

TOWN of HUBBARDSTON

GENERAL BYLAWS

Updated through June 2018



Bylaws originally approved by the Attorney General of the Commonwealth of Massachusetts on April 22, 1969, and including all subsequent amendments approved by the Attorney General of the Commonwealth of Massachusetts up to June 2018, with the exception of Zoning Bylaws.

The following provisions shall constitute the Revised General Bylaws
of the Town of Hubbardston, which shall be in lieu of all bylaws
heretofore in force:

GENERAL BYLAWS

TOWN OF HUBBARDSTON

MASSACHUSETTS

(with revisions through June 2018)

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CHAPTER I GENERAL PROVISIONS

SECTION 1. Repeal of Prior Bylaws

The Town of Hubbardston Bylaws as originally approved by the Attorney General on April 22, 1969, with all subsequent amendments thereto are hereby repealed, with the exception of Zoning bylaws and bylaw amendments thereto adopted since January 1, 1982.

SECTION 2. Past Decisions

The adoption of these bylaws shall not affect any act done or begun, any right accrued or established, any penalty or liability incurred, or any suit, prosecution, or proceedings heretofore taken or instituted or that shall be pending at the time these bylaws take effect.

The repeal of a bylaw shall not thereby have the effect of reviving any bylaw therefore repealed.

SECTION 3. Successor

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

SECTION 4. Bylaw Violations

Whoever violates any of the provisions of these bylaws whereby any act or thing is enjoined or prohibited, shall, unless other provisions are expressly made, forfeit and pay a fine not exceeding twenty dollars (\$20.00) for each offense. Each day that violation continues shall be considered a separate offense. Except when otherwise provided by law, prosecution for offenses under the bylaws of the Town may be made by any constable or police officer of the Town.

SECTION 5. Prosecution Limitation

No person shall be prosecuted for any offense against any of these bylaws unless complaint for same shall be instituted and commenced within forty-five days from the time of committing such offense.

SECTION 6. Bylaw Availability

An up-to-date copy of the bylaws shall be posted on the Town website and available at the Town Clerk's office.

SECTION 7. Authorization for Numbering

With the approval of the Town Administrator, the Town Clerk is authorized to correct internal cross-references and assign appropriate alphanumeric references to chapters, articles, sections, subsections, paragraphs and subparagraphs of the Hubbardston General and Zoning Bylaws where none are approved by Town Meeting and if such are approved by Town Meeting, to make non-substantive editorial revisions to ensure consistent and appropriate sequencing and numbering.

SECTION 8. Severability

Should any provision or section of these bylaws be held unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions or sections, it being the intent that these bylaws shall stand notwithstanding the invalidity of any provision or section thereof.

CHAPTER II TOWN MEETINGS

The procedure and conduct of the business meetings of the Town not herein provided for, shall be governed by "Town Meeting Time, A Handbook of Parliamentary Law" so far as they are applicable and are not inconsistent with the bylaws of the Town.

SECTION 1. Annual Town Meetings

- a) That part of the Annual Town Meeting for the election of Town Officers and the determination of such matters as the laws that are required to be determined by ballot shall be held on the second Tuesday in June each year.
- b) The polls shall be opened at 7:00 AM and shall remain open until 8:00 PM.
- c) The part of the Annual Town Meeting for the conduct of business matters shall be held at 7:30 PM on the Monday of the week preceding the Annual Town Election or such other date prior to the end of the fiscal year as designated by the Board of Selectmen.

SECTION 2. Notice of Meetings

In accordance with General Laws, notice of all Town Meetings shall be given by posting attested copies of the Warrant therefor in the Town Office, and two other public places, and through a general mailing to all Boxholders in the Town of Hubbardston fourteen (14) days at least prior to either a Special or Annual Town Meeting, such posting to be done by a constable or if no constable is available, by a police officer. Town Meeting warrants shall also be posted on the official Town of Hubbardston website and any official social media outlets at least fourteen (14) days prior to either a Special or Annual Town Meeting.

SECTION 3. Finance Committee Consideration

All articles in any warrant for a Town Meeting shall be referred to the Finance Committee for its consideration at least thirty (30) days before the Town Meeting.

SECTION 4. Checkers

The Moderator and/or Town Clerk shall appoint checkers who shall permit only registered voters to enter the designated area of the Annual or any Town Meeting. Separate areas shall be assigned to visitors.

SECTION 5. Motions

Motions shall be in writing if so directed by the Moderator.

SECTION 6. Attorneys and Agents

Any person who is employed as an attorney or agent by another party interested in any matter under discussion at the Town Meeting shall disclose the fact of his/her employment before speaking thereon.

SECTION 7. Doubting the Vote

All votes, unless otherwise provided by law, shall be taken in the first instance by raising one hand. If the Moderator is in doubt as to the result of the vote, or if a registered voter immediately doubts the vote, the Moderator shall designate counters and revote with a show of hands. He/she may call for a standing vote, or for a vote by ballot, as the Moderator may determine.

SECTION 8. Length of Debate

No person shall speak to a motion more than twice or for more than 10 minutes. The Moderator may recognize a speaker to answer questions or provide information more than twice.

SECTION 9. Motion to Adjourn to a Stated Time & Place

No motion, the effect of which would be to dissolve the meeting, shall be in order until every article in the warrant therefor has been duly considered and acted upon, but this shall not preclude the postponement of consideration of any article by an adjournment of the meeting to a stated time and place.

SECTION 10. Motion to “Pass Over”

A motion to "pass over" an article in the warrant shall not be entertained until a motion incorporating the substance of said article is before the meeting and at least one voter has had the opportunity to speak in favor of the question as to its merits, unless, after reasonable opportunity to do so, no voter makes such motion or speaks in favor thereof. A motion to "pass over" shall be debatable as to its merits but not as to the merits of the article.

SECTION 11. Majority Vote

Unless otherwise provided by law or bylaws, all motions shall require a majority vote of those present and voting in order to determine the outcome.

SECTION 12. Order of Articles

All articles in the warrant shall be taken up in their order upon the warrant unless otherwise ordered by a two-thirds (2/3) vote of the meeting.

SECTION 13. Addressing the Moderator

Every person when about to speak shall rise respectfully, address the Moderator, identify themselves and wait until he/she is recognized, and in speaking, he/she shall refrain mentioning by name any other person, shall confine himself to the question under consideration and avoid personalities. When two or more persons rise to speak at the same time, the Moderator shall determine the one entitled to speak. The Moderator may use an alternate sequence for recognizing speakers.

SECTION 14. Speaking without Interruptions

No person while speaking, shall be interrupted by another, excepting to call to order, or for a privileged motion..

SECTION 15. Subsidiary Motions

When a motion is under debate, no motion other than those mentioned in the preceding section shall be entertained, except the following subsidiary motions, namely:

- a) To lay on the table or to take from the table (illegal at Special Town Meetings).
- b) For the previous question
- c) To close the debate at a specified time
- d) To postpone to a time certain
- e) To commit, to recommit or refer
- f) To amend
- g) To postpone indefinitely

which several motions shall have precedence in the order in which they are arranged in this bylaw, and shall be open to debate, except the first two.

SECTION 16. Debate Times on Subsidiary Motions

Debate on such subsidiary motions shall be limited to ten (10) minutes, and no person shall speak for more than three (3) minutes, nor more than twice.

SECTION 17. Close of Debate

When debate is closed by ordering the previous question or by vote to close debate at a specific time, debate will come to an immediate close and vote will proceed.

SECTION 18. Tabling an Article

No article may be tabled at a Special Town Meeting.

SECTION 19. Quorum

The presence of fifty (50) registered voters at a Town Meeting for the transaction of business shall constitute a quorum, except for a motion to adjourn for which no quorum shall be required.

