

CHAPTER I. INTRODUCTION

It is traditional in public affairs to establish rules or Bylaws for the most effective conduct of the meetings and operations of its organizations. Of equal importance is the publication of these rules so that all concerned, particularly newcomers, may be adequately instructed in the conduct of such meetings and of the organization itself.

So it is in the Town of Hampden. The efforts of the first Bylaw Committee which provided the first Bylaws in 1948, and the revisions in 1950 and 1969 are respectfully acknowledged. In preparation for this 1984 revision a Committee was approved at the Annual Town Meeting, April 25, 1983. This Committee has reviewed and revised the Bylaws for completeness and clarity. All General Bylaws of 1969 and subsequent amendments thereto are hereby repealed and annulled on the effective date of these Bylaws.

Whoever violates any of the provisions of these Bylaws shall, unless other provision is expressly made, pay a fine, not exceeding one hundred dollars, for each offense. All fines shall be paid into the Town Treasury.

The invalidity of any section or provision of these Bylaws shall not invalidate any other section or provision thereof.

CHAPTER II. TOWN MEETINGS

The Annual Town Meeting is actually conducted in two parts: the Annual Town Meeting for the transaction of business, and the Annual Town Meeting to elect town officers (commonly referred to as Town Election).

SECTION 1.

The Annual Town Meeting for the transaction of business shall be held on the last Monday in April at 7:00PM (Amended April 26, 1999). Special Town Meetings for the transaction of business shall be called by the Board of Selectmen as provided by law. (Massachusetts General Laws, Chapter 39, Section 9. (Adopted April 16, 1974.)

The warrant containing all items of business for each Town Meeting shall be posted on the Bulletin boards in the Town House, Thornton Burgess School, Green Meadows School, on the building located at 43 Somers Road, presently occupied by the Village Food Mart, and at a location known as the Mini Mall located on Allen Street and East Longmeadow Road, at least seven days before any Town Meeting. (Adopted April 26, 1983)

The number of registered voters to constitute a quorum at a Town Meeting shall be 50.(amended April 26, 1999)

These procedures shall be followed:

- a. Persons speaking shall address the Moderator.
- b. All questions asked of any person shall be asked through the Moderator.
- c. On entering the meeting room, before or during a Town Meeting held for the transaction of business, each voter of the Town of Hampden shall be identified by the Board of Registrars or their deputies, by reference to the Voters' List. Persons who are not voters of the Town of Hampden shall be seated separately from the voters, in a place designated by the moderator.
- d. All votes or motions shall be taken by a show of hands; nothing in this section shall be construed to prevent the taking of a vote by ballot if a motion to that effect shall be duly made and carried by a majority of the voters present and voting thereon. When a question is determined by a ballot vote, every person voting shall have his or her name checked by the check list of the Registrars of Voters before depositing the ballot in the receptacle provided.
- e. Prior to discussion of each article, the Moderator shall indicate, or call for, the pertinent recommendation of the Advisory Board.
- f. The Moderator shall preserve decorum and order; shall decide all questions of order; and may in the Moderator's discretion, make any ruling of Parliamentary Law, without appeal, utilizing Robert's Rules of Order as a guide.
- g. Bylaws may be adopted, amended or repealed by a majority vote at any Annual Town Meeting.

- h. On matters requiring a two-thirds vote by statute, a count need not be taken unless the vote declared by the Moderator is immediately questioned by seven or more voters as provided in General Laws, Chapter 39, Section 15.(amended April 28, 1997)

SECTION 2.

The Annual Town Meeting to elect town officers and to vote on such other matters as may be voted on the official ballot, shall be held on the first Monday in May. The polls for the election of town officers shall be open at 7:00 AM (Amended 4/24/06) and remain open until 8:00 PM when they shall be closed. These times shall be stated in the warrant calling said meeting.

If a vacancy occurs in any elected office, that vacancy shall be filled in accordance with the provisions of the Massachusetts General Law, Chapter 41, as amended.

All appointments made by elected officials for the ensuing year will be made after the Annual Town Meeting described in this SECTION 2.

CHAPTER III. ADVISORY COMMITTEE

SECTION 1.

There shall be an Advisory Committee for the Town, which shall perform the duties set forth in the following sections, and be governed by the provisions thereof, and by the provisions of Massachusetts General Laws, Chapter 39, Section 16 and related statutes.

SECTION 2.

The Committee will consist of five members appointed by the Moderator, and the term of each shall be three years, following the expiration of the terms of those appointed heretofore.

The Moderator of the Town elected at said annual Town Election of officers shall fill the expired vacancies (within thirty days).

The Committee shall choose its own officers and cause a true record to be kept of its proceedings and shall serve without pay.

Three members shall constitute a quorum.

SECTION 3.

The said Committee shall fill any vacancy, which may occur in its membership, by a majority of those present and voting. An attested copy of this vote shall be sent by the Committee to the Town Clerk.

If any member is absent from five consecutive meetings of said Committee, except in case of illness, that member's position shall be deemed vacant and shall be filled as herein provided. The term of office of any person so chosen to fill a vacancy shall expire at the adjournment of the next succeeding Annual Town Meeting to elect officers. The Moderator elected at said Town Meeting shall appoint a successor to complete the unexpired term of the member in whose office such vacancy originally occurred.

SECTION 4.

The Selectmen, after drawing any warrant for a Town Meeting, shall transmit immediately a copy thereof to each member of the Advisory Committee and said Committee shall consider all articles. A public hearing shall be held at least seven days before such Town Meeting upon all articles and a notice of such hearing shall be given by posting a copy thereof in at least those five public places in the Town, identified in CHAPTER II, SECTION 1 above, seven days prior to the hearing. After due consideration of the subject matter in such articles, said

Committee shall report thereon, in print or otherwise, to the Town Meeting, its recommendations on all articles pertaining to appropriations, the expenditure of money and the incurring of debts. The Committee may make recommendations on any other articles it deems appropriate. (Adopted April 16, 1974)

SECTION 5.

It shall be the duty of the Advisory Committee to consider the annual estimates and expenditures as prepared by the several boards, officers and committees of the Town, or by the Town Accountant. The Advisory Committee shall recommend for comparison, amounts which in the Committee's opinion should be appropriate for the ensuing year. The Committee shall add thereto such explanations and suggestions in relation to the proposed appropriations as it may deem expedient, and report thereon as provided in SECTION 4.

SECTION 6.

