

CHAPTER 2
TOWN OF HOLDEN
BY-LAWS
Effective June 9, 1966

Amended:

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	May 15, 2023

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TOWN OF HOLDEN

By-Laws

Effective June 9, 1966

ARTICLE I

Town Meetings

- Section 1.** Every Warrant for Meeting shall be served by posting attested copies thereof at the Town Hall and at least two other places in town as the Selectmen shall direct in the Warrant at least 7 days before the town meeting.
- Section 2.** The Annual Meeting for the election of Town Officers shall be held on the second Monday in May each year. The polls shall be opened as stated in the Warrant calling said meeting, but not later than 12 o'clock noon. All business of the Annual Meeting except the election of Town Officers, and the determination of such matters as by law are required to be determined at such meetings, shall be considered at the adjournment thereof, which adjournment shall be held on the Monday following the second Monday in May, at 7:00 o'clock P.M.
- Section 3.** Articles of the Warrant shall be acted upon in the order in which they stand except that after an affirmative vote by three-fourths of those present and voting an article may be acted upon out of its regular order.
- Section 4.** No motion, the effect of which would be to dissolve a town meeting shall be in order until every article in the Warrant has been duly considered and acted upon; but this shall not preclude the postponement of, or consideration of any article to an adjournment of the meeting to a given time.
- Section 5.** At any town meeting, except such parts of meetings as are devoted exclusively to the election of Town officers, one percent of the registered voters of the Town shall constitute a quorum, but a less number may from time to time adjourn the meeting.
- Section 6.** When a question is under debate, motions shall be received to adjourn to a day certain, to lay on the table, to postpone to a certain time, to postpone indefinitely, to commit, or to amend; which several motions shall have precedence in the order in which they are herein arranged.
- Section 7.** No motion shall be entertained at an adjourned meeting for the reconsideration of any vote passed at the original meeting or at any previous adjournment of the same, unless notice of such motion shall have been given at such original meeting or previous adjournment or a notice has been filed with the Town Clerk who shall post such notice at least five days before said adjourned meeting; but this by-law

may be suspended in any particular case by a vote of three-fourths of those present and voting.

- Section 8.** No article in the Warrant passed over, or under which further action has been indefinitely postponed, shall be again taken into consideration unless ordered by a vote of two-thirds of those present and voting.
- Section 9.** The Moderator may decline to put motions obviously frivolous, or tending to disorder. Motions shall be presented in writing if the Moderator so requests.
- Section 10.** The Moderator shall be governed in his rulings by the provisions of these by-laws. In matters not herein provided for, the procedure shall be as outlined in the latest version of Roberts Rules of Order as far as applicable.
- Section 11.** All committees shall be appointed by the Moderator unless otherwise specially directed by the meeting, and all committees so appointed shall be directed to report within a definite time. If a committee does not report within the time stated, or at the first town meeting held hereafter, the Moderator may hold said committee discharged. The Moderator shall not be a member of any committee appointed by him unless the meeting so votes.
- Section 12.** No persons shall speak more than twice upon any questions, except to answer an inquiry, or to give information requested, without first obtaining leave of the meeting, and then not until others, who have not spoken upon the question, shall have spoken if they desire.
- Section 13.** At any Town Meeting held for the transaction of town business, no person whose name is not upon the list of voters shall be admitted to the area which the Moderator designates to be for the use of the voters. The Moderator may designate areas for the use of non-voters provided, however, that none of them shall be permitted to vote.
- Section 14.** The Moderator may make a public declaration of a 2/3rds vote without the necessity that a count be taken except as otherwise provided by General Laws Chapter 39, Section 15.

ARTICLE II

Financial Affairs

- Section 1.** It shall be the duty of the Town Clerk, within fifteen days after every town meeting, to furnish the Board of Selectmen, Chairman of the Finance Committee, the Town Manager, the Treasurer, the Town Accountant and the Clerk of the Board of Assessors a copy of the record of said meeting.

- Section 2.** The Collector shall serve a statement of the amount of the tax with a demand for its payment upon all persons whose taxes are not paid as required by law in the year of assessment, and thereafter shall seasonably proceed to enforce its collection as provided by law.
- Section 3.** In Fiscal Year 1983 and every third year thereafter there shall be an audit of the Town's accounts, under the supervision of the Director of the Bureau of Accounts in the Department of Revenue.
- Section 4.** The Town Manager shall have authority to sell and dispose of obsolete equipment salvageable waste and other personal property belonging to the Town and no longer needed or useable, if the value of such equipment, waste, or property at the time of the proposed sale or disposition is \$1,000 or less. If the value of such equipment, waste or property at the time of the proposed sale or disposition exceeds \$1,000, such sale or disposition shall be by competitive bidding as provided for purchases and public work in Section 4 of this article.

SECTION 5 – DEPARTMENTAL REVOLVING FUNDS

- 5.01: Purpose.**
This Bylaw establishes and authorizes revolving funds for use by Town departments, boards, committees, agencies or officers in connection with the operation of programs or activities that generate fees, charges or other receipts to support all or some of the expenses of those programs or activities. These revolving funds are established under and governed by General Laws Chapter 44, § 53E1/2.
- 5.02: Expenditure Limitations.**
A department or agency head, board, committee or officer may incur liabilities against and spend monies from a revolving fund established and authorized by this Bylaw without appropriation subject to the following limitations:
- A.** Fringe benefits of full-time employees whose salaries or wages are paid from the fund shall also be paid from the fund, except for those employed as school bus drivers.
 - B.** No liability shall be incurred in excess of the available balance of the fund.
 - C.** The total amount spent during a fiscal year shall not exceed the amount authorized by Town Meeting on or before July 1 of that fiscal year, or any increased amount of the authorization that is later approved during that fiscal year by the Board of Selectmen and the Finance Committee.
- 5.03: Interest.**
Interest earned on monies credited to a revolving fund established by this Bylaw shall be credited to the general fund.

5.04: Procedures and Reports.

Except as provided in General Laws Chapter 44, § 53E1/2 and this Bylaw, the laws, bylaws, rules, regulations, policies or procedures that govern the receipt and custody of the Town monies and the expenditure and payment of Town funds shall apply to the use of a revolving fund established and authorized by this Bylaw. The Town Accountant shall include a statement on the collections credited to each fund, the encumbrances and expenditures charged to the fund and the balance available for expenditure in the regular report the Town Accountant provides the department, board, committee, agency or officer on appropriations made for its use.

5.05: Authorized Revolving Funds.

The Table of Authorized Revolving Funds, as set forth below, establishes:

- A. Each revolving fund authorized for use by a Town department, board, committee, agency or office;
- B. The department or agency head, board, committee or officer authorized to spend from each fund;
- C. The fees, charges and other monies charged and received by the department, board, committee, agency or officer in connection with the program or activity for which the fund is established that shall be credited to each fund by the Town Accountant;
- D. The expenses of the program or activity for which each fund may be used;
- E. Any restrictions or conditions on expenditures from each fund;
- F. Any reporting or other requirements that apply to each fund; and
- G. The fiscal years each fund shall operate under this Bylaw.

A. Revolving Fund	B. Department, Board, Committee, Agency or Officer Authorized to Spend from Fund	C. Fees, Charges or Other Receipts Credited to Fund	D. Program or Activity Expenses Payable From Fund	E. Restrictions or Conditions on Expenses Payable From Fund	F. Other Requirements/ Reports	G. Fiscal Years
Inspectional Services	Planning and Development Director	Fees charged and received by the Building Inspector for gas, electric and plumbing inspections	To pay for wages, salaries and fringe benefits associated with wages or salaries of the Building Commissioner and wages of inspectors performing gas, electric and plumbing	None, other than as set forth in this Bylaw.	None, other than as set forth in this Bylaw and by Town Meeting vote.	Fiscal Year 2018 and subsequent years

			inspections and contractual services related to those inspections; for expenses including supplies and software purchases.			
Recreation Department	Recreation Director	Fees charged and received by the Recreation Department for Adult programs/classes, youth programs/classes, rental of recreation facilities, field rental fees, annual pool passes, day pool passes, snack bar sales, summer day/weekly programs and before and after school programs and all classes/lessons offered.	To pay for wages, salaries and fringe benefits associated with wages or salaries of the recreation director, program coordinator, clerical staff and hourly wages for seasonal employees. To pay for contracted services related to pay for programs offered, supplies, software purchases and maintenance agreements, pool repairs and maintenance, costs of training seasonal staff, upkeep of fields, basketball courts, tennis courts, and other recreational areas.	None.	None, other than as set forth in this Bylaw and by Town Meeting vote.	Fiscal Year 2019 and subsequent years
Senior Center	Council on Aging	Fees charged and received by the Council on Aging for programs/Classes and for day or weekly programs offered at the Senior Center, as well as meals.	To pay for programs, classes, activities, food and events for seniors at the Senior Center, including equipment and supplies, and to pay for improvements and repairs to the Senior Center.	None, other than as set forth in this Bylaw.	None, other than as set forth in this Bylaw and by Town Meeting vote.	Fiscal Year 2023 and subsequent years

ARTICLE III

Annual Report

Section 1. Boards, officer and committees appointed by the Town Manager shall submit an annual report to the Town Manager in such form and at such time after the end of each year as he shall designate. The Town Manager shall forward a copy of each such report to the Board of Selectmen not later than April 2 of each year. Not later than April 2 of each year, each other town officer, board, or committee shall

submit to the Board of Selectmen an annual report for the preceding year in such form as the Board of Selectmen shall designate. From such reports, the Board of Selectmen with the assistance of the Town Manager shall prepare the Annual Town Report.

ARTICLE IV

Finance Committee

Section 1. There shall be a Finance Committee consisting of nine voters of the Town, no one of whom shall be a town official, elected or appointed. Said Committee shall choose its own officers, set its own rules and shall serve without pay, except the clerk, who shall receive reasonable compensation of his services. The clerk of said Committee may or may not be a member of the Committee.

Section 2. The Finance Committee shall be appointed by the Moderator. The Moderator elected at the annual town meeting, in each year, shall in June of that year appoint three members of that committee to serve for a term of three years. Said Committee shall meet at the call of the Moderator and choose its chairman and clerk. The Moderator shall forthwith fill by appointment any vacancies which occur in its membership and said appointee shall serve for the remainder of his predecessor's term of office.

Section 3. The Finance Committee shall consider matters relating to the appropriation, the borrowing, and the expenditure of money by the Town, its indebtedness, the methods of administration of its various officers or departments, property valuation and assessment, and other municipal affairs, and may make recommendations to the Town or to any town board, official or committee relative to such matters.

Section 4. The Finance Committee shall duly consider the budget for the ensuing year submitted to the Committee by the Town Manager, the Trustees of Damon Memorial and Gale Free Library, the Town School Committee, and the Wachusett Regional School Committee, and may obtain from any town officer, employee, board or commission such supplementary information in such form and detail as they deem necessary. The Finance Committee may request any town officer, employee, or committee to meet and confer with them, and may hold hearings if they deem it advisable.

The Committee shall furnish to the Selectmen, at least three weeks prior to the date of the Annual Town Meeting, a report of the matters so considered by it, with recommendations or suggestions relative thereto, and the same shall be printed and ready for distribution at the annual town meeting.

The report of the Finance Committee as published in the Town Report shall contain a statement of the doings of the committee during the year, with such

recommendations and suggestions as it may deem advisable on any matter pertaining to the welfare of the Town.

Section 5. Articles in Town Warrants shall be considered by the Finance Committee who shall make report to the voters with such recommendation or suggestions as the Finance Committee shall deem advisable, and no such recommendation shall be amended after consideration of the article has begun.

Section 6. In the discharge of its duties, said Committee shall have free access of all books of record and accounts of any office, department, or committee of the Town.

ARTICLE V

Part 1

Five-Member Board of Selectmen

Section 1. Effective at and after the Annual Meeting in 1972, the Board of Selectmen shall consist of five members, of which two shall be those members whose terms shall not expire in 1972 and of which three shall be elected in 1972 as follows: one for a term of one year, one for a term of two years, and one for a term of three years. Thereafter, as the term of a selectman expires, his successor shall be elected for a term of three years.

Section 2. They shall keep all books, documents, and valuable papers belonging to the Town relating to their departments, in the fireproof vault provided therefor.

Section 3. It shall be the duty of the Selectmen to manage all tax title possessions acquired by the Town.

Section 4. The Town Manager shall act in accordance with any votes on policy matters of the Board of Selectmen delivered to him in writing, which are consistent with Holden Town Manager Act.

Part 2

Trustees of Damon Memorial and Gale Free Library

Section 1. The Board of Trustees of the Damon Memorial Building, and the Gale Free Library shall consist of six members, two to be chosen at each annual town meeting for a term of three years, and if any vacancy or resignation shall occur in the board during the year, it shall be filled for the unexpired term by the Town at the next annual town meeting. Only residents of the Town shall be qualified to serve on the Board of Trustees. The Trustees are authorized to obtain the services of a Librarian, Assistants, and Janitor, and make such rules and regulations for the

proper management and government of the Library and Reading Room, and the use of the books, magazines, periodicals, papers wherever located, as they may deem best for the public good. They shall have the entire custody and management of the Damon Memorial Building and the Gale Free Library.

Part 3

Town School Committee

- Section 1.** The Town School Committee shall consist of five members each of whom shall serve for a term of three years. At each Annual Town Meeting, two members or one member, as the case may be, shall be elected to succeed the member or members whose term or terms shall expire in such year.

Part 4

Wachusett Regional School District Committee

- Section 1.** The Holden members of the Wachusett Regional School District Committee shall be elected and appointed as provided in the Wachusett Regional School District Agreement, as it may be in effect from time to time.

Part 5

Board of Appeals - Zoning

- Section 1.** The Board of Appeals established under the Zoning By-Laws shall also be the Board of Appeals for the Subdivision Control Laws as authorized by the Massachusetts General Laws, Chapter 41, Section 81Z.

Part 6

Board of Health

- Section 1.** The Town Manager shall appoint a Board of Health consisting of three members and may remove any member.
- Section 2.** The Board of Health shall have control over dumps, and no person shall place or cause to be placed any waste refuse or any kind of rubbish in any public way or place in the Town except in such manner as may be directed by the Board of Health.
- Section 3.** No person shall transport or cause to be transported into the Town for the purpose of dumping or depositing the same in the Town any ashes, paper, dirt, waste, garbage, refuse, rubbish, or filth of any kind, or any animal or vegetable material, without a written permit from the Board of Health.