CHAPTER III VACANCIES & APPOINTMENTS

SECTION 1. Town Officers & Election or Appointment of Same

ELECTIVE OFFICERS:

MODERATOR: for a term of three (3) years

BOARD OF SELECTMEN: to consist of five (5) members, two to be elected in each of two years and one to be elected every third year, for a term of three (3) years

ASSESSORS: to consist of three (3) members, one to be elected each year for a term of three (3) years

LIBRARY TRUSTEES: to consist of six (6) members, two (2) to be elected each year for a term of three (3) years

CEMETERY COMMISSION: to consist of three (3) members, one to be elected each year for a term of three (3) years

PLANNING BOARD: to consist of five (5) members, one to be elected each year for a term of five (5) years

FINANCE COMMITTEE: to consist of five (5) members, two to be elected in each of two years and one to be elected every third year for a term of three (3) years

BOARD OF HEALTH: to consist of five (5) members, two to be elected in each of two years and one to be elected every third year, for a term of three (3) years

QUABBIN REGIONAL SCHOOL COMMITTEE: as provided by the Quabbin Regional School District Agreement

HOUSING AUTHORITY: to consist of five (5) members each for a term of five (5) years; four (4) members to be elected and one (1) member to be appointed as a State Appointee

PARKS COMMISSIONERS: to consist of five (5) members each for a term of three (3) years

OFFICERS TO BE APPOINTED BY THE BOARD OF SELECTMEN from among the residents of the Town:

AGRICULTURAL COMMISSION; 5 members for terms of 3 years

BOARD OF APPEALS; 5 members for terms of 5 years

BOARD OF REGISTRARS OF VOTERS; 4 members for terms of 3 years, one being the Town Clerk

CAPITAL IMPROVEMENT PLANNING COMMITTEE (3 of 5)

CONSERVATION COMMISSION; 5 members for terms of 3 years

COUNCIL ON AGING; 9 members for terms of 3 years

CULTURAL COUNCIL; 5 members for terms of 3 years

HISTORICAL COMMISSION; 5 members for terms of 3 years

HUMAN RESOURCES ADVISORY BOARD; 5 members for terms of 3 years

MONTACHUSETT REGIONAL TECHNICAL SCHOOL COMMITTEE

REPRESENTATIVE

OTHER OFFICERS TO BE APPOINTED BY THE BOARD OF SELECTMEN:

ANIMAL INSPECTOR; per MGL Ch 129, Sec 15

COMMUNITY PRESERVATION COMMITTEE: three of nine members each for a term of three years, appointed as per Chapter XIV of these bylaws

CONSTABLES; 3 for staggered terms of 3 years

VETERANS' AGENT; per MGL Ch 115, Sec 3

ELECTION WORKERS; per MGL Ch 54, Sec 12

FIRE CHIEF; per Town Charter

MONTACHUSETT REGIONAL PLANNING COMMISSION REPRESENTATIVE

PLANNING BOARD, ASSOCIATE MEMBER OF; per Town Zoning Bylaws Article 7.6

POLICE CHIEF; per Town Charter

TOWN ADMINISTRATOR; per Town Charter

TOWN COUNSEL; per Chapter IX of these bylaws

VETERANS' GRAVES OFFICERS; per MGL Ch 115, Sec 7

OFFICERS TO BE APPOINTED/HIRED BY THE TOWN ADMINSTRATOR:

BUILDING COMMISSIONER
COUNCIL ON AGING DIRECTOR
DIRECTOR OF PUBLIC WORKS
EMERGENCY MANAGEMENT/CIVIL DEFENSE DIRECTOR
HIGHWAY DEPT PERSONNEL
OFFICE PERSONNEL
PLUMBING/GAS INSPECTOR
TAX COLLECTOR
TOWN ACCOUNTANT
TOWN CLERK
TOWN SECRETARY
TREASURER
TREE WARDEN
WIRING INSPECTOR
ANY OTHER EMPLOYEE/APPOINTEE as per the Town Charter Section 3-4-1.

SECTION 2. Vacancies

Vacancies arising in appointed Town boards, committees or commissions shall be filled by the respective appointive authority for the un-expired portion of the term.

SECTION 3. Appointments

All appointments, unless otherwise specified by the General Laws or these bylaws shall be made within thirty (30) days following the annual Town election by the appointive authority.

SECTION 4. Eligibility

No person shall be appointed to act in the capacity of an elected official or an assistant to an elected official if that person could not of his/her own accord be elected to office or appointed to a vacancy in an elective office.

SECTION 5. Oath of Office

Any person elected or re-elected to an office, board or committee or who is appointed to fill a vacancy in an elected position shall not be allowed to function in that position until he/she has presented him/herself to the Town Clerk and taken an oath of office. Any person who fails to do so shall have their acts considered null and void and shall not be protected by the Town's liability insurance for said oath. This section shall also apply to persons appointed to non-elected boards and committees.

CHAPTER IV FINANCIAL YEAR & FINANCES

SECTION 1. Warrant Approval

No money shall be paid from the Town Treasury without a warrant or order therefor signed by the Town Accountant and approved in writing by the Town Administrator which warrant shall state the appropriation from which the money shall be paid.

SECTION 2. Approval of Expenditures

No bill, draft order, share or account against the Town shall be paid without first being approved in writing by the person, board, commission, department or other Town officer incurring the same.

SECTION 3. Expenditure Details

It shall be the duty of the Board of Selectmen to require detailed accounts, showing items and dates in all bills against the Town.

SECTION 4. Expenditure Submission Process

The Selectmen and all boards, committees, heads of departments, and officers authorized to expend money shall approve in writing and transmit to the Town Accountant as often as twice each month, and at such other time or times as the Accountant shall request in writing, all bills, drafts and orders chargeable to the respective appropriations of such expenditures. The Town Accountant shall examine all such bills, drafts and orders and if found correct and approved as herein provided, shall draw a warrant upon the Treasurer for the payment of same, and the Treasurer shall pay no money from the Treasury except upon such warrant approved by the Town Administrator.

SECTION 5. Certification of Appropriations

The Town Clerk shall, as soon as an order or vote appropriating money becomes effective, certify to the Selectmen, and the Assessors, and the Treasurer, the Finance Committee and the Town Accountant, each appropriation in detail and the provision made for meeting the same, if specified in the appropriate order or vote.

SECTION 6. Departmental Revolving Funds

A. Purpose

This bylaw establishes and authorizes revolving funds for use by town departments, boards, committees and 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.

B. Expenditure Limitations

A department 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:

1. No liability shall be incurred in excess of the available balance of the fund.
2. The total amount spent during a fiscal year shall not exceed the amount authorized by Annual Town Meeting on or before July 1 of that fiscal year, or any authorization that is later approved during that fiscal year by the Board of Selectmen and Finance Committee.
3. Fringe benefits of full-time employees whose salaries or wages are paid from the fund shall also be paid from the fund.

C. Interest

Interest earned on monies credited to a revolving fund established by this bylaw shall be credited to the general fund.

D. Procedures and Reports

Except as provided in General Laws Chapter 44, §53E1/2 and this bylaw, all applicable state and local laws and regulations that govern the receipt, custody, expenditure and payment of town funds shall apply to the use of revolving funds established and authorized by this bylaw.

E. Authorized Revolving Funds

Fund	Authorization By	Revenue Source	Use of Fund
Con Com Fund	Conservation Commission	Receipts from fees for site inspections and plan review	Payment to member performing site inspection and expenses relating to such inspections or plan review
DPW Temporary Driveway Fund	DPW Director	Charges and fees collected by the DPW upon payment of permit fees for temporary driveway applications	Expenses associated with road repairs made necessary by the temporary driveway installation.
Gas Fund	Gas Inspector	Gas Permit Fees and Applications	Pay inspector for inspection services
Grave Fund	Cemetery Commissioners	Payments for grave openings	Payment to party hired to open grave
Haz Mat Fund	Fire Chief	Service charges for clean-up and disposal of hazardous materials	Expenditures related to clean-up and disposal of hazardous materials
Hazardous Building Demolition Fund	Board of Health and the Building Department	Reimbursement from property owners for demolition of hazardous buildings	Payment of expenses associated with the demolition of hazardous buildings and related clean-up of underlying property
Hubbardston Special Events Fund	Town Administrator	Donations, sale of promotional items and other sources	Payment of the costs associated with organizing and hosting various special community celebratory events throughout the year
Late fee Dog License Fund	Town Clerk	Fees for late licensing of dogs and kennels	Payment of costs associated with the regulation of dogs, including ACO capital expense.
MART Transportation Management Fund	Executive Admin Assist	MART Reimbursement	Payment of costs associated with the supervision and operation of the MART Transportation