In the discharge of its duty said Committee shall have free access to all books of record and accounts, bills and vouchers on which money has been or may be paid from the Town Treasury. Officers, Boards, and Committees of the Town shall, upon request, furnish said Committee with facts, figures and other information pertaining to their several activities.

SECTION 7.

No expenditure shall be made or liability incurred by or in behalf of the Town until an appropriation has been made sufficient to meet such expenditure or liability, in accordance with Massachusetts General Laws, Chapter 44, Section 31.

SECTION 8.

The Advisory Committee shall make an annual report of its activities to be contained in the annual Town Report, or a supplement thereto. (Adopted April 16, 1974.)

CHAPTER III (A) COMMUNITY PRESERVATION ACT (adopted May 7, 2001)

In accordance with the acceptance of MGL 44B, Sections 3,4,5 & 7 (amended November 10, 2001) inclusive, known as the Community Preservation Act, there shall be a dedicated funding source to acquire and preserve open space, parks and conservation land, protect public drinking water supplies, and scenic areas, protect farm land and forests from future development, restore and preserve historic properties, and help meet local families' housing needs. In the Town of Hampden, it will be funded by an additional surcharge of 1% on the annual property tax on real property, and by any annual distributions made by the state. EXCLUSION: \$100,000 of the value of each taxable parcel of residential real property. Any taxpayer receiving an exemption of real property authorized by Chapter 59 of the General Laws shall be exempt from the surcharge. The surcharge paid by a taxpayer receiving an abatement of real property authorized by Chapter 59 shall be reduced in proportion to the amount of such abatement. A community Preservation Committee composed of 9 (amended November 10, 2001) local citizens will make recommendations on the use of the funds and all expenditures will be subject to an annual audit.

SECTION 1: (Adopted October 29, 2001)

There shall be a Community Preservation Committee for the Town which shall perform the duties set forth in the following sections and be governed by the provisions thereof and by the provisions of General laws Chapter 44B, Section 5 and any other applicable statutes.

- a. The Committee will consist of nine (9) members. The committee shall include one designee from the Conservation Commission, the Historical Commission, the Planning Board, the Park Commission and the Housing Authority and two persons designated by the Board of Selectmen and two persons designated by the Town Moderator.

(At its first meeting, the members of the Committee shall determine, by lot or otherwise, which of its members shall serve a term of one year, which for a term of two years and which for a term of three years so that the terms of approximately one-third of its members expire each year. After expiration of their initial terms, members of the Committee shall serve for terms of three years. A member of the Committee shall serve until his or her successor has been appointed (or elected) and qualified.

- b. A quorum, consisting of a majority of the entire membership of the committee, must be present for the Committee to meet and act. A majority vote of the entire committee membership is needed to take any action.

SECTION 2:

The Committee shall study the needs, possibilities and resources of the Town regarding community preservation. The Committee shall consult with existing municipal boards, including the Conservation Commission, the Historical Commission, the Planning Board, the Board of Park Commissioners and the Housing Authority, or persons acting in these capacities or performing like duties, in conducting such studies. As part of its study, the Committee shall hold one or more public informational hearings on the needs, possibilities and resources of the Town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the Town.

SECTION 3:

The Committee shall make recommendations to the Town Meeting for the acquisition, creation and preservation of open space; for the acquisition and preservation of historic resources; for the acquisition, creation and preservation of land for recreational use; for the creation, preservation and support of community housing and for rehabilitation or restoration of such open space, historic resources, land for recreational use and community housing that is acquired or created as provided in this section. With respect to community housing, the Committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites. Recommendations to the Town Meeting shall include their anticipated costs.

SECTION 4:

The Committee may include in its recommendation to the Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund established by the Town to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.

SECTION 5:

After receiving recommendations from the Committee, the Town Meeting shall then take such action and approve such appropriations from the Community Preservation Fund and such additional appropriations as it deems appropriate to carry out the recommendations of the Committee.

SECTION 6: NOT ACCEPTED

SECTION 7:

The foregoing provisions shall be subject to the provisions of General Laws Chapter 44B, Sections 3 through 7 or any other general or special act relating to community preservation and the rights and obligations of the Committee.

CHAPTER IV. CONTRACTS BY TOWN OFFICERS

SECTION 1.

No contract involving an obligation of the Town in excess of \$500 shall be binding upon the Town unless it is in writing and is signed by at least a majority of the board or committee duly authorizing or having control of the appropriation against which such obligation is incurred; and such board or committee shall make a record of every contract in a book which shall be property of the Town.

SECTION 2.

Every contract in excess of \$2,000 shall be controlled by Massachusetts General Laws, Chapter 40, Section 4B.

CHAPTER V. LEGAL AFFAIRS

SECTION 1.

The Selectmen shall institute, prosecute, and defend any and all claims, actions and proceedings to which the Town is a party, or in which the interests of the Town are, or may be, involved.

SECTION 2.

The Selectmen may at their discretion employ counsel to assist them in the institution, prosecution, and defense of any and all claims, actions and proceedings to which the Town is a party, or in which the interests of the Town are, or may be, involved.

SECTION 3.

All town officers, boards and committees requiring the services of the Town Counsel, shall contact Town Counsel only after obtaining the acquiescence of the Board of Selectmen and shall keep the Board of Selectmen apprised of the status of each issue by notifying them in writing or by sending copies of any communications to them.

SECTION 4.

The Board of Selectmen shall annually, in June, and whenever a vacancy shall exist, appoint a member of the Massachusetts Bar to act as Town Prosecutor. The Town Prosecutor shall be subject at any time to removal by the Board of Selectmen.

CHAPTER VI. REPORTS

SECTION 1.

All reports submitted to the Town of Hampden by elected or appointed officials shall be reproduced in the Annual Town Report and a copy shall be retained by the Town Clerk.

CHAPTER VII. PERMITS AND FEES

SECTION 1.

The Selectmen shall from time to time establish a schedule of fees to be charged for the issuance of permits.

SECTION 2.

No permit or license shall be issued until the applicant for same has paid to the Town Treasury a fee.

SECTION 3.

All Town officers who receive a salary shall pay all fees received by them by virtue of their office into the Town Treasury.

SECTION 4.

All Town officers who receive a salary shall on June 30 and December 31 of each year report to the Selectmen the amount of fees received by them by virtue of their offices, and the Selectmen shall publish the same in the Annual Town Report.

SECTION 5.

The Tax Collector or other municipal officer responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as the Tax Collector, shall annually 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 for not less than a twelve month period, 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.

