 Section 21D of the General Laws of the Commonwealth of Massachusetts. Whoever violates any provision of the Swampscott Board of Health and Regulations may, at the discretion of the Board of Health and/or Health Officer, and the same for the Building Department or Fire Department be penalized by a Non-Criminal Complaint in the District Court pursuant to the provisions of the General Laws Chapter 40 Section 21D.

The fines shall be the same as the fines set by state statute, state codes and those regulations established by the Board of Health for criminal violations or take any action thereto. Nothing in this section shall serve to waive the town's right to enforce the by-laws by criminal enforcement (5/94).

#### *SECTION 2. NON-CRIMINAL ENFORCEMENT OF THE BY-LAWS*

Non-Criminal Enforcement of the General By-Laws not set out in Section 1 above shall be as follows: The **Select Board** or their respective designee, or any police officer of the Town, is authorized to enforce said by-laws pursuant to MGL Chapter 40, Section 21D. Whoever violates any provision of the Swampscott By-Laws may, at the discretion of the **Select Board** or their respective designee, or any police officer of the Town, be penalized by a non-criminal disposition pursuant to the MGL Chapter 40 Section 21D. The fines shall be the same as the fines set by the by-laws, or by state statute, state codes and those regulations established by the town for criminal violations. This by-law shall not apply to state statutes, state codes or regulations which provide for range of fines. Nothing in this section shall serve to waive the town's right to enforce the by-laws by criminal enforcement. (5/6/98). (5/4/09)

# ARTICLE XIII

## EARTH REMOVAL

### *SECTION 1. DEFINITIONS*

(a) For the purposes of this by-law, “Earth Removal” shall include the removal of any form of soil, including without limitation, sod, loam, peat, humus, clay, sand, stone, gravel, rock, and ledge from its natural location, by any means, including but not limited to, stripping, excavating, mining or blasting and whether or not such soil is moved from the lot to another location on the same lot or off the lot by truck, conveyance or any other means.

(b) For the purpose of this by-law, “Board” shall mean **Select Board**.

### *SECTION 2. EXEMPTIONS*

(a) Notwithstanding the provisions hereof, no permit shall be required for the removal of earth from:

1. Any parcel in connection with the lawful construction of a residential building of up to three residential units or structure thereon or the lawful construction of a driveway or sidewalk incidental to any such building or structure, provided that the quantity of material removed does not exceed that actually displaced by the portion of building, structure, driveway or sidewalk below finished grade.

### *SECTION 3. EARTH REMOVAL PROCEDURE*

(a) Permit Required - The removal of more than 400 cubic yards of earth as defined in Section 1 herein shall, except as herein provided, be allowed only in accordance with a written permit issued by the Board. The Board may grant a permit for such removal and for structures accessory thereto in accordance with the procedure set forth herein. Any permit granted hereunder shall lapse within six (6) months if substantial use has not sooner commenced, except for good cause shown to the Board. No permit for removal shall be granted unless the Board finds that such removal (subject to the conditions imposed by the permit) will not be contrary to the best interests of the Town; and no removal operations subsequently undertaken under such permit shall continue if contrary to such interests. Removal of earth material shall be considered contrary to the best interest of the Town if it will:

1. Be injurious or dangerous to the public health or safety;
2. Produce noise, vibration, dust or other effects in amounts which are unreasonable, detrimental or otherwise interfere with the normal use of adjacent property or otherwise creates a nuisance;
3. Have a material adverse effect on the health, safety or overall quality of life for the inhabitants of the Town;
4. Have an adverse effect on natural resources, including but not limited to, the recharge of the water table or condition of the groundwater, surface water, or wetlands; or otherwise results in noncompliance with applicable federal, state, or local environmental laws or regulations, including the Massachusetts Wetlands Protection Act;

5. Cause excessive traffic congestion or damage to roadways.

(b) Application for Permit - Any person, , as defined in the Town of Swampscott General Bylaw, intending to engage in earth removal, as defined in Section 1 herein which is estimated to involve the removal of more than 400 400 cubic yards of soil shall file a formal application with the Board, which application shall include the following specific information and supporting documentation:

1. The location of the proposed excavation;

2. The legal name and address of the owner of the property involved;

3. The legal name and address of the petitioner, which address shall be used by the Board for all correspondence hereunder;

4. Property lines, names and addresses of all abutting property owners within three hundred (300) feet of the property line, including those across any streets;

5. A detailed plan of the land involved, prepared by a Registered Civil Engineer, or a registered surveyor, and acceptable to the Board, at a scale of 1"-20', or as determined appropriate, showing the entire parcel of land based on a perimeter survey and showing existing topography by two (2) contours within one hundred (100) feet of, and including, the site of the proposed excavation or to the property line. This contour plan shall show locations of a sufficient number of test borings made to determine the average depth of top soil before excavation. The plan shall further show the maximum depth that the applicant intends to excavate, the type of material the applicant intends to extract from the land, the manner and depth in which the top soil shall be replaced, and the type of reseeded and planting proposed for use;

6. A detailed plan of the land involved, prepared by a Registered Civil Engineer, or a registered surveyor, and acceptable to the Board, showing two (2) foot contours of the site as of the completion of the excavation project, all drawn to a scale acceptable to the Board;

7. Natural features, including but not limited to, wetlands, the 100-year flood plain, ground cover, and surface and ground water. Water-table elevation shall be determined by test pits and soil borings. A log of soil borings shall be included, taken to the depth of the proposed excavation, congruent with the size and geological makeup of the site;

8. A topographical map showing drainage facilities, final grades and proposed vegetation and trees;

9. Erosion and sediment-control plan;

10. The amount of proposed restoration materials;

11. The proposed form of performance security to be used;

12. An Integrated Pest Management (IPM) plan in accordance with Section 17; and

13. Copies of the information outlined in the above articles one (1) through twelve (12) shall be filed with the Town Clerk and the **Select Board**.

*SECTION 4. GENERAL LIMITATIONS:*

(a) In granting a permit hereunder, the Board shall impose reasonable conditions especially designated to safeguard the neighborhood and the Town and to protect the environment. The permit shall include, but not be limited to, conditions that address the following:

1. method of removal;
2. type and location of structures;
3. fencing;
4. hours of operation;
5. routes for transporting the material through the Town;
6. the duration of the removal operations;
7. the area and depth of excavation;
8. the re-establishment of ground levels and grades;
9. the steepness of slopes excavated;
10. provisions for temporary and permanent drainage;
11. disposition of boulders and tree stumps;
12. grading of slopes and replacement of loam over the area of removal;
13. planting of the area to suitable cover, including trees, necessary to restore the area to usable condition;
14. distance from excavation to street and lot lines;
15. the distance, vegetation and other materials and qualities required to provide adequate buffer for noise, dust, aesthetics and safety from excavation and associated structures, machinery and operation thereof;
16. corrective measures to be taken to restore areas of past removal operations in the case of an application for continuation of an existing removal operation;
17. pollution insurance if appropriate under the circumstances; and
18. an Integrated Pest Management (IPM) plan.

(b) No permit for the removal of earth shall be approved by the Board if the work extends within two hundred (200) feet, measured horizontally, of a way open to public use (whether public or private) or of an adjacent property line, unless the Board is satisfied that such removal will not undermine the way or structure.

- (c) Any excavation shall be in compliance with all applicable federal, state, and local laws and regulations, including, but not limited to, the Massachusetts Wetlands Protection Act (MGL Chapter 131, Section 40), and the regulations promulgated thereunder at 310 C.M.R. 10.00, and local zoning bylaws, including the Flood Plain and Coastal Flood Area Overlay District regulations in the zoning bylaws.
- (d) No area shall be excavated so as to cause accumulation of free standing water unless the Board shall, with the approval of the Conservation Commission, permit creation of a pond in an area not used for drinking water. Permanent drainage shall be provided in accordance with good conservation practices. Drainage shall not lead directly into streams or ponds, unless approved by the Conservation Commission and otherwise properly permitted by other regulating governmental agencies, and in compliance with applicable federal, state, and local environmental laws, including the Massachusetts Wetlands Protection Act.
- (e) All top soil and subsoil stripped from operation areas shall be stockpiled and used in restoring the area.
- (f) Any temporary shelters or buildings erected on the premise for use by personnel or storage of equipment shall be screened from public view and shall be removed from the premises within sixty (60) days after the permit has expired or been revoked.
- (g) Operations shall be conducted during the hours specified by the Board, under the permit, and shall be strictly regulated. No operations are to occur on Sundays or Massachusetts legal holidays unless expressly authorized by the Board. Trucks shall enter and leave the premises only during permitted hours. All trucks shall be suitably covered to prevent dust and contents from spilling and blowing from the load. Trucks shall not be left idling more than five (5) minutes.
- (h) Trucking and access routes and methods shall be subject to the approval of the Chief of Police.
- (i) All access roads leading to public ways shall be treated with suitable material to reduce dust and mud for a distance of two hundred (200) feet back from the way. The operator shall clean up any spillage on public ways.
- (j) Access roads shall not drain onto public ways.
- (k) Permits for the removal of earth material shall be issued for a period of not more than one (1) year.
- (l) Any permit issued hereunder shall automatically expire upon the completion of the earth removal project for which it was issued, or at such other time as may be specified in such permit. A permit issued hereunder is not transferable and no work under any such permit shall be performed except by the holder thereof, or the contractor.
- (m) The Board shall require a surety bond, cash or other adequate security to insure compliance with the terms, conditions, limitations, and safeguards of a permit issued hereunder, and this by-law, and to indemnify the Town for any harm to any well, roadway, or area subject to protection under the Massachusetts Wetlands Protection Act and the regulations promulgated thereunder (including streams, ponds, and wetlands) or other resource that is caused by such removal, the removal operations, the equipment used on the premises, or by ancillary activities.
- (n) All applicants are required to provide the Town of Swampscott with a hold harmless agreement along with a certificate of insurance subject to the minimum of one million dollars (\$1,000,000) single limit.

(o) The bond or cash deposit shall be held by the Town Treasurer for one (1) year after termination of the project or until all conditions as required by the permit have been completed to the satisfaction of the Board. If after eighteen (18) months from the issuance of the permit all conditions as required by the permit have not been completed, (especially grading and seeding), the Board will use said monies to comply with the originally stated conditions.

(p) No permit issued hereunder shall authorize any activity which is in violation of the Zoning By-Law of the Town.

## *SECTION 5. SPECIFIC LIMITATIONS*

No permit for removal of earth or operations accessory thereto shall be approved by the Board except upon the following conditions:

- a. Regained subsoil and topsoil shall be spread over the disturbed area and treated with appropriate fertilizer or other suitable material and seeded with an appropriate mixture of grass or legume mixture as prescribed by and as determined appropriate by the Board. Trees or shrubs of prescribed species will be planted to provide screening and reduce erosion during the establishment period.
- b. Restoration shall be carried on simultaneously with excavation, so that when any five (5) acres has been cleared and stumped and five (5) acres is in active mining operation, at least five (5) acres shall be restored before work commences (including building haul roads) on the next contiguous five (5) acres. Final restoration work shall be completed within a reasonable time after expiration or withdrawal of a permit or upon cessation of operations.
- c. Only in extreme circumstances and only if additional reasonable safety measures are provided, no slope shall be steeper than 2:1 (two feet horizontal to one foot vertical) (50%); 4:1 (four feet horizontal to one foot vertical) is preferred for erosion control and shall be required in all sensitive areas.
- d. Unless the permit conditions expressly require alteration of drainage patterns, the land shall be left so that natural storm drainage shall leave the property at the original nature drainage points; and so that the total discharge at peak flow and the area of drainage at any one point, is not increased.
- e. Natural vegetation shall be left and maintained on undisturbed land for screening, safety, noise and dust reduction and erosion control purposes.

## *SECTION 6. EXISTING OPERATIONS*

(a) Earth removal activities in lawful operation at the time this by-law is adopted may continue under the existing terms for a period up to three (3) months only if an application is pending under the terms of this by-law. This period may be extended an additional three (3) months by the Board.

(b) Existing quarry operations are exempt from the provisions of Section 5 of this by-law.

## *SECTION 7. PERMITS FOR PROPOSED SUBDIVISIONS*

It is the intention of this by-law that the removal from any parcel of land for which a preliminary or definitive subdivision plan has been prepared shall be allowed only in the same manner as removal from other parcels of land in

the Town. Consequently, tentative or final approval of a subdivision plan by the Planning Board shall not be construed as authorizing the removal of earth materials from the premises, except that which is to be removed in compliance with the requirements of this by-law. For the purposes of this by-law, the original parcel or parcels from which the subdivision is created shall be considered one.

### *SECTION 8. NOTICE AND HEARING*

No permit for the removal of earth material shall be issued by the Board until a public hearing is held thereon by the Board, due notice of which shall be given by the Board, at the expense of the applicant, at least fourteen (14) days in advance of the public hearing, in a newspaper commonly used for such notices in the community, the posting of copies thereof on municipal bulletin boards, and the mailing of copies thereof to property owners within three hundred (300) feet of the property line, including those across any streets.