Open Burn Fund	Fire Chief	Receipts for fees for open burning	Payment of expenses related to fighting brush fires in town, including payment of part-time wages, forest firefighting equipment and other costs of fighting such fires
PEG Access	Cable Advisory Committee	License Fees from Cable TV providers	Expenses associated with providing recording and broadcasting of town meetings, events, and other costs associated with cable access.
Planning Board Fund	Planning Board	Site Plan Review, Site Inspection Fees, Special Permit & Subdivision and Application fees.	Expenses related to Site Plan Review, Special permit, Subdivision Applications and Zoning Bylaw & Subdivision Regulations revisions, Training, Consultants, and Administrative support.
Plumbing Fund	Plumbing Inspector	Plumbing Permit Fees and Applications	Pay inspector for inspection services
Public Records	Town Clerk	Charges and fees collected upon payment of public records fees.	Expenses associated with providing public records, and other costs associated with public records requests.
Recycling Fund	Board of Health	Fees collected for use of center and drop-off of recyclables	Costs associated with programs and facilities needed to recycle materials, including employee wages
Septic Fund	Board of Health	Fees for septic system plan review, agent inspections, and perc tests	Payments to septic system plan review engineers and to agents witnessing perc tests or performing inspections
Tax Title Collection Fund	Treasurer/Collector	Charges and fees collected upon redemption of tax titles or sales of property	Expenses associated with making a tax taking and to pay out of pocket expenses incurred in connection with a redemption or tax title foreclosure proceeding.
Vaccine Administration Account	Board of Health	Fees, health insurance reimbursements and receipts for vaccine related services	Payments for vaccine, supplies, and services deemed necessary by the Board of Health
Wiring Fund	Wiring Inspector	Electrical Permit Fees and Applications	Pay inspector for inspection services and clerical wages

CHAPTER V GENERAL COMMITTEE POLICIES

SECTION 1. Appointment

All committees except as otherwise provided by law, Article 4 of the Town Charter or by vote of Town Meeting shall be appointed by the Board of Selectmen within thirty days after the passage of the vote creating the committee.

SECTION 2. Organization

Unless otherwise provided, the first named member of a committee shall immediately call all other members of the committee together for the purpose of organization, and each committee shall thereafter proceed with its duties and report to the Town as promptly as possible, and unless it is soon discharged, it shall make a report at the next meeting.

SECTION 3. Meetings

All Town boards, commissions and committees shall hold definite, scheduled, posted meetings.

SECTION 4. Discharge of Special Committees

A vote to accept a report of a special committee (except a report of progress) shall, unless otherwise provided, discharge the committee but it shall not operate as an adoption of the recommendation of such report without an express vote duly passed to that effect.

SECTION 5. Report of Expenditures

All officers, boards, standing committees and special committees of the Town having charge of the expenditures of Town money shall annually report thereon in writing in such manner as to give the citizens a fair and full understanding of the objects and methods of such expenditures, referring, however, to the report of the Town Accountant for statements in detail of receipts and payments, and may make therein such recommendations as they deem proper. Such reports shall be submitted to the Selectmen for inclusion in the Annual Report in January of each year.

SECTION 6. Operational Procedures

All appointed committees shall establish a set of operational procedures that shall allow for the establishment of officer positions and any reasonable rules by which they wish to govern their committee.

CHAPTER VI MODERATOR

SECTION 1. Term

A Moderator shall be elected at Annual Town Election for a three-year term.

SECTION 2. Duties

The Moderator shall preserve order and decorum at Town Meeting. He/She may speak to points of order in preference to other voters, and he/she shall decide all questions subject to an appeal. Every question of order with a decision thereon shall be entered by the Clerk in his/her records at the meeting.

SECTION 3. Moderator *Pro Tem*

The Moderator may appoint a voter to perform duties of the Moderator while he/she addresses the meeting, or in case he/she is called away from the meeting.

CHAPTER VII TOWN CLERK

SECTION 1. Appointment

A Town Clerk shall be appointed as per the Town Charter, Article 3-4-1.

SECTION 2. Record Keeping

The Town Clerk shall furnish all boards, committees and officers of the Town with a copy of all votes affecting them. Said Clerk shall keep a file of all Town Reports, reports of all committees chosen by the Town, and all original documents and all records of the Town which may come into said Clerk's possession. The Clerk shall suitably index all such reports, documents and all records of the Town in said Clerk's custody, in a manner convenient for reference and examination.

SECTION 3. Statement of Appropriations

The Town Clerk shall promptly after each session of a Town Meeting, furnish the Town Accountant, Treasurer, Selectmen, Finance Committee and Assessors with a statement of all moneys appropriated by the Town at such session and the purpose for which such moneys were respectively appropriated.

SECTION 4. Town Meeting Ballots

The Town Clerk shall provide and have in readiness a sufficient supply of "YES" and "NO" ballots at every Town Meeting.

SECTION 5. Binding of Town Reports

The Town Clerk shall keep and cause to be bound in a volume the copies of each Annual Town Report for each five consecutive years.

CHAPTER VIII BOARD OF SELECTMEN

SECTION 1. Members; Term Length

A Board of Selectmen consisting of five members shall be elected at the Annual Town Election for three years, overlapping terms.

SECTION 2. Authority

All executive powers of the Town, except as provided by the General Laws or Town Charter shall be vested in the Board of Selectmen. The Board shall exercise control over Town affairs and recommend major courses of action by establishing policies to be carried out by other officers, boards and commissions. The Board shall have the power to enact rules and regulations relating to the conduct of Town elections and for the establishment of town policies, not otherwise governed by General Laws, Town Charter or these bylaws.

SECTION 3. Control of Town Property

The Selectmen shall have control of all public places and real and personal property of the town, the custody of which is not by law reposed in any other authority.

SECTION 4. Representation

The Selectmen may appear either personally or by counsel before any committee of the Legislature, or Board or Commission, to protect the interests of the Town, but are not committed by this bylaw to any course of action.

SECTION 5. Licensing Authority

The Selectmen shall be the licensing authority for the Town and shall issue all permits and licenses except as otherwise provided by General Laws or these bylaws.

SECTION 6. Open Session

The Board of Selectmen shall hold open at the start of each regularly scheduled meeting a minimum of 30 minutes for any resident to present a non-agenda item.

CHAPTER IX TOWN COUNSEL

SECTION 1. Appointment; Term; Compensation; Qualifications

The Board of Selectmen shall each year within thirty (30) days after the Annual Town Election of Town Officers, appoint some attorney-at-law as Town Counsel, who shall serve for the term of one year and until his/her successor is appointed. He/she shall receive for his/her services such compensation as the Board may determine subject to the appropriations of the Town therefor. The board may, whenever they deem it necessary, employ special counsel to assist or act in place of the Town Counsel. Said attorney shall be a member of the Bar of the Commonwealth of Massachusetts in good standing.

SECTION 2. Duties

Town Counsel or Special Counsel appointed by the Board of Selectmen shall approve contracts, give legal advice and furnish written opinion when so requested in writing by a Town Officer, the chairperson of a Town board or committee or person delegated by the chairperson regarding any legal questions or matters relating to the duties of such officer, board or committee.

SECTION 3. Counsel Representation

The Town Counsel or Special Counsel appointed by Board of Selectmen shall prosecute or defend all cases and proceedings to which the Town is a party. S/he shall, when requested by the Selectmen, prosecute all cases for the breach or violation of the bylaws of the Town.

SECTION 4. Use of Other Counsel

No officer, board or committee, shall, at the expense or in behalf of the Town, employ or be represented by any other than the Town Counsel or appointed Special Counsel.

CHAPTER X FINANCE COMMITTEE

SECTION 1. Members

There shall be a Finance Committee consisting of five members. Any registered voter may serve on the Finance Committee. Said Committee shall choose its own officers and shall serve without pay. Said Committee shall meet regularly.

SECTION 2. Election

The Finance Committee shall be elected at Annual Town Election as per Chapter III of these bylaws.