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 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 purpose of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such denial, revocation or suspension. Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the licensing 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 of the date of issuance of said certificate.

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 satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit: provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.

SECTION 6 (Adopted April 28, 2003)

The Town shall receive and may demand the following fees for providing the services of sealing and or registering or inspecting the following classes of weighing and measuring devices:

- a. Each scale with a weighing capacity of more than ten thousand pounds, one hundred dollars.
- b. Each scale with a weighing capacity of five thousand to ten thousand pounds, sixty dollars.
- c. Each scale with a weighing capacity of one thousand to five thousand pounds, thirty dollars.
- d. Each scale with a weighing capacity of one hundred to one thousand pounds, twenty –five dollars.
- e. Scales and balances with a weighing capacity less than one hundred pounds, twenty dollars.
- f. Each liquid capacity measure, except vehicle tanks, ten dollars.
- g. Each liquid measuring meter, except water meters, the following shall apply: motor fuel dispenser , twenty dollars; vehicle tank pump or gravity type, fifty dollars; bulk storage, seventy-five dollars; all others, twenty dollars.
- h. Each taximeter or measuring device on vehicles used to determine the cost of transportation, twenty-five dollars.
- i. Vehicle tanks used in the sale of commodities by liquid measure for each hundred gallons or fraction thereof, five dollars and an additional fee of ten dollars per sealed indicator.
- j. All weights and other measures liquid and linear, two dollars each.
- k. Reverse vending machines (container return), twenty dollars.
- l. Each automated electronic retail checkout system with fewer than four cash registers or computer terminals, not more than seventy-five dollars.
- m. Each automated electronic retail checkout system with no less than four and no more than eleven cash registers or computer terminals, not more than one hundred and fifty dollars.
- n. Each automated electronic retail checkout system with greater than eleven cash registers or computer terminals, not more than two hundred and fifty dollars.

The Town shall also receive reasonable compensation for the use of special facilities, necessary repairs and adjustments made by inspector, and the service of testing these devices, which include time allotted for record keeping and associated paperwork.

The Town shall either collect the fees as listed above or the fees as listed in Massachusetts General Laws, Chapter 98: Section 56, whichever is greater.

SECTION 7 Curb Cut Permit (Adopted April 28, 2003)

No owner or occupant of land, abutting upon a town way of Hampden or any public way which, by statute, said town is obligated to repair and maintain, shall construct any private road or driveway thereon, so as to extend into such public way, without first having obtained a written permit therefor from the Building Inspector and the

Superintendent of Highways having charge of the maintenance and repair of such public way. A written permit shall also be approved by the Fire Chief.

If the curb cut is for forestry, agriculture or other purpose not involving construction that requires a building permit, then the plan provided for herein shall be submitted only to the Superintendent of Highways who shall have the sole authority to issue the curb cut permit without approval of the Building Inspector.

The Building Inspector (or in cases where no building permit is required, only the Superintendent of Highways) shall issue the curb cut permit (with approval of the Fire Chief) within forty (40) days or shall render a decision in writing specifying the reason(s) for denial of said permit and shall base that decision upon consideration of public safety. Whoever by him/herself being the owner or occupant, or by his/her agents or servants, violates this regulation, shall be punished by a fine not to exceed one hundred dollars (\$100.00) per day, and shall be liable to the Town of Hampden for all damages caused by the unpermitted curb cut including the cost and expense of removing the obstructing material and of restoring the said way to its former condition.

CHAPTER VIII. PROTECTION OF PERSONS OR PROPERTY

SECTION 1.

No person shall enter upon the premises of another or upon any public or private property with the intention of peeping into the windows of a house or other building or of spying in any manner upon any person or persons therein, and any person so convicted shall be subject to a fine of not more than fifty dollars.

SECTION 2.

Whoever shall, within the Town, whether that public way, county highway, state highway, or a private way open to the public, or in any other place where the public shall have access, consume alcoholic beverages shall be punished by a fine not exceeding \$50. This section shall be construed also to prohibit the consumption of alcoholic beverages, by any person while such person is standing, sitting, walking, running, or otherwise present within such way or public place as herein above defined, or within any vehicle, whether parked or moving, which is within the limits of such public way or place as herein defined. (Adopted April 25, 1983)

SECTION 3.

Whoever shall consume any alcoholic beverages or be in possession of an open container of alcoholic beverages, in any public building, or on any public property, including parks, cemeteries, school houses, and school grounds, public squares, or in any private way or parking area regulated under the provisions of General Laws, Chapter 90, Section 18, shall be punished by a fine not exceeding \$50. (Adopted April 25, 1983.)

SECTION 4.

The foregoing SECTION 2 and 3 shall not apply to any activity duly licensed by the Board of Selectmen under the applicable provisions of the General Laws, or where specific permission has been granted. A violation of this Bylaw shall be deemed to be a breach of peace. (Adopted April 25, 1983.)

SECTION 5.

No person, not licensed to do so, shall keep, store, or park any motor vehicle or vehicles, as defined in the General Laws, which are required to be registered in order to be operated upon the ways of the Commonwealth, if said vehicles are unregistered, whether assembled or disassembled; on any premises within the Town, unless stored within an enclosed building, without a permit from the Chief of Police.

This Bylaw shall not apply to vehicles used for farming purposes.

Violations of this Bylaw shall be punished by a fine of not more than \$50.

SECTION 6. (adopted April 21,1991)

No person shall hunt by any means, trap or discharge a firearm on any land owned by the Town of Hampden. No person shall hunt by any means, trap or discharge a firearm on any private property in the Town of Hampden, other than said person's property or the property of said person's parents, children, grandchildren or their spouses, without written permission of the owner of the land upon which hunting, trapping, or discharging of a firearm will take place. Permission forms shall be obtained from the Hampden Town Clerk's office. The

distribution of the permission form prior to hunting, trapping or discharging a firearm shall be as follows: The Town Clerk shall receive and stamp all copies, one of which shall be forwarded to the Police Department by the Town Clerk, and the original copy must be retained by the hunter and must be carried while hunting.

Each offender shall receive a written notice to appear before the clerk of the district court at any time during working hours not later than twenty-one days after the date of such notice. Fine for first offense shall be \$100.00. Second time offenders shall be fined a minimum of \$100.00 up to \$300.00. This bylaw shall be enforced by all State and local law enforcement officials and shall be administered under the provisions of Massachusetts General Laws, Chapter 40, Section 21D on non-criminal dispositions. This bylaw shall not apply to the lawful defense of life and property, or to any discharge of firearms in accordance with law enforcement.

