

TOWN OF NEEDHAM

Office of the Town Clerk

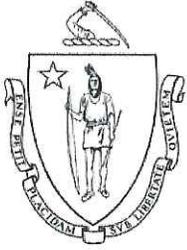


BY-LAWS

Approved By the Attorney General

Special Town Meeting
October 10, 2018

January 25, 2019



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
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ATTORNEY GENERAL

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January 25, 2019

Theodora K. Eaton, Town Clerk
Town of Needham
1471 Highland Avenue
Needham, MA 02492

Re: Needham Special Town Meeting of October 10, 2018 – Case # 9196
Warrant Article # 9 (Zoning)
Warrant Articles # 15 and 16 (General)

Dear Ms. Eaton:

Articles 9, 15, and 16 - We approve Articles 9, 15, and 16 from the October 10, 2018, Needham Special Town Meeting. Our comments on Article 15 are provided below.

Article 15 - Article 15 adds a new Article 7, “Stormwater,” to the Town’s general by-laws. One of the stated purposes of the by-law is to fulfill the Town’s obligations under federal law and the Town’s National Pollution Discharge Elimination System (NPDES) permit. Section 7.1 (d).

A. Law Applicable to Article 35

Both the federal government and the Commonwealth of Massachusetts have enacted certain regulations relative to stormwater management by municipalities. For instance, the federal Environmental Protection Agency has enacted requirements pertaining to operators of municipal separate storm sewers. *See* 40 C.F.R. § 122.34. The Massachusetts Department of Environmental Protection (the Department) has promulgated regulations at 310 C.M.R. § 10.05 (6) (k)-(q) (“Stormwater Management Standards”), pursuant to G.L. c. 131, § 40. Furthermore, the Department has promulgated stormwater regulations at 314 C.M.R. §§ 3.04 and 5.04, pursuant to G.L. c. 21, §§ 26-53 (the Massachusetts Clean Waters Act). Any local regulation of stormwater management must be supplementary to and consistent with the regulation of such matters by the federal government and the Commonwealth of Massachusetts. Operators of municipal separate storm sewers are required to develop and implement a stormwater management plan that meets certain minimum measures. *See* 40 C.F.R. § 122.34.

The federal regulations suggest that municipalities adopt local laws or regulations as part of an effective stormwater management plan. *See, e.g.*, 40 C.F.R. § 122.34 (b) (3) (i) (B); 40

C.F.R. § 122.34 (b) (4) (i) (A); 40 C.F.R. § 122.34 (b) (5) (i) (B). We understand the new by-law is part of Town's efforts to effectively manage stormwater.

B. Comments on Specific Sections of Stormwater By-law

1. Section 7.2 - Definitions

Section 7.2 defines "Person" as:

[a]n individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

We approve the definition of "Person." However, the Town's authority to regulate state and federal entities is limited. "The doctrine of essential governmental functions prohibits municipalities from regulating entities or agencies created by the Legislature in a manner that interferes with their legislatively mandated purpose, absent statutory provisions to the contrary." Greater Lawrence Sanitary Dist. v. Town of North Andover, 439 Mass. 16 (2003). *See also* Teasdale v. Newell & Snowling Const. Co., 192 Mass. 440 (1906) (holding local board of health could not require state park commissioners to obtain license to maintain stable on park land). Similarly, municipalities may not regulate federal governmental entities in a manner that impedes with their purpose. *Cf. First Nat'l Bank v. Missouri*, 263 U.S. 640, 656 (1926) (state laws may not regulate federal entities if "such laws interfere with the purposes of their creation [or] tend to impair or destroy their efficiency as federal agencies"); Palfrey v. City of Boston, 101 Mass. 329 (1869) (federal internal revenue stamps not subject to state or local property tax). The Town's enforcement of the new by-law cannot impermissibly interfere with the operation of state or federal entities. The Town should discuss the proper application of this definition with Town Counsel.

2. Section 7.3 - Administration

Section 7.3.1 authorizes the Board of Selectmen to adopt rules and regulations to administer the by-law. Local officials, boards and committees cannot adopt rules or regulations that are inconsistent with state law. We suggest that the Town discuss with Town Counsel any proposed rules or regulations adopted pursuant to Section 7.3.1 to ensure that they comply with state law.