SECTION 3. Duties

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. Budget Review

The Finance Committee shall duly consider the budget for the ensuing year, as well as the budget for the Town and 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, board or committee to meet and confer with them and may hold hearings if they deem it advisable.

SECTION 5. Report of Committee

The Committee shall furnish a report of the matters so considered by it, with the recommendations or suggestions relative thereto, and the same shall be printed and included in the posting and mailing of the warrant for Annual Town Meeting.

SECTION 6. Recommendations on Warrant

Articles in Town warrants shall be considered by the Finance Committee and their recommendations or suggestions shall be appended to the warrant.

SECTION 7. Access to Records

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

CHAPTER XI BOARD OF HEALTH

SECTION 1. Household Waste

All household waste shall be disposed of in accordance with the published regulations of the Board of Health. The Town of Hubbardston encourages all residents to recycle through the services of their licensed curbside hauler and/or the Hubbardston Recycling Center.

CHAPTER XII CEMETERY COMMISSIONERS

SECTION 1. Authority

All persons shall be subject to the rules and regulations adopted by the Cemetery Commission, not otherwise covered by these Bylaws or by the Massachusetts General Laws.

CHAPTER XIII CAPITAL IMPROVEMENT PLANNING COMMITTEE

SECTION 1.

A Capital Improvement Planning Committee shall consist of 5 members appointed as per the Town Charter, Article 4, Section 4-2-3. The Committee shall develop policies and procedures for submission and evaluation of requests for proposed capital outlays involving major non-recurring tangible assets (facilities, vehicles, equipment, and infrastructure) that have a useful life of at least three years and have a total cost of over \$10,000. The Committee shall submit a capital plan annually to the Town Administrator in accordance with the Town Charter, Article 5, Section 2.

CHAPTER XIV COMMUNITY PRESERVATION COMMITTEE

SECTION 1. Establishment

There is hereby established a permanent committee of the Town to be known as the Community Preservation Committee, consisting of nine voting members, pursuant to G.L. c. 44B, §5. The composition of the committee, the appointing authority and the term of office for the committee members shall be as follows

- (1) One member of the Conservation Commission as designated by the Commission;
- (2) One member of the Historical Commission as designated by the Commission;
- (3) One member of the Planning Board as designated by the Board;
- (4) One member of the Housing Authority as designated by the Authority;
- (5) One member of the Board of Park Commissioners as designated by the Commissioners;
- (6) One member of the Open Space Committee as designated by the Committee;
- (7) One at-large member as designated by the Board of Selectmen;
- (8) One at-large member as designated by the Board of Selectmen;
- (9) One at-large member as designated by the Board of Selectmen.

Each member of the Committee shall serve for a term of three years or until the person no longer serves in the position or on the board or committee as set forth above, whichever is earlier.

Should any of the officers and commissions, boards, or committees who have appointing authority under this bylaw be no longer in existence for whatever reason, the Board of Selectmen shall appoint a suitable person to serve in their place.

Any member of the Committee may be removed for cause by their respective appointing authority after hearing.

SECTION 2. Duties

(1) The Community Preservation Committee shall study the needs, possibilities and resources of the town regarding community preservation. The Committee shall consult with existing municipal boards, including the Conservation Commission, the Historical Commission, the Planning Board, the Department of Public Works, and the Housing Authority, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the Committee shall hold one annual public informational hearing, or more at its discretion, on the needs, possibilities and resources of the town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the town and on the official Town website.

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

(3) The Community Preservation Committee may include in its recommendation to Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with

community preservation but for which sufficient revenues are not then available in the Community Preservation Fund to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.

(4) In every fiscal year, the Community Preservation Committee must recommend either that the legislative body spend, or set aside for later spending, not less than 10% of the annual revenues in the Community Preservation Fund for open space (not including land for recreational use); not less than 10% of the annual revenues in the Community Preservation Fund for historic resources; and not less than 10% of the annual revenues in the Community Preservation Fund for community housing.

SECTION 3. Exemption Application Deadline

The application deadline for exemption from the community preservation surcharge shall be the same as for personal exemption applications, 90 days following the issuance of the actual tax bill.

SECTION 4. Effective Date

This bylaw shall take effect upon approval by the Attorney General of the Commonwealth, and after all requirements of G.L. c.40, §32 have been met. Each appointing authority shall have thirty days after approval by the Attorney General to make their initial appointments.

CHAPTER XV ANNUAL REPORTS

SECTION 1. Publication; Distribution

It shall be the duty of the Board of Selectmen to publish the Annual Town Report and to make available on the official Town of Hubbardston website and at such convenient locations as the Library, Dispatch Center, Town Offices a copy of such, prior to the last day of May.

SECTION 2. Contents

The Annual Report shall contain, in addition to the reports of officers, boards and committees as herein before provided, a detailed report of all the moneys received into and paid out of the Town Treasury in the financial year next preceding, showing separate payments made from the proceeds of loans as capital outlay for payment improvements; the report of the Collector of Taxes, or receipts, payments and abatements; statements of all funds belonging to the Town or held for the benefit of its inhabitants; a statement of the liabilities of the Town on bonds, notes, certificates of indebtedness, or otherwise, and of indebtedness authorized but not incurred, and the purpose thereof; a statement of transfers made to or from any appropriation; a complete list of Town officers and appointees for the municipal year; and such other matters as the said report is required by law to contain, or as may be inserted by the Selectmen under the discretion granted them by law.

SECTION 3. Inventory

Annually, on or before February 1 a report of all properties and apparatus except library books and their condition shall be made by each department head to the Board of Selectmen, and such report shall be published in the Annual Town Report.

SECTION 4. Town Meeting Records

The Annual Town Report shall include a copy of the records of the Town Meetings, annual and special, held during the preceding year including the warrants of such meetings and the action taken on the various articles therein; a list of all laws of the Commonwealth accepted by the Town which shall state the date of acceptance of each such law; all bylaws or changes in existing bylaws adopted by the Town since the preceding Annual Report.

CHAPTER XVI LICENSES & PERMITS

SECTION 1. Junk Dealers; Licensing

The Board of Selectmen may license suitable persons to be dealers or keepers of shops for the purchase, sale or barter of junk, old metals or secondhand articles in the Town. They may also license suitable persons as junk collectors, to carry by purchase or otherwise, junk, old metals and secondhand articles from place to place in the Town, and they may provide that such collectors shall display badges upon their persons or upon their vehicles, or upon both, when engaged in collecting, transferring, or dealing in junk, old metals or secondhand articles, and may prescribe the design thereof and may make rules, regulations and restrictions, in addition to and not inconsistent with those herein provided, relative to their business and may provide for the supervision thereof.

SECTION 2. Junk Dealers; Requirements

Every keeper of a shop, for the purchase, sale or barter of junk, old metals, or secondhand articles, within the limits of the Town shall keep a book in which shall be written, at the time of every purchase of any such articles, description thereof, the name, age and residence of the person from whom purchased, the day and hour when such purchase was made; such book shall at all times be open to the inspection of the Selectmen or any person by them authorized to make such inspection; and every keeper of such shop shall put in a suitable and conspicuous place in his shop, a sign having his name, and occupation legibly thereon in large letters; and such shop and all articles of merchandise therein may be at all times examined by the Selectmen or any person by them authorized to make such examinations, and no keeper of such shop and no junk collector shall, directly or indirectly, either purchase or receive by way of barter or exchange, any of the articles aforesaid of a minor, knowing or having reason to believe him to be such.

SECTION 3. Transient Vendors

Transient vendors, hawkers, and peddlers of magazines, publications, magazine and book subscriptions, and transient vendors, hawkers and peddlers duly licensed by the Director of Standards of the Commonwealth under GL Chapter 101, before doing any business in the Town of Hubbardston, shall record his or her name and residence with the Chief of Police of the Town of Hubbardston and receive a recorded number and solicitor registration card from the Chief of Police of the Town of Hubbardston which he shall carry on his or her person at all times, in addition to any license issued by the Licensing Commission of the Director of the Bureau of Standards.