For the purposes of this bylaw a firearm shall be defined as any instrument used in the propulsion of shot, shell, bullets or ball by the use of gunpowder.

SECTION 7. Temporary Permit - (Adopted April 29, 2002)

If a physician certifies in writing that a person has a temporary disability, the Board of Health has authority to issue to that person a temporary permit bearing the international symbol for the handicapped.

The permit is limited to a duration of six (6) months but is renewable by the Board, if necessary, with the written certification of the physician.

The Board of Health shall revoke a temporary handicap permit issued by it if the vehicle to which the permit is affixed is used for special handicapped parking privileges when the vehicle is not operated by or is not carrying as a passenger the person for whose handicap the permit was issued. If the owner or operator of a vehicle for which a temporary handicap permit has been issued stands or parks the vehicle in a space reserved for handicapped persons when the vehicle is not being operated by or is not carrying as a passenger the person for whose handicap the permit was issued, he is subject to a fine and to the procedures established under General Laws Chapter 90, Section 20A.

SECTION 8. Alarms (Adopted April 25, 2005)

No person shall connect or cause to be connected a fire alarm system to a burglar alarm system whereby the triggering of the burglar alarm would cause the fire alarm system to place a call to the Fire Department.

If a person has for his home or business a burglar alarm system that results in a police call to the person's home or business, the person is liable for a fee of twenty five (\$25) dollars for each false alarm after the first three (3) false alarms in any calendar year.

For the purposes of a burglar alarm, a "false alarm" means the triggering of the alarm by any cause other than by a person whose presence on the premises the alarm system intended to report.

If a person has for his home or business a fire alarm system that results in a Fire Department call to the person's home or business the person is liable for a fee of twenty five (\$25) dollars for each "false alarm" after the first three (3) false alarms in any calendar year.

For the purposes of a fire alarm, a "false alarm" means the triggering of any alarm by any cause other than fire or smoke on the premises which requires the presence of the Fire Department.

All alarms shall have a disconnect feature which will automatically prevent an alarm from transmitting and or sounding for more than fifteen (15) minutes.

CHAPTER IX. AUDITS

SECTION 1.

The Town shall have an audit of the financial books and accounts of the Town made periodically by the State Bureau of Accounts or a private accounting firm. (Adopted April 25, 1977.)

CHAPTER X. WETLANDS PROTECTION

SECTION 1: Purpose

The purpose of this bylaw is to protect the Wetlands, related water resources and adjoining land areas of the Town of Hampden by prior review and control of activities found by the Conservation Commission (hereinafter "Commission") to have a significant effect upon wetland values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, prevention of water pollution, fisheries, wildlife, wildlife habitat, rare or endangered species, recreation and protection of water quality; these values are to be known collectively as the "wetland values protected by this bylaw."

SECTION 2: Jurisdiction

Except as otherwise provided in this bylaw, no person shall remove, fill, dredge or alter any bank, fresh water wetland, coastal wetland, beach dune, flat, marsh, meadow or swamp bordering on any estuary, creek, river, stream, pond, or lake, or any land under said waters or any land subject to flooding without filing an application under Section 5 and complying with the provisions of this bylaw. Except as otherwise provided in this bylaw, no person shall undertake any activity in the above-described areas or within one hundred (100) feet of the above-described areas without filing an application under Section 5 and complying with the provisions of this bylaw.

SECTION 3: Exceptions

The application and permit required by this bylaw shall not be required for maintaining, repairing or replacing, but not substantially changing or enlarging, an existing or lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services, sanitary sewers and storm sewer, provided that written notice has been given to the Commission at least forty-eight (48) hours prior to commencement of work.

The application and permit required by this bylaw shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be performed or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof, provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within twenty-four (24) hours after commencement, provided that the Commission or its agent certifies the work as an emergency project, provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency.

The application and permit required by this bylaw shall not apply to work performed for normal maintenance or improvement of land actively devoted to agricultural use at the time of the application, mosquito control work done under Clause (36) of Section 5 of C. 40, or any special Act.

SECTION 4: Consultant Fees

The Commission is authorized to require any applicant to pay the reasonable costs and expenses borne by the Commission for specific expert engineering and consultant services deemed necessary by the Commission to review an application, Notice of Intent, as described in paragraphs 1 through 4 below, and to review all engineering and consultants' reports submitted to the Commission by or on behalf of the applicant and for field work incidental thereto. In the event that the services of said expert or consultant are reasonably required by the Commission in any enforcement actions described in Section 15, the applicant shall be responsible for the reasonable fees of said expert or consultant. Said payment can be required at any point in the deliberations prior to a final decision rendered. Said services may include but are not necessarily limited to wetlands survey and delineations, hydro geologic and drainage analyses, wildlife habitat evaluation and environmental land use law. The Commission may require the applicant to pay fees directly to the consultant designated by the Commission, not to exceed the following:

1. Projects proposing alteration of up to 1500 square feet of land abutting a resource area (including the 100 foot buffer zone), the consultant fee shall not exceed \$100.00.
2. Projects proposing alteration of 1500 to 2500 square feet of land abutting a resource area (including the 100 foot buffer), or up to 2500 square feet of land under water bodies or land subject to flooding, or up to 50 linear feet of bank, the consultant fee shall not exceed \$400.00.

3. Projects proposing alteration of 2500 to 10,000 square feet of land under water bodies, land subject to flooding, or land abutting a resource area (including the 100 foot buffer) 50 to 200 linear feet of bank, or up to 5000 square feet of wetland, the consultant fee shall not exceed \$1000.00.
4. Projects proposing more than 10,000 square feet of alteration of land under water bodies, land subject to flooding or land abutting a resource area (including the 100 foot buffer) more than 200 linear feet of bank, or more than 5000 square feet of wetland, the consultant fee shall exceed \$5000.00.

Projects which entail unforeseen complications or which may require the expertise of multiple experts may, upon the determination of the Commission, exceed the fee limits as outlined above.

The minimum qualification of the consultant chosen by the Commission shall consist of an educational degree in or related to the field at issue or three or four years of practice in the field at issue or a related field. Hourly fees charged by Consultants shall be made available to the applicant at the applicant's request.

SECTION 5: Applications for Permits & Request for Determination

Written application shall be filed with the Commission to perform activities regulated by this bylaw affecting wetland values protected by this bylaw. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects upon the environment. No activities shall commence without receiving and complying with a permit, or a negative determination of applicability issued pursuant to this bylaw.