Part 7

Town Committees

- Section 1.** In addition to the powers given to the Town Manager by law, he may, in his discretion, be a member ex-officio of all committees appointed by a town meeting or by the Moderator, except the Finance Committee, but without power to vote. In addition, a member of the Board of Selectmen chosen by the Selectmen may, in the discretion of the Board of Selectmen, be a member ex-officio of each such committee but without power to vote.

Part 8

Officers and Bonds

- Section 1.** All Town Employees having custody of funds belonging to the Town shall be bonded in such amounts as are determined by the Board of Selectmen except as otherwise provided by law.

Part 9

Council on Aging

- Section 1.** There is hereby established in accordance with the provisions of General Laws, Chapter 40, Section 8B, a Council on Aging, said Council (a) to perform such duties and to exercise such powers and privileges as provided by said Statute as it may now exist or hereafter be amended and (b) to consist of not less than three (3) nor more than eleven (11) members, as shall be determined from time to time by the Town Manager for such term of office as he shall designate.

Part 10

Term of Office

- Section 1.** A person elected to any town office or appointed to any committee appointed by a town meeting or by the Moderator shall hold office for the term of his election or appointment and until his successor shall be elected or appointed and qualified.

Part 11

Solicitors and Canvassers By-Law

- Section 1. Permit Required:** It shall be unlawful for any solicitor or canvasser as hereinafter defined to engage in such business within the Town of Holden without first obtaining a permit from the Board of Selectmen.
- Section 2. Definition:** Solicitor or Canvasser is defined as any person who, for himself or for another person, firm or corporation travels by foot, automobile, or any other type of conveyance from place to place, from house to house, taking or attempting to lease or take orders for the sale of goods, wares, merchandise, or services or taking or attempting to take contributions for any purpose, including, but not limited to, the selling, distribution, exposing for sale or soliciting orders for magazines, books, periodicals, or other articles of commercial nature, the contracting of all home improvements, or for services to be performed in the future, whether or not such individual has, carries or exposes for retail sale a sample of the subject of such sale, whether or not the person is collecting advance payments under such retail sales.
- Section 3. Rules and Regulations:** The Board of Selectmen is hereby authorized to adopt and from time to time amend reasonable rules and regulations governing the form of permit application and the information required thereon, the term and renewal of such permits, and the conditions upon which such permits shall be granted.
**See Chapter 3.6
- Section 4. Fee:** The Town of Holden Board of Selectmen is hereby authorized to establish and from time to time change a fee to be paid for the issuance of Solicitors and Canvassers permits as authorized under this By-Law.
- Section 5. Enforcement:** Police officers of the Town of Holden and such other agents as designated by the Board of Selectmen shall enforce this By-Law.
- Section 6. Exemption:** Provisions of this By-Law shall not apply to any person who is engaged in the pursuit of soliciting charitable, benevolent, fraternal, municipal, religious, or political activities, nor any person exempted or licensed under Chapter 101 of the General Laws, or to any person exempted by any other General Laws.
- Section 7. Violation and Penalty:** Any person violating any provisions of this By-Law shall upon conviction in a court of law, be punished by a fine not to exceed fifty (\$50.00) dollars for each and every offense.

Part 12

Alcoholic Beverages

- Section 1.** No person shall consume any alcoholic beverages (as defined in Chapter 138, Section 1 of the General Laws):
- (a) While in or on a public street, way, sidewalk, public parking lot or any other public property, or in any public conveyance.
 - (b) In a motor vehicle while the same is in motion or parked in a public street, way, public parking lot, or any other public property, or
 - (c) While upon any private property, not his own, without the express permission of the owner or other person having authority to grant such permission.
- Section 2.** No person shall discard any alcoholic beverage container upon any public street, way, sidewalk, public parking lot, or any other public property, or upon any private property, not his own, without the express permission of the owner.
- Section 3.** A police officer witnessing a violation of this Part shall have the right to arrest such person without a warrant and shall bring the person so arrested before the Court within twenty-four hours, Sundays and Holidays excepted. Alcoholic beverages being used in violation of this Part may be seized and safely held until final adjudication of the charge against the person so arrested or summoned before the Court, at which time the beverages shall be disposed of as directed by the Court.
- Section 4.** Any person violating any provision of this Part of the By-Laws shall, upon conviction thereof, be punished by a fine not to exceed fifty dollars (\$50.00) for each offense.

Part 13

Agricultural Commission

- Section 1. Agricultural Commission**
There is hereby established a Holden Agricultural Commission. Said Commission shall encourage the pursuit of agriculture both as a business and a resource, the preservation of farmland, and the promotion of agricultural-based economic opportunities within the Town. It shall also be available to mediate, advocate, educate and/or negotiate over any and all farming issues within town borders.
- Section 2. Duties and Responsibilities**
The duties and responsibilities of the Agricultural Commission shall include, but shall not be limited to:

1. Advising the Board of Selectmen, the Planning Board, the Zoning Board of Appeals, the Conservation Commission, the Board of Health, and other local organizations, on projects and activities related to agriculture, including acquisitions and other transactions involving agricultural lands in town.
2. Engaging in projects and actions to promote the business of farm-related activities and traditions, and the preservation of farmland in town. These activities shall include programs and community events.
3. Reporting on all business related to the committee on an annual basis as a part of the official Town Report.
4. All of the powers of an agricultural commission set forth in Chapter 40, Section 8L, of the General Laws.

Section 3. Commission Structure

The Commission shall consist of seven members appointed by the Town Manager, subject to the approval of the Board of Selectmen. A majority of members shall be farmers or employed in an agriculture-related field. If farmers or persons employed in agriculture are not available to serve on the Commission, then the Commission shall include a majority of members with knowledge and experience in agricultural practices or knowledge of related agricultural business. They shall serve staggered terms of three years each, except that with respect to the initial appointees, one shall have a term of one year, three shall have a term of two years and three shall have a term of three years.

Part 14

Right to Farm Bylaw

Section 1. Right to Farm Bylaw - Legislative Purpose and Intent

The purpose and intent of this By-law is to state with emphasis that the Right to Farm is accorded to all citizens of the Commonwealth under Article 97, of the Constitution, and under 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 111, Section 125A and Chapter 128 Section 1A. We the citizens of Holden restate and republish these rights pursuant to the Town's authority conferred by Article 89 of the Articles of Amendment of the Massachusetts Constitution – The Home Rule Amendment.

This By-law encourages the pursuit of agriculture, promotes agriculture-based economic opportunities, and protects farmlands within the town of Holden 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 or non-contiguous parcels of land, or bodies of water 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:

- 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 horses;
- keeping of horses as a commercial enterprise;
- keeping and raising of poultry, swine, cattle, ratites (such as emus, ostriches and rheas), camelids (such as llamas and camels), and other domesticated animals for food and other agricultural purposes, including bees and fur-bearing animals;
- farming in all its branches.

"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;
- slaughtering, 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 the propagation, processing, management, or sale of agricultural products;
- on-farm relocation of earth and the clearing of ground for farming operations;
- any other accepted agricultural activity.

Section 3. Right To Farm Declaration

The Right to Farm is hereby recognized to exist within the town of Holden. 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 exclusively 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. Precedence

In the event of conflict between this By-law and all other town regulations, this By-law shall take precedence. In the event of conflict between this By-law and federal or state law, federal or state law shall respectfully take precedence.

Section 5. Resolution of Disputes

Any person who seeks to complain about the operation of a farm may, notwithstanding, pursue any other available remedy, file a grievance with the Select Board, the Zoning Enforcement Officer, or the Board of Health, depending upon the nature of the grievance. The filing of the grievance does not suspend the time within which to pursue any other available remedies that the aggrieved may have. The Zoning Enforcement Officer or Select Board may forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance, and report its recommendations to the referring Town authority within an agreed upon time frame.

The Board of Health, except in cases of imminent danger or public health risk, may forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance, and report its recommendations to the Board of Health within an agreed upon time frame.

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 Holden hereby declares the provisions of this By-law to be severable.

ARTICLE VI

Regulations of Billboards

Section 1. No person, firm, association, or corporation shall erect, display or maintain a billboard, sign, or other outdoor advertising device, except those exempted by Sections 30 and 32 of Chapter 93 of the General Laws, until a permit has been obtained from the Board of Selectmen.

ARTICLE VII

Removal of Soil

Section 1. No person shall remove any soil, loam, sand, or gravel from any land in the Town not in public use unless such removal is authorized by a permit issued by the

Board of Selectmen, except in conjunction with the construction of a building on the parcel and except for the continued operation on the same parcel of an existing sand and gravel pit. No such permit shall be issued until an application therefor is filed with said Board. Said Board shall hold a public hearing on the application and notice of the filing of such application, and the date and time of the public hearing thereon shall be advertised in a paper published in the Town of Holden or City of Worcester and circulated in the Town seven days at least before the public hearing.

- Section 2.** The Selectmen as a condition of granting approval may require that the person moving the above shall conform to specifications of said Board in leaving the area in a sightly condition.

ARTICLE VIII

Restraint of Dogs

- Section 1.** Whoever owns or keeps a dog within the Town shall restrain said dog from running at large, confining said dog to the premises of the owner or keeper and shall keep such dog on a leash while on a public way unless within an officially designated Town Dog Park or Dog Run.

- Section 2.** Whenever a complaint is sought within the jurisdiction of the Town of Holden for a violation of a By-Law made under the provisions of Section 173A, the hearings officer of said Town shall send a written notice to the person complained against, stating that such a complaint has been sought and will be issued unless such person appears before such officer and confesses the offense, either personally or through an agent duly authorized in writing, or by mailing to such officer with the notice and the fine provided herein. As used herein, hearings officer means such person as shall be appointed by the Town Manager to conduct hearings and perform other duties pursuant to Article VIII of these By-Laws.

If a person notified to appear, as hereinbefore provided, fails to appear or pay the fine within twenty-one days of the sending of the notice, or having appeared, does not desire to avail himself of the procedure established by this section, the hearings officer shall request a complaint to be issued by the District Court and the procedure established for criminal cases shall be followed. The fines which may be imposed by the hearings officer shall be determined in accordance with General Laws Chapter 140, Section 173A, as the same may from time to time be amended and supplemented. The fine which may be imposed by the Hearings Officer shall be 1st Offense \$50.00, 2nd Offense in the calendar year \$75.00, 3rd Offense in the calendar year \$100.00, 4th and subsequent offense in the calendar year \$200.00.

- Section 3.** The restraint of dogs shall not apply for the purpose of training dogs or hunting. Nor shall it apply to a dog belonging to a law enforcement agency, acting in the line of duty.
- Section 4.** No dog confined under the provisions of General Laws, Chapter 140, as amended, shall be released unless it has been licensed as required by this chapter.
- Section 5.** The owner of a dog found in violation of this By-Law or the provisions of Chapter one hundred and forty of the General Laws, which has been impounded, shall pay a fee equal to the expenses incurred by the Town for the daily care; plus a fee for the initial handling of such dogs. The initial handling fee shall be established by the Board of Selectmen, but shall not exceed twenty (20) dollars.
- Section 6.** Definition guard dog. A dog owned by a guard dog business or a dog leased, purchased or otherwise acquired from a guard dog business (as defined in Chapter 129 Section 1 of the General Laws) kept for the purpose of protecting life or property.
- Section 7.** No "guard dog" shall be kept or licensed within the Town of Holden without the approval of the Board of Selectmen or their designated representative. The Board of Selectmen may impose restrictions or deny approval of the keeping of such dogs within the Town of Holden, as may be deemed necessary to insure public safety.
- Section 8.** Any guard dog that is not in compliance with the requirements of Section 7 shall be immediately impounded by the Town of Holden Dog Officer. Said dog shall be held by the Dog Officer for a period of at least seven days prior to disposing of the dog.
- Section 9.** Upon receipt of a written report from an investigating officer regarding a complaint about a dog being kept in the Town of Holden, the Town Manager may make such order concerning the restraint of such dog as may be deemed necessary, pending a hearing on the matter.
- Section 10.** All claims for damages done by dogs in the Town of Holden shall be determined by appraisers pursuant to Section one hundred and sixty-one of Chapter 140, and when the awards are approved by the Selectmen of the Town, shall be paid in full on the last business day of each fiscal year by the Treasurer of the Town. The awards for damages in any fiscal year shall not exceed the fees, fines and reimbursements collected by the Dog Officer during such fiscal year and if the amounts so collected are insufficient to satisfy all such awards, they shall be divided pro rata among such claimants in full discharge of their claims.

ARTICLE IX

Street Opening

Section VIII No person and no department of the Town shall break up the ground or pavement in any street or enter any driveway into a public way, or erect thereon any staging for any buildings, or occupy any portion of the way for the purpose of erecting or repairing any building without a written permit from the Town Manager or his designee provided that in case of any emergency, the head of a department may proceed to act without such permit, but shall as soon as may be practical notify the Town Manager. Such permit shall contain such lawful restrictions and limitations as the Town Manager may deem necessary for the protection, convenience, and safety of the public.

No such permit to remove the ground or pavement in any street or for the entering of a driveway into the public street, for the purpose of constructing or installing underground utilities within the street lines, nor to maintain such underground utilities, shall be issued until plans of the proposed construction, in detail have been filed with and are approved by the Town Manager.

In all cases in which such permit may be given for obstructing or excavating or entering into any street, the Town Manager may impose such conditions and limitations as he shall see fit so far as erecting barriers, maintaining lights, and taking other precautions for the security of travelers and other persons.

Whenever any public street is open for any purpose, all materials for paving or blasting shall be removed with the least possible injury or loss of the same, and, together with the excavated materials from the trench, shall be placed where they shall cause the least possible inconvenience to the public, or as may be directed by the Town Manager.

All work shall be done in accordance with the specifications of the Town and shall be approved by the Town Manager.

Any permit required under the provisions of paragraph one of this section shall execute a written agreement to indemnify and save harmless the Town against all damage or cost by reason of any claim for damages or any process, civil or criminal, on account of the existence of such obstruction or excavation, or any injury to any person occasioned thereby and such person shall be required to deposit either cash, a surety company bond, or any insurance policy so that there shall be sufficient surety that the agreement to indemnify shall be carried out and such security shall be approved by the Town Manager.

The contractor shall also post with the Town Manager a performance bond in an amount to be determined by the Town Manager, indemnifying the Town that the work performed under the permit shall be completed in accordance with the specifications of the Town Manager.