### *SECTION 9. GENERAL ADMINISTRATION*

- (a) The Board shall exercise the powers and duties hereunder.
- (b) The Board or its designee may enter upon the premises involved from time-to-time to inspect and ensure proper conduct of the work.
- (c) Upon the petition of the owner, permit holder, abutters, or upon its own initiative, the Board may hold a new hearing and reissue or modify the permit, subject to any conditions not in conflict with this by-law. Any modification to a permit, if determined to be material change by the Board, may also require a new public hearing.
- (d) The Board may order revocation of, or suspension of, the permit if the conditions established hereunder are not complied with, and the permit holder in such situations shall not be relieved of his obligations hereunder.

### *SECTION 10. FEES*

The Board shall establish such fees for the issuance of permits as it shall find necessary for the administration of this by-law, taking into consideration the costs of clerical, civil engineering consultants, legal and inspection expenses.

### *SECTION 11. VIOLATIONS*

- (a) The Board, if it concludes that there has been a violation of this by-law or the conditions of any permit issued hereunder, shall send to the permit holder or other offender, by registered mail to the address stated on the initial application, if an application has been filed, or shall post on the premises if no address can reasonably be ascertained, a notice ordering a cessation of the improper activities.
- (b) If a permit holder, or other offender, persists in such violation, in addition to the imposition of penalties as contained in the Town's by-laws, the Board shall seek an injunction through appropriate legal action.
- (c) In the event that the permit holder persists in such violations, the Board may notify the permit holder by mail or posting as stated above, of a hearing to be held not less than four (4) days thereafter to show cause why said permit should not be revoked, and following said hearing, may in its discretion, revoke or amend the permit.

- (d) If a permit holder fails to comply within thirty (30) days of a written notice from the Board of any deviation from the approved operating plan, the Board may take such action as is necessary to correct the deviations. In the event of such an undertaking by the Board, the owner of the land shall reimburse the Town for expenses incurred in connection therewith, and such expenses shall constitute a lien upon the entire tract of land approved in the permitting process.
- (e) The Board may bring suit in the name of the Town of Swampscott to restrain any violation of or noncompliance with the provisions of these regulations.

## *SECTION 12. VALIDITY*

The invalidity of any section or provision of this by-law shall not invalidate any other section or provisions thereof.

## *SECTION 13. COMPLIANCE WITH OTHER RULES AND REGULATIONS*

Notwithstanding any provision of this by-law or any rules and regulations adopted pursuant to Section 14, the applicant shall comply with all other applicable federal, state, and local laws, regulations, rules and guidelines, including the Massachusetts Wetlands Protection Act.

## *SECTION 14. EARTH REMOVAL ADVISORY COMMITTEE*

The Earth Removal Advisory Committee (hereinafter referred to as the “Committee”) shall be established as follows and have the following powers and duties.

- (a) The Committee shall consist of five (5) voting members, all residents of the town. One (1) member shall be chosen annually by the Board of Health. One (1) member shall be chosen annually by, and from, the Planning Board to serve a one-year term. One (1) member shall be chosen by, and from, the Conservation Commission to serve a one-year term. Two (2) members shall be appointed by the Board for a three-year term. The terms of the members appointed by the Board shall begin and end at the Annual Town Meeting nearest to the date of their appointment and the third anniversary thereof, respectively. Any member may be appointed to succeed him- or herself. An excavation engineer and a representative of the Fire Department may be appointed as a non-voting member (town residency not required).
- (b) The Committee shall file with the Board a written report, with recommendations, at or within twenty-one (21) days of each hearing held pursuant to the provisions of this by-law, and no such permit may be granted until such report has been filed or until the Committee has allowed twenty-one (21) days to elapse after such hearing without filing a report.
- (c) The Committee shall from time to time file such reports relating to earth removal as the Board may require or as the Committee shall deem necessary or desirable.

## *SECTION 15. RULES AND REGULATIONS*

The Board may adopt rules and regulations not inconsistent with the provisions of this by-law for conducting its business and otherwise carrying out the purposes of this by-law.



*SECTION 16.           BLASTING PERMIT*

No blasting shall be allowed unless permitted, by the Fire Chief and otherwise in conformance with federal, state, and local law.

*SECTION 17.           RODENT CONTROL*

(a) INTRODUCTION

1.     This policy specifies the minimum rodent control and general pest control requirements that shall be included in the Integrated Pest Management (IPM) plan submitted in a permit application under Section 3(b) of this Article, and that shall be incorporated into a permit issued under this Article. A copy of the IPM shall be provided to the Swampscott Board of Health Agent.
2.     Where appropriate, pest control devices and supplies (e.g., bait stations and traps) shall be used so as to facilitate the management and effectiveness of the pest control program.
3.     The IPM plan shall be implemented in such a manner that toxicants or other control tools do not pose a hazard to persons, domestic animals, or non-target wildlife, and in a manner that is consistent with all applicable federal, state, or local environmental or public health laws or regulations, including the Massachusetts Wetlands Protection Act.
4.     The IPM plan requirements are to be performed prior to demolition, excavation, and site preparation, and throughout the project area, so that rodents and other pests do not disperse from or infest the project area or bordering areas. Accordingly, implementation of the IPM plan shall be initiated no later than two weeks before field mobilization begins for the project or such earlier date as necessary to allow for adequate time to achieve control before environmental disruptions.
5.     The project contractor or third-party subcontractor shall perform the rodent control tasks described in the IPM plan and shall respond to other pest control needs when directed by the Swampscott Board of Health Agent.
6.     The project contractor or sub-contractor shall maintain a cooperative dialogue with Town representatives and owners of neighboring properties throughout the development and implementation of the IPM plan.
7.     The IPM plan shall be implemented until the project is completed and all equipment and materials are removed from the site.

(b) QUALIFICATIONS

Pest control applicators shall have specific training and experience in rodent control and integrated pest management and shall have a Massachusetts pesticide applicator license or certification.

(c) INSPECTIONS

1. Prior to any rodent baiting, the proposed construction area and accessible or observable bordering areas (including, but not limited to, all embankments, edge areas, and properties within and abutting the construction area) shall be inspected and signs of rodent activity and sanitation conditions recorded.
2. Thereafter, and for the duration of the project, the proposed construction area and accessible or observable bordering areas, shall be thoroughly inspected for rodent activity and sanitation deficiencies in accordance with the schedule as specified in the IPM, unless directed by the Swampscott Board of Health Agent to inspect on a different or more frequent schedule.

(d) APPLICATION FOR RODENT CONTROL

1. For surface placement of rodent baits, properly secured and tamper-resistant rodent bait stations and traps consistent with U.S. Environmental Protection Agency regulation shall be used and individually numbered and properly identified.
2. Bait stations and traps shall be installed and secured at all observable rodent burrows and at regular and appropriate intervals and locations. Rodent activity (burrows, droppings, bait consumed, dead rodents) shall be recorded. Bait shall be replenished and bait stations and traps shifted as necessary to ensure complete control of rodent populations. Bait placements shall be inspected on a schedule as specified in the IPM plan, unless directed by the Swampscott Board of Health Agent to inspect on a different or more frequent schedule. Inspection and baiting data shall be used to determine the most effective distribution of baiting locations and bait quantities.
3. For situations involving underground construction/demolition, utility relocation, or utility construction, manholes shall be accessed according to the requirements of appropriate agencies and utility companies. Appropriate baits to control rodent populations in manholes and catch basins shall be placed in all accessible manholes and catch basins within the project areas.

(e) CLEANUP

1. Visible rodent carcasses shall be promptly removed and properly disposed of.
2. Upon completion of any pest control operations at the site, all remaining bait and bait stations and traps and other controls shall be removed and properly disposed of.

(f) COMPLAINT CALLS

1. During construction, pest-related complaints from the adjacent neighborhood must be responded to by the project contractor or person designated as responsible for responding to neighborhood complaints as soon as practicable. In responding to any such complaints, if it is determined that there is a relationship between pest infestation and the construction activities, or when directed by the Swampscott Board of Health Agent pesticides or traps, or other appropriate controls or measures shall be used as necessary and appropriate to resolve the complaint.
2. 24-hour contact information shall be provided in the IPM plan for the project contractor or person responsible for responding to neighborhood complaints.

3. Records of all complaints received, including location, contact person, inspection results, and actions taken, shall be created and maintained, as well as whether it was determined that the pest infestation was related to construction activities and, if so, the action taken to resolve the complaint.

(g) RECORD KEEPING

1. Accurate records and data sheets shall be created and maintained setting forth, at a minimum: the locations of areas treated; the number and types of bait stations and traps and other control devices set; the amount of pesticide used; inspections conducted and their findings; information regarding any complaints received as specified in subparagraph(g)(3) above; and an explanation of any changes in pest activity observed in the construction area and accessible or observable bordering areas.
2. All such reports and data sheets shall be provided to the Swampscott Board of Health Agent according to the schedule provided in the IPM plan, but not less than on a monthly basis.

# ARTICLE XIV

## REGISTRATION AND ENFORCEMENT OF ALARM SYSTEMS

### SECTION 1. DEFINITIONS

- A. Alarm Company is a person or business that sells, provides, monitors, maintains, services, repairs, alters, replaces, moves or installs an alarm system. This includes an individual or business that installs an alarm system for their private or proprietary facilities.
- B. Alarm Officer is a designee of the Police Department or Fire Department responsible for administration of the alarm program. The Alarm Officer is charged with the responsibility of reviewing alarm activations, service fee billing, reporting on problematic alarm systems and serving as a resource to the community.
- C. Alarm System is a device or series of devices that emit or transmit a remote or local audible, visual or electronic signal indicating an alarm has been activated and is intended or is likely to result in the summoning of police services or fire services. This does not include an alarm installed in a vehicle unless the vehicle is permanently located at the site.
- D. Alarm User is any homeowner, renter, lessee, or other resident and any renter, lessee, or owner of a business or other establishment or building (other than a government facility) who is primarily responsible for an alarm system and/or an activation of the alarm system.
- E. Alarm Verification is an alarm that has been independently verified by a third party other than the Police Department or Fire Department confirming that the alarm was activated as the result of a crime or incident requiring the police to investigate.
- F. Automatic Voice Dialer is any electronic, mechanical or other device that, when activated, automatically contacts the Police Department or Fire Department by telephone, radio or other means requesting police services through a prerecorded message or other automated system.
- G. Cancellation is the notification of the Police Department by the person, who initially requests police response to a non-High Risk Alarm activation, that the situation does not require a police response.
- H. Contact Person is one or more individuals, or a private business, that can respond to the alarm location to assist police and fire services to thoroughly inspect the property, secure unlocked doors and windows, deactivate or reset an alarm, and/or take responsibility for protected property.
- I. False Burglar Alarm is any alarm where a responding officer(s), having completed a timely investigation of the alarm site, finds no reasonable evidence of a criminal offense. False alarms include avoidable alarms whereby the alarm activation caused by non-criminal behavior could have been avoided with simple preventative measures.
- J. False Fire Alarm is any alarm where responding firefighters, having completed a timely investigation of the alarm site, find no reasonable evidence of a fire. False alarms include avoidable alarms whereby the alarm activation caused by non-fire behavior could have been avoided with simple preventative measures.

- K. Fire Alarm Malfunction(s) include operation of a faulty smoke or heat detection device, a faulty control panel or associated equipment, a water pressure surge in automatic sprinkler equipment, accidental operations of an automatic sprinkler system, an action by an employee of the owner or occupant of the protected premises or a contractor employed by the owner or the occupant, causing accidental activation of the internal fire alarm.
- L. High Risk Alarms include panic, duress, silent, robbery, hold-up and/or any similarly labeled alarm that suggests the alarm has been manually activated and a crime is in progress or there is some other life threatening event. High Risk Alarms also include commercial establishments such as gas stations, banks, jewelry stores and/or businesses with cash or valuables commonly victimized by robbery or commercial thefts.
- M. Nuisance Alarm is any alarm that activates repeatedly and/or unnecessarily within the same 24-hour period, emits an outside audible that does not reset after 10 minutes, emits an outside audible that sounds more than twice from the same activation, and/or when the Chief of Police or Fire Chief, or a designee, determines the alarm is a nuisance due to a violation(s) of these rules and regulations.
- N. Malicious False Alarm is any intentional activation of a fire alarm system not resulting from an actual fire or emergency.

*SECTION 2. AUTOMATIC VOICE DIALERS PROHIBITED*

Alarm Users shall be prohibited from using, and Alarm Companies shall be prohibited from installing, automatic voice dialers.

*SECTION 3. ALARM REGISTRATION*

- A. Alarm Systems in the Town of Swampscott shall be registered with the appropriate department(s) annually between January 1 and January 15. Any subsequent changes to the registration information shall be reported promptly.
- B. Required Information:
  - 1. The address and telephone number of the alarmed property;
  - 2. The resident's name or business name at the alarmed property;
  - 3. If different, the name, address and telephone number of the person(s) or business responsible for any alarm activation; and
  - 4. The name(s) of a Contact Person(s), able to respond to secure the property or prevent additional False Alarms.
- C. The Alarm User shall be responsible for ensuring that an Alarm System that is under their control and located within Swampscott is registered with the appropriate department(s).

- D. An Alarm Company that monitors an Alarm System located in Swampscott with the purpose of reporting alarm activations to the Police Department or Fire Department may register that alarm on behalf of an Alarm User. If registering ten (10) or more Alarm Systems, the list shall be provided in alphabetical order by name. The Alarm Company shall notify the appropriate department of any new or removed Alarm Systems or when there has been a change to the required registration information.