3. Section 7.7 - Stormwater Management and Erosion Control

Section 7.7.3 imposes general requirements for stormwater management. More specifically, Section 7.7.3.5, pertains to drainage systems for areas with poor soil or with shallow depth to the groundwater. Section 7.7.3.5 provides in pertinent part as follows:

Properties located within an area of poor soils as identified on the Town's Watershed Management Plan or due to shallow depth to groundwater . . . a small diameter drain shall be extended from the . . . [MS4] . . . to collect the roof runoff from the main dwelling. If there is no portion of a drainage system within 100 feet of the property, the property owner

shall contribute to a fund for the Town to construct a communal infiltration system on Town property. The contribution shall be an amount as determined by the Board of Selectmen per cubic foot of stormwater required to be recharged as described above.

Section 7.7.3.5 allows a property owner to contribute to a “fund” an amount determined by the Board of Selectmen to be used to construct a communal infiltration system. It is unclear what type of “fund” the Town intends to use for such payments.

General Laws Chapter 44, § 53, provides that “[a]ll moneys received by a city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury.” In the absence of any general or special law to the contrary, funds of the sort contemplated here would have to be deposited with the Town Treasurer and made part of the town’s general fund. An example of such legislative authority includes G.L. c. 44, §§ 53E ½, that provides in pertinent part as follows:

Notwithstanding section 53, a . . . town may authorize by by-law . . . the use of 1 or more revolving funds by 1 or more municipal agencies, boards, departments or offices, which shall be accounted for separately from all other monies in the . . . town and to which shall be credited any fees, charges or other receipts from the departmental programs or activities supported by the revolving fund. . . . A revolving fund shall be established pursuant to this section by by-law . . . The by-law . . . shall specify for each fund: (1) the programs or activities for which the revolving fund may be expended; (2) the departmental receipts in connection with those programs or activities that shall be credited to the revolving fund; (3) the board, department or officer authorized to expend from such fund; and (4) any reporting or other requirements the city or town may impose.

In order for the Town to deposit any money received under Section 7.7.3.5 in a revolving fund, the Town would have to comply with the requirements of G.L. c. 44, § 53E ½. In the absence of compliance with G.L. c. 44, § 53E ½, or some other statutorily created fund, the payments authorized under Section 7.7.3.5 must be deposited with the Town Treasurer and made part of the Town’s general fund pursuant to G.L. c. 44, § 53. The Town should consult with Town Counsel on the proper application of Section 7.7.3.5.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,
MAURA HEALEY
ATTORNEY GENERAL

Kelli E. Gunagan

by: Kelli E. Gunagan, Assistant Attorney General
Municipal Law Unit
Ten Mechanic Street, Suite 301
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(508) 792-7600

cc: Town Counsel David S. Tobin

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2019

TOWN CLERK
January 25, 2019

NEEDHAM
12:14 P.M.



Theodora K. Eaton, MMC
Town Clerk

TOWN OF NEEDHAM

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AT THE SPECIAL TOWN MEETING

HELD ON MONDAY, OCTOBER 10, 2018

UNDER ARTICLE 9

It was

VOTED: That the Town vote to amend the Needham Zoning By-Law as follows:

(1) In Section 6.7, Wireless Communications Facilities, Subsection 6.7.3.3, Special Permit, by inserting a new paragraph (i), to read as follows:

“(i) Wireless Communication Equipment serving the Town of Needham’s public safety communication purposes, located on a preexisting and lawfully permitted tower, and ground based equipment accessory thereto.”

(2) In Section 6.7, Wireless Communications Facilities, Subsection 6.7.3.3, Special Permit, by inserting a new paragraph (j), to read as follows:

“(j) Free standing monopole owned and operated by the Town of Needham for public safety communication purposes exclusively, and wireless communication equipment accessory thereto, where such monopole and equipment are located on the site of the Town of Needham’s Police and Fire Department Headquarters, as shown on the “Lot Consolidation Plan of Land 70 & 88 Chestnut Street, 89 & 99 School Street, and 43 Lincoln Street Prepared for the Town of Needham, Massachusetts” dated July 23, 2018 and to be recorded with the Norfolk County Registry of Deeds, and do not exceed 130 feet in height.”