SECTION 4. Solicitors/Canvassers

License Required; Exceptions

- a) It shall be unlawful for any solicitor or canvasser, as defined in this bylaw to engage in such business within the Town of Hubbardston without first obtaining a license therefor in compliance with the provisions of this bylaw.
- b) The provisions of this bylaw shall not apply to any person residing within the Town of Hubbardston and engaged in the pursuit of soliciting for charitable, benevolent, fraternal, religious or political activities, any person exempted by any other general law, nor shall this bylaw be construed to prevent persons having established customers to whom they make periodic deliveries from calling upon such prospective customers to solicit an order for future periodic deliveries.

Definitions:

As used in this chapter, the following terms shall have the meanings indicated:

SOLICITOR or CANVASSER - Any person who, for himself or for another person, firm or corporation, travels by foot, automobile or any other conveyance from place to place or from house to house, taking or attempting to lease or to take order for sale of or soliciting orders for magazines, books, periodicals or other articles of a commercial nature, the contracting of all home improvements or for services to be performed carries or exposes for retail sale a sample of the subject of such sale or whether or not he is collecting advance payment on such retail sales.

Filing of Applications;

1. Contents

Applicants for a license shall file with the Chief of Police, on a form issued by the Chief, a written application, signed under the penalties of perjury, containing the following information:

- A) Name of Applicant
- B) Address of Applicant (local or permanent)
- C) Applicant's height, weight, eye and hair color
- D) Applicant's Social Security Number
- E) The length of time for which the right to do business is desired
- F) A brief description of the nature of the business and the goods to be sold
- G) A photograph of the applicant, said photo to be submitted by the applicant and be 2" x 2" (two inches by two inches), showing the head and shoulders of the applicant in a clear and distinguishing manner.
- H) A statement as to whether or not the applicant has been convicted of any crime or misdemeanor within ten years of the date of application, except violations of motor vehicles laws, and the nature of the offense.
- I) If operating a motor vehicle, the year, make, model, color, registration number, state of registration, vehicle owner and address.
- J) The applicant's fingerprints.

2. Application Fee:

At the time of filing the application, each applicant shall pay a fee of \$10 (Ten Dollars) to the Town of Hubbardston.

3. Investigation of Applicant:

Upon receipt of the application, the Chief of Police shall do an investigation as to whether the applicant has a previous history of criminal activity or prior complaints of propensity for violence or abusive conduct.

4. Approval or Disapproval of Application; Right of Appeal

After an investigation of the applicant as described above, the Chief of Police shall approve or disapprove the application and notify the applicant of the decision within ten (10) days. IF the Chief of Police fails to act within that ten-day period, the applicant is automatically entitled to the license. In the event the application is approved, a license shall be issued. Any applicant shall have the right to appeal to the Board of Selectmen, in writing, within five (5) days and the Board of Selectmen should act within a fourteen (14) day period.

5. Contents of License:

Such license, when issued, shall contain the signature of the issuing officer and shall show the name, address and photograph of said licensee, the date of issuance and the length of time the license shall be operative, as well as the license number.

6. Police Records of License:

The Chief of Police shall keep a record of all licenses issued for a period of six (6) years.

7. Badge to be Displayed:

Solicitors and canvassers, when engaged in the business of soliciting or canvassing, are required to display an identifying badge issued by the Chief of Police, by wearing said badge on outer garment.

8. Individual Licenses Required:

Each licensee is required to possess an individual license.

9. Enforcement:

The Police officers of the Town of Hubbardston shall enforce this bylaw.

10. Licenses not Transferable:

No license shall be transferred.

11. Authority to Revoke:

The Chief of Police is hereby vested with jurisdiction over the revoking of licenses. The Board of Selectmen shall have the right to review licenses and make recommendations for revocation for cause.

12. Duration of License:

Each license issued under the provisions of this bylaw shall continue in force for one (1) year from the date of issue unless specified for a shorter period of time or revoked.

13. Renewals:

An applicant requesting a renewal of a license must apply in person for such license renewal and provide such relevant material as required by the Chief of Police.

14. Violations and Penalties:

- a) Any person in violation of this bylaw shall be punished by a fine of \$50 (fifty dollars) for each and every offense.
- b) Non-criminal disposition - In addition to any other methods of enforcement of this bylaw which are available, the provisions of this bylaw may also be enforced by the police officers of the Town of Hubbardston, by non-criminal complaint pursuant to provisions of Massachusetts General Laws Chapter 40, section 21D. Each day on which a violation exists shall be deemed to be a separate offense. The penalty for violations of any provision of this bylaw shall be \$50 (Fifty Dollars).

SECTION 5. Licenses and Permits of Delinquent Taxpayers

a) The Tax Collector or other Town Official responsible for records of all town taxes, assessments, betterments, and other town charges, hereinafter referred to as the tax collector, shall annually furnish to each department, Board, Commission or Division, hereinafter referred to as the Licensing Authority, that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the Party, that has neglected or refused to pay any Town Taxes, fees, assessments, betterments, or other Town charges for not less than a thirty (30) day period.

b) The Licensing Authority may deny, revoke or suspend any license or permit, including renewals and transfers of any whose name appears on said list furnished to the Licensing Authority from the Tax Collector, or with respect to any activity, event or other matter which is the subject of a such license or permit and which activity, event or matter is carried out or exercised or is to be carried out or exercised on or about real estate whose owner has neglected to pay any local taxes, fees, assessments, betterments or other municipal charges provided, however,

that written notice is given to the Party and the Tax Collector, as required by applicable provisions of the law, and the Party is given a hearing, to be held not earlier than fourteen (14) days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any Party. The Tax Collector shall have the right to intervene in any hearing conducted with respect to such licensing 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 proceedings 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 Licensing Authority receives a certificate issued by the Tax Collector that the Party is in good standing with respect to any and all Town taxes, fees, assessments, betterments or other Town charges, payable to the Town as the date of issuance of said certificate.

c) Any party shall be given the opportunity to enter into a payment agreement, thereby allowing the Licensing Authority to issue a certificate indicating said limitations to the license or permit and the validity of said license shall be conditioned upon the satisfactory compliance 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 the law.

d) The Board of Selectmen may waive such denial, suspension or revocation if it finds that 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 General Laws Ch. 268A, Sec. 1) in the business or activity conducted in or on said property.

This bylaw shall not apply to the following licenses and permits: open burning, Section 13 of Chapter 48; bicycle permits, Section 11A of Chapter 85; sales of articles for charitable purposes, Section 33 of Chapter 101; children work permits, Section 69 of Chapter 149; clubs, associations dispensing food or beverage licenses, Section 21E of Chapter 140; dog licenses, Section 137 of Chapter 140; fishing hunting, trapping licenses, Section 12 of Chapter 131; marriage licenses, Section 28 of Chapter 207; theatrical events, public exhibition permits, Section 181 of Chapter 140. Sections and Chapters refer to the General Laws of the Commonwealth.

CHAPTER XVII STORING UNUSED MOTOR VEHICLES

SECTION 1. Conditions

No person, except the holder of a license granted under Section 58 of Chapter 140 of the General Laws, or a junk dealer duly licensed under the Town bylaws, said license issued by the Board of Selectmen, shall keep or permit to keep exposed on his premises, more than one unused or unregistered motor vehicle. Such motor vehicle shall not be within one hundred-fifty (150) feet of a public way or within fifty (50) feet of a property line.

CHAPTER XVIII STREETS AND SIDEWALKS

SECTION 1. General Regulations

SECTION 1.1 Obstructions

No person shall obstruct the free and convenient use for travel of any public way or sidewalk without a written permit from the Board of Selectmen.

SECTION 1.2 Ground Breaking Requirements

No person except when acting under orders of the Director of the Department of Public Works in the lawful performance of his duties shall break or dig up the ground in any public street or way without first obtaining a written permit therefor from the Board of Selectmen. All persons acting under such permit shall maintain a suitable barrier or guard around that part of the street or way so broken up and shall keep suitable lights exposed every night from sunset to sunrise so long as such street or way shall remain unsafe for travelers. Upon completion of such work the surface of such street or way shall be restored. Violation of said bylaw shall be punishable by a fine of \$200.00.