An Alarm Company shall ensure that each Alarm System monitored by them is properly registered. Without confirmation that an Alarm System is properly registered, Alarm Verification shall be required prior to reporting the alarm activation to the Swampscott Police Department or Fire Department.

- E. An Alarm System that is not monitored by an Alarm Company that produces a local audible, visual or electronic signal indicating an alarm has been activated and is intended or is likely to result in the summoning of police or fire services shall be required to be registered by the Alarm User.
- F. Alarm Registration Fee. The annual fee for registering an alarm is \$10 for residential alarms and \$25 for commercial alarms.
- G. No Registration Required if the residence or business has no local audible, visual or electronic signal that alerts a neighbor or passing person that an alarm has been activated and for other types of alarms where the Alarm User or Alarm Company provides Alarm Verification. In these instances, no False Alarm will be reported to the Police Department or Fire Department.

#### *SECTION 4. DUTIES OF THE ALARM USER*

A. An Alarm User shall:

1. Ensure that the alarm is properly registered.
2. Ensure that the Alarm System is properly installed and maintained to minimize or eliminate False Alarms (including equipment that prevents False Alarms during regional power outages and severe storms).
3. Set the Alarm System so that the audible signal sounds for no longer than ten (10) minutes after being activated. The alarm shall be programmed to sound or cycle not more than twice during any single activation. The Alarm User shall not intentionally cause a False Alarm resulting in a public safety response to the alarm site.

B. Alarm User Guidelines

1. If two False Alarms are received in a calendar year, the Alarm System should be inspected, repaired if needed, and/or the Alarm User(s) should receive additional training in the use of the Alarm System.
2. Ensure that all persons who may activate the alarm are properly trained in the use of the Alarm System and/or have the means to disarm and rearm the Alarm System without causing a False Alarm.

*SECTION 5. DUTIES OF THE ALARM COMPANY*

A. An Alarm Company shall:

1. Clearly distinguish High Risk Alarms when reporting alarm activation to the Police Department. High Risk Alarms will be given a high priority public safety response.
2. When reporting an alarm activation, provide, to the extent possible: the nature of the alarm; Alarm User's name and the address, the address where the alarm was activated, and any other pertinent information that may assist police officers to safely investigate the alarm.
3. Report an alarm Cancellation to the proper public safety department as soon as it is learned that a response is not required. Cancellations received prior to arrival of public safety personnel shall not result in a service fee.

B. Alarm Company Guidelines:

1. The Alarm Company shall install Alarm Systems that meet current industry standards and offer Alarm Users written and oral instructions as to the proper use of the system. The Alarm Company should make regular maintenance, upgrades and remedial training available to the Alarm Users.

*SECTION 6. FALSE ALARM SERVICE FEE*

A. Residential. An alarm service fee of \$60 (sixty dollars) shall be assessed on the third and each subsequent false alarm in a calendar year.

B. Non-Residential and High Risk Alarms. An alarm service fee of \$80 (eighty dollars) shall be assessed on the third and each subsequent false alarm in a calendar year.

C. Malicious False Alarm. An alarm service fee of \$150 (one hundred and fifty dollars) shall be assessed for the first and subsequent alarms.

D. All False Alarm activations that occur in one calendar day will be counted as one False Alarm.

E. Alarm Users shall be billed once a month for the previous month's False Alarm activity. All service fees assessed shall be paid to the Town of Swampscott for deposit in the general fund.

If a bill is not paid within thirty (30) days, a second notice will be sent. If the bill is not paid after another thirty-day period, a final notice will be sent informing the owner and/or occupant that court proceedings will commence.

F. When possible, the Police Department shall leave notice of each False Alarm activation at the residence or business of the Alarm User and provide a written letter of warning in response to the second False Alarm.

G. Alarm service fees are not subject to appeal. However, the Police Chief or Fire Chief, Alarm Officer or their designees shall accept written documentation that outlines mitigating circumstances for the False

Alarms and the measures being taken by the Alarm User to prevent future False Alarms. The Chief of Police or Fire Chief shall be authorized to waive service fees.

- H. An Alarm User with five (5) or more alarm service fees, unpaid for a period of six months, will be given a “FINAL” written notice of the fees owed. The Alarm User has fourteen (14) days to make full payment; otherwise the Alarm User is subject to an additional fine.

## *SECTION 7. CONFIDENTIALITY*

The Town recognizes that it is subject to the requirements of the Public Records Law, G.L. c.66, §10. However, in the interest of public safety, it is the intention of the Town, to the extent permitted by law, to maintain confidentially personal information and infrastructure information regarding Alarm Systems including, but not limited to, that specifically identifying the location, operations, or other proprietary information contained in alarm registrations.

## *SECTION 8. GOVERNMENT IMMUNITY*

Alarm System registration is not intended to, nor shall it, create a contract, duty or obligation, either expressed or implied, of response. Any and all liability resulting from the failure to respond to a notification is hereby disclaimed; governmental immunity, as provided by law, is retained. When registering an alarm, the Alarm User and the Alarm Company shall acknowledge that law enforcement or fire services response may be influenced by factors such as, but not limited to: the availability of police units or fire units; priority of calls; weather conditions; traffic conditions; emergency conditions; and staffing levels.

## *SECTION 9. ENFORCEMENT*

Any person who violates any provision of Sections 2, 3, 4A, and 5A of this By-law shall be guilty of a separate offense for each day or portion of a day during which the violation is committed, continued, or permitted. Penalties for violation of this By-law shall be as follows: \$50 for the first offense in a calendar year; \$100 for the second offense in a calendar year; and \$300 for the third and subsequent offenses in a calendar year. No person shall incur penalties in excess of \$750 in any one calendar year under this section.

This by-law may be enforced by any means available in law or in equity, including non-criminal disposition in accordance with G.L. c.40, §21D and Article XI, Section 2 of the Town By-laws. In addition to the enforcing authorities identified in said Article, any police officer of the Town or the Fire Chief or his designee shall be authorized to enforce this Bylaw.

1. Appropriation Amount: Not Applicable
2. Funding: Not Applicable
3. Indicate department priority in relation to your requests: Not Applicable
4. Justification Narrative: Historically a very small minority of alarm activations involve criminal conduct. This proposed bylaw is an effort to provide some regulatory oversight in the interests of public safety. The by-law provides a more stringent policy for repeated, false burglar and/or fire alarms. (5/4/09ATM)



## ARTICLE XV

### PUBLIC CONSUMPTION OF MARIJUANA OR TETRAHYDROCANNABINOL

No person shall smoke, ingest, or otherwise use or consume marijuana or tetrahydrocannabinol (as defined in G.L. c. 94C, § 1, as amended) while in or upon any street, sidewalk, public way, footway, passageway, stairs, bridge, park, playground, beach, recreation area, boat landing, public building, schoolhouse, school grounds, cemetery, parking lot, or any other area owned by or under the control of the Town; or in or upon any bus or other passenger conveyance operated by a common carrier; or in any place accessible to the public.

Any person smoking, ingesting or otherwise using or consuming marijuana or tetrahydrocannabinol in violation of Section 1 of this bylaw shall provide to a police officer so requesting personal identifying information, including their full legal name and address. Failure to provide such identifying information upon request, or provision of false, incorrect or otherwise invalid identifying information, shall be considered a separate violation of this bylaw, and any fine imposed shall be in addition to that imposed for violation of the first paragraph of this bylaw.

This by-law may be enforced through any lawful means and in law or in equity including, but not limited to, non-criminal disposition pursuant to G.L. c. 40, § 21D, by the **Select Board**, the Town Administrator, or their duly authorized agents, or any police officer. Any penalty imposed under this by-law shall be in addition to any civil penalty imposed under G.L. c. 94C, § 32L.

In case any section, paragraph or part of this bylaw is for any reason declared invalid or unconstitutional by any court, every other section, paragraph and part shall continue in full force and effect. (5/4/09ATM)

# ARTICLE XVI

## STRETCH ENERGY CODE

### *SECTION 1. ADOPTION*

The Town of Swampscott has adopted the provisions of 780 CMR 120.AA (i.e., Appendix 120.AA of the State Building Code or the “Stretch Energy Code”), as may be amended from time to time, in place of the provisions set forth under 780 CMR 13.00, 34.00, 61.00 and 93.00.

### *SECTION 2. PURPOSE*

The purpose of the Stretch Energy Code shall be to provide the Town with a more energy efficient alternative to the base energy code otherwise set forth under the State Building Code. (5/3/10ATM)

# ARTICLE XVII

## CIVIL FINGERPRINTING FOR CERTAIN LICENSE APPLICANTS

By-law requires the Police Department to conduct state and national fingerprint based criminal history checks for individuals applying for specified licenses, and further authorizes the **Select Board**, in consultation with the Chief of Police, to adopt appropriate policies and procedures to effectuate the purposes of the by-law, or take any other action relative thereto:

### Civil Fingerprinting for Certain License Applications

1. In accordance with the provisions of G.L. c.6, §172BY2, the Police Department shall, fingerprint the persons listed below and conduct state and national fingerprint-based criminal history checks for such individuals. To carry out these criminal history checks, the Police Department shall be authorized to utilize Federal Bureau of Investigation records; provided, however, that such records shall not be disseminated to unauthorized entities and shall be maintained and disclosed in accordance with law.

The licensing authority is hereby authorized to deny an application for any license specified herein, including renewals and transfers thereof, from any person who is determined unfit for the license due to information obtained pursuant to this by-law. Factors that shall be considered in making a determination of fitness shall include but not be limited to whether the record subject has been convicted of, or is under pending indictment for a crime that bears upon the subject's ability or fitness to serve in that capacity, including any felony or a misdemeanor that involved force or threat of force, possession of a controlled substance, or a sex-related offense.

2. All applicants for Hawkers and Peddlers, Door-to-Door Sales, Pawn Broker, Dealers of Second Hand Articles, Ice Cream Truck Vendor, Taxi and Livery licenses, and for any license to sell alcoholic beverages, including the "responsible manager" listed on the license application, shall be subject to the requirements of this by-law.
3. The **Select Board** in consultation with the Chief of Police, shall promulgate regulations for the implementation of this by-law, which may include, but shall not be limited to: establishment of submission deadlines; procedures for making recommendations to the licensing authority or making a licensing decision as a result of such criminal history check; procedures for accessing, correcting or amending any such record; criteria for fitness determinations in addition to those set forth in Section 1 of this by-law; and penalties for failure to comply with this by-law.
4. The Police Department shall charge a fee of one hundred dollars (\$1 00.00) for each fingerprinting and criminal history check. A portion of the fee, as specified in G.L. c.6, §1 72B Y2 , shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund, and the remainder of the fee may be retained by the Police Department for costs associated with the administration of the fingerprinting system.
5. This by-law and any regulations adopted hereunder shall be enforceable through any means available at law or in equity, including but not limited to non-criminal disposition under G.L. c.40, §21 D. The Chief of Police or any police officer of the Town of Swampscott shall be an enforcing person for purposes of this by-law. Each day of violation shall constitute a separate offense.

6. This by-law shall take effect after compliance with all requirements of G.L. c.40, §32 have been met. (5/7/12 ATM)

# ARTICLE XVIII

## ILLCIT DISCHARGES TO MUNICIPAL SEPARATE STORM SEWER SYSTEM

### *SECTION 1. PURPOSE*

The purpose of this Bylaw is to eliminate non-stormwater discharges to the Town of Swampscott's municipal separate storm sewer system. Non-stormwater discharges contain contaminants and supply additional flows to the Town's storm drain system. Both increased and contaminated stormwater runoff are major causes of:

1. impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater;
2. contamination of drinking water supplies;
3. alteration or destruction of aquatic and wildlife habitat; and
4. flooding.

Regulation of illicit connections and discharges to the municipal separate storm sewer system is necessary for the protection of the Town's natural resources and municipal facilities, and to safeguard the public health, safety, welfare and the environment.

The objectives of this Bylaw are:

1. To prevent pollutants from entering the Town's municipal separate storm sewer system;
2. To prohibit illicit connections and unauthorized discharges to the municipal separate storm sewer system;
3. To require the removal of all such illicit connections;
4. To comply with State and Federal statutes and regulations relating to stormwater discharges; and
5. To establish the legal authority to ensure compliance with the provisions of this Bylaw through inspection, monitoring, and enforcement.

### *SECTION 2. DEFINITIONS*

For purposes of the administration and enforcement of this Bylaw, the following definitions shall apply:

**ENFORCEMENT AUTHORITY:** The Director of the Department of Public Works, and Town employees and/or agents designated by the Director of the Department of Public Works to enforce this Bylaw.

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

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

**GROUNDWATER:** Water beneath the surface of the ground.

**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 or approved before the effective date of this Bylaw.

**ILLICIT DISCHARGE:** Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Section 8. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or a Surface Water Discharge Permit, or resulting from firefighting activities exempted pursuant to Section 8, Subsection (a) of this Bylaw.

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

**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 Swampscott.

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT:** A permit issued by United States Environmental Protection Agency or jointly with the Commonwealth of Massachusetts that authorizes and regulates the discharge of pollutants to waters of the United States.