Newly resurfaced areas within a public right-of-way (ROW) are subject to a five (5) year prohibition on the issuance of street opening permits and excavations within the ROW. This prohibition shall also apply to new street ROWs within five (5) years of their acceptance date by the Town. Exceptions to the five year moratorium may be granted by the Town Manager, as he deems necessary in his sole and absolute discretion, to provide for the protection, convenience, and safety of the public. In the event such an exception to the prohibition is granted, a written waiver shall be issued by the Town Manager or his designee, which may limit or specify the type of repair or excavation permitted during the moratorium.

ARTICLE X

Amendment, Repeal, Penalty

Section 1. These By-laws may be amended by vote of the Town at any annual town meeting, provided notice is given in accordance with the General Laws.

Repeal - Provision for Amendment

Section 2. The repeal of a By-Law shall not thereby have the effect of reviving any By-Law theretofore repealed.

Penalties

Section 3. Whoever violates any of the provisions of these By-Laws whereby any act or thing is enjoined or prohibited shall, unless other provisions are expressly made herein or in the General Laws, forfeit and pay a fine not exceeding twenty dollars for each offense. Each day that a violation continues shall be considered a separate offense.

Validity Not Affected by

Unconstitutionality of Any Section

Section 4. If any Article or Section of any Article of these By-Laws is declared unconstitutional or illegal by any court, or is disapproved by any state authority having jurisdiction, the validity of the remaining provisions of these By-Laws shall not be affected thereby.

ARTICLE XI

Littering

Section 1. No person, whether in or upon a vehicle or on foot or in a building shall throw, deposit, drop, discharge or sweep onto a public way or other public place, and allow to remain there, any refuse, filth or other rubbish unless it is thrown,

deposited, dropped, discharged or swept into a receptacle provided for the purpose.

Section 2. No person whether in or upon a vehicle or on foot on a public way or other public place, shall throw, deposit, drop or discharge onto private property and allow to remain there, any refuse, filth or other rubbish.

Section 3. Whoever violates the provisions of this Article shall be fined for each offense within the calendar year in accordance with the following schedule:

First Offense	\$100.00
Second Offense	\$200.00
Third and subsequent offense	\$300.00

ARTICLE XII

Town Clerk Fees

Section 1. Unless General Laws, Chapter 262, section 34, as from time to time amended and supplemented, shall specify a higher fee for any of the items listed in this Section 1, the fees of the Town Clerk for the following items shall be as follows:

1. (1) For filing and indexing assignment for the benefit of creditors
\$12.00
2. (11) For entering amendment of a record of the birth of an illegitimate child subsequently legitimized
\$20.00
3. (12) For correcting errors in a record of birth
\$20.00
4. (13) For furnishing certificate of birth
\$10.00
5. (13A) For furnishing an abstract copy of a record of birth
\$5.00
6. (14) For entering delayed record of birth
\$20.00

7. (20) For filing certificate of a person conducting business under any title other than his real name

\$40.00

8. (21) For filing by a person conducting business under any title other than his real name of statement of change of his residence, or of his discontinuance, retirement or withdrawal from, or of a change of location of such business.

\$20.00

9. (22) For furnishing certified copy of certificate of person conducting business under any title other than his real name or a statement by such person of his discontinuance, retirement or withdrawal from such business.

\$8.00

10. (24) For recording the name and address, the date and number of the certificate issued to a person registered for the practice of podiatry in the Commonwealth.

\$40.00

11. (29) For correcting errors in a record of death

\$20.00

12. (30) For furnishing a certificate of death

\$10.00

13. (30A) For furnishing an abstract copy of a record of death

\$5.00

14. (42) For entering notice of intention of marriage and issuing certificates thereof

\$30.00

15. (43) For entering certificate of marriage filed by persons married out of Commonwealth.

\$6.00

16. (44) For issuing certificate of Marriage
\$10.00
17. (44A) For furnishing an abstract copy of a record of marriage
\$5.00
18. (45) For correcting errors in a record of marriage.
\$25.00
19. (54) For recording power of attorney
\$20.00
20. (57) For recording certificate of registration granted to a person to engage in the practice of optometry, or issuing a certified copy thereof.
\$40.00
21. (58) For recording the name of the owner of a certificate of registration as a physician or osteopath in the Commonwealth
\$40.00
22. (62) For recording order granting locations of poles, piers, abutments or conduits, alterations or transfer hereof, and increase in number of wires and cable or attachments under the provisions of Section 22 of Chapter 166
Flat Fee \$45.00
Add'l Fee \$15.00
23. (66) For examining records or papers relating to birth, marriage or deaths upon the application of any person, the actual expense thereof, but not less than \$6.00
\$10.00
24. (67) For copying any manuscript or record pertaining to a birth, marriage or death.
\$5.00 per page

25. (69) For receiving & filing of a complete inventory of all items to be included in a "closing out sale" etc.
- \$12.00 1st page \$4.00 add'l page
26. (75) For filing a copy of written instrument or declaration of trust by the trustees of an association or trust, or any amendment thereof as provided by Section 2, Chapter 182
- \$25.00
27. (78) For recording deed of lot or plot in a public burial place or cemetery
- \$15.00
28. (79) Recording any other documents
- 1st page \$12.00
add'l page \$2.00 each

Miscellaneous Fees

A	Certified Voter's Certificate	\$6.00
B	Certification of other documents	\$3.00 per page
C	Raffle Permit	\$10.00
D	Drainlayer License Renewal	\$50.00
E	Flammable Storage License Renewal	\$50.00
F	Voter List Extract	\$10.00
G	Burial Permit	\$10.00

Section 2. Unless section 1 of this Article shall specify a fee for a particular item listed in General Laws Chapter 262, Section 34, as from time to time amended and supplemented, then the fee to be charged therefor shall be as required by said section 34.

Section 3. The fees to be charged by the Town Clerk for voter cards shall be \$6.00 or such higher amount as the general laws may allows.

ARTICLE XIII

Handicapped Parking

Section 1. Any person or body that has lawful control of a public or private way or of improved or enclosed property used as off-street parking areas for businesses, shopping malls, theaters, auditoriums, sporting or recreational facilities, cultural centers, residential dwellings, or for any other place where the public has a right of access as invitees or licensees, shall reserve parking spaces in said off-street parking areas for any vehicle owned and operated by a disabled veteran or handicapped person whose vehicle bears the distinguishing license plate authorized by General Laws, Chapter 90, section 2, according to the following formula:

If the number of parking spaces in any such area is more than fifteen but not more than twenty-five, one parking space; more than twenty-five but not more than forty, five percent of such spaces but not less than two; more than forty but not more than one hundred, four per cent of such spaces but not less than three; more than one hundred but not more than two hundred, three per cent of such spaces but not less than four; more than two hundred but not more than five hundred, two per cent of such spaces but not less than six; more than five hundred but not more than one thousand, one and one-half per cent of such spaces but not less than ten; more than one thousand but not more than two thousand, one per cent of such spaces but not less than fifteen; more than two thousand but less than five thousand, three-fourths of one per cent of such spaces but not less than twenty; and more than five thousand, one-half of one per cent of such spaces but not less than thirty.

Section 2. Parking spaces designated as reserved under the provisions of Section 1 shall be identified by the use of above grade signs with white lettering against a blue background and shall bear the words "Handicapped Parking: Special Plate Required. Unauthorized Vehicle May be Removed at Owner's Expense"; shall be as near as possible to a building entrance or walkway; shall be adjacent to curb ramps or other unobstructed methods permitting sidewalk access to a handicapped person; and shall be twelve feet wide or two eight foot wide areas with four feet of cross hatch between them.

Section 3. No person shall leave a vehicle (a) within a parking space designated for use by disabled veterans, handicapped persons, or other temporarily handicapped persons as authorized by this article unless such vehicle bears a distinctive number plate authorized under General Laws, Chapter 90, Section 2, for disabled veterans and handicapped persons, or a temporary Town of Holden handicapped sticker to be displayed in the lower left portion of the rear window; or (b) in such a manner as to obstruct a curb ramp designed for use by handicapped persons as a means of egress to a street or public way. Temporary Town of Holden handicapped persons stickers may be issued by the Chief of Police when the registered owner of a motor vehicle meets the following qualifications: (1) a letter from qualified physician stating the handicap, the expected duration of the handicap, and a recommendation that the applicant be given a temporary permit. Temporary stickers shall not be issued for periods of less than 1 month, nor more than 1 year. The fee for such sticker shall be Five (\$5.00) dollars.

Section 4. The penalty for violation of this By-Law for the first and each subsequent offense shall be thirty-five dollars and the vehicle may be removed according to the provisions of section one hundred and twenty D of chapter two hundred and sixty-six.

ARTICLE XIV

Street Numbers

Street numbers shall be provided for each dwelling, business, industry and other building in the Town of Holden.

- (a) The number shall be made of permanent, weather-proof materials, shall be at least three (3) inches in height and shall be clearly visible from the street or roadway upon which the structure fronts.
- (b) Any structure that is not visible from the street or roadway shall have the assigned number posted on a suitable support at the entrance to the driveway that services such structure.
- (c) The number posted shall be those assigned to each structure by the Department of Public Works, Engineering Division, and filed in the Office of the Town Clerk. The said Department shall advise the owners of property of the assigned or reassigned number in writing at the property's tax address.
- (d) It shall be the responsibility of each property owner in the Town to obtain and display the assigned street number within ninety (90) days notice to the owner referred to in paragraph (c) hereof.
- (e) This by-law shall be enforced by the office of the Town Manager through his designees. Failure to comply with this by-law shall subject property owners to a fine of not more than twenty dollars (\$20.00).

ARTICLE XV

Water Protection By-Law

Section 1: Authority

This by-law is adopted by the Town under its home rule powers, its police powers to protect the public and private water sources, public health and welfare, and the provisions of M.G.L. Chapter 40, Section 21.

Section 2: Purpose

With the exception of the 63 1/2 acre Muschopauge Pond, the Town and its residents rely on town owned and privately owned wells for their water supply.

The purpose of this by-law is to protect, preserve and maintain the existing and potential groundwater supply and recharge areas and surface waters within the Town from contamination by hazardous materials. This by-law is not meant to negate compliance with any applicable federal or state regulations.

Section 3: Definitions

Abnormal loss or gain - Shall mean a change in the volume of the product exceeding 0.5 percent of the volume of product used or sold, where such change cannot be accounted for by a change in temperature.

Hazardous material - Shall mean any product or waste, or combination of substances, in whatever form, including without limitation pesticides, herbicides, fungicides and oil, which because of quantity, concentration, or physical, chemical, or infectious characteristics poses an actual or potential hazard to water supplies, or other hazard to human health or the environment when improperly treated, stored, transported, used or disposed of, or otherwise managed.

Fire Chief - Shall mean the Holden Fire Chief, or his designee.

Licensing Authority - Shall mean the Holden Board of Selectmen.

Owner - Shall mean the person(s) who owns, as real property, the premises where hazardous materials are stored.

Section 4: Applicability

This by-law shall apply to:

- (a) aboveground storage of hazardous materials excluding heating oil, except that Sections 6.5 and 9 shall be applicable to aboveground storage of heating oil;
- (b) all underground systems used for storing hazardous materials, including without limitation heating oil for consumptive use on the premises where stored, and farm or residential tanks of 1,100 gallons capacity or less used for storing motor fuel for noncommercial purposes; and
- (c) fuel oil dealers who deliver heating oil to any customer in the Town of Holden.

Section 5: Fuel Oil Dealers

Any fuel oil dealer who delivers heating oil to any customer within the Town of Holden shall obtain a license from the Licensing Authority. At the time of application for the license, the fuel oil dealer shall supply a list of locations of all underground heating oil systems served by that dealer, the current owner of the property where the tank is located, and the approximate size of tank if known. The fuel oil dealer shall renew this license annually. It shall be a condition of any such license that the licensee shall be required to report to the Licensing Authority in

writing, at least monthly, all underground heating systems added to its customer list since the date of its application of its last report.

Section 6: Underground Storage Systems

The following provisions shall apply to all underground storage systems referred to in Section 4(b).

6.1 Permit Required

6.1.1 Within ninety (90) days of the approval of this By-Law the Fire Chief shall notify all owners of existing underground storage systems that a permit is required for continued use of their systems. Within ninety (90) days of receiving notice of the permit requirement, each owner shall apply for a permit from the Fire Chief. The owner shall provide evidence of the date of installation, composition and capacity of the tank, and other information as is reasonably requested by the Fire Chief, including that which would be required if 527 CMR 9.24(3) were applicable.

6.1.2 No new or replacement system may be installed unless the owner shall first obtain a permit from the Fire Chief.

6.1.3 Any such system for which a valid permit under 527 CMR 9.24 is outstanding shall not be required to obtain a permit under this section 6.1.

6.2 Existing System

6.2.1 Single-Family and Two-Family Dwellings

All existing underground storage systems in service at single-family or two-family residential sites shall be removed thirty (30) years after the date of installation. If the date of installation is unknown, it shall be assumed to have been the later of January 1, 1960, or the permit issuance date for the original building erected on the site.

6.2.2 All others

(a) The owner of each existing system serving other than single-family and two-family residences, which does not satisfy the design requirements of 527 CMR 9.00, shall have each tank and its piping tested, at the owner's expense, during the 10th, 13th, 15th, 17th and 19th years after installation and annually thereafter. If the date of installation is unknown, the system shall be assumed to be twenty (20) years old.

(b) The owner of each existing system serving other than single-family and two-family residences, which does satisfy said design requirements, shall have the tank and its piping

tested at the owner's expense, during the 15th and 20th years following the date of installation and at two-year intervals thereafter. If the date of installation is unknown, the system shall be assumed to be twenty (20) years old.

6.2.3 Testing Alternatives and Groundwater Protection

If a system is located within Area 1 or 2 identified by I.E.P. Inc. in a report entitled Holden Municipal Groundwater Resources Analysis and Protection Study (1982), the Fire Chief may require, in lieu of the testing requirements of Section 6.2.2., the installation of three or more groundwater observation wells or other leak detection systems. Water samples from such observation wells may be required by the Fire Chief at any reasonable time, and shall be analyzed at the expense of the owner.

6.3 New Systems

6.3.1 All new underground storage systems shall be of a design approved by the Fire Chief and shall be properly installed as per 527 CMR 9.00 in force at the time of installation and according to manufacturer's specifications. Installation shall be under the direction of the Fire Chief. All such systems shall be tested at the intervals stated in Section 6.2.2(b).