The Commission in an appropriate case may accept as the application and plans under this bylaw the Notice of Intent and plans filed under the Wetlands Protection Act.

At the time of an application or request, the applicant shall pay a filing fee specified in regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act. The Commission may waive the filing fee for an application or request filed by a government agency and may waive the filing fee for a request for determination filed by a person having no direct or indirect financial connection with the property which is the subject of the request.

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may request in writing a determination from the Commission. Such a request for determination shall contain data and plans specified by the regulations of the Commission.

The Commission in an appropriate case may accept as the request under this bylaw the Request for Determination of Applicability filed under the Wetlands Protection Act.

SECTION 6: Public Notice and Hearings

Any person filing an application or a request for determination with the Commission at the same time shall give written notice whereof, by certified mail (return receipt requested or hand delivery) to the owner of the land of other than the applicant, to abutters of the land to their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice to abutters shall enclose a copy of the application or request, with plans or shall state where copies may be examined and obtained by abutters free of charge. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any application or request for determination, with written notice given at the expense of the applicant, five working days prior to the hearing, in a newspaper of general circulation in the community. The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act.

The Commission shall commence the public hearing within twenty-one days from receipt of a completed application or request for determination, unless the applicant extends the twenty-one day time period by a signed written waiver or if the applicant has failed to pay the consultant fees under Section 4.

The Commission shall have authority to continue the hearing to a date certain announced at the hearing or to an unspecified date, for reasons stated at the hearing, which may include the receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission in its description, or comments and recommendations of boards and officials in Section 7. If a date for continuation is not specified, the hearing shall reconvene within twenty-one days after the submission of a specified piece of information or the occurrence of a specified action. The date, time and place of said continued hearing shall be published in a newspaper of general circulation in the community five working days prior to the continuation, at the expense of the applicant, and written notice shall be sent to any person who so requests in writing.

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

SECTION 7: Coordination with Other Boards

Any person filing a permit application or a request for determination with the Commission shall provide written notice thereof at the same time, by certified mail or hand delivery, to the Board of Selectmen, Planning Board, Zoning Board of Appeals, Board of Health, Town Engineer, Building Inspector and Highway Department. The Commission shall not take final action until such boards and officials have had fourteen days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any such comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

SECTION 8: Permits, Determinations and Conditions

The Commission shall have the authority, after a public hearing, to determine whether a specified parcel of land contains or does not contain resource areas protected under this bylaw. If the Commission finds that no such resource areas are present, it shall issue a negative determination.

If the Commission, after a public hearing on the permit application, determines that the activities which are the subject of the application are likely to have a significant effect upon the wetland values protected by this bylaw, the Commission, within twenty-one days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

If the Commission determines that the activities which are the subject of the application are not likely to have a significant or cumulative detrimental effect upon the wetland values protected by this bylaw, the Commission shall issue a permit without conditions within twenty-one days after the public hearing.

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

A permit shall expire three years from the date of issuance, and all work shall be completed prior to expiration. The Commission may, upon good cause shown, extend a permit once for an additional one year period.

No work proposed in any application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the registry of Deeds, or, if the land affected thereby be registered land, in the registry section of the land court for the district wherein the land lies, by the holder of the permit or, if provided in regulations of the Commission, by the Town of Hampden and until the holder of the permit certifies in writing to the Commission that the permit has been so recorded or the Town of Hampden has recorded said permit.

For good cause the Commission may revoke or modify a permit issued under this bylaw after notice to the holder of the permit, notice to the public, abutters and town boards and officials pursuant to Sections 6 and 7 and public hearing.

The Commission in an appropriate case may combine the permit or other action on an application issued under this bylaw with the Order of Conditions or other action issued under the Wetlands Protection Act.

SECTION 9: Preacquisition Violation

Any person who purchases, inherits, or otherwise acquires real estate upon which work has been done in violation of this section or in violation of any such order issued under this section, shall forthwith comply with any such order or restore such real estate to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless such action is commenced within three (3) years following the recording of the deed or the date of the death by which such real estate was acquired by such person.

SECTION 10: Regulations

The Commission shall adopt fee and administrative regulations needed to implement the provisions of this bylaw. These regulations shall be consistent with the terms of this bylaw. The Commission may amend only administrative and fee regulations only after public notice and public hearing. Prior to the adoption of said regulations, the Commission shall hold at least two (2) public hearings duly advertised and publish a synopsis of the regulations in a newspaper of general circulation at least thirty (30) days before implementation. The rules and regulations may not expand or enlarge the power or jurisdiction of the Commission granted under this bylaw.

Unless otherwise stated in this bylaw or in the rules and regulations promulgated under this bylaw, the definitions, procedures and performance standards of the Wetlands Protection Act and associated Regulations, 310 C.M.R. 10.00, in effect as of the effective date of this bylaw, shall apply. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this bylaw.

SECTION 11: Burden of Proof

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

SECTION 12: Definitions

All terms, unless otherwise specified in this section, are as defined in the Massachusetts Wetland Protection Act, M.G.L. Ch. 131, S. 40 and Regulations 310 C.M.R. 10.00.

SECTION 13: Security

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by a proper bond or deposit of money or negotiable securities, including letter of credit or other undertaking of financial responsibility sufficient in the opinion of the Commission and payable to the Town of Hampden.

SECTION 14: Appeals

Anyone taking issue with a decision of the Commission in issuing a determination of applicability or permit may within ten (10) days of the decision appeal to the Board of Selectmen. This appeal shall state grounds for the appeal and the Board of Selectmen, on consideration of those arguments, may decide to request the Commission to reconsider the decision at issue. Such request by the Board of Selectmen shall be binding in as much as the Commission must reconsider its decision, but any final decision will be solely the responsibility of the Commission.

The Commission, within 21 days of receiving the request for reconsideration from the Board of Selectmen, will open an appeals hearing to consider arguments related to the decision. The Commission may extend the hearing for the purpose of receiving additional information. Upon the close of the appeals hearing, the Commission will issue a final decision within 21 days.

SECTION 15: Enforcement

The Commission, its agents, officers and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.

The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions.

Upon petition of the Commission, the Board of Selectmen and Town Counsel may take such legal action as may be necessary to enforce this bylaw and permits issued pursuant to it under civil law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal Law.