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

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

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

**POLLUTANT:** Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the Commonwealth. Pollutants shall include without limitation:

1. paints, varnishes, and solvents;
2. oil and other automotive fluids;
3. non-hazardous liquid and solid wastes and yard wastes;
4. refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
5. pesticides, herbicides, and fertilizers;
6. hazardous materials and wastes;
7. sewage, fecal coliform and pathogens;
8. dissolved and particulate metals;
9. animal wastes;
10. rock, sand, salt, soils;
11. construction wastes and residues; and
12. noxious or offensive matter of any kind.

**PROCESS WASTEWATER:** Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

**RECHARGE:** The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

**STORMWATER:** Runoff from precipitation or snow melt.

**SURFACE WATER DISCHARGE PERMIT:** A permit issued by the Massachusetts Department of Environmental Protection (“DEP”) that authorizes the discharge of pollutants to waters of the Commonwealth.

**TOXIC OR HAZARDOUS MATERIAL OR WASTE:** Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under as defined under G.L. Ch.21C and Ch.21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

**WASTEWATER:** Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

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

**WATERS OF THE COMMONWEALTH:** All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

### *SECTION 3. APPLICABILITY*

This Bylaw shall apply to flows entering the municipally owned storm drainage system.

### *SECTION 4. AUTHORITY*

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and the regulations of the federal Clean Water Act found at 40 CFR 122.34.

### *SECTION 5. RESPONSIBILITY FOR ADMINISTRATION*

The Enforcement Authority shall administer, implement and enforce this Bylaw. Any powers granted to or duties imposed upon the Enforcement Authority may be delegated in writing by the Enforcement Authority to employees or agents of the Enforcement Authority, and to other Town officials and employees.



*SECTION 6. REGULATIONS*

The Enforcement Authority may promulgate rules and regulations to effectuate the purposes of this Bylaw. Failure by the Enforcement Authority to promulgate such rules and regulations shall not have the effect of suspending or invalidating this Bylaw.

*SECTION 7. PROHIBITED ACTIVITIES*

a) Illicit Discharges

No person shall dump, discharge, cause or allow to be discharged any pollutant or non-storm water discharge into the municipal separate storm sewer system (MS4).

b) Illicit Connections

No person shall construct, use, allow, maintain or continue any illicit connection to the municipal separate storm sewer system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

c) Obstruction of Municipal Separate Storm Sewer System

No person shall obstruct or interfere with the normal flow of storm water into or out of the MS4 without prior written approval from the Enforcement Authority.

d) Yard Wastes

No person shall dump or dispose of yard waste (leaves, grass clippings, etc.) into the municipal storm drain system, or into catch basins which discharge to the storm drain system.

*SECTION 8. EXEMPTIONS*

a) Discharges or flows resulting from fire-fighting activities or other authorized hydrant use are exempt.

b) The following non-storm water discharges or flows are exempt from the prohibitions of this Bylaw provided that the source is not a significant contributor of a pollutant to the municipal storm drain system:

1. Waterline flushing;
2. Flow from potable water sources;
3. Springs;

4. Natural flow from riparian habitats and wetlands;
5. Diverted stream flow;
6. Rising groundwater;
7. Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
8. Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
9. Discharge from landscape irrigation or lawn watering;
10. Water from individual residential car washing;
11. Discharge from dechlorinated swimming pool water (less than one ppm chlorine) provided the water is allowed to stand for one week following last chlorination prior to draining and the pool is drained in such a way as not to cause a nuisance;
12. Discharge from street sweeping;
13. Dye testing, provided verbal notification is given to the Enforcement Authority prior to the time of the test;
14. Non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or DEP, provided that the discharge is in full compliance with the requirements of the written approval, waiver, or order and applicable laws and regulations; and
15. Discharge for which advanced written approval is received from the Enforcement Authority as necessary to protect public health, safety, welfare or the environment.

*SECTION 9. EMERGENCY SUSPENSION OF STORM DRAINAGE SYSTEM ACCESS*

The Enforcement Authority 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 Enforcement Authority may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

## *SECTION 10. 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 storm drain system or waters of the Commonwealth, 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 Town fire and police departments. In the event of a release of non-hazardous material, the reporting person shall notify the Enforcement Authority no later than the next business day. The reporting person shall provide to the Enforcement Authority 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 prevent its recurrence. Such records shall be retained for at least three years.

## *SECTION 11. ENFORCEMENT*

### a) Enforcement

The Enforcement Authority or an authorized agent of the Enforcement Authority shall enforce this Bylaw, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

### b) Entry to Perform Duties

To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Enforcement Authority may enter upon privately owned property for the purpose of performing its duties under this Bylaw and may make or cause to be made such examinations, surveys or sampling as the Enforcement Authority deems reasonably necessary.

### c) Civil Relief

If a person violates the provisions of this Bylaw, regulations, permit, notice, or order issued thereunder, the Enforcement Authority may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

### d) Orders

The Enforcement Authority may issue a written order to enforce the provisions of this Bylaw or the regulations thereunder, which may include: (i) elimination of illicit connections or discharges to the MS4; (ii) performance of monitoring, analyses, and reporting; (iii) that unlawful discharges,

practices, or operations shall cease and desist; and (iv) remediation of contamination in connection therewith.

If the enforcing person determines that abatement or remediation of contamination 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 may, at its option, undertake such work, and expenses thereof shall be charged to the violator.

e) Criminal Penalty

Any person who violates any provision of this Bylaw, regulation, order or permit issued thereunder, shall be punished by a fine not to exceed \$300.00 per violation. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

f) Non-Criminal Disposition

As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, §21D and Article XII, Section 2 of the Town Bylaws, in which case the Enforcement Authority shall be the enforcing person. For non-criminal disposition, the penalty for the first violation shall be \$100.00, the penalty for the second violation shall be \$200.00, and the penalty for the third and subsequent violations shall be \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

g) Appeals

The decisions or orders of the Enforcement Authority shall be final. Further relief shall be to a court of competent jurisdiction.

h) 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 13. TRANSITIONAL PROVISIONS*

Property owners shall have sixty days from the effective date of the Bylaw to comply with its provisions provided good cause is shown for the failure to comply with the Bylaw during that period.

# ARTICLE XIX

## CONSTRUCTION AND POST-CONSTRUCTION STORMWATER MANAGEMENT

### *SECTION 1. PURPOSE*

Regulation of discharges to the municipal separate storm sewer system (MS4) is necessary for the protection of the Town's water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment. Increased and contaminated stormwater runoff associated with developed land uses and the accompanying increase in impervious surface are major causes of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater. In addition, land disturbances can cause harmful impacts due to soil erosion and sedimentation:

- A. Impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater;
- B. Contamination of drinking water supplies;
- C. Erosion of stream channels;
- D. Alteration or destruction of aquatic and wildlife habitat;
- E. Flooding; and
- F. Overloading or clogging of municipal catch basins and municipal storm drainage systems.

Therefore, this Construction and Post-Construction Stormwater Management Bylaw ("Bylaw") establishes stormwater management standards for the final conditions that result from development and redevelopment projects to minimize adverse impacts offsite and downstream which would be born by abutters, townspeople, and the general public. In addition, the Bylaw establishes stormwater management standards for land disturbances that have harmful impacts of soil erosion and sedimentation.

The objectives of the Bylaw are:

- A. To require practices to control the flow of stormwater from new and redeveloped sites into the municipal storm drainage system in order to prevent flooding and erosion;
- B. To protect groundwater and surface water from degradation;
- C. To promote groundwater recharge and infiltration;
- D. To prevent pollutants from entering the Town's municipal separate storm sewer system (MS4) and to minimize discharge of pollutants from the MS4;

- E. To ensure adequate long-term operation and maintenance of structural stormwater best management practices (BMPs) so that they work as designed;
- F. To require practices that eliminate soil erosion and sedimentation and control the volume and rate of stormwater runoff resulting from land disturbances;
- G. To ensure that soil erosion and sediment control measures and stormwater runoff control practices are incorporated into the site planning and design process and are implemented and maintained;
- H. To encourage the use of non-structural stormwater management measures and better site design practices or “low-impact development practices”, such as reducing impervious cover and the preservation of green space and other natural areas, to the maximum extent practicable;
- I. 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;
- J. To comply with state and federal statutes and regulations relating to stormwater discharges; and
- K. To establish the Town’s legal authority to ensure compliance with the provisions of this Bylaw through inspection, monitoring, and enforcement.

*SECTION 2. DEFINITIONS*

The definitions contained herein apply to issuance of a Stormwater Management Permit established by this Bylaw. Terms not defined in this section shall be construed according to their customary and usual meaning unless the context indicates a special or technical meaning.

ABUTTER – The owner(s) of land abutting the activity.

ALTERATION – Any activity that will measurably change the ability of a ground surface area to absorb water or will change existing surface drainage patterns. Alteration may be similarly represented as “alteration of drainage characteristics” and “conducting land disturbance activities”. Such changes include change from distributed runoff to confined discrete discharge, change in the volume of runoff from the area, change in the peak rate of runoff from the area, and change in the recharge to groundwater on the area.

APPLICANT – Any person, individual, partnership, association, firm, company, corporation, trust, authority, agency, department, or political subdivision, of the Commonwealth of Massachusetts or the Federal government to the extent permitted by law requesting a Stormwater Management Permit for proposed land disturbances.

**BEST MANAGEMENT PRACTICES (BMP)** – Structural, non-structural and managerial techniques that are recognized to be the most effective and practical means to prevent and/or reduce increases in stormwater volumes and flows, reduce point source and non-point source pollution, and promote stormwater quality and protection of the environment. “Structural” BMPs are devices that are engineered and constructed to provide temporary storage and treatment of stormwater runoff. “Non-structural” BMPs are natural measures to reduce pollution levels, do not require extensive construction efforts, and/or promote pollutant reduction by eliminating the pollutant source.

**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. Clearing activities generally include grubbing activity as defined below.

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

**DISCHARGE OF POLLUTANTS** – The addition from any source of any pollutant or combination of pollutants into the municipal storm drainage system or into the waters of the United States or Commonwealth of Massachusetts from any source.

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

**ENFORCEMENT AUTHORITY** – Town’s authorized agent to enforce construction and post construction runoff controls as specified in this Bylaw and the Stormwater Management Rules and Regulations. The Director of Public Works, or his designee, is designated as the Enforcement Authority.

**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 SEDIMENT CONTROL PLAN** – A document containing narrative, drawings, and details developed by a Registered Professional Engineer (P.E.) or a Certified Professional in Erosion and Sediment Control (CPESC), which includes BMPs, or equivalent measures designed to control surface runoff, erosion and sedimentation during pre-construction and construction related land disturbances.

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

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

**IMPERVIOUS SURFACE** – Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes but is not limited to roads, paved parking lots, sidewalks, and roof tops.

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

**LOW IMPACT DEVELOPMENT (LID)** – An approach to environmentally friendly land use planning. It includes a series of landscaping and design techniques intended to maintain the natural, pre-developed ability of a site to manage rainfall. LID techniques capture water on site, filter it through vegetation, and allow seeping into the ground rather than being lost as surface runoff so that the local water table can recharge. An important LID principle embodies the concept that rainwater is a resource and not merely a superfluous waste product.

**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. The policy has been incorporated in the Regulations to the Wetlands Protection Act at 310 CMR 10.05(6)(k) through (q).

**MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) OR MUNICIPAL STORM DRAINAGE 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.

**NON-POINT SOURCE POLLUTION** – Pollution from many diffuse sources caused by rainfall or snowmelt moving over and through the ground.

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

**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 of Massachusetts or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.



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

POLLUTANT – Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the Commonwealth of Massachusetts. Pollutants shall include without limitation:

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

POST-DEVELOPMENT – Conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land. Post-development refers to conditions after culmination of a new development or re-development project and does not depict conditions during the construction phases of a project.

PRE-DEVELOPMENT – The conditions that exist at the time that plans for the land development of a tract of land are submitted to the Enforcement Authority. Where phased development or phased plan approval occurs (preliminary grading, roads, utilities, etc.), the existing conditions at the time prior to the first plan submission shall establish pre-development conditions.

RECHARGE – The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

REDEVELOPMENT – Development, rehabilitation, expansion, demolition, or phased projects that disturb the ground surface 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.

SEDIMENT CONTROL – Measures that prevent eroded sediment from leaving the site or entering off-site drainage structures.

SEDIMENTATION – The process or act of deposition of sediment.

SITE – Any lot or parcel of land or area of property where land disturbances are, were, or will be performed.

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

START OF CONSTRUCTION – The first land-disturbing activity associated with a development, including but not limited to, land preparation such as clearing, grading and filling; installation of streets and walkways; excavation for basements, footings, piers or foundations; erection of temporary forms; and installation of accessory buildings.

STORMWATER – Stormwater runoff, snow melt runoff, and surface water runoff and drainage.

STORMWATER MANAGEMENT PLAN – A plan required as part of the application for a Stormwater Management Permit, that includes structural and non-structural best management practices (BMPs) to manage and treat stormwater runoff generated from regulated development activity. A Stormwater Management Plan also includes an Operation and Maintenance Plan describing maintenance requirements for structural BMPs.

STREAM – A body of running water, including brooks, creeks, and other water courses, which moves in a definite channel in the ground due to a hydraulic gradient. A portion of a stream may flow through a culvert or beneath a bridge. A stream's flow may be intermittent (i.e., does not flow throughout the year), or perennial.