(3) In Section 6.7, Wireless Communications Facilities, Subsection 6.7.3.3, Special Permit, by inserting a new paragraph (k), to read as follows:

“(k) Free standing monopole or free-standing lattice tower, owned and operated by the Town of Needham for public safety communication purposes, and wireless communication equipment accessory thereto, where such monopole, lattice tower,

and equipment are located on the site of the Town of Needham's Recycling and Transfer Station, shown of record as the lot containing 71.667 +/- acres on the "Plan of Land in Needham, Mass. Showing Property of the Town of Needham" dated February 11, 1991 and recorded with the Norfolk County Registry of Deeds in Plan Book 619 at Page 36 and Lot 2 on Land Court Subdivision Plan 21906-C, all of said land being within the Wireless Communications Facilities Tower Overlay District, and do not exceed 199 feet in height."

- (4) In Section 6.7, Wireless Communications Facilities, Subsection 6.7.2, Definitions, by revising the definition of the term "Wireless Communication Equipment" so that it shall read as follows (new language underlined):

"Wireless Communication Equipment – any device or other apparatus, fixed at a location, for transmission and reception of telecommunication that performs the function of antennas, together with any supporting structures, equipment and facilities ancillary and/or accessory thereto, including, but not limited to panel antennas, whip antennas, free-standing monopoles (not lattice shaped towers except as allowed in sections 6.7.3.1 (b), 6.7.3.1 (c), 6.7.3.3 (h) and 6.7.3.3 (k) below), dish and cone shaped antennas, satellite earth station antennas, personal wireless communication systems facilities, paging service facilities, cellular telephone service facilities, commercial mobile radio service facilities and related equipment boxes serving personal wireless services exclusively or, for purposes of this section 6.7, serving municipal public safety communication purposes."

- (5) In Section 6.7, Wireless Communication Facilities, Subsection 6.7.3.3, Special Permit, by revising paragraph (h) to read as follows (new language underlined):

"(h) Free standing monopoles and free-standing lattice towers servicing personal wireless services located in the Wireless Communications Facilities Tower Overlay District which meet the criteria outlined in section 3.7.3.2(b)."

- (6) In Section 6.7, Wireless Communication Facilities, Subsection 6.7.3.2, Prohibited, by revising the first paragraph so that it shall read as follows (new language underlined):

"Lattice style towers, guyed towers, and facilities requiring three or more legs and/or guy wires for support shall not be allowed except for those uses set forth in 6.7.3.1 (b), 6.7.3.1 (c), 6.7.3.3 (h), and 6.7.3.3 (k). Lattice style towers, guyed towers, and facilities requiring three or more legs and/or guy wires existing or approved on the effective date of this by-law may be used for wireless communications equipment, subject to section 6.7.3.3 (f)."

- (7) In Section 6.7, Wireless Communication Facilities, Subsection 6.7.5, Decision Criteria, by inserting a new paragraph (q), to read as follows:

"(q) Free standing monopoles and free-standing lattice towers, owned and operated by the Town of Needham for public safety communication purposes that are located

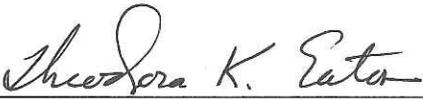
within the Wireless Communications Facilities Tower Overlay District shall be subject to Section 3.7.3.2(b)(2) and 3.7.3.2(b)(4).”

- (8) In Section 3.7, Wireless Communications Facilities Towers Overlay District, Subsection 3.7.3.2, Special Permit Uses, by revising paragraph (b) to read as follows (new language underlined):

“(b) Free-standing monopoles and free-standing lattice towers serving personal wireless services which meet the following criteria.”

Two-thirds Vote Declared
By the Moderator on a Voice Vote

A true copy
ATTEST:



Theodora K. Eaton, MMC, Town Clerk



Theodora K. Eaton, MMC
Town Clerk

TOWN OF NEEDHAM

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AT THE SPECIAL TOWN MEETING

HELD ON MONDAY, OCTOBER 10, 2018

UNDER ARTICLE 15

It was

VOTED: That the town vote to amend the General By-Laws by inserting a new Article 7 as follows:

“ARTICLE 7

STORMWATER

SECTION 7.1 PURPOSE

The purpose of this By-Law is:

- (a) To prevent pollution of Needham’s wetlands and surface waters from uncontrolled stormwater runoff and illicit discharges.
- (b) To prevent pollutants from entering the Town of Needham’s Municipal Separate Storm Sewer System (MS4).
- (c) To prohibit illicit connections and unauthorized discharges to the MS4 and to require the removal of all such illicit connections.
- (d) To comply with state and federal statutes and regulations relating to stormwater discharges, including the NPDES MS4 Permit issued by the U.S. Environmental Protection Agency (EPA), the Massachusetts Stormwater Standards, regardless of the location of the subject property relative to wetlands or other resource areas, and the Memorandum of Understanding (MOU) issued to the Town of Needham by the EPA in 1996.
- (e) To establish the legal authority to ensure compliance with the provisions of this By-Law through permitting, inspection, monitoring, and enforcement.
- (f) To control runoff and prevent soil erosion and sedimentation resulting from construction site stormwater runoff.
- (g) To promote infiltration and the recharge of groundwater.