6.3.2 Except as provided in Section 12 below, no new underground storage systems shall be installed within Area 1 or 2 identified in Section 6.2.3.

6.3.3 The Fire Chief may deny a permit to replace an existing system or to install a new system if, after consultation with the Town Engineer and/or the Board of Health, he determines there is a danger to a public or private water supply, or approve it subject to conditions that he may determine are necessary to protect such public or private water supply.

6.4 Testing

All tests shall be approved and administered by qualified persons and any such person shall notify the Fire Chief prior to administering a test, which test shall conform to the requirements of 527 CMR 9.00. The Fire Chief may require that a qualified hydrogeologist be engaged by the owner to locate the wells and other leak detection systems referred to in Section 6.2.3.

6.5 Removal

The owner of any tank to be taken out of service either voluntarily or because of its noncompliance with this by-law shall obtain a permit from the Fire Chief. Any product remaining shall be removed and the tank removed from the ground, unless the Fire Chief determines that it is

physically impossible to remove a tank located under a building or that such removal would endanger the structural integrity of another tank or structure. The product and tank shall be disposed of in accordance with 310 CMR 30.00 "Hazardous Waste Regulations" and any other applicable governmental regulation or statute at the owner's expense as directed by the Fire Chief.

Section 7: Above Ground Storage

- 7.1** Aboveground storage of liquid hazardous materials, other than heating oil stored inside a building, shall be on an impervious chemical resistant surface. The storage area shall be provided with a secondary containment system designed to prevent hazardous materials from reaching the environment in the event of a rupture or spill. The secondary containment system shall have the capacity to contain either ten (10) percent of the total possible volume within the storage area or one hundred (100) percent of the volume of the single largest tank, whichever is greater. This section shall apply to both indoor and outdoor storage areas.
- 7.2** Every owner or operator of a commercial or industrial establishment, including home occupations, storing hazardous materials in quantities totaling more than fifty (50) gallons liquid volume or twenty-five (25) pounds dry weight, shall register with the Fire Chief the types, maximum quantities, location and method of storage of said hazardous materials. Registration required by this provision shall be initially submitted within ninety (90) days after the approval of this by-law and annually thereafter on or before January 1 of each succeeding year.
- 7.3** Storage of road salt shall conform to Massachusetts Department of Environmental Quality Engineering requirements for road salt and water supply management.

Section 8: Application of Road Salt

Application of road salt will be in conformance with the Snow and Ice Control Program of the Massachusetts Department of Public Works.

Section 9: Leaks and Spills

- 9.1** Any person having knowledge of a spill or abnormal loss of hazardous materials shall immediately report such spill or loss to the Fire Chief.
- 9.2** All leaking tanks shall be emptied within twenty-four (24) hours of leak detection and taken out of service, by removal, according to Section 6.5 of this by-law.
- 9.3** Fuel oil dealers shall report to owners and the Fire Chief any condition or circumstance which may indicate a leak.

- 9.4** All leaks and spills shall be reported as required by M.G.L. Chapter 21E, the Massachusetts Oil and Hazardous Material Prevention and Response Act.

Section 10: Costs and Fees

The Board of Selectmen shall establish reasonable license and permit fee schedules.

Section 11: Penalties

Whoever violates any provisions of this by-law shall be subject to a fine of two hundred dollars (\$200.00) for each violation. Each day that such violation continues shall constitute a separate offense.

The by-law may be enforced pursuant to M.G.L. Chapter 40, section 21D, or in any other manner permitted by law.

Section 12: Variances

12.1 The Board of Health may vary the application of any provision of this by-law only in cases when, in its opinion, the applicant has demonstrated that an equivalent degree of environmental protection required under this by-law will still be achieved.

12.2 Requests for such variance shall be in writing. The applicant must notify all abutters by certified mail, return receipt requested, at least ten (10) days before the Board of Health meeting at which the variance request will be considered. The notification shall state the variance sought and the reasons therefor. The decision of the Board shall be in writing and shall contain a brief statement of the reasons therefor.

12.3 In granting a variance, the Board shall take into consideration the direction of the groundwater flow, soil conditions, depth to groundwater, size, shape, and slope of the lot, and existing and known future water supplies. Said information shall be supplied by the applicant in the form of a groundwater impact study prepared by a qualified Registered Professional Engineer or a qualified hydrogeologist.

12.4 A variance will require a majority vote of the Board.

Section 13: Servability

Each provision of this by-law shall be construed as separate, to the end that if any part of it shall be held invalid for any reason, the remainder shall continue in full force and effect.

ARTICLE XVI

Snow Removal By - Law

No person other than an employee in the service of the Town or an employee in the service of an independent contractor acting for the Town shall pile, push or plow snow or ice onto a public way of the Town so as to impede the flow of traffic on such way. Whoever violates this section shall be punished by a fine of not more than one hundred and fifty dollars.

ARTICLE XVII

Town By-Law Establishing so Called Fire Lanes On Public and Private Properties

Definition:

1. **Commercial** : Shall mean the occupancy of a building or structure or any portion thereof for the display, sale, shelter, storage or rental of goods, wares, products, vehicles or merchandise and the transaction of business, administrative, or professional services for public or private use.
2. **Industrial** : Shall mean the occupancy of a building or structure or any portion thereof, including open spaces adjacent thereto, where work is performed in manufacturing, assembly, processing, altering, repairing or storing materials or merchandise or products.
3. **Multiple Dwellings** : Shall mean a cluster or complex of residential buildings housing four (4) or more dwelling or rooming units, occupied or offered for occupancy. The words Multiple Dwellings shall include motels, hotels and other rental properties whether permanent or transient in nature.
4. **Place of Assembly** : Shall mean the occupancy of a building or structure or any portion thereof accommodating fifty (50) or more individuals for religious, recreational, educational, political, social or amusement purposes or for the consumption of food and drink.

The authority to establish Fire Lanes under this by-law shall be vested in the office of the Fire Chief as appointed from time to time in the Town of Holden, MA and the enforcing authority shall be the Town of Holden Police Department.

DESIGNATION OF FIRE LANES

The Fire Chief is authorized to require and designate Fire Lanes on public and private property used and occupied for assembly, commercial, educational, industrial, institutional or multiple dwelling purposes or on property occupied by clusters of two or more dwellings to which access is provided by private roads for the purpose of prohibiting parking in front of or adjacent to fire hydrants, fire escapes and egress facilities and providing access to such property for fire apparatus and emergency vehicles.

The fire lanes designated by the Fire Chief shall be constructed with a surface durable to all weather and of sufficient strength to support the weight of firefighting apparatus used by the Fire Department. Such Fire Lanes shall be a minimum width of twenty (20) feet unless the Fire Chief determines that a reduced width which shall be no less than fifteen (15) feet, will not adversely affect access by fire apparatus and emergency vehicles.

It shall be the duty of the owners of the property affected by this by-law to maintain designated Fire Lanes in good repair and free of obstructions. Overhead obstructions including overhanging tree limbs and canopies shall not be lower than fourteen (14) feet above the surface of a Fire Lane. Accumulations of snow and ice shall be removed from Fire Lanes at the same time as such conditions are remedied under normal circumstances, but under no conditions shall Fire Lanes be allowed to accumulate depths of snow or ice that will prevent travel by emergency vehicles.

The Fire Chief may order that signs reading "FIRE LANE NO PARKING ANYTIME" be mounted along side the established Fire Lane at such intervals as may be deemed necessary. Owners may, at their discretion post signs warning of "Tow Zone", "Vehicles May be Towed If Illegally Parked In Fire Lanes" and other signs attesting to the identity of the enforcing authority or for the purpose of warning against the parking of vehicles in such areas. Signs shall be of such dimensions and content as the Fire Chief shall reasonably determine. Signs shall be so posted or located that drivers will have free and unobstructed vision along the Fire Lane and at the same time be able to read the wording of the sign. Signs shall be so elevated that they may be readily visible from vehicle window height.

The Fire Chief may require that the curbs of Fire Lanes be painted a specific color, with wording or without, as the need may arise and be repainted periodically so that the color or words shall remain visible.

The cost of construction, installation, painting, maintenance and repair of the Fire Lanes and signs required pursuant to this by-law shall be borne by the owner of the affected property.

It shall be a violation of this by-law to park any vehicle or otherwise obstruct a Fire Lane as designated by this by-law. Any person or firm convicted of such a violation shall be subject to a fine of not more than \$200. Any vehicle parked or obstruction of any other nature, cited by police tagging for violation of this by-law may be removed by towing or other means by the Holden Police Department in the same manner as an obstructing vehicle in a public way. Cost for removal of a vehicle or other obstruction by the Holden Police Department shall be borne by the owner of said vehicle or other obstruction and shall be paid at the time and under the conditions as established by the Holden Police Department according to the policies and there shall be no liability on the part of the Town of Holden.

The provisions of this by-law shall apply to all existing properties as described under definitions and all property owners shall comply with the provision within six (6) months after written notification as to the specific requirements for the property. Should public

safety demand, the Fire Chief may set a completion date sooner than the specified six months. Existing occupancies shall, by the purpose of this by-law, include any planned occupancy for which a building permit was issued prior to the effective date of this by-law.

ARTICLE XVIII

Licenses and Permits of Delinquent Taxpayers

- A.** The Tax Collector shall 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. Such list shall be furnished annually and at more frequent intervals as requested by the licensing authority.
- 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 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 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, assessment, 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 validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.
- D.** The Board of Selectmen may waive such denial, suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined in section one of

chapter two hundred and sixty eight A in the business or activity conducted in or on said property.

- E.** This Article shall not apply to the licenses and permits excluded by M.G.L. Chapter 40, Section 57 (as amended from time to time) from coverage by such statute and to the following: None

ARTICLE XIX

Non Criminal Disposition Of Violation Of Town Bylaws And Rules And Regulations Of Town Offices Boards, Committees, Commissions And Departments

- 1.** Whoever violates any Town By-Law, or any Rule or Regulation of a Town Office, Board, Committee, Commission or Department, the violation of which is subject to a specific monetary penalty, may be penalized with non-criminal disposition being made of such penalty as provided and following the procedures being made set forth in Massachusetts General Laws, Chapter 40, section 21D.
- 2.** Without limitation by enumeration such non-criminal disposition may be made of violations of the By-Laws and Rules and Regulations listed at the end of this chapter.
- 3.** Each day on which a violation exists shall be deemed to be a separate offense.
- 4.** Notwithstanding anything contained in this By-law, if the enforcing person deems it appropriate, he or she, before proceeding with non-criminal disposition of a violation under Massachusetts General Laws Chapter 40, section 21D, may give a written warning to an offender who has violated a By-Law, Rule or Regulation allowing the offender up to 15 days to terminate the violation and repair any damage caused thereby.
- 5.** The following By-Laws, Rules and Regulations are included herein and the applicable enforcing agents and specific penalties are as follows:

SOLICITORS AND CANVASSERS BY-LAW

Enforcement Agent	Police Officers	
Fine Schedule	First offense	Warning
	Second offense	\$25.00
	Third and subsequent offenses	\$50.00

ALCOHOLIC BEVERAGES BY-LAW

Enforcement Agent	Police Officers	
Fine Schedule	First and Subsequent Offenses	\$50.00

REMOVAL OF SOIL BY-LAW

Enforcement Agent	Building Inspector	
Fine Schedule	First offense	\$25.00
	Second offense	\$50.00
	Third offense	\$100.00
	Fourth and subsequent offenses	\$200.00

RESTRAINT OF DOGS

Enforcement Agent	Police Officers and the Animal Control Officer	
Fine Schedule	First offense	Warning
	Second offense	\$50.00
	Third offense	\$75.00
	Fourth offense	\$100.00
	Fifth and subsequent offenses	\$200.00

STREET OPENING BY-LAW

Enforcement Agent	Director of Public Works	
Fine Schedule	First offense	Warning
	Second and subsequent offenses	\$20.00

LITTERING BY-LAW

Enforcement Agent	Police Officers	
Fine Schedule	First offense	\$100.00
	Second offense	\$200.00
	Third & Subsequent offenses	\$300.00

STREET NUMBER BY-LAW

Enforcement Agent	Director of Public Works	
Fine Schedule	First offense	Warning
	Second and subsequent offenses	\$20.00

WATER PROTECTION BY-LAW

Enforcement Agent	Fire Chief	
Fine Schedule	First offense	\$25.00
	Second offense	\$50.00
	Third offense	\$100.00
	Fourth and subsequent offenses	\$200.00

SNOW REMOVAL BY-LAW

Enforcement Agent	Director of Public Works	
Fine Schedule	First offense	\$50.00
	Second offense	\$100.00
	Third & subsequent offenses	\$150.00

FIRE LANES BY-LAW

Fine Allowed	\$200.00	
Enforcement Agent	Fire Chief	
Fine Schedule	First and subsequent offenses	\$200.00

SIGNS AND BILLBOARDS BY-LAW	Section VII A - I	ZBLaw
CERTIFICATE OF OCCUPANCY REQUIRED	Section XI D	ZBlaw
REMOVAL OF JUNK CARS	Table of Use	ZBlaw

Enforcement Agent	Building Inspector/Zoning Officer	
Fine Schedule	First offense	\$25.00
	Second offense	\$50.00
	Third and subsequent offenses	\$100.00

STORMWATER MANAGEMENT BY-LAW

Enforcement Agent	Director of Public Works	
Fine Schedule	First offense	\$100.00
	Second and subsequent offenses	\$200.00
	Third and subsequent offenses	\$300.00

ARTICLE XX

Individual Health Insurance Contracts

WHEREAS, the Second Article of Amendment to the Constitution of Massachusetts as amended by the Eighty-Ninth Article of Amendment provides that the Town may by bylaw exercise any power or function which the General Court has power to confer upon it;

WHEREAS, the Town of Holden may be unable to secure indemnity health insurance for its employees and/or retirees;

WHEREAS, certain employees and/or retirees of the Town may reside beyond the service areas of the health maintenance organization plans which the Town can offer to its employees and retirees;

WHEREAS, such persons would previously have been covered by an indemnity health insurance plan procured by the Town;

WHEREAS, such persons may not be able to be covered by any group health insurance plan then offered by the Town;

THEREFORE, the Town of Holden adopts the following new Article to be numbered Article XX and entitled "Individual Health Insurance Contracts":

Individual Health Insurance Contracts

- Section 1.** Pursuant to the Second Article of Amendment to the Massachusetts Constitution and Chapter 43B of the General Laws, the Town of Holden is hereby empowered to pay for, in whole or in part, individual or family health care insurance coverage and benefits for persons unable to be covered by group health plans and health maintenance organization plans offered by the Town, in accordance with this Article.
- Section 2.** The Town Manager is hereby authorized to approve reimbursement by the Town to employees and retirees of the Town who reside outside the service area of any health maintenance organization plan offered by the Town for reasonable expenses incurred by such persons in the purchasing of individual or family health insurance contracts, or under such contracts, in such amounts and in such manner and under such conditions as the Town Manager deems to be in the interest of the Town, subject to availability of funds.
- Section 3.** The School Committee is hereby authorized to approve reimbursement by the Town to School Department employees who reside outside the service area of any health maintenance organization plan offered by the Town for reasonable expenses incurred by such persons in the purchasing of individual or family health insurance contracts, or under such contracts, in such amounts and in such manner and under such conditions as the School Committee deems to be in the interest of the Town, subject to the availability of funds, and the Rules and Regulations promulgated by the Town Manager under this Article. The School Committee may, but is not required to, delegate its authority under this Section to the Town Manager.
- Section 4.** The Town Manager shall have the authority to issue rules and regulations concerning the carrying out of this Article, including but not limited to the type and coverage of any insurance plans to be subject to reimbursement by the Town and the amount of such reimbursement.
- Section 5.** No person who resides within the service area of a health maintenance organization plan offered through the Town or who is otherwise eligible to be covered by any health insurance plan offered through the Town shall be eligible for reimbursement pursuant to this Article.
- Section 6.** Reimbursement under this Article shall not be allowed in the event the Town obtains group indemnity health insurance available to all employees and retirees of the Town eligible to participate in group plans under Chapter 32B, or if the

Commonwealth or some agency of the Commonwealth under Chapter 32B or any comparable statute provides health care coverage to persons eligible to participate in group plans under Chapter 32B but are unable to be covered by the health insurance plans offered by the Town.