WATERS OF THE COMMONWEALTH OF MASSACHUSETTS – All waters within the jurisdiction of the Commonwealth of Massachusetts, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, costal waters, and groundwater.

WETLANDS – Coastal and freshwater wetlands, including wet meadows, marshes, swamps, and bogs, as defined and determined pursuant to G.L. c. 131, § 40 and 310 CMR 10.00 et seq.

*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 G.L. c.83, §§ 1, 10, and 16, as amended by St. 2004, c. 149, §§ 135-140, and the regulations of the Federal Clean Water Act found at 40 CFR 122.34

*SECTION 4. APPLICABILITY*

A. No person shall undertake a construction activity, including clearing, grading, and excavation, that results in a land disturbance equal to or greater than one acre of land, or less than one acre of land but part of a larger common plan of development that will ultimately disturb equal to or greater than one acre of land, without a Stormwater Management Permit from the Enforcement Authority. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or the original purpose of the site.

B. Exemptions

The following activities are exempt from the requirement for a Stormwater Management Permit:

1. Construction activities waived from permit coverage under the NPDES General Permit for Stormwater Discharges from Construction Activities;
2. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04, whether or not the activity occurs within a wetland resource area;
3. Normal maintenance of existing landscaping, gardens or lawn areas associated with a single-family dwelling;
4. The construction of fencing that will not substantially alter existing terrain or drainage patterns;
5. Construction, maintenance and operation of utilities other than drainage (gas, water, electric, telephone, etc.) which will not alter terrain or drainage patterns;
6. As authorized in the Phase II Small MS4 General Permit for Massachusetts, stormwater discharges resulting from the activities identified in Section 4-A that are wholly subject to jurisdiction under the Wetlands Protection Act and demonstrate compliance with the Massachusetts Stormwater Management Policy as reflected in an Order of Conditions issued by the Conservation Commission are exempt from compliance with this Bylaw; and
7. Emergency work to protect life, limb, or property.

*SECTION 5. ADMINISTRATION*

The Enforcement Authority shall administer, implement, and enforce this Bylaw. Any powers granted to or duties imposed upon the Enforcement Authority may be delegated in writing by the Enforcement Authority to its employees and agents.

*SECTION 6. RULES AND REGULATIONS*

After public notice and public hearing, the Enforcement Authority may adopt, and periodically amend, rules and regulations relating to the procedures and administration of this Bylaw, including but not limited to content of permit applications, review time periods, permit conditions, additional definitions, and fees. Failure by the Enforcement Authority to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw.

*SECTION 7. FEE STRUCTURE*

The Enforcement Authority by regulation shall promulgate an application fee schedule for Stormwater Management Permit applications and completion certificates. The fee schedule shall be reasonably related to the costs of processing, reviewing and acting upon the application, including review of the application by a professional engineer or other consultant retained by the Enforcement Authority, if it so deems necessary, to advise it on technical, legal, economic, or other aspects of the proposed work. The fee specified in such a fee schedule shall be made payable to the Town and shall accompany the permit application or request for certificate of completion. The Enforcement Authority may require an additional fee for review of any change in or alteration from an approved permit.

*SECTION 8. WAIVERS*

- A. The Enforcement Authority may waive strict compliance with any requirement of this Bylaw or the rules and regulations promulgated hereunder, where such action:
  1. is allowed by federal, state and local statutes and/or regulations,
  2. is in the public interest, and
  3. is not inconsistent with the purpose and intent of this Bylaw.
- B. Any applicant may submit a written request to be granted such a waiver. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of this Bylaw does not further the purposes or objectives of this Bylaw.

*SECTION 9. ENFORCEMENT*

A. The Enforcement Authority or its authorized agent shall enforce this Bylaw, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violation.

B. Orders

1. The Enforcement Authority or an authorized agent of the Enforcement Authority may issue a written order to enforce the provisions of this Bylaw or the regulations thereunder, which may include requirements to:

- a) cease and desist from construction or land disturbance until there is compliance with this Bylaw, or provisions of an approved Stormwater Management Permit;
- b) maintain, install, or undertake additional erosion and sediment control measures;
- c) repair, maintain, or replace the stormwater management system or portions thereof in accordance with the operation and maintenance plan;
- d) perform monitoring, analyses, and reporting; and/or
- e) remediate an adverse impact resulting directly or indirectly from malfunction of erosion control measures or the stormwater management system.

2. If the Enforcement Authority or its agent determines that abatement or remediation of adverse impacts is required, the order shall set forth a deadline by which such abatement or remediation must be completed by the violator or property owner.

C. Criminal Penalty

Any person who violates any provision of this Bylaw or regulation, order or permit issued thereunder, shall be punished by a fine of not more than \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

D. Non-Criminal Disposition

As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in MGL c.40, § 21D and Article XII, Section 2 of the Town General By-laws, in which case the Enforcement Authority and its agents shall be the enforcing person. The penalty for the first violation shall be \$100. The penalty for the second violation shall be \$200. The penalty for the third and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

E. Appeals

The decisions or orders of the Enforcement Authority shall be final. Further relief shall be to a court of competent jurisdiction.

F. 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 10. SEVERABILITY*

If any provision, paragraph, sentence, or clause of this Bylaw shall be held invalid for any reason by a court of competent jurisdiction, all other provisions shall continue in full force and effect.

## ARTICLE XX

### SWAMPSCOTT AFFORDABLE HOUSING TRUST FUND

#### *SECTION 1. PURPOSE*

The purpose of the Swampscott Affordable Housing Trust Fund (the “Trust”) shall be to provide for the creation and preservation of affordable housing in the Town for the benefit of low and moderate-income households.

#### *SECTION 2. BOARD OF TRUSTEES*

There shall be a Board of Trustees (the “Board”), comprised of five (5) Trustees who shall be appointed by the **Select Board**. At least one (1) of the Trustees shall be a **Select Board**. The Trustees of the Board shall serve for a term of two (2) years, except that two of the initial appointments shall be for a term of one (1) year. The Trustees may be reappointed by the **Select Board** for succeeding terms, and there are no limits on the number of terms that a Trustee can serve. Vacancies shall be filled by the **Select Board** for the remainder of the unexpired term. Any Trustee may be removed for cause by the **Select Board** after the opportunity for a hearing. Reference to the Trustee shall mean the Trustee or Trustees for the time being hereunder.

#### *SECTION 3. POWERS OF TRUSTEES*

The powers of the Board of Trustees, all of which shall be carried on in furtherance of the purposes set forth in G.L. c.44, §55C, shall include the following:

- A. To accept and receive real property, personal property or money, by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the Trust in connection with any ordinance or by-law or any general or special law or any other source, including money from G.L. c.44B;
- B. To purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;
- C. To sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to Trust property as the Board deems advisable notwithstanding the length of any such lease or contract;

- D. To execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the Board engages for the accomplishment of the purposes of the trust;
- E. To employ advisors and agents, such as accountants, appraisers and lawyers, as the Board deems necessary;
- F. To pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the Board deems advisable;
- G. To apportion receipts and charges between incomes and principal as the Board deems advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;
- H. To participate in any reorganization, re-capitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;
- I. To deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the Board may deem proper and to pay, out of Trust property, such portion of expenses and compensation of such committee as the Board may deem necessary and appropriate;
- J. To carry property for accounting purposes other than acquisition date values;
- K. To borrow money on such terms and conditions and from such sources as the Board deems advisable, to mortgage and pledge trust assets as collateral;
- L. To make distributions or divisions of principal in kind;
- M. To comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the Trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of G.L. c.44, §55C, to continue to hold the same for such period of time as the Board may deem appropriate;
- N. To manage or improve real property; and to abandon any property which the Board determined not to be worth retaining;
- O. To hold all or part of the Trust property un-invested for such purposes and for such time as the Board may deem appropriate; and
- P. To extend the time for payment of any obligation to the Trust.



*SECTION 3. DECLARATION OF TRUST*

The Trustees are hereby authorized to execute a Declaration of Trust and Certificate of Trust for the Swampscott Affordable Housing Trust, to be recorded with the Essex County Registry of Deeds and filed with Essex County Registry District of the Land Court

*SECTION 4. FUNDS PAID TO THE TRUST*

In accordance with G.L. c.44, §55C, all moneys paid to the Trust in accordance with any zoning or general by-law, exaction fee, or private contributions shall be paid directly into the Trust and need not be appropriated or accepted and approved into the Trust. Funds appropriated into the Trust by the Town shall become Trust property, and, to be expended, these funds need not be further appropriated. All moneys remaining in the Trust at the end of any fiscal year, whether or not expended by the Board within one year of the date they were appropriated into the Trust, remain Trust property.

*SECTION 5. ANNUAL AUDITS*

The Board shall provide for an annual audit of the books and records of the Trust. Such audit shall be performed by an independent auditor in accordance with accepted accounting practices. Upon receipt of the audit by the Board of Trustees, a copy shall be provided forthwith to the **Select Board**.

# ARTICLE XXI

## REVOLVING FUNDS

### SECTION 1.

There are hereby established in the Town of Swampscott pursuant to the provisions of G.L. c.44, §53E½, the following Revolving Funds:

<b>PROGRAM</b>	<b>AUTHORIZED REPRESENTATIVE OR BOARD TO SPEND</b>	<b>DEPARTMENT RECEIPTS</b>	<b>PURPOSE</b>
<b>Council on Aging</b>	Council on Aging	User fees or charges from COA programs	To pay for salaries, supplies, equipment and COA programs
<b>Recycling-Blue Bins</b>	Health Department	Fees or charges received in connection with sale of recycling blue bins	To purchase supplies and equipment
<b>Recreation</b>	Town Administrator	Fees or charges received from Recreation Department programs	To pay for supplies, salaries and equipment
<b>Public Library</b>	Town Administrator	Fees or charges for use of Library public copier and computer printers	To purchase supplies and paper for the copier and computer printers
<b>Athletic Field Maintenance</b>	Town Administrator	Fees or charges received for rental or use of town athletic fields	To pay for salaries, supplies, and equipment of the town's athletic fields.
<b>Historical Commission</b>	Historical Commission	Historic House Plaque Program; Community programs and Seminars; sale of books and Keepsakes	\$5,000 to pay expenses related to the programs for which receipts will be collected (11/2020)

*SECTION 2.*

Expenditures from each revolving fund set forth herein shall be subject to the limitation established by Town Meeting or any increase therein as may be authorized in accordance with G.L. c.44, §53E½.

<b>PROGRAM OR PURPOSE</b>	<b>FISCAL YEAR SPENDING LIMIT</b>
<b>Council on Aging</b>	\$75,000
<b>Recycling-Blue Bins</b>	\$5,000
<b>Recreation</b>	\$500,000
<b>Public Library</b>	\$3,500
<b>Athletic Field Maintenance</b>	\$20,000

## ARTICLE XXII

### SINGLE USE PLASTIC BAGS

#### *SECTION 1. PURPOSE.*

The production and use of single-use plastic bags have significant impacts on the environment of all communities, including but not limited to: contributing to the potential death of fish, fowl, animals and wildlife through ingestion and entanglement; contributing to pollution of the environment through improper disposal; clogging storm drainage systems; creating a burden to solid waste collection and recycling efforts; and requiring the use of millions of barrels of non-renewable, polluting, fossil fuel for their manufacture. Therefore, the Town of Swampscott seeks to phase out the use of single-use plastic bags by all retail establishments, including restaurants providing take-out, doing business in Town over a period of 12 months from the effective date of this bylaw.

#### *SECTION 2. DEFINITIONS.*

“Establishment” means any business selling goods, articles, food or personal services to the public, including restaurants.

“Single-use plastic bags” means bags made of plastic, with integral handles, and thickness less than 2.5 mils, that are intended to be used for the transport of products purchased at an Establishment as defined herein.

“Reusable bag” means a bag that is specifically designed for multiple use and is made of cloth, fabric or other durable materials.

#### *SECTION 3. USE REGULATIONS.*

- A. Single-use plastic bags shall not be distributed or sold at any Establishment within the Town of Swampscott effective September 1, 2018. Existing stock of single-use bags shall be phased out within four (4) months after August 31, 2018; any stock remaining at the end of said 4 months shall be disposed of properly by the Establishment. Customers are encouraged to bring their own reusable shopping bags to stores.
- B. Establishments may provide reusable bags at no charge or charge a reasonable fee for each paper or other bag, as they desire. Establishments are strongly encouraged to make reusable bags available to customers at a reasonable price.

- C. Thin-film plastic bags, used by Establishments to contain dry cleaning, newspapers, produce, meat, bulk foods, wet items, and other similar merchandise, typically without handles, are exempt from the provisions of this Regulation.

*SECTION 4. ADMINISTRATION AND ENFORCEMENT.*

This Bylaw may be enforced by any Town police officer, enforcement officers or agents of the Board of Health. This Bylaw may be enforced through any lawful means in law or in equity, including, but not limited to, non-criminal disposition pursuant to G.L. c.40, §21D and Article XII of the Town's General Bylaws. If non-criminal disposition is elected, then any Establishment which violates any provision of this regulation shall be subject to the following penalties:

First Offense:	Written warning
2nd Offense:	\$50 fine
3rd Offense:	\$100 fine
4th and Subsequent Offenses:	\$300 fine

Subsequent offenses shall be determined as offenses occurring within two years of the date of the first noticed offense. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense. Effective date September 1, 2018 shall be phased out within 4 months after August 31, 2018.