- (h) To protect, maintain and enhance the public safety, environment, health, and general welfare by establishing minimum requirements and procedures to manage stormwater runoff.
- (i) To ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process and are implemented and maintained.

SECTION 7.2 DEFINITIONS

For the purposes of this By-Law, the following definitions shall apply:

Alteration Any activity that will change the ability of a ground surface area to absorb water or will change existing surface drainage patterns. Examples include, but are not limited to, construction of new structures, excavation, earthmoving, or paving.

Best Management Practices (BMPs) Structural, non-structural, and managerial techniques that are recognized to be the most effective and practical means to prevent or minimize increases in stormwater volumes and flows, reduce point source and non-point source pollution, and promote stormwater quality and protection of the environment.

Clean Water Act The Federal *Water Pollution Control Act* (33 U.S.C. §§ 1251 *et seq.*) as it may hereafter be amended, and the Massachusetts Clean Water Act and Regulations.

Commercial The term commercial shall include municipal, industrial, and multi-family projects.

Construction Site Any site where activity is proposed or occurs that involves the alteration of land and involves a permit required by the Town.

Development The alteration of land requiring an application for a building permit; or for a permit from the Planning Board, Zoning Board of Appeals (ZBA), or Conservation Commission.

Erosion Control The prevention or reduction of the movement of soil particles or rock fragments due to stormwater runoff. Erosion control is typically achieved through the installation of straw bales, silt fence, silt socks, or by surface coverings such as jute mesh, erosion control blankets, or by the establishment of surface vegetation.

Dry Well A subsurface structure that infiltrates stormwater runoff.

Green Citizen Certificate A certificate issued by the Board of Selectmen conferring recognition to environmentally conscious citizens who install infiltration/recharge systems, rain gardens, or similar stormwater quality improvements that are not required by the Stormwater By-Law or these promulgated regulations.

Illicit Connection A surface or subsurface drain or conveyance that allows a discharge into the MS4 that is not entirely composed of stormwater or clean groundwater, including any connection from an indoor drain, sink, toilet, or laundry facility.

Illicit Discharge Any direct or indirect discharge to the MS4 or the Waters of the Commonwealth that is not composed entirely of stormwater or clean groundwater, including, without limitation, any discharge of a pollutant, sewage, process wastewater, or wash water, except as exempted. The term does not include a discharge in compliance with a NPDES Stormwater Discharge Permit or a Surface Water Discharge Permit.

Impervious Surface Any material or structure on, above or below the ground that prevents water from infiltrating through to the underlying soil. Impervious surfaces may include, without limitation: paved surfaces, parking lots, sidewalks, driveways, rooftops and swimming pools.

Large Residential Project A residential project (new construction or reconstruction) of a residential building with larger than 4,000 square feet (s.f.) of ground coverage.

Low Impact Development (LID) Stormwater management systems and practices that mimic natural hydrologic processes resulting in infiltration, evapotranspiration or use of stormwater. LID techniques manage stormwater as close to the source as possible. LID practices frequently use cost-effective landscape features located at the lot level.

Massachusetts Stormwater Handbook (MSH) A document published in 1997 and revised and updated in 2008 by MassDEP as guidance on the 1996 Stormwater Policy.

MS4 (Municipal Separate Storm Sewer System) The system of conveyances, owned or operated by the Town of Needham, that is designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, swale, culvert, channel, catch basin, outfall, outlet, reservoir, or other drainage structure.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit
A permit issued by the United States Environmental Protection Agency or jointly with the state that authorizes the discharge of stormwater containing pollutants into waters of the United States.

New Construction Construction or replacement of a structure, house or building which requires a Building Permit or construction/reconstruction of a parking lot, or construction of a subdivision roadway requiring Planning Board or Board of Appeals approval.

Non-point Source Pollution Rainfall or snowmelt that picks up pollutants as it moves across the ground.

Non-stormwater Discharge A discharge that is not composed entirely of stormwater, such as sanitary waste or process water.