A cash security of \$5000.00 shall be deposited with the Town of Hubbardston before the restoration. After 12 months, the Director of Public Works shall inspect the site of disturbance to determine if there has been any settling of the hole. The Director shall have the person/company who did the restoration return to make the corrections, use the money on deposit to do the work properly, or return the money if there has been no settling or need for repair.

SECTION 1.3 Sidewalk Prohibitions

No driver of a horse or vehicle except authorized Town snow removal equipment, shall drive or allow same to stand or be on any sidewalk.

SECTION 1.4 Materials Prohibited from Public Way

No person, without lawful authority so to do, shall throw, sweep, place or drop and suffer to remain on any street, or public place, any ashes, earth, garbage, rubbish, litter, wood, sawdust, manure or any noxious or refuse liquids or solid substance, or any glass, nails, tacks, scrap iron, or similar articles. Violations of said bylaw shall be punishable by a fine of \$200.00.

SECTION 1.5 Protection of Trees

No person without authority to do so, shall climb any tree or injure any tree or shrubbery standing in any street or public place, and no person shall permit or suffer any animal under his care to in any way injure such trees or shrubbery.

SECTION 1.6 Snow Removal

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 place or cause to be placed any obstruction which includes, but not limited to, the depositing of snow, ice or the pumping of water on any traveled public way or sidewalk so as to impede the flow of traffic or hinder the snow plowing operation on such public way; nor allow same to remain without first obtaining the consent in writing of the Department of Public Works Director. Such obstruction shall also include but is not limited to shrubbery, fences, walls, or any personal property such as portable or fixed sporting equipment. In the event

that a Town vehicle is damaged as a result of the presence of a prohibited private obstruction in the public way or sidewalk, the Town will pursue the remedies available at law to recover the costs associated with repairing the Town's vehicle. Such obstruction shall not include rubbish and recyclable materials put out for collection. The Police Department will be the sole enforcing agency of the bylaw. Whoever violates this section shall be punished by a fine, non-criminal disposition:

First Offense - Written Warning

Second Offense - \$30.00

Third & Subsequent Offenses - \$100.00

SECTION 1.7 Road Damage

No person shall unload any steel-track construction equipment in a public way without adequate protection to the existing road surface. Any individual or business causing damage to the public way by such action shall be fined \$300.00, with each day that the violation continues considered a separate offense, and shall be responsible for the repair of said damage to the satisfaction of the Department of Public Works Director.

SECTION 2. Acceptance of Roads, Streets, and Ways

SECTION 2.1 Conditions of Acceptance

No private street shall be accepted by the town as a public way unless all of the following conditions have been met:

- 1) The way shall have a minimum pavement width of not less than twenty (20) feet for its entire length, such pavement composed of Type I bituminous concrete and base coat,
- 2) The way shall be shown on a definitive plan endorsed by the Planning Board, and shall be actually constructed in accordance with the specifications of the definitive plan approval, and
- 3) The way shall have been completed in accordance with said definitive plan for a period of at least twelve (12) months in order to ensure that the way may withstand severe winter weather, during which time the developer shall remain responsible for all costs of maintenance, including but not limited to plowing of snow and ice and associated materials to provide adequate access and public safety.

Notwithstanding the above, the Town Meeting may accept as a public way a way that does not meet all of the conditions set forth above upon a recommendation, by majority vote, from the Planning Board to waive such condition(s).

SECTION 3. Private Ways

SECTION 3.1 Temporary Repairs of Private Ways

A. General

The Board of Selectmen may authorize temporary repairs to be made to private ways that have been open to the public for a minimum of two years out of funds appropriated for this purpose by the Town Meeting. All costs for such repairs shall be assessed as a betterment upon those properties which benefit from the repairs.

B. Type of Repairs

The repairs must be temporary in nature, such as filling, grading, patching and surface coating, may include repairs to drainage swales, conduits and structures as are necessary to preserve the integrity of surface repairs to the roadway, and shall not be such as to constitute a reconstruction of the roadway. All repairs must be determined by the Department of Public Works Director to be required by public necessity.

C. Petition

A minimum of fifty-one percent (51%) of the owners of property abutting the portion of the way proposed to be repaired must petition for the repair, with each ownership entity counting as one.

D. Betterment Charges

Betterments shall be assessed upon each parcel of land benefiting from such repair in proportion to linear frontage on the portion of the way to be improved or other proportional method as may be approved by the Board of Selectmen.

E. Liability for Defects and Stipulation as to Status of Way

No repair shall be undertaken until all of the owners of property abutting on the portion of the way to be repaired agree, in writing, as follows:

- a) That the Town assumes no liability to such owners by making the repairs, beyond the liability imposed by Massachusetts General Law relating to municipal repair of private ways;
- b) Jointly and severally, to indemnify and hold harmless the Town with respect to such statutory liability and all other liability for claims of injury, death or property damage to such owners or third parties caused by alleged defects in the way, including attorneys' fees and other costs of defense;
- c) That should the Town decide not to continue to provide temporary repairs to such way, the owners will themselves keep such way in good repair so as to minimize the liability of the Town for having undertaken such repairs;
- d) That such repair shall not constitute "maintenance" of such way, so as to give the way the status of a way "maintained and used as a public way" under the Massachusetts Subdivision Control Law;

Such agreement to be acknowledged before a notary public, to be recorded with the Worcester District Registry of Deeds and to be binding upon successors and assigns of such property owners.

CHAPTER XIX OPERATION OF MOTOR VEHICLES

SECTION 1. Winter Parking Ban

It shall be unlawful for the driver of any vehicle other than one acting in an emergency, to park said vehicle on any street for a period longer than one hour between the hours of eleven (11:00) P.M. and six (6:00) A.M. from November 15 to April 15 inclusive.

SECTION 2. Parking Violations

The following schedule of fines for violations of parking regulations of the Town is hereby established.

Group A - \$20.00 FINE

1. Parking on sidewalk or crosswalk
2. Parking in front of driveway or private way
3. Wrong direction parking
4. Not parking within marked spaces
5. Overtime parking
6. Parking more than 12 inches from curb
7. Parking in restricted area - No Parking
8. Parking within 10 feet of fire hydrant
9. Parking within 10 feet of intersection
10. Interfering with free flow of traffic
11. Blocking fire exits (Fire Station, School Lanes)
12. Bus Stop, Taxi Stand
13. All night, when restricted

Group B - \$25.00 FINE

1. Obstructing snow removal

SECTION 3. Littering

GROUP A - \$20.00

1. Public Highways
2. Private Property
3. Inland waters

CHAPTER XX DRIVEWAYS

SECTION 1. Driveway Permit

No person may build or construct any connection between any private driveway in the Town of Hubbardston and any public way in the Town of Hubbardston without first obtaining a permit from the Department of Public Works. The cost of construction will be the responsibility of the owner.

SECTION 2. Submission; Approval

The permit application shall be submitted to the Department of Public Works Director and on its approval, a permit shall be issued by the Board of Selectmen.

SECTION 3. Construction Sketch

Prior to final construction of a driveway, a sketch must be submitted on the reverse side of the application titled, "Construction of Driveway Permit Required", showing lot lines, any inlets or culverts and exact location of proposed driveway. Sketch must show approximate width of driveway after grading and/or surfacing.

SECTION 4. No Disturbance to Road Surface; Driveway Apron

The existing town road surface must not be disturbed and the gutter line must be maintained. The width and flare of the driveway apron must conform to specifications on the driveway permit.

SECTION 5. Violations

Any person violating any of the provisions of this bylaw shall be fined not more than \$50.00 for each offense. Each day that a violation continues shall be considered a separate offense.

CHAPTER XXI EARTH REMOVAL

SECTION 1. Authority

This bylaw is adopted under the authority contained in Massachusetts General Law, Chapter 40, §21(17) and the Home Rule Amendment to the Massachusetts Constitution.

SECTION 2. Purpose

The purpose of this bylaw is to prevent the degradation of the town's natural resources including its soil, surface and groundwater, and naturally occurring vegetation due to the improper or uncontrolled removal or redistribution of earth and vegetation and to protect the right of every resident of the Town of Hubbardston to enjoy the natural, scenic, historic, and aesthetic qualities of the environment as declared in Article XLIX of the Constitution of the Commonwealth of Massachusetts.