# ARTICLE XXIII

## IMPROVEMENT OF BLIGHTED OR UNSAFE STRUCTURES OR PROPERTY AND THE MAINTENANCE OF VACANT BUILDINGS

### *SECTION 1. AUTHORITY AND PURPOSE*

Pursuant to the general powers granted to towns by Article 89 of the Amendments to the Massachusetts Constitution, and the specific powers granted by Massachusetts General Laws, Chapter 139, Sections 1-3A, this Bylaw is adopted for the prevention of any unreasonable interference with the common interest of the general public in maintaining decent, safe, and sanitary structures. The provisions of this Bylaw shall be applicable to any building or structure or property that meets any one of the three sets of conditions set forth herein under the definitions of “Blighted Structure or Property”, “Unsafe Structure or Property,” or “Vacant Buildings” **provided however that this bylaw shall not apply to any property in residential use.**

### *SECTION 2. DEFINITIONS*

- (a) Building - A structure, whether portable or fixed, with exterior walls or firewalls and a roof, built, erected or framed, of a combination of any materials, to form shelter for persons, animals, or property.
- (b) Structure - A combination of materials, whether wholly or partially level with, above or below the surface of the ground, whether permanent or temporary, assembled at a fixed location to give support, shelter, or enclosure such as a building (see above), framework, retaining wall, platform, bin, fence, parking area, sign, flagpole, or mast for antenna or the like.
- (c) Enforcement Authority – This Bylaw shall be enforced by the Building Inspector or his qualified designee.
- (d) Interested Parties - In connection with the enforcement and notification requirements of this Bylaw, Interested Parties are: The Enforcement Authority; any Responsible Party; owners and occupants of property abutting the subject property; owners and occupants of property directly opposite the subject property on any public or private street or way; and a person filing a complaint under this Bylaw.
- (e) Occupant - A person who occupies real property with the consent of the owner as a lessee, tenant at will, licensee, or otherwise. The singular use of the term includes the plural when the context so indicates.
- (f) Owner - Every person who alone or jointly or severally with others (a) has legal title to any building, structure or property; or (b) has care, charge, or control of any such building structure or property in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or (c) is a mortgagee in possession; or (d) is an agent, trustee or other person appointed by the courts.
- (g) Responsible Party - The owner or occupant (in the case of real property) of property that is the subject of proceedings under this Bylaw. The singular use of the term includes the plural when the context so indicates.

### *SECTION 3. BLIGHTED STRUCTURE OR PROPERTY*

Blighted is a condition of structure or property that by reasonable determination displays physical deterioration that renders the structure unfit for human habitation, in need of major maintenance or repair, or lacks ventilation, light or sanitation facilities, and that contributes to detrimental effects to safety or health and unreasonably interferes with the common interest of the general public in maintaining decent, safe, and sanitary structures. This definition of the term “blighted” is based on Massachusetts General Laws Chapters 121A and 121B and the implementing regulations which provide guidance regarding the definition of blighted structures. Blighted does not constitute a condition that merely adversely affects property values. The term blighted includes, but is not limited to:

- (a) property having deteriorated roofs, foundations, walls, or floors, including broken or inadequately secured windows or doors;
- (b) burned structures not otherwise lawfully habitable or usable;
- (c) property that attracts or harbors vermin or rodents or wild animals; or
- (d) garbage and rubbish.

### *SECTION 4. UNSAFE STRUCTURE OR PROPERTY*

Unsafe is a condition of a structure or structures or personal property that exposes persons to unreasonable risk of injury or harm, or exposes property to unreasonable risk of damage, loss or destruction.

### *SECTION 5. VACANT BUILDINGS*

Vacant buildings or structures are ones which (a) are or will be unoccupied, i.e., not inhabited or lived in, by a Responsible Party for a period of one-hundred-and-eighty (180) consecutive days or more and (b) which appear to manifest blighted or unsafe conditions as defined in Sections 3 and 4, and (c) for which the Responsible Party has failed to do any of the following:

- (a) comply with all applicable sanitary, building, and fire codes and orders issued pursuant thereto;
- (b) secure the premises to prevent unauthorized entry and exposure to the elements;
- (c) maintain the premises in a manner that ensures their external/visible maintenance, including but not limited to the maintenance of major systems, the removal of trash and debris, and the upkeep of lawns, shrubbery, and other landscape features;
- (d) repair or replace broken windows or doors within thirty (30) days. Boarding up any doors or windows is prohibited except as a temporary measure for no longer than thirty (30) days, and;
- (e) for properties vacant for six months or more at which the utilities have been shut off, remove or cut and cap such utilities to prevent accidents.

## *SECTION 6. VIOLATIONS*

If the Enforcement Authority is informed of or has reason to believe that blighted or unsafe conditions, as defined in Sections 3 and 4, or that vacant buildings, as defined in Section 5, exist on any real property in the Town, he may make or cause to be made an investigation of the facts, including an inspection of the property where the condition may exist. In making such inspection, the Enforcement Authority shall have such right of access to premises that may be lawfully exercised by him under the laws and constitution of the Commonwealth and/or of the United States.

## *SECTION 7. PROCEDURES FOR ENFORCEMENT*

- (a) Procedures – During his investigation of the matter, the Enforcement Authority shall make reasonable efforts to consult with the Responsible Party for the purpose of obtaining voluntary compliance with this Bylaw before initiating any enforcement action.

If, after inspection, the Enforcement Authority confirms the existence of blighted or unsafe conditions or vacant buildings in violation of this Bylaw and the Responsible Party fails to voluntarily comply, he shall issue a Notice of Violation and may make and issue such Orders as he deems necessary to correct or eliminate the blighted or unsafe conditions or obtain compliance with the requirements for vacant buildings. Said Notice and Orders shall be in writing and shall be served upon all Responsible Parties as can be determined after reasonable inquiry.

Any Interested Party who has filed a written complaint of blighted or unsafe conditions or vacant buildings to the Enforcement Authority upon which complaint the Enforcement Authority has determined that the conditions do not exist, or the Enforcement Authority has taken action that the Interested Party claims is inadequate, shall have a right to a review of the matter by the Town Administrator. At the request of such an Interested Party, the Town Administrator shall confer with the Enforcement Authority and may confer with other appropriate agencies of Town government such as the Council on Aging, Board of Assessors, and Building Department. The Town Administrator shall make a decision and recommend appropriate action in writing to the Interested Parties, the Responsible Parties, the Enforcement Authority, and the **Select Board**.

Any person aggrieved by the decision and recommendation of the Town Administrator may request a hearing before the **Select Board**. Said request shall be in writing and received by the **Select Board** within ten (10) business days of issuance of the Town Administrator's decision. A copy of the hearing request shall also be delivered to the complainant, if any, and to all interested Parties. It shall be the responsibility of the person requesting the hearing to show that all Interested Parties have been notified of the request. If no such request is received within the time specified herein, the order of the Enforcement Authority shall be final.

A request for hearing shall not constitute a stay of the Enforcement Authority's Order unless the Enforcement Authority so orders.

Upon receipt of a timely request, the **Select Board** shall convene a public hearing, which may include an examination of any complainant or Responsible Party, under oath, to determine whether conditions under this Bylaw exist. Based on the evidence and testimony presented at said public hearing, the **Select Board** may affirm the Enforcement Authority's Order, reverse and nullify the Order, or issue any such Order as it deems necessary to ensure the protection of public safety and/or eliminate blighted or unsafe conditions. The determination of the **Select Board** after a hearing shall be final.

Fines for non-compliance with the Enforcement Authority's or **Select Board**'s Order shall be enforceable through the non-criminal disposition procedure, pursuant to M.G.L. Chapter 40, Section 21D, and Article



XII of the Town's Bylaws; and/or G.L. c. 40U and Article XXIV of the Town's General Bylaws in the following amounts:

- i. First offense, \$100.00
- ii. Second offense, \$200.00
- iii. Third and successive offenses, \$300.00 each

Each violation of this Bylaw shall constitute a separate offense. Each day that any such violation continues shall constitute a separate offense.

The Enforcement Authority may require that a complaint be made in writing subject to the penalties of perjury. If the Enforcement Authority determines that a reported condition may warrant immediate action, or constitutes a substantial violation of this Bylaw, the Enforcement Authority may seek authority to file for injunctive relief in court without first holding a hearing or providing prior notice to the Responsible Party and without requiring the disclosure of the identity of the complainant.

If the Enforcement Authority determines that the condition is subject to the jurisdiction of the Board of Health or is a violation of the State Sanitary Code or any health regulation, in addition to enforcing this Bylaw, he shall refer the matter to the Board of Health for action.

- (b) Notice to Complainant - In any matter in which a complaint has been made by a person other than the Enforcement Authority, the Enforcement Authority shall notify the complainant in advance of all conferences or proceedings concerning resolution of the complaint or of any enforcement action and the complainant shall be allowed to be present.
- (c) Removal of Blighted or Unsafe Conditions or Vacant Buildings by **Select Board** - If the Responsible Party fails to remedy the conditions upon notice and order from the Enforcement Authority to do so, the **Select Board** may cause corrective action for the conditions as provided in General Laws c. 139.
- (d) Reports by Enforcement Authority - The Enforcement Authority shall file with the Town Administrator each month a report that shall include all complaints under this Bylaw made to him during the prior month; all proceedings begun by him under this Bylaw; all pending complaints and all investigations and enforcement actions taken by him or referred to the Board of Health. The report shall state the location of the premises, a summary of the nature of the complaint, the name of the Responsible Party(ies), and the disposition or the status of the matter.

## *SECTION 8. OTHER LAWS*

Compliance with this Bylaw shall not relieve the Responsible Party of any applicable obligations set forth in any other codes, regulations, covenant conditions or restrictions, and/or homeowner or condominium association rules and regulations.(5/19)

# ARTICLE XXIV

## ADMINISTRATION OF FINES FOR CERTAIN VIOLATIONS

### *SECTION 1. ADOPTION OF G.L. c.40U*

The procedures for the payment and collection of unpaid municipal fines, as set forth in G.L. c.40U are hereby adopted.

### *SECTION 2. MUNICIPAL HEARING OFFICER*

The Town Administrator shall appoint a Municipal Hearings Officer to conduct hearings of alleged violations of the Bylaws and Regulations specified in this Bylaw.

### *SECTION 3. VIOLATIONS SUBJECT TO THIS BYLAW*

The following Bylaws and Regulations and the specified penalties attached thereto shall be included within the procedure established under this Bylaw. Each day a violation is committed or permitted to continue shall constitute a separate offense and may be penalized as such hereunder:

<b><u>BYLAW OR REGULATION</u></b>	<b><u>SUBJECT</u></b>
Article V, Section 4	Obstructions on Public Streets and Sidewalks (including Snow & Ice)
Article V, Section 7	Discharge of Water onto Sidewalks
Article V, Section 10	Deposit of Ashes, Dirt, Rubbish, etc. on a public street or sidewalk
Article V, Section 11	Dumping in Catch Basins
Article XXIII	Noncompliance with orders relative to blighted, unsafe or vacant properties

### *SECTION 4. ENFORCEMENT*

Notwithstanding the provisions of this Bylaw, the Town may enforce its Bylaws and regulations or enjoin violations thereof through any lawful process, including but not limited to, any lawful means in law or in equity, including, but not limited to, non-criminal disposition pursuant to G.L. c.40, §21D and Article XII of the Town's General Bylaws, and the election of one remedy by the Town shall not preclude enforcement through any other lawful means.

### *SECTION 5. SEVERABILITY*

If any provision of this Bylaw is declared invalid, or unenforceable, the other provisions shall not be affected thereby.

(5/19)

# ARTICLE XXV

## SINGLE USE PLASTIC BEVERAGE STRAW AND STIRRER REDUCTION IN BUSINESS ESTABLISHMENTS

### *SECTION 1. PURPOSE AND INTENT*

This bylaw is enacted for the purpose of eliminating the distribution of single use plastic straws and stirrers by all Business Establishments in the Town of Swampscott. The production and use of single use plastic straws and stirrers have significant impacts on the environment, including, but not limited to: contributing to pollution of the land environment; creating a burden to solid waste collection and recycling facilities; entering storm drains that lead to waterways leading to the ocean causing the potential death of marine animals through ingestion; and requiring the use of millions of barrels of crude oil nationally for their manufacture.

### *SECTION 2. DEFINITIONS*

“Business Establishment” means the following businesses: a retail store; supermarket; general department store; bar, tavern, lounge; restaurant and take-out restaurant, serving liquid, slurry, frozen, semi-frozen, or other forms of beverages to the public for consumption, not including nursing homes or nursing care or assisted living facilities or doctors or nurses or Emergency Medical Technicians providing straws to patients.

“Town Sponsored Event” means any event organized or sponsored by the Town of Swampscott or any department of the Town of Swampscott.

“Plastic Beverage Straw” means a tube made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources, for transferring a beverage from its container to the mouth of the drinker. “Plastic Beverage Straw” includes compostable and biodegradable petroleum or biologically based polymer straws, but does not include straws that are made from non-plastic materials, such as, but not limited to, paper, sugar cane, and bamboo.