Operation and Maintenance (O&M) Plan A plan setting 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.

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

Plot Plan The plan that accompanies an application for a Building Permit.

Point Source Any discernible, confined and discrete conveyance, including, without limitation, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. The term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

Pollutant Any element or characteristic of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into Needham's MS4 or waters of the Commonwealth. Pollutants shall include, but are not limited to:

- (a) Paints, varnishes, and solvents;
- (b) Oil and other automotive fluids;
- (c) Non-hazardous liquid and solid wastes and yard wastes;
- (d) Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, accumulations and floatables;
- (e) Excess pesticides, herbicides, and fertilizers;
- (f) Hazardous materials and wastes;
- (g) Sewage, fecal coliform and pathogens;
- (h) Dissolved and particulate metals or nonmetals, including phosphorus;
- (i) Animal wastes;
- (j) Rock, sand, salt, silt, soils;
- (k) Construction wastes and residues; and
- (l) Noxious or offensive matter of any kind.

Permitting Authority The municipal board, committee or department with authority for issuing permits for construction. These include the Planning Board, Conservation Commission, Department of Public Works, Building Department, and Zoning Board of Appeals.

Recharge The process by which groundwater and the underlying aquifer is replenished by the absorption of water.

Redevelopment Replacement, rehabilitation, or expansion of existing structures, improvement of existing roads or reuse of degraded or previously developed areas. Redevelopment is defined to include the following projects:

- (a) Maintenance and improvement of existing roadways including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems and repaving; and

- (b) Development, rehabilitation, expansion and phased projects on previously developed sites provided the redevelopment results in no net increase in impervious area.

Runoff The water from rain, snowmelt or irrigation that flows over the land surface and is not absorbed into the ground, instead flowing into the MS4 or streams or other surface waters or land depressions.

Sanitary Sewer System A separate underground conveyance system specifically for transporting sanitary waste operated separately and independently from the MS4, to which storm, surface, and ground waters are not lawfully admitted.

Small Diameter Drain Program A Town of Needham Program allowing the extension of the Town's drainage system (MS4) by a series of 6-inch, 8-inch and 10-inch drain pipes used to collect roof drains and clean sump pump discharges.

Stormwater Water originating from rainfall and snow/ice melt.

Stormwater Management The use of structural or non-structural practices that are designed to reduce and control stormwater runoff pollutant loads, discharge volumes or peak flow discharge rates. Stormwater Management includes the use of Low-Impact Development (LID) management practices.

Vegetation Trees, shrubs, bushes and ground cover, including grass.

Watershed Management Plan The plan developed for the Town of Needham subdividing watershed areas within the Town and depicting drainable soil areas appropriate for infiltration/recharge.

Waters of the Commonwealth All waters within the jurisdiction of the Commonwealth of Massachusetts under the Wetlands Protection Act (M.G.L ch. 131 section 40 and regulations at 310 CMR 10.00) and regulations at 314 CMR 9.00, Water Quality Certification, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, wetlands, and vernal pools.

Waters of Needham All waters within the jurisdiction of the Town of Needham under the Wetlands Protection Bylaw (Article 6) and implementing regulations, including rivers, streams, lakes, ponds, springs, impoundments, wetlands and vernal pools.

SECTION 7.3 ADMINISTRATION

7.3.1 The Board of Selectmen shall adopt, and may periodically amend, Stormwater Regulations to effectuate the purposes of this By-law, after conducting a public hearing to receive Public comment.

- 7.3.2 The Director of Public Works shall be responsible for the day-to-day administration of this By-Law and its Regulations except as provided in Section 7.3.3 below. The Director may designate a person or persons to carry out any of his/her duties under this Stormwater By-Law.
- 7.3.3 The issuing authorities for permits (Building Department, Planning Board, Zoning Board of Appeals, and Conservation Commission) are responsible for determining compliance with this By-law for any application to these authorities. The Director of Public Works/designee shall review permit applications and provide an advisory opinion to the issuing authorities.
- 7.3.4 The Director of Public Works/designee shall have the authority to investigate suspected illicit discharges and to require the elimination of illicit discharges.

SECTION 7.4 APPLICABILITY

7.4.1 Permits and Approvals

All persons required to obtain a Building Permit for new construction and/or additions greater than 25% of the existing building footprint shall be subject to the requirements of this By-Law.