Section 7. Only persons otherwise eligible to participate in group health insurance plans of the Town under any section of Chapter 32B of the General Laws accepted by the Town, or rules and regulations promulgated under said Chapter 32B, but unable to do so because of the lack of a group indemnity health insurance plan, shall be eligible for reimbursement under this Article.

ARTICLE XXI

Underground Utilities Bylaw

Section 1. Definitions

For purposes of this Bylaw, the definitions of "person", "poles and overhead wires and associated overhead structures" and "utility" shall be the same definitions as those set forth in Section 22A of Chapter 166 of the General Laws.

Section 2. Prohibiting Installation of New Poles and Overhead Wires

No utility shall install or construct, except by way of replacement or upgrading of existing facilities, any poles and overhead wires and associated overhead structures upon, along or across any public way within the parts of the Town listed in Section 3. Any poles and overhead wires and associated overhead structures installed or constructed in violation of this bylaw shall be immediately removed by the utility responsible therefor.

Section 3. Applicability of Section 2 Section 2 applies to the following parts of Town:

- A.** Any new public way approved by the Planning Board to the extent it is exclusively situated in an approved residential or non-residential subdivision.
- B.** Any way in which the wires and utility facilities are underground as of the effective date of this bylaw.

Section 4. Violations of Section 2

- A.** Any person who installs or constructs any poles and overhead wires and associated overhead structures which are in violation of Section 2 shall be punished by a fine or not less than one thousand (\$1,000.00) dollars and not more than five thousand (\$5,000.00) dollars.

- B.** Any person who fails to remove immediately any poles and overhead wires and associated overhead structures which are in violation of Section 2 shall be punished by a fine of not less than one thousand (\$1,000.00) dollars and not more than five thousand (\$5,000.00) dollars for each consecutive fifteen day period during which the failure continues.

Section 5. Removal of Existing Poles and Overhead Wires

- A.** Any utility presently owning or operating poles and overhead wires and associated overhead structures in the town on Main Street between (a) at a point approximately one hundred twenty one (121) feet westerly of the intersection of the westerly line of Maple Street with the northerly line of Main Street and (b) its intersection with Shrewsbury Street shall begin to remove such poles and overhead wires and associated overhead structures following the effective date of this bylaw in accordance with M.G.L. Chapter 166, Section 22D. Main transmission lines connecting to the Chaffins Substation or feeder lines servicing other sections of town may be excluded with the approval of the Town Manager.
- B.** Any utility that fails to remove any poles or overhead wires and associated overhead structures required to be removed; pursuant to Section 5A of this bylaw shall be punished by fine of not less than one thousand (\$1,000.00) dollars and not more than five thousand (\$5,000.00) dollars for each consecutive fifteen day period during which such failure continues; provided however, that no utility shall have been deemed to have violated this bylaw, provided that:
- (1)** If replacement facilities for poles or overhead wires and associated overhead structures required to be removed will be needed in order for a utility to continue its service, the utility shall, within sixty (60) days after the effective date of this bylaw, petition the Board of Selectmen pursuant to Section 22 of Chapter 166 of the General Laws for permission to install, erect, or construct under the public ways replacement facilities for such poles and overhead wires and associated structures; and
 - (2)** The utility shall file with the Board of Selectmen a plan (which shall be consistent with Section 5A of this bylaw), for removal of poles and overhead wires and associated overhead structures and, if needed, for the continuation of its service, for their replacement with underground facilities; and
 - (3)** In each calendar year beginning with the calendar year next following the effective date of this bylaw and until all such poles and overhead wires and associated overhead structures shall have been removed, the utility shall in carrying out its plan, allocate and expend for the direct cost of demolition and construction (over and

above the reasonable value of salvage) an amount which shall not be less than two percent (2%) of its gross revenues derived during the next preceding calendar year from its customers in the Town of Holden; and

- (4) The utility shall, on or before the last day of March in each year, file with the Board of Selectmen a statement signed under the penalties of perjury, by its Treasurer setting forth in detail, the amounts spent by the utility during the immediate preceding calendar year in carrying out its plan; the purposes for which such expenditures were made; the gross revenues derived from its customers in the Town during the immediately preceding calendar year; provided, however, that no utility which enters into a cooperation agreement under Section 22E of Chapter 166 of the General Laws shall be deemed to have violated this bylaw during the term such payments are to be made, so long as said utility shall not be in default of said cooperation agreement.

- C. Notwithstanding the effective date of this bylaw, any utility may, in its sole discretion, cooperate with the Town's plans for early construction and may commence the removal of its poles, overhead wires and associated overhead structures and proceed to perform the undergrounding work following this bylaw's adoption and prior to its effective date. Any such early cooperation by any utility will be subject to the utility's rights to recover its expenditures and impose and collect a billing surcharge under M.G.L. Chapter 166, Sections 22D and 22M.

ARTICLE XXII

Water Use Restriction Bylaw

Section 1 Authority

This Bylaw is adopted by the town under its police powers to protect public health and welfare and its powers under M.G.L. c. 40, §§21 et. seq. Implements the town's authority under M.G.L. c.40, §§41A, conditioned upon a declaration of water supply emergency issued by the Department of Environmental Protection.

Section 2 Purpose

The purpose of this bylaw is to protect, preserve and maintain the public health, safety and welfare whenever there is in force a State of Water Supply Conservation or State of Water Supply Emergency by providing for enforcement of any duly imposed restrictions, requirements, provisions or conditions imposed by the town or by the Department of Environmental Protection.

Section 3 Definitions

Available Daily Supply shall mean the total of the safe yields of approved groundwater sources plus the maximum daily purchase allowed under contract(s) with the City of Worcester and/or other wholesale water suppliers. For purposes of this section, the total safe yield of approved groundwater sources shall be taken as 1.000 million gallons per day, less the safe yield of any individual well which is planned to be out of service for a period exceeding fourteen (14) days, or which has actually been out of service for a period exceeding fourteen (14) days due to required maintenance, contamination, improper operation, or other reason.

Person shall mean any individual, corporation trust, partnership or association, or other entity.

State of Water Supply Emergency shall mean all public and private users of the town's public water system, irrespective of any person's responsibility for billing purposes for water used at any particular facility.

Section 4 Declaration of a State of Water Supply Conservation

The town, through its Department of Public Works, may declare a State of Water Supply Conservation upon a determination that a shortage of water exists and conservation measures are appropriate to insure an adequate supply of water to all water customers. Public notice of State of Water Supply Conservation shall be given under section 6 of this bylaw before it may be enforced.

A State of Water Supply Conservation shall exist, and Restricted Water Uses shall be placed in effect whenever the following occur:

Level 1 Voluntary Water Ban - average of any consecutive 14-day water use exceeds sixty (60) percent of Available Daily Supply;

Level 2 Mandatory Water Ban - average of any consecutive 14-day water use exceeds seventy-five (75) percent of Available Daily Supply;

Level 3 Mandatory Water Ban - average of any consecutive 14-day water use exceeds eighty (80) percent of Available Daily Supply, and;

Level 4 Mandatory Water Ban - average of any consecutive 14-day water use exceeds ninety (90) percent of Available Daily Supply.

Section 5 Restricted Water Uses

A declaration of a State of Water Supply Conservation shall include one or more of the following restrictions, conditions, or requirements limiting the use of water as necessary to protect the water supply. The applicable restrictions, conditions or requirements shall be included in the public notice required under section 6.

Level 1 Voluntary Water Ban Outside water use is permitted following an odd/even method. For property located on the odd-numbered side of a street, outside water use is permitted only on the odd-numbered days of the month; even

numbered properties may use outside water only on the even-numbered days of the month.

Level 2 Mandatory Water Ban Outside water use is permitted following an odd/even method. For property located on the odd-numbered side of a street, outside water use is permitted only on the odd-numbered days of the month; even numbered properties may use outside water only on the even-numbered days of the month. The only exceptions to a Level 2 Mandatory Water Ban are for commercial agricultural, commercial floricultural, or commercial horticultural uses at one principal, permanent place of business.

Level 3 Mandatory Water Ban Outside watering of lawn, shrubs, trees or plants is permitted only by hand-held device, such as a hose with a spray nozzle attached. Lawn irrigation and oscillating sprinklers are not permitted. Filling swimming pools and washing cars are not permitted. The only exceptions to a Level 3 Mandatory Water Ban are for commercial agricultural, commercial floricultural, or commercial horticultural uses at one principal, permanent place of business.

Level 4 Mandatory Water Ban All outdoor water use is prohibited. The only exceptions to a Level 4 Mandatory Water Ban are for commercial agricultural, commercial floricultural, or commercial horticultural uses at one principal, permanent place of business.

Section 6 Public Notification of a State of Water Supply Conservation; Notification to DEP

Notification of any provision, restriction, requirement or condition imposed by the town as part of a State of Water Supply Conservation shall be published in a newspaper of general circulation within the town, or by such other means reasonably calculated to reach and inform all users of water of the State of Water Supply Conservation. Any restriction imposed under section 5 shall not be effective until such notification is provided. Notification of the State of Water Supply Conservation shall also be simultaneously provided to the Massachusetts Department of Environmental Protection.

Restricted Water Uses as determined in Section 4 shall not become effective until the Thursday following the first Monday on which the Restricted Water Use is required based upon the average of any consecutive 14-day water use.

Section 7 Termination of a State of Water Supply Conservation; Notice

A State of Water Supply Conservation may be terminated by the Department of Public Works upon a determination that the water supply shortage no longer exists. In determining that a water supply shortage no longer exists, the Department of Public Works may consider an average of any consecutive 14-day water use which is less than said average requiring a specific Restricted Water Use, providing that there shall be a period of at least seven (7) consecutive days within said average each of which are below the daily use requiring the specific

Restricted Water Use then in effect. In the event that actual water use in each of fourteen (14) consecutive days is less than that requiring a specific Restricted Water Use, the Department of Public Works shall immediately reduce the Restricted Water Use then in effect to the next lower level. Public Notification of the termination of a State of Water Supply Conservation shall be given in the same manner required by section 6.

Section 8 State of Water Supply Emergency; Compliance with DEP Orders

Upon notification to the public that a declaration of a State of Water Supply Emergency has been issued by the Department of Environmental Protection, no person shall violate any provision, restriction, requirement or condition of any order approved or issued by the Department intended to bring about an end to the State of Emergency.

Section 9 Penalties

Any person violating Level 2 Mandatory Water Ban shall be subject to the following penalties: first violation – warning; second violation - \$25.00 fine; third violation - \$50.00 fine; fourth and each subsequent violation - \$100.00 fine.

Any person violating Level 3 Mandatory Water Ban shall be subject to the following penalties: first violation – warning; second violation - \$50.00 fine; third violation - \$100.00 fine; fourth and each subsequent violation - \$200.00 fine.

Any person violating Level 4 Mandatory Water Ban shall be subject to the following penalties: first violation – warning; second violation - \$100.00 fine; third violation - \$200.00 fine; fourth and each subsequent violation - \$300.00 fine and water service to be shut off by the Department of Public works for a minimum of 24 hours with an additional charge of \$50.00 to resume the water service.

Fines shall be recovered by indictment, or on complaint before the District court, or by non-criminal disposition in accordance with section 21D of chapter 40 of the general laws. Each day of violation shall constitute a separate offense.

Section 10 Severability

The invalidity of any portion or provision of this bylaw shall not invalidate any other portion of provision thereof.

ARTICLE XXIII

Wetland Bylaw

I. Purpose

The purpose of this bylaw is to protect the wetlands, water resources and adjoining land areas in Holden by controlling activities determined by the Holden Conservation Commission likely to have a significant or cumulative effect upon resource area values, including but not limited to the following: public or private water supply, groundwater,

flood control, erosion and sedimentation control, storm damage prevention and storm flowage, water quality, water pollution control, fisheries, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture, and recreation values deemed important to the community (collectively, the “resource area values protected by this bylaw”). This bylaw is intended to utilize the Home rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act (GL Ch. 131, Sec. 40) and Regulations thereunder (310 CMR 10.00).

II. Jurisdiction

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands; marshes; wet meadows; bogs; vernal pools; swamps; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; land under water bodies; lands subject to flooding or inundation by groundwater or surface water; and lands abutting any of the aforesaid resource areas as set out in Section VII (collectively the “resource areas protected by this bylaw”). Said resource areas shall be protected whether or not they border surface waters.