Any person who violates any provision of this bylaw or any condition of a permit issued pursuant to it shall be punished by a fine of not more than three hundred (\$300.00) dollars. Each day or portion thereof during which a violation continues shall constitute a separate offense. This fine may be in addition to any levied under the Wetland Protection Act.

In the alternative to criminal prosecution, the Commission may elect to utilize the non-criminal disposition procedure known as the "ticketing" approach set forth in G.L.C. 40, Sec. 21D. The fine for any violation disposed of through this procedure shall be two hundred (\$200.00) dollars for each offense. Each day or portion thereof during which a violation continues shall constitute a separate offense. This fine may be in addition to any levied under the Wetlands Protection Act. For purposes of non-criminal disposition, any member duly authorized by a majority of the members of the Commission, Police Officers and Environmental Police Officers shall all be enforcing persons.

SECTION 16: Relation to the Wetlands Protection Act

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statute, independent of the Wetlands Protection Act and the Regulations thereunder.

SECTION 17: Severability

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

CHAPTER XI. NON CRIMINAL DISPOSITION OF CERTAIN VIOLATIONS (Adopted April 30, 2001)

SECTION 1: Violations Covered

The following violations shall be subject to the non-criminal disposition procedures described in this chapter:

- a) Any violation of an order of the Hampden Board of Health relating to public health which is authorized by the general laws, any special law applicable to the Town of Hampden, the provisions of the state sanitary code or other state regulations, or any Hampden by-law, rule or regulation;
- b) Any violations of an order of the Hampden Building Inspector relating to public safety which is authorized by the general laws, any special law applicable to the Town of Hampden, the provisions of the state building code or other state regulations, or any Hampden by-law, rule or regulation;
- c) Any violation of order of the Chief or Fire Safety Officer of the Hampden Fire Department relating to the public safety which is authorized by the general laws, any special law applicable to the Town of Hampden, the provision of the state fire prevention code or other state regulation, or any other Hampden by-law, rule or regulation; or
- d) Any violation of any other Hampden by-law or rule or regulation of any Hampden officer, board or department.

SECTION2: Amount of penalty (Amended April 29, 2002)

The penalties for the infractions set forth in Section 1 above shall be as specifically set forth in the respective order, by-law, rule or regulation which is violated but, if no such penalty is provided, the penalty shall be as follows: \$50.00 for the first offense, \$100.00 for the second offense, and \$200.00 for the third offense. Each day, or portion thereof, that such a violation continues shall constitute a separate offense. All fines shall be paid into the town treasury.

SECTION 3: Enforcement Procedure

The violations set forth in Section 1 above shall be disposed of in keeping with the non-criminal disposition procedures set forth in Massachusetts General Laws, Chapter 40, Section 21D or take any other action relative thereto.

CHAPTER XII DOG CONTROL AND VIOLATIONS (Adopted April 28, 2003)

1. Description of Violations

Any owner who allows his/her dog to do or be any of the following will be considered in violation of this by-law:

- a. Unlicensed – a dog, six (6) months or older, which is unlicensed or not re-licensed by April 30 each year.
- b. Run at Large – to go beyond the boundaries of the owner's property unless the dog is:
 1. In sight and under voice command, and
 2. Does not trespass on residential property. Dogs in the act of training, working, hunting, or guarding are excepted.
- c. Chase – a pedestrian, bicycle, or any other vehicle.
- d. Bark – excessively during the day, or to bark between ten (10) pm and six (6) am so disturbing the reasonable quiet of the neighborhood.
- e. Worry livestock – to worry, injure, or kill another's livestock, fowl or pet.
- f. Vicious – a dog that menaces, attacks, or bites a person without provocation.

2. Informal Complaint

- a. Any person may by telephone or letter inform the Dog Officer of any violation by:
 1. Identifying him/herself
 2. Describing the dog in detail
 3. Describing the violation
- b. The Dog Officer shall make a log of all information received, but the identity of the complainant shall be strictly confidential with the Dog Officer.

3. Formal Complaint

- a. Complaint forms shall be readily available from the Dog Officer, the Selectmen’s Office, and the Police Department. Any resident may file this form at any of the above points or by mailing it to the Board of Selectmen.
- b. Within seven (7) days of receiving a complaint form, the Dog Officer shall make a progress report to the Complainant.
- c. If the complainant remains unsatisfied he/she may re-file the complaint with the Selectmen. A formal hearing may be called.
- d. Confidentiality ends once a formal complaint is filed.

4. Citations

- a. The Dog Officer, acting upon personal knowledge of a violation, may serve a citation, having the force of law, on the owner. It shall describe the dog’s conduct, cite the violation, and secure the enforcement by any of these means:
 - 1. Warning – a warning shall state a deadline for compliance and other steps of enforcement, as necessary.
 - 2. Fine- a fine may be levied to the maximum of \$25.00 for the first offense and \$50.00 for each subsequent offense to be paid to the Town Clerk. Each day of a continuing offense shall be considered a separate offense.
- b. The owner shall comply with the citation by:
 - 1. Satisfying the Dog Officer by complying with the warning or restraint order and/or
 - 2. Paying a fine within ten (10) days to the Town Clerk.
- c. Town Police Officers or the Dog Officer may issue citations for violations of this by-law pursuant to the non-criminal disposition procedures contained in Section XI of the General By-laws of the Town, provided however that only the Board of Selectmen shall have the jurisdiction to order that a dog be permanently restrained, removed from the Town or otherwise disposed of.
- d. The owner has the right to appeal to the Selectmen within ten (10) days of the citation’s issue.
- e. Filing an appeal suspends a fine or restitution but not a restraint order.

CHAPTER XIII Private Roads Maintenance: Temporary Repairs on Private Ways

(Approved October 26, 2003)

The Town may make temporary repairs on private ways, which have been opened to public use for a period of six years or more, provided the repairs are for the protection of the health and safety of the general public using such roads.

Such repairs shall include the filling of holes in the subsurface of such ways and repairs to the surface materials thereof. Materials for such repairs, where practical should be the same as, or similar to, those used for the existing surfaces of such ways, but may include surfacing the ways with bituminous materials, including but not limited to bituminous concrete.

Drainage, as determined by the Highway Superintendent to be necessary as a result of the repairs, may also be done. Drain repairs shall be made only if petitioned for by all the abutters who own frontage on such ways with the approval of the land owner, if necessary, and if the Board of Selectmen declare that they are required by the public necessity and convenience to make such repairs based on an advisory opinion of the Highway Superintendent. Drainage easements shall, if necessary, be the responsibility of the petitioners. The cost of such repairs shall be paid by the abutters by a cash deposit as herein provided.