All persons also required to obtain Planning Board Site Plan approval pursuant to the Zoning By-Law, Planning Board approval for a Subdivision, and/or a Board of Appeals Decision (for new construction and/or additions greater than 25% of the existing building footprint) are subject to the requirements of this By-Law.

7.4.2 Stormwater Management and Erosion Control

Except as listed below, all applications for new construction or redevelopment subject to the provisions of this By-law, whether or not the issuance of a Building Permit is required, shall include Stormwater Management and Erosion Control provisions.

The relevant permitting authority (Building Department, Planning Board, Zoning Board of Appeals, or Conservation Commission) shall review and approve the Stormwater Management and Erosion Control Plan prior to the issuance of a permit.

The Director of Public Works/designee shall participate in the review process and make recommendations to the permitting authority as needed. Applications involving facade treatments, interior renovations, and/or changes in use are exempt from the requirement for a Stormwater Management and Erosion Control Plan.

The following applications do not require a Stormwater Management and Erosion Control Plan when proposed in an area not subject to jurisdiction of the Conservation Commission:

- Applications for addition to a commercial structure, parking lot, or roadway that is less than 1,500 square feet.

7.4.3 Modification of Building Permits

The applicant, or an agent thereof, shall obtain the approval of the Director of Public Works prior to any change or modification of an activity associated with the Stormwater Management and Erosion Control provisions of the Building Permit. The Director of Public Works shall approve or reject the change or modification in writing on the plot plan submitted within two (2) weeks of the receipt of such change or modification. If no action is taken within the said two-week period, the change or modification shall be deemed to have been approved.

7.4.4 Modification Requiring Planning Board, Zoning Board of Appeals, and/or Conservation Commission Approval

In circumstances where Planning Board, Zoning Board of Appeals, and/or Conservation Commission approval is required prior to the issuance of a Building Permit, approval by the respective board or commission is required prior to any significant change or modification of an activity associated with an approved Stormwater Management and Erosion Control Plan. Additional stormwater runoff and erosion control measures may be required prior to approval of the change or modification.

SECTION 7.5 ILLICIT DISCHARGE, DETECTION & ELIMINATION (IDDE)

7.5.1 Prohibited Activities

7.5.1.1 Illicit Discharges No person shall cause or allow an illicit discharge into the MS4 or into the Waters of the Commonwealth. This By-Law shall not exempt stormwater discharges from regulations under the National Pollutant Discharge Elimination System (NPDES) stormwater program where applicable.

7.5.1.2 Illicit Connections No person shall construct, use, allow, maintain or continue any Illicit Connection, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

7.5.1.3 Obstruction of Municipal Storm Drain System No person shall obstruct or interfere with the normal flow of stormwater into or out of the MS4 without prior written approval from the Director of Public Works.

7.5.2 Regulated Activities

7.5.2.1 No person shall connect a pipe or other appurtenance to the Town of Needham Sanitary Sewer System or the MS4, or otherwise perform any modification, repair, rehabilitation, or replacement work on either system, without receiving an

approved Sewer Connection Permit or Drainage Connection Permit from the Department of Public Works.

7.5.2.2 No person shall allow a pipe, swale or other point source to discharge onto a Public Way.

7.5.3 Exemptions

The following are exempt from the requirements of this By-Law:

- (a) Water line flushing;
- (b) Landscape irrigation;
- (c) Diverted stream flows;
- (d) Rising ground waters,
- (e) Uncontaminated ground water (groundwater that is free of pollutants);
- (f) Discharges from potable water sources;
- (g) Air conditioning condensation;
- (h) Lawn watering;
- (i) Flows from wetland resource areas;
- (j) Discharges or flows from firefighting activities; and
- (k) Discharges necessary to protect public health, safety, welfare or the environment.

SECTION 7.6 EMERGENCY SUSPENSION OF STORM DRAIN SYSTEM ACCESS

The Director of Public Works/designee may suspend MS4 access to any person or property without prior written notice when such suspension is determined to be necessary to prevent or terminate a threatened or actual discharge of pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event that any person fails to comply with an emergency suspension order issued pursuant to this section, the Director of Public Works/designee may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

SECTION 7.7 STORMWATER MANAGEMENT AND EROSION CONTROL

7.7.1 Regulated Activities

A Stormwater Management and Erosion Control plan shall be required for any construction activity as set forth under Section 7.4 of this By-Law.