SECTION 3. Definitions

Applicant:

The individual, corporation or other legal entity who makes the application for an Earth Removal Permit. Such individual, corporation or other legal entity may be the Owner of the site or may be the operator of the Earth Removal Operation. The permit shall be issued to the Applicant. If the Applicant is not the Owner of the land, the applicant shall provide the Owner's notarized permission to make an application and alter the site for an Earth Removal Operation.

Board

The Planning Board of the Town of Hubbardston who shall act as the Permit Granting Authority (PGA)

Earth

All forms of soil, including, without limitation, decomposed organic matter, loam, sand, gravel, clay, peat, hard-pan, or rock.

Earth Removal Operation

The removal from a site, by hand or by machinery, of any earth material including but not limited to loam, sand, gravel, clay, peat, hard-pan, or rock from surface or subsurface without the aid of drilling and/or blasting, together with all activities associated with the removal, including, but not limited to, the stripping of vegetation, loam, topsoil, or sod, the digging, stockpiling, processing, moving, depositing, or transportation of earth products in any form, natural, altered or otherwise. The Earth Removal Operation includes the moving of equipment required for the operation to, from, or within the site, and all land affected by the operation (e.g. fill, or storage piles, access ways, or structures). There are two classes of earth removal activities as described below:

1) **Small scale earth removal:**

A small scale earth removal operation is one that is for general site grading, alterations and modification where the removal is 1000 cubic yards or less, annually.

2) **Large scale earth removal:**

A large scale earth removal operation is earth material removal of more than 1000 cubic yards of material removed from the site on an annual basis.

Erosion

The process by which the ground surface is worn by forces such as wind, running water, ice, abrasion, gravity, transportation, or by artificial means.

Fill

- 1) Soil, earth, sand, gravel or other earth material which is deposited, placed, pushed, pulled, or transported, and includes the conditions that result from that act.
- 2) Any act by which soil, earth, gravel or other similar material is deposited, placed, pushed, pulled, or transported.

Gravel

Loose fragments of rock or coarse aggregate resulting from natural disintegration and abrasion of rock or processing of weakly bound conglomerate.

Gross Landscape Modification

The alteration of more than 50% of any single lot or more than one acre of land, whichever is less.

Loam or Topsoil

A soil consisting of a friable mixture of varying proportions of clay, sand, silt, and organic matter. Surface soil as distinguished from subsoil.

Lot

A parcel of land under single, joint, or several ownership and separated from contiguous land by property lines and/or street lines, defined by metes and bounds, or boundary lines, and shown on a deed and/or plan recorded in the Worcester District Registry of Deeds or registered in the Land Court.

Owner

Owner of the land from which earth is sought to be removed or the person lawfully standing in the stead of such owner. Ownership must be shown on the deed to the property. Person, company or agent, standing in the stead of such owner must have owner's notarized permission to do so.

Processing

The sorting or separation of earth materials into distinct categories based on particle size or type usually through the use of a screening process but not exclusively so. Processing does not include stone crushing.

Quarrying

The removal of stone (from the ground) by cutting, blasting, ripping or hammering or any other method other than collection of distinct particles (eg. glacial erratics, boulders and similar distinct, separate stone objects).

Sand

A loose granular material resulting from the disintegration of rock, consisting of smaller granules than gravel, and larger particles than silt particles.

Sediment

Earth materials transported or deposited into any body of water, creek, ravine, or other sensitive area by the movement of wind, water, ice, gravity, or by artificial means.

Sensitive Areas

- 1) Areas subject to the jurisdiction of either the State Wetlands Protection Act (M.G.L. Ch. 131 §40), the Hubbardston Wetlands Protection Bylaw, or both.
- 2) Areas delineated as Priority or Estimated Habitats for Rare Species as Defined by the Natural Heritage and Endangered Species Program (NHESP), a Division of the Department of Fisheries and Wildlife.
- 3) Areas designated as Watershed Protection:
 - a. Department of Environmental Protection Estimated or Defined Zones 1 and 2 to Public Water Supply Sources.
 - b. Areas delineated on the Town of Hubbardston's Aquifer Protection Favorability overlay district.
 - c. Areas subject to the Department of Conservation and Recreation (DCR), Watershed Protection per the Watershed Protection Act (350 CMR 11.00)

Sensitive Receptors:

Existing structures and uses that are not compatible with Earth Removal Operations. These include: schools, libraries, senior housing facilities, hospitals, densely developed residential areas, multifamily or cluster developments and other uses by their nature, as determined by the Planning Board, that are sensitive to noise, air and traffic caused by earth removal operations.

Silt

Loose sedimentary material with rock particles usually less than 1/16 mm or less in diameter.

Site

A distinct portion of one lot, or one or more contiguous lots, under the same or different ownerships, on which an earth removal operation is conducted, or is proposed to be conducted, under an Earth Removal Permit.

Slope

An area that is more or less steep, as measured by vertical rise over a horizontal distance, expressed as a percentage or ratio. For example, a rise of one (1) foot over three (3) horizontal feet is a slope of 33%, and is expressed as a ratio of 3:1 slope.

Stone Crushing

The mechanical operation which creates smaller sized stones or stone products from larger sized stones, boulders or particles typically using a crushing plant or similar machinery.

SECTION 4. General Provisions

- A. All operations for the removal of earth shall be regulated in accordance with the procedures, standards and conditions contained herein.
- B. Earth removal may be permitted by a permit on a lot in the Town of Hubbardston and shall run with the land and encumber said lot.
- C. Quarrying is prohibited.
- D. No Earth Removal Operation shall be permitted adjacent to any sensitive receptor or area unless mitigation measures can be implemented, which in the opinion of the Board will serve to protect such areas. as approved by the Planning Board.
- E. No person, firm, or corporation shall excavate in any one year more than five hundred (500) cubic yards of earth from any land in the Town without first obtaining an earth removal permit as provided in the following sections.

- F. Each operation proposed by the same applicant for a site with multiple lots shall require a separate Earth Removal Permit for each lot .
- G. The Permit Granting Authority for earth removal shall be the Planning Board. The Planning Board shall have the following powers and duties relative to earth removal:
 - 1. The Planning Board shall receive, review and hold public hearings, take testimony and facts and act on all complete applications for permits to conduct earth removal.
 - 2. The Planning Board shall issue all permits for earth removal according to the provisions of this bylaw.
 - 3. The Planning Board shall act to monitor compliance with issued permits and any conditions imposed thereon. The Board shall, under the provisions of this Bylaw, act to issue notice of violation(s), cease and desist orders or revoke or suspend any permit for cause.
 - 4. The Planning Board shall, annually by April 15th, file with the Board of Selectmen, a report on the current activity and status of all earth removal operations in the Town.
 - 5. The Planning Board may waive strict compliance with the requirements under Section 7 Rules and Regulations, except for large scale earth removal applications. A pre-submission review with the Board is recommended for all earth removal operations.

SECTION 5. Existing and Pre-Existing Operations

All earth removal operations in existence, or which pre-existed, in Hubbardston on the effective date of this bylaw shall be subject to the requirements stated herein according to the following:

- A. Existing operations with permits. All earth removal permits, issued either under the provisions of the Hubbardston General Bylaws or Zoning Bylaws prior to the effective date of this bylaw, shall remain in effect until their expiration date. Permit renewal for existing permits shall follow the procedures of this bylaw and be subject to all the terms and conditions contained herein.
- B. Pre-Existing operations without permits. Within thirty (30) days of the effective date of this bylaw, each existing operation without a permit shall meet with the Planning Board to discuss a process for development of a transition plan to bring the site into compliance. The Applicant shall, in consultation with the Planning Board, property owner (if not the applicant), operator and the Town's consultants, develop such transition plan to bring the operation into compliance with the bylaw to the greatest extent possible. The transition plan shall be developed and approved within ninety (90) days of the effective date of this bylaw.