No repairs shall be commenced unless and until a cash deposit equal in amount to the estimated cost of such repairs, as determined by the Highway Superintendent, is paid over to the Town and the Board of Selectmen has given its approval for the project. No betterment charges shall be assessed.

The Town shall not be liable on account of any damage whatsoever caused by such repairs and Section 25 of Chapter 84 shall not apply. The Board of Selectmen may require an indemnity agreement executed by the

petitioning abutters, indemnifying the Town for all claims and damages, which may result from changing such repairs.

The Town may, subject to the approval of the Board of Selectmen and based on an advisory report from the Highway Superintendent, make temporary minor repairs to private ways not to exceed \$500 per road per year, in total, provided the private way has been open to public use for a period of six years or more. The repair shall be limited to minor work such as filling, patching, and not more than grading or scraping twice per year.

No such repairs shall be done unless there is a unanimous agreement by all abutters that the work shall commence and the Town of Hampden shall be held harmless from any and all damages or claims arising out of such repairs. Massachusetts General Laws, Chapter 84, Section 25 shall not apply.

CHAPTER XIV STORMWATER MANAGEMENT

(Approved April 25, 2005)

1. PURPOSE

The purpose of this chapter is to eliminate non-stormwater discharges to the Town of Hampden's Municipal Storm Drain System. Non-stormwater discharges contain contaminants and supply additional flows to the Town of Hampden's Storm Drain System. Non-stormwater discharges are major causes of:

- a. impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands, and groundwater;
- b. contamination of drinking water supplies;
- c. alteration or destruction of aquatic and wildlife habitat; and
- d. flooding.

Regulation of illicit connections and discharges to the storm drain system is necessary for the protection of the Town of Hampden's, natural resources, municipal facilities, general health, safety, welfare, and the environment. The objectives of this section are:

- a. to prevent pollutants from entering the storm drain;
- b. to prohibit illicit connections and unauthorized discharges to the storm drain
- c. to remove all such illicit connections;
- d. to comply with state and federal statutes and regulations relating to stormwater discharges; and
- e. to establish the legal authority to ensure compliance with the provisions of this section through inspection, monitoring, and enforcement.

2. DEFINITIONS

These definitions and provisions shall apply to the "Discharges to the Municipal Drain System" By-Law.

AUTHORIZED ENFORCEMENT AGENCY - The Board of Selectman, its employees or agents designated to enforce this by-law.

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

CLEAN WATER ACT - The Federal Water Pollution Control Act (33 U.S.C. section 1251 *et seq.*) and as it is amended from time to time.

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

GROUNDWATER - Water beneath the surface of the ground. Except where the water under the ground is the result of a perched water table.

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

ILLICIT DISCHARGE - Direct or indirect discharge to the storm drain that is not composed entirely of stormwater, except as exempted in Section 7. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or resulting from fire fighting activities exempted pursuant to Section 7, subsection d, part 1, of this by-law.

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

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) - The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Hampden.

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

NON-STORMWATER DISCHARGE - Discharge to the storm drain not comprised 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.

POLLUTANT - Any element or property of sewage, residential, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or non-point source, that is or may be introduced into any storm drain system, waters of the United States, and/or Commonwealth. Pollutants shall include without limitation:

1. paints, varnishes, solvents;
2. oil, grease, antifreeze, other automotive fluids and/or products;
3. non-hazardous liquid and solid wastes;
4. refuse, garbage, litter, rubbish, yard wastes, or other discarded or abandoned objects, ordnances, accumulations and floatables;
5. pesticides, herbicides, and fertilizers;
6. hazardous materials and wastes;
7. sewage;
8. dissolved and particulate metals;
9. metal objects or materials;
10. animal wastes;
11. rock, sand, salt, soils, or other products/materials that mobilize in surface water runoff;
12. and construction wastes and/or residues.

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 snowmelt.

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 material including without limitation:

1. any synthetic organic chemical;
2. petroleum products;
3. heavy metals;
4. radioactive or infectious waste;
5. acid and alkali substances;
6. any substance defined as Toxic or Hazardous under G.L. Ch. 21C and Ch. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.000;
7. and any substance listed as hazardous under 40 CFR 261.

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.

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, by-product or waste product.

3. APPLICABILITY

This section shall apply to flows entering the municipally owned and/or operated storm drainage system.

4. AUTHORITY

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

5. RESPONSIBILITY FOR ADMINISTRATION

The Board of Selectmen shall administer, implement and enforce this by-law. Any powers granted to or duties imposed upon the Board of Selectmen to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

6. REGULATIONS

The Board of Selectmen may promulgate rules and regulations to effectuate the purpose of by-law. Failure by the Board of Selectmen to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

7. PROHIBITED ACTIVITIES

- a. **ILLCIT DISCHARGES** - No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the storm drain system, into a watercourse, or into waters of the United States and/or Commonwealth.

- b. **ILLICIT CONNECTIONS** - No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.
- c. **OBSTRUCTION OF THE MUNICIPAL STORM DRAIN SYSTEM** - No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior approval from the Board of Selectmen.
- d. **EXEMPTIONS**
 - 1. Discharge of flow resulting from fire fighting activities and Highway Department ice and snow control operations.
 - 2. The following non-stormwater discharges or flows are considered exempt provided that the source is not a significant contributor of pollution to the municipal storm drain system:
 - i. waterline flushing;
 - ii. flow from potable water sources;
 - iii. springs;
 - iv. natural flow from riparian habitats and wetlands;
 - v. diverted stream flow;
 - vi. rising groundwater;
 - viii. uncontaminated groundwater infiltrating as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater; water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
 - ix. discharge from landscape irrigation or lawn watering;
 - x. water from individual residential car washing;
 - xi. discharge from dechlorinated swimming pool water (less than one ppm chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
 - xii. discharge from street sweeping;
 - xiii. dye testing, provided verbal notification is given to the Board of Selectmen prior to the time of the test;
 - xiv. non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations;
 - xv. and discharge for which advanced written approval is received from the Board of Selectmen as necessary to protect public health, safety, welfare, and the environment.

8. **EMERGENCY SUSPENSION OF STORM DRAINAGE SYSTEM ACCESS**

The Board of Selectmen 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 present imminent risk of harm to public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the Authorized Enforcement Agency may take all reasonable steps to prevent or minimize harm to the public, health, safety, welfare or the environment.