“Plastic Stirrer” means a device that is used to mix beverages, intended for only one-time use, and made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant source. “Plastic Stirrer” includes compostable and biodegradable petroleum or biologically based polymer stirrers, but does not include stirrers that are made from non-plastic materials, such as, but not limited to, paper, sugar cane, and bamboo.

### *SECTION 3. USE REGULATIONS*

A. Effective **September 1, 2019**, Plastic Beverage Straws and Plastic Stirrers shall not be used or dispensed or sold in conjunction with the serving by Business Establishments or at any Town Sponsored Event of liquid, slurry, frozen, semi-frozen, or other forms of beverages to the public for consumption. The Town of Swampscott shall accept from Business Establishments any stock remaining after that date for disposal free of charge through January 30, 2020, at the DPW.

B. Nothing in this Bylaw prohibits the sale of Plastic Straws by supermarkets and general department stores in packages not in conjunction with the service of liquid, slurry, frozen, semi frozen, or other forms of beverages to the public for consumption.

C. Nothing in this Bylaw prohibits customers from using their own straws of any material for personal use in any Business Establishment.

#### *SECTION 4. ENFORCEMENT*

A. This Bylaw may be enforced by any agents of the Board of Health. This Bylaw may be enforced through any lawful means in law or in equity, including, but not limited to, non-criminal disposition pursuant to G.L. c.40, §21D and Article XII of the Town's General Bylaws. If non-criminal disposition is elected, then any Business Establishment which violates any provision of this regulation shall be subject to the following penalties:

First Offense:	Written warning
2nd Offense:	\$50 fine
3rd Offense:	\$100 fine
4th and Subsequent Offenses:	\$300 fine

Subsequent offenses shall be determined as offenses occurring within two years of the date of the first noticed offense. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

#### *SECTION 5. SEVERABILITY*

If any provision of this Bylaw is declared invalid, or unenforceable, the other provisions shall not be affected thereby. (5/19)

# ARTICLE XXVI

## TREES

### *SECTION 1. PURPOSE*

Trees contribute to the health and well-being of the Town of Swampscott (the “Town”) and its residents and wildlife. Trees enhance the Town’s beauty and improve air quality and climate by providing shade, producing oxygen, and sequestering carbon. Research has also shown that mature trees increase property values. The purpose of this bylaw is to preserve and protect Town Trees and, in accordance with the provisions of M.G.L. c. 87, Public Shade Trees in the Town

### *SECTION 2. DEFINITIONS*

- a. “DBH (Diameter at Breast Height)” means the diameter of the trunk of a tree 4 1/2 feet above the existing grade at the base of the tree.
- b. “Drip Line” means a vertical line running through the outermost portion of the crown (i.e., the outer branch tips) of a tree and extending to the ground.
- c. “Person” means any individual or group of individuals, or any association, partnership, corporation, company, profit or non-profit business organization, trust or estate, to the extent permitted under the laws of the Commonwealth of Massachusetts.
- d. “Public Right-of-Way” means the strip of land controlled or owned by the Town within which a public street or road lies. Typically, the Public Right-of-Way is wider than the road surface and often includes curbs, sidewalks, utilities, Public Shade Trees and grass strips.
- e. “Public Shade Tree” for purposes of this bylaw, and consistent with M.G.L. c. 87, means all trees within a public way or on the boundaries thereof including trees planted 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 that the written consent of the owner of such adjoining land was first be obtained.
- f. “Town Tree” means any tree in a public park or other place owned, controlled or leased by the Town, or where the Town has an easement, except trees on conservation lands managed by, or resource areas or their buffer zones, under the jurisdiction of, the Swampscott Conservation Commission.
- g. “Tree Removal” means the cutting down of any Public Shade Tree or Town

Tree and any other act that the Tree Warden determines will cause such a tree to die within a three-year period, including but not limited to improper or excessive pruning and construction, demolition, and excavation activities. Excessive pruning means the removal of more than one third of the tree canopy or cutting back the tree's limbs to a point that the Tree Warden determines will prevent the natural growth of the tree.

### *SECTION 3. JURISDICTION*

- a. This bylaw applies to all Public Shade Trees and Town Trees in the Town.
- b. Tree Warden. The Tree Warden shall have jurisdiction over all trees to which this bylaw applies and as set forth in G.L. c. 87, s. 2. Consistent with M.G.L. c. 41, s.106, the Tree Warden shall be appointed by the Select Board upon the recommendation of the Director of the Department of Public Works for a three year period, shall be qualified by training and experience in the field of arboriculture, and be licensed with the department of food and agriculture in accordance with the provisions of M.G.L. 132B, s. 10.
- c. Coordination with Other Town Regulators. If, based on information provided to the Town's Building Department, Planning Board, Zoning Board of Appeals, or other Town Department or Board, it appears that any Public Shade Tree or Town Tree may be impacted by construction, demolition or excavation activities under that regulatory agency's jurisdiction, such agency shall
  - (1) require the owner of the affected property and any Person engaging in such activities to comply with the provisions of this bylaw and (2) notify the Tree Warden of such activities,
- d. Special Permit. For projects that require Planning Board Site Plan Review or Special Permit, the Planning Department shall forward Site Plan Review and Special Permit applications to the Tree Warden for review and comment.

### *SECTION 4. ACTIVITIES REQUIRING WRITTEN APPROVAL BY THE TOWN*

- a. A Public Shade Tree or Town Tree may not be trimmed, pruned, cut or removed by any Person other than by the Tree Warden, acting through the Department of Public Works, unless and until the Tree Warden issues a written approval pursuant to this bylaw.
- b. Such written approval shall also be required of any Person for (1) planting a Public Shade Tree or Town Tree, (2) engaging in construction or demolition activities within the Drip Line of a Public Shade Tree or Town Tree, and (3) engaging in excavation activities that may disturb a Public Shade Tree or Town Tree, including but not limited to the installation of utility lines.

## *SECTION 5. TREE PLANTING*

The written approval issued under Section 4.b. of this bylaw for planting Public Shade Trees and Town Trees shall include, as determined by the Tree Warden: (1) the species of trees acceptable for planting; (2) the size of the tree (generally anticipated to have a DBH of no less than 2.5 inches); (3) site selection; (4) priorities for tree planting locations; (5) spacing of street trees; (6) any specific planting guidelines; and (7) compliance with any rules or regulations as may be adopted by the Tree Warden. A list of acceptable street tree replacements is available on the Town's Forestry Division web page. The Tree Warden may issue standards for planting Public Shade Trees and Town Trees for which a permit is issued under Section 4.b.

## *SECTION 6. PROHIBITED ACTIVITIES*

- a. It shall be unlawful for any Person to engage in any of the following activities relating to Public Shade Trees or Town Trees: (1) topping or stubbing tree branches (i.e., cutting back the vertical stem and the upper primary limbs on mature trees to stubs at uniform height); (2) girdling tree trunks, (3) cutting or poisoning tree roots; (4) causing any other kind of injury; and (5) pollarding the top and branches of a tree if done by any Person other than the Tree Warden, acting through the Department of Public Works.
- b. No person shall asphalt or install other impervious surfaces within three feet of the trunk of a Street Tree, provided, however, that if such length is not feasible, in the opinion of the DPW, on the street-side or sidewalk-side of the tree, then less than three feet is acceptable on that side, but in no case shall asphalt or installation of impervious surfaces be made up to the trunk of the tree. For purposes of this subsection, the term person shall include any agency, department or commission of a State or a subdivision of a State. Through policy or regulation, the Tree Warden may establish additional requirements for the installation of new or replacement Street Trees, including specifying the appropriate size of tree basins. Where construction or other work occurs in the street or on the sidewalk near an existing Street Tree, and to the extent feasible, the modification of the existing tree basin shall comply with such policy or regulation. As general matter, it is presumed that the tree basin should be at least 15 sq. feet, preferably three-feet wide and five feet long.

## *SECTION 7. APPLICATION PROCEDURES*

A Person who wishes to initiate any activity affecting a tree for which a written approval is required under this bylaw shall submit a written request to the Tree Warden and provide, upon request, such information as the Tree Warden may require. The Tree Warden may specify schedules, terms, and conditions as deemed appropriate by the Tree Warden in the written approval. There shall be no fee for filing a request.

## *SECTION 8. PUBLIC HEARING*

- a. Except as provided in M.G.L. c. 87, s. 5, the Tree Warden shall not cut down, remove, or trim a Public Shade Tree, or grant a written approval to any Person for the removal of a Public Shade Tree, without first conducting a public hearing. Where a public hearing is required, the Tree Warden shall, consistent with the provisions of M.G. L. c. 87, s. 3, issue a notice of the time and place of the hearing, which notice shall identify the size, type and location of the tree to be cut down or removed. The Tree Warden shall post the notice on the Town's website, in two or more public places in Swampscott, and in public view on the affected tree at least seven (7) days before such hearing. The Tree Warden shall also publish the notice in a newspaper of general circulation in Swampscott, once in each of two successive weeks, the first publication to be not less than seven (7) days before the day of the hearing. The costs of notice, posting and publication, if any, shall be borne by the applicant.
- b. When a public hearing must be held under the provisions of his bylaw and also for either Scenic Roads Designations under M.G.L. c. 40, s. 15C or for projects requiring Planning Board Site Plan Review or Special Permit, such hearings shall be consolidated into a single public hearing before the Tree Warden and the Planning Board.
- c. When the Public Shade Tree to be trimmed, pruned, cut, or removed is on conservation lands managed by, or resource areas or their buffer zones under the jurisdiction of, the Swampscott Conservation Commission, the public hearing required under the provisions of this bylaw shall be consolidated into a single public hearing before the Tree Warden and the Conservation Commission.

## *SECTION 9. APPROVAL CRITERIA*

- a. The Tree Warden shall approve trimming, pruning, cutting, or removal of a Public Shade Tree or Town Tree under this bylaw upon his or her determination that one of the following criteria is satisfied:
  - i. The tree interferes with structures, utilities, streets, sidewalks or proposed necessary improvements for which there is no feasible alternative that would save the tree; or
  - ii. The tree is dead, diseased, terminally injured, in danger of falling, posing a threat to public safety or personal property, interfering with the use of the public right-of-way or causing drainage problems or
  - iii. There is no alternative to removal of the tree as determined by the Tree Warden.



## *SECTION 10. MANDATORY APPLICABILITY OF STATE STANDARD*

In accordance with the provisions of M.G. L. c. 87, s. 4, the Tree Warden shall not cut down or remove or grant a written approval for the cutting down or removal of a Public Shade Tree if, at or before the public hearing required by this bylaw, objection in writing is made by one or more Persons, unless such removal is approved by the Select Board.

## *SECTION 11. TREE REPLACEMENT*

In addition to the remedies provided in this bylaw and M.G.L. c. 87, any Person who removes, injures, defaces or destroys a Public Shade Tree or a Town Tree, including the driver of any vehicle that knocks down or severely injures such a tree, shall be required to replace it, within 6 months of the date of its removal, at such Person's cost, and in accordance with the application procedures and requirements of this bylaw, as follows:

- a. The replacement tree shall be purchased from a certified tree nursery professional approved by the Tree Warden. Such professional shall plant and ensure the health of the tree for one year. If the replacement tree cannot be planted within 6 months, the Person shall, within that 6 month period, provide the Tree Warden with a plan acceptable to the Tree Warden for the tree's replacement and the replacement tree shall be planted within 12 months.
- b. The replacement tree shall be of the same or similar species or such other species as deemed advisable by the Tree Warden and shall have the same or equivalent size as measured in DBH inches as that of the tree that was removed.
- c. If a tree of equivalent size cannot be obtained or is not appropriate, the Tree Warden shall determine a suitable alternative, including planting two or more smaller replacement trees that are the largest available and appropriate for transplanting (provided that DBH is no less than 2.5 inches) or payment to the Town for the value of the tree that was removed as determined by the Tree Warden based on standards in the industry.

## *SECTION 12. EMERGENCIES*

- a. Trimming, pruning, cutting, or removal shall be allowed without written approval for any Public Shade Tree or Town Tree that is determined by emergency response officials to create a public hazard so as to immediately endanger public safety or cause an immediate and severe disruption of public services. Such officials shall complete a written record of any such determination and submit it to the Tree Warden within 14 calendar days of such determination.
- b. The Tree Warden may waive the provisions of this bylaw as an emergency response to a hurricane, windstorm, flood or other act of nature.

### *SECTION 13. ENFORCEMENT*

- a. Any Person who violates any provision of M.G. L. c. 87, s. 3-5, relating to the trimming, cutting, or removal of Public Shades Trees shall be subject to fines of \$300 for each separate offense, as provided by M.G. L. c. 87, s. 6. Where any Person violates any provision of this bylaw but not the provisions of M.G. L. c. 87, the Person shall be subject to fines of \$300 for each separate offense. Each act causing damage to a separate tree shall constitute a separate offense. Each day that a violation continues shall constitute a separate offense; provided, however, that any Person who removes, injures, defaces or destroys a Public Shade Tree or a Town Tree, including the driver of any vehicle that knocks down or severely injures such a tree in violation of this Bylaw, shall be subject to a one-time fine of \$300 and shall, in the event that person fails to comply with the requirements of this Bylaw to replace that tree, be subject additional fines for that new violation. Fines for violations of this bylaw may be assessed and collected under M.G.L. c. 40, s. 21D process.
- b. These remedies shall not be in derogation of the Town's right to enforce the provisions of M.G. L. 242, s. 7, against any Person who, without a permit, willfully cuts down, girdles or otherwise destroys a Public Shade Tree or Town Tree, or the Town's right to apply or enforce any other Massachusetts law or Town bylaw.
- c. Fines and damages paid to the Town under this bylaw, M.G. L. c. 87, or M.G. L. c. 242, shall be paid into the Town's General Fund.