III. Conditional 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 and lawfully located structure or facility used in the service of the public to provide electric, gas, water, sewer, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specified in regulations adopted by the Commission.

The application and permit required by this bylaw is not required for work performed for normal maintenance or improvement of land which is lawfully in agricultural use at the time the work takes place.

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

Other than stated in this section, the exceptions provided in the Wetlands Protection Act (GL Ch. 131, Sec. 40) and Regulations (310 CMR 10.00) shall not apply under this bylaw.

IV. Applications for Permits and Requests for Determination

Written application shall be filed with the Commission to perform activities affecting resource areas protected by this bylaw. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

The Commission in an appropriate case may accept as the permit application and plans under this bylaw the Notice of Intent and plans filed under the Wetlands Protection Act (GL Ch. 131 Sec 40) and Regulations (310 CMR 10.00).

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

Upon receipt of a permit application or Request for Determination, or at any point during the hearing process, the Commission is authorized to require an applicant to pay a fee for reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. This fee is called the “consultant fee”. The specific consultant services may include, but are not limited to, performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydrogeologic and drainage analysis; and researching environmental or land use law.

The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision. If a revolving fund for consultant expenses and fees is authorized by the town meeting, or by any general or special law, the applicant’s fee shall be put into such revolving fund, and the Commission may draw upon that fund for specific consultant services approved by the Commission at one of its public meetings.

The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision. Any applicant aggrieved by the imposition of, or size of, the consultant fee, or any act related thereto, may appeal according to the provisions of the Mass. General Laws.

The Commission may waive the filing fee, consultant fee, and costs and expenses for a permit application or RFD filed by a government agency.

V. Notice and Hearings

Any person filing a permit application with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors as certified by Board of 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 and any property owner of land crossed by an easement or right-of-way serving the property which is the subject of the application. The notice to abutters shall have enclosed a copy of the permit application, with plans, or shall state where copies may be examined and obtained by abutters. 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 permit application or RFD, with written notice given at the expense of the applicant, five business days prior to the hearing, in a newspaper of general circulation in the municipality.

The Commission shall commence the public hearing within 21 days from receipt of a completed permit application or RFD unless the applicant authorizes an extension in writing.

The Commission shall issue its permit or determination in writing within 21 days of the close of the public hearing thereon unless the applicant authorizes an extension in writing.

The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act (GL Ch. 131 Sec 40) and Regulations (310 CMR 10.00).

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

VI. Coordination with Other Boards and Agencies

Any person filing a permit application or RFD with the Commission shall submit all required information to the Office of the Conservation Commission by certified mail (return Receipt Request) or hand delivery. One copy of the complete application package must also be delivered, by certified mail or hand delivery, to the local office of the Department of Conservation and Recreation Division Office. A copy shall be provided in the same manner to the conservation commission of the adjoining municipality, if the application or RFD pertains to property within 300 feet of that municipality. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The Commission shall not take final action until the boards

and officials have had 14 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 comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

VII. Permits and Conditions

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

The 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 the requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area values protected by this bylaw; and where no conditions are adequate to protect these values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

Lands within 200 feet of rivers, ponds and lakes, and lands within 100 feet of other resource areas, are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetation cover within either the 200-foot or 100-foot area, as applicable, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the bylaw.

In the review of areas within 200 feet of rivers and streams, no permit issued thereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirement of this bylaw, has proved by a preponderance of the evidence that (1) there is no practicable alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being

done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial purpose), logistics, existing technology, costs of the alternatives, and overall project costs.

To prevent wetlands loss, the Commission shall require applicant to avoid wetland alteration wherever feasible; shall minimize wetlands alteration; and, where alteration is unavoidable, shall require full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication.

A permit shall expire three years from the date of issuance. Any permit may be renewed upon approval of the Commission. Any permit may be renewed once for an additional one-year period, provided that a request for a renewal is received in writing by the Commission prior to expiration. Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years indefinitely, or until permanent protection is in place, and shall apply to all owners of the land.

For good cause the Commission may revoke or modify a permit or determination issued under this bylaw after notice to the holder of the permit or determination, notice to the public, abutters, and town boards, pursuant to Sec. V and Sec. VI, and a public hearing.

The Commission in an appropriate case may combine the permit or determination issued under this bylaw with the Order of Conditions or Determination of Applicability issued under the Wetlands Protection Act (GL Ch. 131, Sec. 40) and Regulations (310 CMR 10.00).

No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the Worcester County Registry of Deeds or, if the land affected is registered land, in the registry section of the Land Court for the district wherein the land lies. The holder of the permit can either certify in writing to the Commission that the permit has been recorded, or submit a stamped copy of the recorded document, reflecting the book and page of recording, to the Commission.

VIII. Regulations

After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw effective. Failure by the Commission to promulgate such rules and regulations or a legal declaration of the invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw.

At a minimum these regulations shall define key terms in this bylaw and establish basic performance standards not inconsistent with the bylaw and procedures governing the amount and filing of fees.

IX. Definitions

The following definitions shall apply in the interpretation and implementation of this bylaw:

The term “alter” shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

- A.** Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind.
- B.** Change of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics.
- C.** Drainage or other disturbance of water level or water table.
- D.** Dumping, discharging or filling with any material which may degrade water quality
- E.** Placing of fill or removal of material, which would alter elevation.
- F.** Driving of piles, erection or repair of buildings, or structures of any kind.
- G.** Placing of obstructions or objects in water.
- H.** Destruction of plant life including cutting of trees.
- I.** Changing temperature, biochemical oxygen demand or other physical, biology, or chemical characteristics of any waters.
- J.** Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater.
- K.** Incremental activities, which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.

The term “person” shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth, or political subdivision thereof, to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents or assigns.

The term “rare species” shall include, without limitation, all vertebrate and invertebrate animals and plant species listed as endangered, threatened, or of special concern by the Mass. Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

Vernal Pool – shall include, in addition to scientific definitions found in the Conservation Commission Regulations, and the Wetlands Protection Act any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other Vernal Pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the Resource Areas for Vernal Pools shall be the mean annual high-water line defining the depression and an additional one-hundred feet, the jurisdictional buffer shall consist of an additional one hundred feet from the resource area.

Except as otherwise provided in this bylaw or in regulations of the Commission, the definitions of terms in this bylaw shall be as set forth in the Wetlands Protection Act (GL Ch. 131, Sec. 40) and Regulations (310 CMR 10.00).

X. Security

As part of a permit issued under this bylaw and 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 thereunder (including conditions requiring mitigation work) to be secured wholly or in part by one or more of the methods described below:

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

XI. Enforcement

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

The Commission, its agents, officers, and employees shall have 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, subject to the constitutions and laws of the United States and the Commonwealth.

The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, administrative and civil and criminal court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

Upon request of the Commission, the selectboard and the town counsel may take legal action for enforcement under civil and criminal law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal law.

Municipal board and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violates any provision of this bylaw, or regulations, permits, or administrative orders issued thereunder, shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

As an alternative to criminal prosecution in a specific case, the Commission may issue citations under the non-criminal disposition procedure set forth in GL Ch. 40, Sec. 21D, which has been adopted by the Town in Sec. 19 of the general bylaws.

XII. Burden of Proof

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the permit application will not have unacceptable significant or cumulative effect upon the resource area values protected by this 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.

XIII. Appeals

A decision of the Commission shall be reviewable in the Superior Court in accordance with GL Ch. 249, Sec. 4.

XIV. Relation to the Wetlands Protection Act

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (GL Ch. 131, Sec. 40) and Regulations (310 CMR 10.00) thereunder.

XV. 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.

ARTICLE XXIV

Stormwater Management Bylaw

Section 1.0 General Provisions

Section 1.1 Title, Purpose, and Intent

- A.** This Article shall be known as the Stormwater Management Bylaw of the Town of Holden (the “Bylaw”) and may be so cited.
- B.** Increased volumes of stormwater, contaminated stormwater runoff from impervious surfaces, and soil erosion and sedimentation are major causes of: impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; erosion of stream channels; alteration or destruction of aquatic and wildlife habitat; flooding; and overloading or clogging of municipal catch basins and storm drainage systems.
- C.** Regulation of illicit discharges and land disturbance activities contributing contaminated stormwater runoff to the Town of Holden’s municipal storm drain system is necessary for the protection of the Town’s water bodies and groundwater, and to safeguard the public health, safety, welfare, and the environment. This Bylaw is required to meet all applicable federal and state requirements of the Town's National Pollutant Discharge Elimination System Small Municipal Separate Storm Sewer Systems General Permit, commonly known as the "NPDES MS4 permit."
- D.** The purposes, objectives, and intent of this Bylaw are as follows:
 - 1.** To prevent pollutants from entering the Town's municipal storm drainage system and waters of the Commonwealth of Massachusetts;
 - 2.** To establish an Authorized Enforcement Agency to promulgate, adopt, implement, enforce and amend stormwater regulations;
 - 3.** To prohibit non-stormwater and unauthorized discharges, connections and obstructions to the municipal storm drainage system;
 - 4.** To require the removal of all such illicit discharges, connections and/or obstructions;
 - 5.** To comply with state and federal statutes and regulations relating to stormwater discharges;

6. To establish procedures to regulate construction and post-construction stormwater runoff management from new development and redevelopment; and
7. To establish legal authority to ensure compliance with the provisions of this Bylaw through inspection, monitoring, and enforcement.

Section 1.2 Definitions

A. The terms used in this Bylaw shall have the following meanings:

- 1. ABUTTER** — The owner(s) of land abutting the activity.
- 2. AGRICULTURE** — The normal maintenance or improvement of land in agricultural or aquacultural use, as defined by the Massachusetts Wetlands Protection Act (M.G.L. c. 131 § 40) and its implementing regulations (310 CMR 10.00).
- 3. ALTERATION OF DRAINAGE CHARACTERISTICS:** Any land disturbing activity, as defined herein, on an area of land that changes the water quality, or the force, quantity, direction, timing or location of runoff flowing from the area. Such changes include: change from distributed runoff to confined, discrete discharge; change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater on the area.
- 4. BEST MANAGEMENT PRACTICE (BMP)** — An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff
- 5. CLEAN WATER ACT:** The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
- 6. CLEARING:** Any activity that removes the vegetative surface cover. Clearing activities generally include grubbing activity as defined below.
- 7. COMMON PLAN OF DEVELOPMENT OR SALE:** A contiguous area where multiple separate and distinct construction activities are occurring under one plan.
- 8. CONSTRUCTION ACTIVITY** — Activities subject to NPDES Construction General Permits.
- 9. CONSTRUCTION AND WASTE MATERIALS** — Excess or discarded building or site materials, including but not limited to concrete truck washout, chemicals, litter, sanitary waste at a construction site that may adversely impact water quality, and clearing/grubbing wastes such as stumps and asphalt.

- 10. DEVELOPMENT:** The modification of land to accommodate a new use or expansion of use, usually involving construction.
- 11. DIRECTOR:** The Director of the Town of Holden Department of Public Works.
- 12. DISCHARGE OF POLLUTANTS:** The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.
- 13. ENFORCING AGENT:** The Town's Director of Public Works, the Stormwater Committee (as defined herein), or its designated agent.
- 14. ENVIRONMENTAL SITE MONITOR** – Trained professional approved by the Stormwater Committee and retained by the holder of a Land Disturbance Permit to periodically inspect the work and report to the Stormwater Committee.
- 15. 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.
- 16. EROSION AND SEDIMENT CONTROL PLAN** – A document containing narrative, drawings, and details developed by an Environmental Site Monitor which includes BMPs, or equivalent measures designed to control surface runoff, erosion and sedimentation during pre-construction and construction related land disturbances. The plan is required as part of the application for a Land Disturbance Permit.
- 17. ESTIMATED HABITAT OF RARE WILDLIFE AND CERTIFIED VERNAL POOLS** – Habitats delineated for state-protected rare wildlife and certified vernal pools for use with the Wetlands Protection Act Regulations (310 CMR 10.00) and the Forest Cutting Practices Act Regulations (304 CMR 11.00).
- 18. 25-FOOT NO-DISTURB-ZONE** – The area adjacent to the wetland resource area, excluding Riverfront and Buffer Zone, where there is no grading, filling, excavation, removal of vegetation or other construction activity allowed.
- 19. 100-FOOT BUFFER** - The zone around all resource areas except Land Under Waterbodies, Land Subject to Flooding and Riverfront Area, where work may be conditioned to protect the resource area (310 CMR 10.02(2)(b)).
- 20. GRADING:** Changing the level or shape of the ground surface.

- 21. GROUNDWATER:** Water beneath the surface of the ground.
- 22. GRUBBING:** The act of clearing land surface by digging up roots and stumps.
- 23. HAZARDOUS OR TOXIC MATERIALS —** Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, corrosive, flammable, reactive, toxic, radioactive, or infectious characteristics, may cause or significantly contribute to a substantial present or potential hazard to human health, safety, or welfare, or to property or the environment. Hazardous or Toxic materials include, but are not limited to, any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Hazardous or Toxic under M.G.L. c.21C and c.21E, and 310 CMR 30.000 and 310 CMR 40.0000.
- 24. ILLICIT CONNECTIONS:** An illicit connection is defined as either of the following:
- (a)** Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the municipal storm drain system, including but not limited to, any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the municipal storm drain system, and any connections to the municipal storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by a government agency; or
 - (b)** Any drain or conveyance connected from a commercial or industrial land use to the municipal storm drain system which has not been documented in plans, maps, or equivalent records and approved by the Town.
- 25. ILLICIT DISCHARGE:** Any direct or indirect non-stormwater discharge to the municipal storm drain system, except as exempted in *Section 2.2* of this Article.
- 26. 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 roof tops. Impervious surface also includes soils, gravel driveways, and similar surfaces with a runoff coefficient (Rational Method) greater than 85.
- 27. INDUSTRIAL ACTIVITY —** Activities subject to NPDES Industrial Permits.