9. **NOTIFICATION OF SPILLS**

Any spills or releases that require notification under local, state or federal law will be the responsibility of the person responsible for a facility or operation, or for an emergency response for a facility or operation (i.e., construction). In the event of a spill or release which may result in a discharge of pollutants or non-stormwater discharge to the municipal storm drain system, waters of the United States, and/or waters of the Commonwealth, the responsible parties, potentially responsible parties, or

any person or persons managing a site or facility shall take all necessary steps to ensure containment, and remediate any municipal storm drains that have been impacted. However, if in the opinion of Board of Selectmen, there is an excessive amount of pollutants in the storm drain system, the Board of Selectmen can require remediation by the responsible party regardless of other state or federal regulations. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall take all necessary steps to ensure containment, clean-up of the release, 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.

10. ENFORCEMENT

The Board of Selectmen or an authorized agent of the Board of Selectmen shall enforce this by-law, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

CIVIL RELIEF - If a person violates the provisions of this by-law, regulations, permit, notice, or order issued thereunder, the Board of Selectmen 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.

ORDERS - The Board of Selectmen or an authorized agent of the Board of Selectmen may issue a written order to enforce the provisions of this by-law or the regulations thereunder, which may include:

- a. elimination of illicit connections or discharges to the MS4;
- b. performance of monitoring, analyses, and reporting;
- c. that unlawful discharges, practices, or operations shall cease and desist;
- d. and remediation of contamination in connection with discharges to the MS4

If the enforcing person determines that abatement or remediation of contaminations is required and is the responsibility of the property *owner*, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of Hampden may, at its option, undertake such work, and expenses times three thereof shall be charged to the violator. Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town of Hampden, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with The Board of Selectmen within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the Board of Selectmen affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owners property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Ch. 59, section 57 after the thirty-first day at which the costs first become due.

PENALTY - Any person who violates any provision of this by-law, regulation, order or permit issued thereunder, shall be punished by a fine as set forth in Chapter XI "Non Criminal Disposition of Certain Violations" of the General by-laws of the Town of Hampden.

ENTRY TO PERFORM DUTIES UNDER THIS BY-LAW - To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Board of Selectmen, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this by-law and may make or cause to be made such examinations, surveys or sampling as the Board of Selectmen deems reasonably necessary

APPEALS - The decision or orders of the Board of Selectmen shall be final. Further relief shall be to a court of competent jurisdiction.

REMEDIES NOT EXCLUSIVE - The remedies listed in this by-law are not exclusive of any other remedies available under any applicable federal, state or local law.

11. SEVERABILITY

The provisions this by-law are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this by-law or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this by-law.

CHAPTER XV - RIGHT TO FARM BY-LAW

(Added 4/30/07)

SECTION 1 Legislative Purpose and Intent

The purpose and intent of this By-law is to state with emphasis the Right to Farm accorded to all citizens of the Commonwealth under Article 97, of the Constitution, and all state statutes and regulations thereunder including but not limited to Massachusetts General Laws Chapter 40A, Section 3, Paragraph 1; Chapter 90, Section 9, Chapter III, Section 125A and Chapter 128 Section IA. We the citizens of the Town of Hampden restate and republish these rights pursuant to the Town's authority conferred by Article 89 of the Articles of Amendment of the Massachusetts Constitution, ("Home Rule Amendment").

This General By-law encourages the pursuit of agriculture, promotes agriculture-based economic opportunities, and protects farmlands within the Town of Hampden by allowing agricultural uses and related activities to function with minimal conflict with abutters and Town agencies. This By-Law shall apply to all jurisdictional areas within the Town.

SECTION 2 Definitions

The word "farm" shall include any parcel or contiguous parcels of land, or water bodies used for the primary purpose of agriculture, or accessory thereto.

The words "farming" or "agriculture" or their derivatives shall include, but not be limited to the following: farming in all its branches and the cultivation and tillage of the soil; dairying; production, cultivation, growing, and harvesting of any agricultural, aquacultural, floricultural, viticultural, or horticultural commodities; growing and harvesting of forest products upon forest land, and any other forestry or lumbering operations; raising of livestock including, but not limited to, horses, poultry, swine, cattle, ratites (such as emus, ostriches and rheas) and camelids (such as llamas and camels), and other domesticated animals for food and other agricultural purposes, including bees and fur-bearing animals.

"Farming" shall encompass activities including, but not limited to, the following: operation and transportation of slow-moving farm equipment over roads within the Town; control of pests, including, but not limited to, insects, weeds, predators and disease organism of plants and animals; application of manure, fertilizers and pesticides; conducting agriculture-related educational and farm-based recreational activities, including agri-tourism, provided that the activities are related to marketing the agricultural output or services of the farm; processing and packaging of the agricultural output of the farm and the operation of a farmer's market or farm stand including signage thereto; maintenance, repair, or storage of seasonal equipment, or apparatus owned or leased by the farm owner or manager used expressly for the purpose of propagation, processing, management, or sale of the agricultural products; and on-farm relocation of earth and the clearing of ground for farming operations.

SECTION 3 Right To Farm Declaration

The Right to Farm is hereby recognized to exist within the Town of Hampden. The above-described agricultural activities may occur on holidays, weekdays, and weekends by night or day and shall include the attendant incidental noise, odors, dust, and fumes associated with normally accepted agricultural practices. It is hereby determined that whatever impact may be caused to others through the normal practice of agriculture is more than offset by the benefits of farming to the neighborhood, community, and society in general. The benefits and protections of this By-law are intended to apply especially to those agricultural and farming operations and activities conducted in accordance with generally accepted agricultural practices. Moreover, nothing in this Right to Farm By-law shall be deemed as acquiring any interest in land, or as imposing any land use regulation, which is properly the subject of state statute, regulation, or local zoning law.

SECTION 4 Posting of Right to Farm Bylaw

The Board of Selectmen shall post the right to farm declaration on town bulletin boards annually to run contiguous with the posting of the annual Town Meeting. Furthermore, the right to farm declaration will be included as part of the town bylaws which are posted on the Town of Hampden's Website: www.hampden.org.

SECTION 5 Resolution of Disputes

Any person who seeks to complain about the operation of a farm may, notwithstanding pursuing any other available remedy, file a grievance with the Select Board. The Select Board shall review and facilitate the resolution of the grievance.

SECTION 6 Severability Clause

If any part of this By-law is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this By-law. The Town of Hampden hereby declares the provisions of this By-law to be severable.