7.7.2 Exempt Activities

The following activities shall be exempt from this By-Law:

- (a) Any work or projects for which all necessary approvals and permits have been issued before the effective date of this By-Law;

- (b) Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture, or the use, expansion, or reconstruction of existing structures for the primary purpose of agriculture, horticulture, floriculture, or viticulture, to the extent protected under the *Zoning Act*, M.G.L. c. 40A, § 3;
- (c) Customary cemetery management;
- (d) Normal maintenance of Town-owned public land, ways, public utilities and appurtenances; and
- (e) Emergency activities necessary to protect public health or safety.

7.7.3 General Requirements

7.7.3.1 **Pre-Construction**

A Stormwater Management and Erosion Control plan shall be submitted as part of a Building Plot Plan or independently with an application for a Building Permit, Planning Board application, Zoning Board of Appeals application, Conservation Commission application, and/or prior to any development activity.

7.7.3.2 **Construction**

The Stormwater Management and Erosion Control plan shall include construction period measures to prevent the discharge of silt or sediment to the MS4 and/or abutting properties.

7.7.3.3 **Post-Construction**

For both commercial and residential projects, the Stormwater Management and Erosion Control Plan shall include provisions for post-construction measures to provide a minimum combined volumetric capacity to recharge a minimum of one (1) inch of rainfall depth over the total impervious area of the property (buildings and impervious surfaces). For commercial projects, the Stormwater Management and Erosion Control Plan shall include stormwater runoff quality controls and other structural and non-structural Best Management Practices (BMPs) to remove pollutants from stormwater prior to recharge to the groundwater in accordance with the Massachusetts Stormwater Handbook. The purpose of this plan is to prevent or minimize increases in stormwater volumes and flows to the MS4 and to reduce pollutant loading to the MS4 and receiving waters.

7.7.3.4 **Standard Infiltration Method**

As one option to satisfy Sections 7.7.3.1 and 7.7.3.2 and 7.7.3.3, for residential and commercial development subject to this By-Law with 4,000 square feet of impervious surface or less on the property, a Standard Infiltration Method (SIM) may be utilized consisting of the installation of drywells at one or more corners of

the main dwelling/building to collect the roof runoff from the structure. Building projects involving additions greater than 25% of the existing building footprint but less than 50% of the existing building footprint shall collect the entire runoff from the roof of the addition plus runoff from the roof on the side of the existing structure that contains the addition. Building projects involving additions that are 50% or greater than the existing building footprint shall capture the stormwater runoff from the entire roof. The as-built (certified) Plot Plan showing the improvements to the property shall be stamped by a Massachusetts Registered Land Surveyor.

7.7.3.5 Poor Soils

Properties located within an area of poor soils as identified on the Town's Watershed Management Plan or due to shallow depth to groundwater or other reason as determined by the Director of Public Works/designee, a small diameter drain shall be extended from the Town's stormwater drainage system (MS4) down gradient of the property to the property to collect the roof runoff from the main dwelling. If there is no portion of a drainage system within 100 feet of the property, the property owner shall contribute to a fund for the Town to construct a communal infiltration system on Town property. The contribution shall be an amount as determined by the Board of Selectmen per cubic foot of stormwater required to be recharged as described above.

7.7.3.6 Operation and Maintenance Plan

An Operation and Maintenance Plan (O&M Plan) shall be submitted with the application for a Building Permit, Planning Board application, Board of Appeals application, or Conservation Commission application pursuant to this By-Law. The Operation and Maintenance Plan shall be designed to ensure compliance with this By-Law in all seasons and throughout the life of the system. The O&M Plan shall be signed by the property owner. For residential and commercial development with 4,000 square feet of impervious surface or less, the O&M Plan shall consist of an annual inspection of the drywells, and removal of sediment, leaves or debris as needed.

7.7.3.7 As-Built Drawing

Except as provided for in Section 7.7.3.4, as-built drawings stamped by a Massachusetts Registered Professional Engineer showing all stormwater management systems shall accompany the as-built Plot Plan at the completion of a project.

7.7.4 Design Criteria

7.7.4.1 Residential development and commercial development with 4,000 square feet or less of impervious surface constructed using the Standard Infiltration Method (SIM) will be deemed compliant with the design criteria of this By-law.