- 28. LAND-DISTURBING ACTIVITY, LAND DISTURBANCE, or DISTURBANCE of LAND:** Any activity, including clearing and grubbing, that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material.
- 29. LOW IMPACT DEVELOPMENT** — An approach to environmentally friendly land use development. It includes landscaping and design techniques that attempt to maintain the natural, pre-developed ability of a site to manage rainfall. LID techniques capture water on site, filter it through vegetation, and let it soak into the ground.
- 30. MASSACHUSETTS ENDANGERED SPECIES ACT** — (MGL c. 131A) and its implementing regulations at (321 CMR 10.00) which prohibit the “taking” of any rare plant or animal species listed as Endangered, Threatened, or of Special Concern.
- 31. MASSACHUSETTS STORMWATER POLICY OR MASSACHUSETTS STORMWATER MANAGEMENT POLICY** — The Policy and guidance Handbook issued by the Department of Environmental Protection, as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act MGL c. 131 s. 40 and the Massachusetts Clean Waters Act MGL c. 21, ss. 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 Handbook provides detailed guidance on the Policy.
- 32. MAXIMUM EXTENT PRACTICABLE** — The limits of available technology and the practical and technical limits on an Owner in planning and designing stormwater management practices to reduce potential for pollutants to enter the municipal storm drainage system or waters of the Commonwealth.
- 33. MUNICIPAL STORM DRAIN SYSTEM or 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 manmade or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Holden.
- 34. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMITS:** General, group, and individual stormwater discharge permits issued by the United States Environmental Protection Agency which regulate facilities defined in federal NPDES regulations pursuant to the Clean Water Act.
- 35. NON-STORMWATER DISCHARGE:** Any discharge to the municipal storm drain system that is not composed entirely of stormwater.

- 36. NEW DEVELOPMENT** — Any construction activities or land alteration on an area that has not previously been developed to include impervious cover.
- 37. NON-STORMWATER DISCHARGE** — Any discharge to the municipal storm drain system that is not composed entirely of stormwater.
- 38. OPERATION AND MAINTENANCE PLAN** — A plan setting up the functional, financial, and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to ensure that it continues to function as designed.
- 39. OUTFALL** — The point at which stormwater flows out from a point source discernible, confined, and discrete conveyance into waters of the Commonwealth of Massachusetts.
- 40. OUTSTANDING RESOURCE WATERS (ORWs)** — Waters designated by Massachusetts Department of Environmental Protection as ORWs. These waters have exceptional sociologic, recreational, ecological and/or aesthetic values and are subject to more stringent requirements under both the Massachusetts Water Quality Standards (314 CMR 4.00) and the Massachusetts Stormwater Policy Standards. ORWs include vernal pools certified by the Natural Heritage Program of the Massachusetts Department of Fisheries and Wildlife and Environmental Law Enforcement, all Class A designated public water supplies with their bordering vegetated wetlands, and other waters specifically designated.
- 41. OWNER:** A person with a legal or equitable interest in property.
- 42. OWNER’S TECHNICAL REPRESENTATIVE** — A Massachusetts Registered Professional Engineer in a competent field and retained by the holder of a Land Disturbance Permit to certify that design, construction, and maintenance are completed in accordance with the applicable local, state, and federal stormwater requirements.
- 43. PERMITTEE:** The person who holds a land disturbance permit and therefore bears the responsibilities and enjoys the privileges conferred thereby.
- 44. PERSON:** Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, legal entity, agency, public or quasi-public body, authority, department, or political subdivision of the Town of Holden, the Commonwealth, or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.
- 45. PLAN:** Any announcement or piece of documentation or physical demarcation indicating construction activities may occur on a specific plot.
- 46. 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.

- 47. POLLUTANT:** Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure (including but not limited to sediments, slurries, and concrete rinsates); and noxious or offensive matter of any kind.
- 48. POLLUTION:** The human-made or human-induced alteration of the quality of waters by waste to a degree which unreasonably affects, or has the potential to unreasonably affect, either the waters for beneficial uses or the facilities which serve these beneficial uses.
- 49. PRE-CONSTRUCTION —** All activity in preparation for construction.
- 50. PREMISES —** Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- 51. PRIORITY HABITAT OF RARE SPECIES —** Habitats delineated for rare plant and animal populations protected pursuant to the Massachusetts Endangered Species Act and its regulations.
- 52. 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.
- 53. RECHARGE:** The replenishment of underground water reserves.
- 54. REDEVELOPMENT:** Development, rehabilitation, expansion, demolition or phased projects that disturb the ground surface or increase the impervious area on previously developed sites.
- 55. RESPONSIBLE PARTY(IES) or PERSON(S):** owner(s), persons with financial responsibility, and persons with operational responsibility.
- 56. RUNOFF:** Rainfall, snowmelt, or irrigation water flowing over the ground surface.
- 57. SEDIMENT:** Mineral or organic soil material that is transported by wind or water, from its origin to another location; the product of erosion processes.
- 58. SEDIMENTATION:** The process or act of deposition of sediment.
- 59. SITE:** Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.
- 60. SLOPE:** The incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.
- 61. SOIL:** Earth materials including duff, humic materials, sand, rock and gravel.

- 62. STABILIZATION** — The use, singly or in combination, of mechanical, structural, or vegetative methods, to prevent or retard erosion.
- 63. STORMWATER:** Any surface flow, runoff, and drainage consisting entirely of water from rainstorm events.
- 64. STORMWATER COMMITTEE:** A Committee of the Town of Holden consisting of the Department of Public Works Director or his designee, the Conservation Commission Agent, the Town Planner, and the Building Commissioner.
- 65. STORMWATER MANAGEMENT PLAN** — A plan required as part of the application for a Land Disturbance Permit.
- 66. STORMWATER POLLUTION PREVENTION PLAN (SWPPP)** — Plan required for permit coverage under the NPDES General Permit for Discharges from Large and Small Construction Activities. The SWPPP is a detailed plan describing how erosion and sediment controls and other BMPs will be implemented on a construction site.
- 67. STRIP:** Any activity which removes the vegetative ground surface cover, including tree removal, clearing, grubbing, and storage or removal of topsoil.
- 68. SURFACE WATER DISCHARGE PERMIT.** A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts.
- 69. TOWN:** The Town of Holden.
- 70. TSS** — Total Suspended Solids.
- 71. VERNAL POOL:** shall include, in addition to scientific definitions found in the Conservation Commission Regulations, and the Wetlands Protection Act any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other Vernal Pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the Resource Areas for Vernal Pools shall be the mean annual high-water line defining the depression and an additional one-hundred feet, the jurisdictional buffer shall consist of an additional one hundred feet from the resource area.
- 72. WATERCOURSE:** A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.
- 73. WETLAND RESOURCE AREA:** Areas specified in the Massachusetts Wetlands Protection Act M.G.L. c. 131, s.40 and in the Town of Holden Wetland Protection Bylaw.

- 74. 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, groundwaters, and vernal pools.
- 75. WETLANDS:** Wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrate for a plant community for at least five months of the year; emergent and submergent communities in inland waters; that portion of any bank which touches any inland water.

Section 1.3 Authority and Responsibility for Enforcement

- A.** This Bylaw is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Procedures Act (MGL Chapter 43B), the Holden Town Charter, MGL Chapter 40, Section 21, pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34, and any other enabling authority available to the Town.
- B.** The Director of Public Works of the Town of Holden (the “Director”), The Stormwater Committee, or an authorized agent thereof (hereafter known as Enforcing Agent), shall administer, implement, and enforce the provisions of this Bylaw, its regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations:
- 1.** The Director shall administer, implement, and enforce the provisions of Section 2.0: Illicit Discharge Detection and Elimination. Any powers granted or duties imposed upon the Director may be delegated in writing by the Director to persons or entities acting on behalf of the Town.
 - 2.** The Stormwater Committee shall administer, implement, and enforce the provisions of Section 3.0: Stormwater Management and Erosion Control. The Stormwater Committee shall consist of the Town’s Department of Public Works Director or his designee, the Conservation Commission Agent, the Town Planner, and the Building Commissioner. The Stormwater Committee shall internally elect the Chair of the Committee every calendar year. Any powers granted or duties imposed upon the Committee may be delegated in writing by the Chair of the Committee to persons or entities acting on behalf of the Town.
- C.** The Enforcing Agent shall have the authority to seek remedies, as described herein or as otherwise available under law, to enforce this Bylaw, its regulations and/or the terms and conditions of its permits.

- D.** Any person found by the Enforcing Agent to be violating any of the provisions of this Bylaw and the regulations promulgated hereunder shall be subject to enforcement action pursuant to the authority granted by this Bylaw and by any and all applicable federal, state or local laws, regulations or rules and as described within this Bylaw. Each day in which any such violation continues shall be deemed a separate offense.
- E.** Civil Relief: If a person violates the provisions of this Bylaw or the regulations adopted hereunder, the Enforcing Agent may seek injunctive relief in a court of competent jurisdiction to restrain the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.
- F.** Notice of Violation: Whenever the Enforcing Agent finds that a person has violated a prohibition or failed to meet a requirement of this Bylaw or the regulations adopted hereunder, the Enforcing Agent may order compliance by written Notice of Violation to the Responsible Person. Such Notice of Violation may require without limitation:
1. The performance of monitoring, analyses, and reporting;
 2. The elimination of illicit connections or discharges;
 3. a requirement to cease and desist from the violating discharges, practices, operations, or Land-Disturbing Activity until there is compliance with the Bylaw or provisions of the Land Disturbance Permit;
 4. maintenance, installation or performance of additional erosion and sediment control measures;
 5. remediation of erosion and sedimentation resulting directly or indirectly from the Land Disturbing Activity;
 6. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
 7. Payment to cover the Town's administrative and remediation costs; and
 8. The implementation of source control or treatment of the stormwater.
- If the Enforcing Agent determines that abatement of a violation, restoration of affected property and/or remediation of erosion and sedimentation is required, the Notice of Violation shall set forth a deadline by which such abatement, remediation, and/or restoration must be completed. Said Notice of Violation shall further advise that, should the violator or property owner fail to abate, restore, and/or perform remediation within the specified deadline, the Town of Holden may, at its option, undertake such work, and the violator shall reimburse the Town's expenses.

G. Penalties

1. Criminal Penalty. Any person who violates any provision of this Stormwater Management Bylaw or the regulations adopted hereunder, or any order or permit issued there under, shall be punished by a fine of not more than \$ 300.00. Each day or part thereunder that such violation occurs or continues shall constitute a separate offense.
2. Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the Enforcing Agent may elect to utilize the non-criminal disposition procedure set forth in M.G.L. c. 40, §21D and Article XIX of these General Bylaws, to be enforced by the Director of the Department of Public Works. The penalty for the 1st violation shall be \$100. The penalty for the 2nd violation shall be \$200. The penalty for the 3rd and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

H. Appeals

Notwithstanding the provisions of Section K below, any person receiving a Notice of Violation under Section F above, but not including a ticket or notice of violation under the Non-Criminal Disposition Process, may appeal the determination of the Enforcing Agent to the Town Manager. The notice of appeal must be received by the Town Manager within 5 days from the date of the Notice of Violation. A hearing on the appeal before the Town Manager or his/her designee shall take place within 15 days from the date of Town's receipt of the notice of appeal. The decision of the Town Manager or designee shall be final. Further relief shall be to a court of competent jurisdiction.

I. Charging Cost of Abatement/Liens

- A. Within 30 days after completing all measures necessary to abate the violation or to perform remediation, the Enforcing Agent shall notify the violator and the property owner of the costs incurred by the Town, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment with the Board of Selectmen within 15 days of receipt of the notification of the costs incurred. A hearing on the protest by the Board of Selectmen shall take place within 30 days from the date of Town's receipt of the written protest. The decision of the Board of Selectmen shall be final. Further relief shall be to a court of competent jurisdiction.
- B. If the amount due is not paid within 10 days of the decision of the Board of Selectmen or the expiration of the time in which to file an appeal under this Section, the charges shall be recorded as a municipal charges lien on

the property, pursuant to M.G.L. c.40, §58. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in M.G.L. c.59, §57 after the thirty-first day at which the costs first become due.

J. Emergency Abatement

The Enforcing Agent shall require the immediate abatement of any violation of this Bylaw or the regulations adopted hereunder that constitutes an immediate threat to the health, safety or welfare of the public. If any such violation is not abated immediately as directed by the Enforcing Agent, to the extent permitted by law, or if authorized by the owner or other party in control of the property, the Town may enter the property and take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the Town shall be at the expense of the property owner and/or violator. Any relief obtained under this Section shall not prevent Town from seeking other and further relief authorized pursuant to this Bylaw or at law or equity.

K. Compensatory Action

In lieu of enforcement proceedings, penalties, and remedies authorized by this Bylaw, the Enforcing Agent may accept from a violator alternative compensatory actions, such as storm drain stenciling, maintenance of stormwater BMPs, participation in municipal waste or pollution reduction programs, attendance at compliance workshops, brook cleanup, etc.

Section 1.4 Applicability

- A.** This Bylaw shall apply to every user of the Town's municipal storm drainage system, including dischargers to the municipal storm drainage system and to the waters of the Commonwealth of Massachusetts, and shall also apply to any land-disturbing activity within the Town of Holden where land disturbance is undertaken on a single property or is part of a larger common plan of development or sale that results in:
 - 1.** a total cumulative disturbance of land that meets or exceeds 20,000 square feet of area, or
 - 2.** a total cumulative added impervious surface that meets or exceed 5,000 square feet.
- B.** The following land disturbance activities are exempt from the requirements of this Bylaw:

1. Normal maintenance and improvement of Town owned public ways and related infrastructure.
2. Normal maintenance and improvement of land in agricultural use.
3. Repair or replacement of septic systems when required by the Board of Health for the protection of public health.
4. Normal maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling provided such maintenance does not include the addition of more than 100 cubic yards of soil material, construction of any walls, alteration of existing grades by more than one foot in elevation, or alteration of drainage characteristics.
5. The construction of fencing that will not alter existing terrain or drainage patterns.
6. Construction of utilities other than drainage (gas, water, electric, telephone, etc.) that will not alter terrain or drainage patterns.
7. Activities conducted in accordance with an approved Massachusetts Department of Conservation and Recreation Forest Stewardship Plan.
8. Regular and approved maintenance of Stormwater Management structures.
9. Emergency work to protect life, limb, or property.

Section 1.5 Ultimate Responsibility of Discharger

- A. The standards set forth herein and promulgated pursuant to this Bylaw are minimum standards. This Bylaw does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the Commonwealth caused by said person. This Bylaw shall not create liability on the part of the Town, or any agent or employee thereof for any damages that result from any discharger's reliance on this Bylaw or any administrative decision lawfully made thereunder.