### *SECTION 14. SEVERABILITY*

If any part of this bylaw is for any reason declared invalid or unconstitutional by any court, every other part shall continue in full force and effect.

### *SECTION 15 ANNUAL REPORTING*

In the annual reporting submitted by the Department of Public Works pursuant to Article IV, Section 3, of the General Bylaws of the Town, the Tree Warden shall specify the number and species of trees that were both removed and planted during the year.  
(11/2020)

## ARTICLE XXVII

### MARIJUANA LICENSING

The number of Adult Use Marijuana Retail Establishments, as defined in G.L. c.94G, §1 and 935 CMR 500.00, permitted to be located within the Town of Swampscott, shall not exceed twenty percent (20%) of the number of licenses issued within the Town for the retail sale of alcoholic beverages not to be drunk on the premises where sold under Chapter 138 of the General Laws. For the purposes of determining this number, any fraction shall be rounded up to the next highest whole number.

#### *SECTION 1. HOST COMMUNITY AGREEMENT REQUIRED.*

Any Marijuana Establishment operating within the Town shall at all times have a valid Host Community Agreement (HCA) and operate in accordance with the terms and provisions thereof.

#### *SECTION 2. REGULATIONS.*

The Select Board shall adopt rules and regulations related to the issuance of a Host Community Agreement, including the fees to be paid therefore and the conditions to be satisfied by any applicant for the approval of an HCA.

#### *SECTION 3. APPLICATIONS.*

Person or persons wishing to be considered for an HCA shall file an application in a form required by the Select Board, signed under the penalties of perjury by the applicant, containing such information as the Select Board may reasonably require from time to time. Each applicant shall pay an application fee as may reasonably be determined from time to time by the Select Board.

#### *SECTION 4. LIMITATION ON NUMBER OF ADULT USE RETAIL ESTABLISHMENTS.*

The number of Adult Use Marijuana Retail Establishments, as defined in G.L. c.94G, §1 and 935 CMR 500.00, as permitted to be located within the Town of Swampscott, shall not exceed twenty percent (20%) of the number of licenses issued within the Town for the retail sale of alcoholic beverages not to be drunk on the premises where sold under Chapter 138 of the General Laws. For the purposes of determining this number, any fraction shall be rounded up to the next highest whole number.

#### *SECTION 5. HEARING.*

The Select Board shall hold a public hearing within 60 days of receipt of a completed application, with due written notice provided to the applicant of the time, date and location where such application will be heard.

*SECTION 6. ENFORCEMENT.*

The **Select Board** may issue orders as appropriate to aid in the enforcement of this regulation and may enforce these provisions in equity, including the request for injunctive relief, in a court of competent jurisdiction. Any failure to comply with any order issued hereunder shall result in the issuance of a formal warning. Any failure to comply with such a warning shall result in a fine of \$100.00. Any failure to comply after the issuance of said fine may be punishable by a subsequent fine of \$300.00. Each day of a continued non-compliance shall constitute a separate violation. Further, the **Select Board** may hold a hearing, with notice to the licensee, to determine if such license should be modified, suspended or revoked.

*SECTION 7. PROHIBITION ON PUBLIC CONSUMPTION OF MARIJUANA OR  
TETRAHYDROCANNABINOL*

No person shall inhale, ingest, or otherwise use or consume marijuana or THC (as defined in G.L. c.94C, § 1, as amended) while in or upon any street, sidewalk, public way, footway, passageway, stairs, bridge, park, playground, beach, recreation area, boat landing, public building, schoolhouse, school grounds, cemetery, parking lot, or any area owned by or under the control of the Town; or in or upon any bus or other passenger conveyance operated by a common carrier; or in any place accessible to the public. Whoever is found in violation of this by-law shall, when requested by an official authorized to enforce this bylaw, state their true name and address to such official.

This Bylaw may be enforced through any lawful means in law or in equity including, but not limited to, enforcement by criminal indictment or complaint pursuant to G.L. c.40, § 21, or by noncriminal disposition pursuant to G.L. c. 40, § 21D, or any police officer. The fine for violation of this Bylaw shall be three hundred dollars (\$300) for each offense. Any penalty imposed under this Bylaw shall be in addition to any civil penalty imposed under G.L. c. 94C, § 32L.

This Bylaw shall not alter or affect the jurisdiction of the Board of Health under the provisions of G.L. c. 111, § 31 or any other applicable law, including but not limited to the regulation of combustion and inhalation of tobacco and non-tobacco products in workplaces and public spaces in Town. (11/2020)

## ARTICLE XXVIII

### FEEDING OF WILDLIFE

#### *SECTION 1. BACKGROUND AND PURPOSE.*

- (a) Background. The high density of human population in a largely developed area affords an environment for wildlife to live in close proximity to the residents and businesses of Swampscott. Human/wildlife interactions further increase in frequency when people intentionally and unintentionally provide food sources and other attractants to wildlife that may create or exacerbate conflicts. Wild animals are opportunistic feeders, so if a food source is readily available, they come to expect it and will habitually return to the site. When wildlife are conditioned to seek food sources from a yard, trash barrels, or dumpsters, conflicts can occur. Such incidents can precipitate harm to humans, pets, livestock, property, and the wildlife itself. This regulation is intended to focus on the human behaviors that contribute to habituating wildlife to occupy populated areas.
- (b) Purpose. The intent of this Bylaw against Feeding of Wildlife is to protect the health and welfare of people, pets, and wildlife by prohibiting the intentional and unintentional feeding of wildlife.

#### *SECTION 2. DEFINITIONS.*

- (a) Attractant: any substance including any grain; shelled, shucked, or unshucked corn; seeds; wheat; bread or bakery products; salt; any animal's meat or parts; fish or their parts; sugar, honey, molasses; scents; waste products; refuse; or any other feed or nutritive substance in any manner or form, so as to constitute for such wildlife, intentionally or unintentionally, a lure, attraction, or enticement to, on, or over any such areas, where such feed items have been placed, exposed, deposited, distributed, or scattered; or any auditory advice designed or employed, in any manner or form, so as to constitute for such wildlife, intentionally or unintentionally, a lure, attraction, or enticement to, on, or over any such areas, where such items have been placed, exposed, deposited, or distributed.
- (b) Bird Feeder: any apparatus designed for the feeding of songbirds, including but not limited to seed, suet, shelled or unshelled nuts and peanuts, and dried fruits.
- (c) Cat: any animal of the feline species.
- (d) Catch Container: any device, extending beneath a bird feeder, to catch seed and other bird food, to prevent attraction of rodents, including but not limited to rats, squirrels, and chipmunks.

- (e) Enforcement Authority: Swampscott Animal Control Officer, Police Officers, and/or agents of the Board of Health.
- (f) Feeding: the intentional or unintentional act of placing, exposing, depositing, distributing, or scattering, directly or indirectly, of any attractant as defined in Section 2(a) herein.
- (g) Feral Cat: any free-roaming cat existing in an untamed state, no longer considered domesticated.
- (h) Garbage/Trash/Refuse: any waste that can reasonably attract wildlife including, but not limited to: food, food packaging, organic waste, soiled diapers, soiled cat litter, or scented cooking waste such as cooking oils, grease, and seasoning.
- (i) Owner/Keeper: any person who has taken charge in the care of any cat, either feral or domesticated.
- (j) Person: any resident, occupier, company, firm, corporation, tax payer, student, rental guest, organization, or other individual or business.
- (k) Stray Cat: any cat that is free-roaming and having no known owner or keeper.
- (l) Town: the Town of Swampscott, Massachusetts.
- (m) Wildlife: any undomesticated and unrestrained animal or fowl, including but not limited to: coyotes, deer, foxes, opossums, raccoons, rodents, skunks, turkeys, birds of prey, and other animals or fowl.
- (n) Wildlife/Rodent Proof Waste Receptacles: a fully enclosed container that effectively prevents wildlife from accessing the contents inside. This includes, but is not limited to: heavy-duty secured containers, metal topped latching dumpsters, enclosed storage areas such as sheds or other buildings. At a minimum the containers should have latching mechanisms and reinforced covers/lids.

### *SECTION 3. PROHIBITED ACTIVITY.*

- (a) No person shall intentionally or unintentionally feed any wildlife or otherwise use an attractant at any place, including but not limited to: residential areas, private yards, business properties, and public ways and areas within the town of Swampscott. Whenever a member of the Enforcement Authority becomes aware that wildlife has been found feeding on any substance, as defined above, and the landowner, business owner, and/or person committing the act has been notified by any person authorized to enforce this Bylaw, and wildlife is thereafter found feeding on any such substance, by commission or omission of the landowner

or other person, such feeding shall be prima facie evidence that the feeding was with the knowledge or consent of the landowner and/or person who committed the act.

- (b) No person shall feed any feral or stray cat. This section shall not apply to persons feeding feral or stray cats with the express purpose of adopting and domesticating said cat(s) within fourteen (14) days of the initial feeding by said persons and, in accordance with M.G.L c. 140, § 145B, having them vaccinated against rabies within ninety (90) days or upon said cat(s) reaching the age of six (6) months, whichever last occurs.

#### *SECTION 4. GARBAGE/TRASH/REFUSE CONTAINERS/ENCLOSURES.*

- (a) In responding to a feeding issue, the Enforcement Authority shall make a determination as to whether or not the refuse containers on the premises are the source of the wildlife feeding problem.
- (b) If the refuse containers are determined to be the source of the wildlife feeding problem, the landowner, person responsible for the premise, or business owner shall replace them with a more secure wildlife-proof container or permanent structure. Failure to comply with an order to replace or secure refuse containers identified as attractants within seven (7) days will constitute a violation of this section.
- (c) If a container is marketed as wildlife-proof and is either damaged or ruptured by wildlife so that it may allow access to the attractant, repair or replacement must be made within seven (7) days after the damage is discovered. Failure to do so shall constitute a violation of this Bylaw.
- (d) Any outdoor compactor, including but not limited to composters, containing any material edible to wildlife must not be accessible by wildlife. No trash or materials may be exposed, and doors must be kept closed and latched with a wildlife-proof mechanism except during loading or removing refuse. If damaged, repairs or replacement must occur within seven (7) days after damage is discovered or written notification by the Enforcement Authority, whichever event occurs first. Failure to do so shall constitute a violation of this Bylaw.

#### *SECTION 5. EXCEPTIONS.*

- (a) Nothing in this Bylaw shall be construed to limit the feeding of domesticated waterfowl, as defined by the Division of Fisheries and Wildlife, by a farmer as defined in G.L. c.128, §1A on property owned or leased by him or her, or the feeding of waterfowl or any other birds by propagators licensed under M.G.L. ch. 131, §23 when such waterfowl or other birds are confined in such a manner as may be required pursuant to said Section 23 and any rules and

regulations issued under authority thereof; or the feeding by any person or his or her agents, invitees, or licensees of any animal lawfully kept as a pet by such person.

- (b) Any action officially sanctioned by the Commonwealth of Massachusetts that would require feeding, baiting, or luring wildlife for management purposes, scientific projects, and research or study.
- (c) Any person engaged in lawful agricultural pursuits, including but not limited to growing crops, crop-bearing plants, or raising livestock.
- (d) This section shall not be interpreted so as to prohibit bird feeders. However, if a bird feeder is determined to be an attractant as herein defined, the enforcement authority shall notify the person responsible to remove the bird feeder(s) and seed debris within forty-eight (48) hours of receipt of written notice.
- (e) The storage of refuse, food product, pet food, or other material or nutritive substance on any premises in a manner which does not constitute a lure, attraction, or enticement of wildlife on property within the Town of Swampscott, provided that if such storage is determined to be the source of a wildlife feeding problem, the landowner or person responsible for the premises will be required to take steps to render such storage area inaccessible to wildlife and the area near the storage be kept free from such debris. If any wildlife gains access to a storage area, the condition allowing access must be corrected or the stored material removed within forty-eight (48) hours. Failure to do so shall constitute a violation of this Bylaw.

### *SECTION 6. PENALTIES.*

Any violation of any section may be enforced by any designated enforcement authority through non-criminal disposition, pursuant to M.G.L. ch. 40, § 21D and Article XII of the Town of Swampscott's General Bylaws, in accordance with the following schedule of fines:

First offense:	Warning
Second offense:	\$50.00
Third offense:	\$100.00
Each subsequent offense:	\$300.00



## ARTICLE XXIX

### GAS-POWERED LEAF BLOWERS

Section 1. Gas-Powered Leaf Blowers Prohibited at Certain Times Use of gas-powered leaf blowers shall be prohibited in the Town of Swampscott from Memorial Day to Labor Day of each year. Such leaf blowers shall be permitted during the remainder of the year, subject to any rules or regulations adopted by the Select Board governing said use.

Section 2. Exceptions The Select Board or its delegee may allow the use of gas-powered leaf blowers in any situation that is deemed, in the Board or its delegee's sole discretion, to be an emergency.