7.7.4.2 All developments subject to this By-Law shall satisfy the following design criteria:

- (a) Stormwater Management and Erosion Control measures must, in the opinion of the Building Department, Planning Board, Zoning Board of Appeals, or Conservation Commission, as the case may be, be in compliance with all applicable provisions of the Massachusetts Stormwater Standards issued in 1996 as amended, regardless of the proximity of the development to resource areas or their buffer zones, as defined by the *Wetlands Protection Act, M.G.L. c. 131, § 40* and its implementing regulations.
- (b) Erosion and sediment controls must be implemented to prevent adverse impacts caused by the discharge of silt or sediment to municipal and/or abutting properties during and after land disturbance and construction activities.
- (c) There shall be no change to the existing conditions of abutting properties from any increase in volume or peak rate of stormwater runoff or from erosion, silting, flooding, sedimentation or impacts to wetlands and other resource areas as defined in the Massachusetts Wetlands Protection Act and/or Needham Wetlands Protection Bylaw.
- (d) When any proposed discharge may have an impact upon streams, wetlands and/or the MS4 or its conveyance system (storm sewers), the Director of Public Works/designee may require minimization or elimination of this impact based on site conditions and existing stormwater system capacity.

SECTION 7.8 MAINTENANCE OF STORMWATER FACILITIES

[Reserved]

SECTION 7.9 SEVERABILITY

If any provision of this Article shall be found invalid for any reason in a court of competent jurisdiction, such invalidity shall be construed as narrowly as possible, and the balance of the Article shall be deemed to be amended to the minimum extent necessary, so as to secure the purposes thereof.

SECTION 7.10 ENFORCEMENT

The Director of Public Works/designee shall enforce this By-Law, and any regulations, orders, violation notices, and enforcement orders made pursuant to this By-Law as follows:

7.10.1 The Director of Public Works may issue a written order to enforce the provisions of this By-Law or the regulations thereunder, which may include (but are not limited to) an order to:

- (a) eliminate illicit connections or discharges to the MS4;
- (b) perform monitoring, analyses, and reporting;
- (c) cease and desist unlawful discharges, practices, or operations; and
- (d) remediate contamination in connection therewith.

7.10.2 If the Director of Public Works/designee determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, it shall be a violation of this By-Law and the Director of Public Works/designee may, at his or her option, authorize such work.

7.10.3 Any person or entity aggrieved by a decision of the Director of Public Works/designee under this provision of this Stormwater By-Law may submit a letter of appeal to the Board of Selectmen who may affirm, amend, or overrule that decision after a public meeting held not more than 45 days after the submission of a letter of appeal.

7.10.4 If a person violates the provisions of this By-Law, or any regulation, permit, notice, or order issued thereunder, the Director of Public Works/designee, with the approval of the Board of Selectmen, may seek injunctive relief in a court of competent jurisdiction to restrain such person from activities that would create further violations or to compel the person to perform abatement or remediation of the violation.

7.10.5 The remedies set forth in this Section are not intended to be exclusive of any other remedies available under applicable federal, state, or local law.

SECTION 7.11 WAIVER

The permit granting authority may waive strict compliance with any requirement of this By-Law when (a) such action would serve a substantial public interest, (b) such action is required for compliance with the Massachusetts Contingency Plan (MCP), or (c) strict compliance would result in severe economic hardship greater in magnitude than the public interest to be served.”

MAJORITY VOTE ON A VOICE VOTE
DECLARED BY THE MODERATOR

A true copy
ATTEST:


Theodora K. Eaton, MMC, Town Clerk



Theodora K. Eaton, MMC
Town Clerk

TOWN OF NEEDHAM

Office of the Town Clerk

1471 Highland Avenue, Needham, MA 02492-0909

Telephone (781) 455-7500 x216

Fax (781) 449-1246

Email: teaton@town.needham.ma.us

**AT THE SPECIAL TOWN MEETING
HELD ON MONDAY, OCTOBER 10, 2018
UNDER ARTICLE 16**

It was

VOTED: That the Town vote to amend the General By-Laws by inserting a new Section 8.2.2.9 Stormwater Regulation (Article 7) as follows:

“ 8.2.2.9 Stormwater Regulation (Article 7)

Enforcement Agent: Director of Public Works, Town Engineer

Fine Schedule

First Offense – Written Warning

Second Offense – failure to cure offense within 15 days’ of notice of first offense
- \$50 - each day being a separate offense.

Subsequent Offenses – failure to cure offense within 15 days’ notice of second
offense - \$100 - each day being a separate offense.”

UNANIMOUS CONSENT

A true copy
ATTEST:

Theodora K. Eaton, MMC, Town Clerk