Section 1.6 Regulations

- A. The Stormwater Committee may adopt and periodically amend rules and regulations to effectuate the purposes of this Bylaw. Said regulations may include but shall not be limited to provisions regarding administration, application requirements, fees, permitting procedures and requirements, design standards, surety requirements, inspection and site supervision requirements, waivers and exemptions, and enforcement procedures.

- B.** Failure by the Stormwater Committee to promulgate such rules and regulations shall not have the effect of suspending or invalidating this Bylaw.

Section 1.7 Severability

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

Section 1.8 Transitional Provisions

- A.** Owners shall have 60 days from the effective date of this Bylaw to comply with its provisions, provided good cause is shown for the failure to comply with the Bylaw during that period.

Section 2.0 Illicit Discharge Detection and Elimination

Section 2.1 Prohibited Activities

- A.** Illicit Discharges. No person shall dump, discharge, cause or allow to be discharged into the municipal storm drain system, watercourses, or waters of the Commonwealth any pollutant or non-stormwater discharge.
- B.** Illicit Connections. No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.
- C.** Obstruction of Municipal Storm Drain System. No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior written approval from the Director.

Section 2.2 Exceptions

- A.** The following non-stormwater discharges and flows to the municipal storm drain system and to waters of the Commonwealth are exempt from the prohibition on illicit discharges, provided that, in the opinion of the Director, the source is not a significant contributor of a pollutant to the Municipal Storm Drain System or to waters of the Commonwealth:
- 1.** Potable water line flushing;
 - 2.** Uncontaminated pumped groundwater and other discharges from potable water sources;
 - 3.** Landscape irrigation and lawn watering;
 - 4.** Diverted stream flows;
 - 5.** Rising groundwater;
 - 6.** Groundwater infiltration to the municipal storm drain system;
 - 7.** Uncontaminated foundation and footing drains;
 - 8.** Uncontaminated water from crawl space pumps;
 - 9.** Air conditioning condensation;
 - 10.** Uncontaminated non-industrial roof drains;
 - 11.** Natural springs;
 - 12.** Individual residential and occasional non-commercial car washing;
 - 13.** Flows from riparian habitats and wetlands;
 - 14.** Dechlorinated swimming pool discharges (provided that the chlorine content is < 1 ppm, water has been allowed to stand for one week prior to draining, and that the discharge is performed in such a way as not to cause a nuisance);
 - 15.** Street sweeping waters;
 - 16.** Flows resulting from firefighting activities;
 - 17.** Non-stormwater discharges permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, or a surface water discharge permitted by DEP, provided that the discharge is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided further that written approval has been granted by the Director for any discharge to the municipal storm drain system;
 - 18.** Any other non-stormwater discharges that are not a source of pollutants to the Municipal Storm Drain System nor waters of the Commonwealth, as set forth in a written determination by the Director.

Section 2.3 Authority to Enter, Inspect, Sample, Establish Sampling Devices, and Test

- A.** To the extent permitted by law, or if authorized by the owner or other party in control of the property, the Director, or other agents, officers, and employees of the Department of Public Works may enter upon privately owned property 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 Director deems reasonably necessary. During any inspection as provided herein, the Director may take any samples and perform any testing deemed necessary to aid in the pursuit of the inquiry or to record site activities.
- B.** The Director may require by written notice that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to stormwater pollution, Illicit Discharges, and/or non-stormwater discharges to the Municipal Storm Drain System or waters of the Commonwealth, undertake at said person's expense such monitoring and analyses and furnish such reports to the Town as deemed necessary to determine compliance with this Bylaw.

Section 2.4 Notification of Spills

- A.** Notwithstanding other requirements of federal, state or local laws, rules or regulations, 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 or illicit discharges into stormwater, to the municipal storm drainage system, or waters of the Commonwealth, the person shall take all necessary steps to ensure discovery, containment, and cleanup of the release. In the event of a release of oil or hazardous waste to the municipal storm drainage system, the person shall immediately notify the Town's fire, board of health and public works departments. In the event of a release of a non-hazardous pollutant to the municipal storm drainage system, the reporting person shall notify the Town's Department of Public Works in person or by phone or facsimile no later than 4:00 p.m. of the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Town's Department of Public Works within three business days of the phone notice. If the discharge of prohibited materials emanates 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 by the Town in accordance with the Massachusetts Public Records Law.

Section 3.0 Stormwater Management and Erosion Control

Section 3.1 Permits & Procedures

- A.** No person may undertake Land Disturbance Activity regulated by this Bylaw in *Section 1.4: Applicability* without a Land Disturbance Permit from the Stormwater Committee pursuant to this Bylaw and regulations promulgated hereunder.
- B.** Permit Procedures and Requirements shall be defined and included as part of any rules and regulations promulgated as permitted under *Section 1.6: Regulations of this Bylaw*.

Section 3.2 Fees

- A.** The Stormwater Committee shall establish fees to cover expenses connected with application review and monitoring permit compliance. The fees shall be sufficient to cover the costs of Town secretarial staff and professional staff time for the review, processing, and monitoring an application and permit.

Section 3.3 Surety

- A.** The Stormwater Committee may require the permittee to post before the start of any Land Disturbance Activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be approved by Town Counsel, if necessary, and be in an amount deemed sufficient by the Stormwater Committee to ensure that the work will be completed in accordance with the permit. If the project is phased, the Stormwater Committee may, in its sole and absolute discretion, release part of the bond as each phase is completed in compliance with the permit but the bond may not be fully released until the Stormwater Committee has received a final report stating that all the work has been satisfactorily completed, as required in the Regulations.

Section 3.4 Waivers

- A.** The Stormwater Committee may waive strict compliance with any requirement of the rules and regulations promulgated hereunder, where such action: is allowed by federal, state and local statutes and/or regulations, is in the public interest, and is not inconsistent with the purpose and intent of this Bylaw.

ARTICLE XXV

Prohibition of Recreational Marijuana Establishments

- Section 1.** This Article is enacted in order to provide for the health, safety, and general welfare of the residents of the Town of Holden, in accordance with the Home Rule Amendment to the Massachusetts Constitution, M.G.L. c. 40, § 21, and M.G.L. c. 94G, § 3(a)(2), the majority of voters in the Town of Holden having voted in the negative on Question 4 on the 2016 State Election Ballot entitled "Legalization, Regulation, and Taxation of Marijuana."
- Section 2.** For purposes of this Article, the term "marijuana establishment" shall refer to recreational or non-medical marijuana operations, as that term is defined in M.G.L. c. 94G, § 1, including marijuana cultivators, independent testing laboratories, marijuana product manufacturers, marijuana retailers, or any other type of marijuana-related businesses, but not including registered marijuana dispensaries or medical marijuana treatment centers.
- Section 3.** In accordance with M.G.L. c. 94G, § 3(a)(2), all types of marijuana establishments shall be prohibited within the Town of Holden.

ARTICLE XXVI

Nuisance Property By-Law

Section 1. Authority and Purpose

Pursuant to the general powers granted the Town by Article 89 of the Amendments to the Massachusetts Constitution, this Nuisance Property Bylaw is adopted to help protect the health, safety, and welfare of the citizens of Holden by preventing blight, protecting property values and neighborhood integrity, protecting the Town's resources, and ensuring the safety and sanitary maintenance of all buildings and properties.

Section 2. Definitions

For purposes of this Bylaw, the following words and phrases, when used herein, shall have the following meanings:

Blight

Any condition that seriously impairs the value, condition, strength, durability, or appearance of real property, or is otherwise detrimental to property values or neighboring properties including real property owned or occupied by an Interested Party as defined in Section 22.2.5 below.

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. See “structure” as defined in 22.2.10, below.

Dilapidated

A condition of decay or partial ruin due to neglect, misuse, or deterioration. The term includes, but is not limited to:

- a) Property having deteriorated or ineffective waterproofing of exterior walls, roofs, foundations, or floors, including broken or inadequately secured windows or doors;
- b) Property having defective weather protection (such as paint, stain, siding or tarpaulin) for exterior wall covering; deleterious weathering due to lack of such weather protection or other protective covering.
- c) Personal property that is broken, rusted, worn, partially or wholly dismantled or otherwise due to deterioration is unsuitable for the purpose for which designed.
- d) Property having a paved parking lot or a parking area in a deteriorated condition causing hazardous conditions to automobiles, bicycles, or pedestrians. Such conditions may include but are not limited to potholes, broken pavement, and/or insufficient drainage so as to cause flooding.

Hazard

A condition likely to expose persons to injury, or property to damage, loss or destruction.

Interested Parties

In connection with the notification requirements of this bylaw Interested Parties are the Building Commissioner; owner(s) and/or occupants of property which is the subject of a hearing; owners and/or occupants of property directly opposite the subject property on any public or private street or way, owners and/or occupants of property abutting the subject property, and owners and/or occupants of abutting property that is within 300 feet of, the property line of the subject property. Other persons who own or occupy property and who demonstrate to the satisfaction of the Building Commissioner that they are affected by the condition of the property or building that is the subject of a hearing may be regarded as Interested Parties by the Building Commissioner.

Nuisance

Any substantial interference with the common interest of the general public in maintaining safe and sanitary structures and neighborhoods that are not dilapidated when such interference results from the hazardous or blighted condition of private property, land or buildings. The fact that a particular structure or use may be permitted under the zoning bylaw does not create an exemption from the application of this bylaw. The term includes but is not limited to:

- a) burned structures not otherwise lawfully habitable or usable,
- b) dilapidated real or personal property including but not limited to real or personal property containing graffiti, tagging or similar markings,
- c) dilapidated real or personal property including parking lots or parking areas, dangerous or unsafe structures or personal property
- d) overgrown vegetation which may harbor rats and vermin, conceal pools of stagnant water or other nuisances, or which is otherwise detrimental to neighboring properties or property values,
- e) dead, decayed, diseased or hazardous trees,
- f) personal property that is exposed to the elements without protection against deterioration, rust or dilapidation,
- g) vehicles, machinery or mechanical equipment or parts thereof that are located on soil, grass or other porous surfaces that are likely to result in the destruction of vegetation or contamination of soil,
- h) in any residential neighborhood, keeping of derelict/junked vehicles located in the open on private property. Such vehicles may be unregistered, or in a rusted, wrecked, partly wrecked, partly dismantled, inoperative, or abandoned condition. Types of vehicles include, but are not limited to, cars, trucks, SUVs, RVs, boats, watercraft, snow vehicles, and trailers of any type.
- i) trash, debris or personal property, including but not limited to personal property marked “free” or “take” that has been placed for collection as rubbish or refuse.

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.

Owner

Every person who alone or jointly or severally with others:

- a) has legal title to any building, structure or real property;
- b) has care, charge, or control of any such building, structure or real property in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, personal representative, trustee or guardian of the estate of the holder of legal title;
- c) is a lessee of a building, structure or real property;
- d) is a mortgagee in possession of a building, structure or real property;
- e) is an agent, trustee or other person appointed by the courts.

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.

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, stand, platform, bin, fence (having a height at any point of six feet or greater above grade), parking area sign, flagpole, or mast for an antenna or the like.

Section 3. Property Standards

All property in the Town of Holden shall be maintained in good repair, so as not to cause or contribute to the creation or existence of blight, hazardous conditions, a nuisance, or to otherwise affect adversely the public health and safety or property value of adjacent or surrounding property.

Section 4. Enforcement

This Bylaw shall be enforced by the Building Commissioner. If the Building Commissioner shall be informed or have reason to believe that any provision of this Bylaw has been, is being, or is likely to be violated, he shall make or cause to be made an investigation of the facts, including an investigation of the property where the violation may exist. If he finds any violation he shall give immediate notice in writing to the Owner and to the Occupant of the premises to immediately cease such violation. In making such inspection, the Building Commissioner shall have such right of access to

premises that may be lawfully exercised by him under the laws and constitution of the Commonwealth or of the United States.

If, after such notice and order, such violation continued, or if any Owner of Occupant fails to obey any lawful order of the Building Commissioner with respect to any violation of the provisions of the Bylaw, the Building Commissioner may make complaint to the Superior Court or any court of competent jurisdiction for any injunction or order restraining any further use of the premises and the continuation of the violation and shall take such other action as is necessary to enforce the provisions of this Bylaw.

This Bylaw may also be enforced by non-criminal disposition as provide in Article XIX of these Bylaws and Massachusetts General Laws, Chapter 40, §21D. Each day on which a violation exists shall be deemed to be a separate offense and any person in violation of this Bylaw shall be subject to the following fines:

First violation: \$0.00 (WRITTEN NOTICE OF VIOLATION)

Second violation: \$100.00

Third and each subsequent violation: \$300.00

If the Building Commissioner determines that the condition of or related to a violation 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 or their Agent or other appropriate state or Town officials for action.

During his investigation of the matter, the Building Commissioner may consult, but is not required to do so, with any Interested Party in an attempt to obtain voluntary compliance with this Bylaw without the need to issue a notice of violation.

Section 5. Separate Jurisdiction and Enforcement Authorities

Nothing in this Bylaw shall restrain, interfere with or diminish any and all statutory rights and obligations available and applicable to the Fire Department/Fire Chief, the Board of Health, the Building Inspector or the Board of Selectmen.

Section 6. Review by the Town Manager

Any Interested Party who has filed a written complaint of a nuisance with the Building Commissioner upon which complaint the Building Commissioner has determined that the condition is not a nuisance, or has taken other action that the Interested Party claims is inadequate shall have a right to a review of the matter by the Town Manager. At the request of such an Interested Party, the Town Manager shall confer with the Building Commissioner and shall recommend appropriate action to the Building Commissioner.

Section 7. Reports by Building Commissioner

The Building Commissioner shall file with the Town Manager each month a report that shall include all complaints of nuisance 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 or their Agent. 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.

Amended: March 9, 1968, March 8, 1969, March 6, 1971, March 10, 1973, May 18, 1974, May 15, 1976, May 13, 1978, May 19, 1980, May 18, 1981, May 17, 1982, May 16, 1983, May 21, 1984, May 19, 1986, May 18, 1987, May 16, 1988, May 15, 1989, May 21, 1990, May 20, 1991, May 17, 1993, May 16, 1994, May 15, 1995, October 23, 1995, May 20, 1996, May 19, 1997, May 19, 1998, September 28, 1998, May 15, 2000, May 21, 2001, May 20, 2002, May 15, 2006, May 18, 2009, May 16, 2011, May 21, 2012, May 15, 2017, May 21, 2018, June 29, 2020, May 17, 2021, May 16, 2022