SECTION 6. Exemptions

A permit shall not be required for the following:

- A. Removal of earth incidental to and reasonably required in connection with the construction of any building, appurtenant walk or driveway, septic system, swimming pool or other accessory uses and expansions thereto, for which all permits required by the Town of Hubbardston have been granted, provided the quantity of materials removed shall not exceed that displaced by the portion of the building or accessory use below grade;
- B. Removal of earth in the course of customary agricultural use of land;
- C. Removal of earth in compliance with the specific requirements of an approved subdivision plan; not including individual house lot development.
- D. Removal of earth in the normal use of a cemetery;
- E. Removal of earth from land in public use; the Town will, however, develop a transition plan for the earth removal operations conducted by the Town for the extraction and processing of road maintenance materials at the so-called "town pit" on Pitcherville Road.
- F. Removal of earth for the construction, maintenance and repair of existing roadways or fire ponds, including the installation of utilities and appurtenances.

G. Removal of earth on a single lot, involving an excavation of no more than five hundred (500) cubic yards or less in one year..

The above exemptions do **not** apply to any activity which involves soil stripping or loam stripping or involves topographical changes which shall be considered gross landscape modifications.

SECTION 7. Rules and Regulations

The Planning Board may establish additional rules and regulations, including fee schedules, to implement this bylaw. Changes in rules and regulations shall be made only after the Planning Board holds a public hearing thereon, such hearing to be advertised in a newspaper of general circulation in the town twice in successive weeks, the first advertisement being not less than fourteen days before the day of the hearing, and posted in the Town Office at least 14 days before the day of the hearing.

SECTION 8. Application and Public Hearing Process

A. Application and Fees:

1. All applications for earth removal operations shall be in writing on a form approved by the Planning Board and shall be accompanied by a filing fee established by the Planning Board to be adequate to defray the costs incurred by the town to administer the application
2. Plans, prepared and stamped by a registered surveyor or engineer shall be submitted in the quantity, format and containing the contents identified in the Rules and Regulations.
3. A. list of all abutters and abutters to the abutters within three hundred (300) feet of the property line as shown on the most recent tax list, certified by the Board of Assessors.
4. No application for an Earth Removal Permit shall be considered complete and shall not be acted upon, unless the Tax Collector of the Town of Hubbardston has certified, pursuant to MG.L. Ch 40, Section 57, that no debt is owed to the Town by the applicant and owner.
5. All costs relating to publication and mailing shall be borne by the applicant.

B. Hearing Process:

The Planning Board shall hold a public hearing upon receipt of a complete application within sixty (60) days of the submission of all required application materials. The Planning Board shall publish notice of the hearing, including the time and place thereof and a description of the proposal sufficient for identification, in a newspaper of general circulation in the town once in each of two successive weeks, the first publication of which shall be not less than fourteen (14) days before the hearing. Notice of the hearing shall be posted on the Official Town website at least fourteen (14) days before the hearing. This notice shall be sent by registered or certified mail at least ten (10) days before the hearing to:

1. the applicant;
2. the owner of the parcel (if different from the applicant);
3. the owners of all land abutting the parcel for which a permit is sought, including land across any public or private street or way or any body of water or watercourse from such parcel, as they appear on the most recent tax list;
4. any other owners of property within three hundred (300) feet of the property lines of the parcel;
5. the Board of Selectmen (not certified mail);
6. any other Town, Regional, State or Federal agencies deemed by the Planning Board to be affected thereby; and
7. any other persons deemed by the Planning Board to be affected thereby.

- C. The Planning Board may continue the public hearing process for cause, for receipt of additional information or to take testimony or receive and review additional provided information. Any continuance in the public hearing process beyond ninety (90) days from date of receipt of the project shall require the written applicant's permission. Any continuance of process shall be extended to a time and date certain, which shall be announced at the public hearing.
- D. The Planning Board shall issue a decision within sixty (60) days of the closing of the public hearing. An Earth Removal Permit shall be deemed approved upon a simple majority vote of the Planning Board.
- E. The Planning Board may act to issue an Earth Removal Permit with standard conditions, with special conditions or may deny the application. If an application is denied, the reasons for denial shall be included in decision.
- F. A copy of the issued Earth Removal Permit or denial thereof shall be filed at the Office of the Town Clerk within five (5) business days of the Board's action..
- G. Appeals to the action of the Planning Board on any Earth Removal Permit may be taken to a court of competent jurisdiction. Such appeals shall be made within twenty (20) days of the filing of action with the Town Clerk. Notification of any appeal must be provided to the owner, applicant, and Hubbardston Planning Board.

SECTION 9. Conditions for all Earth Removals

A. General

The following criteria shall apply to all earth removal operations, regardless of whether a permit is required or not:

- 1. Unless otherwise provided as part of the permit: Hours of operation shall be between 6:30 a.m. and 4:00 p.m. Monday through Friday and 8 a.m. to 12 noon on Saturday, except hours of operation for a crusher shall be 8 a.m. to 4 p.m., Monday through Friday and 9 a.m. to noon on Saturday. No operations are allowed on Sunday and State holidays.
- 2. Noise from normal operations shall not exceed permissible levels as set forth in the Regulations of the Hubbardston Board of Health, Section 5: Noise Thresholds. Professional monitoring tests shall be performed by the permittee and submitted to the Planning Board and Board of Health for review.
- 3. All earth removal operations shall be conducted in such a manner to prevent the erosion of the land, siltation of waters or water bodies and prevention and control of dust and other deleterious effects of earth removal operations.
- 4. All Earth Removal Operations shall be permitted as set forth in Section 9.B.1-11, and shall include the provision for reclamation of the site, in part during operations or in whole, once excavation and earth removal activities have ceased in that part of the site. Reclamation shall include the stabilization of all surfaces by planting or other means to prevent erosion, control runoff and reduce hazards at the site. All slopes shall be graded to a maximum slope of 3:1 (Horizontal:Vertical) and shall be planted or otherwise made stable in a manner determined acceptable to the Planning Board.

B. Permit Requirements:

- 1. The limit of work shall be as described in the permit application and depicted on accompanying plans. Work outside the limit of work is expressly prohibited. Phasing limits shall be clearly depicted on submitted plans.
- 2. No excavation may extend below four (4) feet above the estimated seasonal high water table as determined by a Massachusetts Department of Environmental Protection Certified Soil Evaluator, or other expert source of determination, and/or on site groundwater monitoring wells as adjusted for seasonal variations. A minimum of two monitoring wells shall be required for each phase of operations. No areas shall be excavated to cause accumulation of standing water.

3. No permit shall be issued for a term longer than two (2) years. Permit renewal applications shall be accompanied by an operations plan for the permit period being applied for and updated site plan. Permit renewals may be granted only if the applicant has complied with all conditions of the original permit and has corrected any violations in a manner satisfactory to the Planning Board.
4. As part of and as set forth in any such permit, the Planning Board shall impose such reasonable restrictions and conditions on the exercise of the permit as it deems to be in the public interest, including but not limited to hours of operations, days of operation, noise, dust and other mitigation measures and other protective measures to be utilized during earth removal operations to limit or mitigate impacts of the operation on adjacent sites, the environment, the public good or abutters.
5. Permits are transferable with the approval of the Planning Board after submission of an operations plan that meets all requirements of the bylaw and have provisions to transfer the applicable performance bond/surety. Permits are revocable (see Section 12: Enforcement).
6. Any Order of Conditions established by the Town of Hubbardston Conservation Commission shall become part of the conditions for the earth removal operation.
7. The permit holder must comply with any and all other requirements of federal, state, or local law applicable to the operation. Violations of any and all other requirements of federal, state or local law can be considered a violation of the Earth Removal Permit and be subject to the enforcement action as described in Section 12: Enforcement.
8. The permittee shall submit an operations report to the Planning Board every six months containing details on the amount of material removed, percent of restoration completed and an estimated timeline to complete the removal operations as permitted.
9. The permit shall not become effective until the applicant has filed the proper security and paid all required fees and review costs.
10. Permits for Large Scale Earth Removal shall require a bond or other surety as required by Section 11 of these bylaws.
11. All permits shall include the provision for reclamation of the site, in part during operations or in whole, once excavation and earth removal activities have ceased in that part of the site. Reclamation shall include the stabilization of all surfaces by planting or other means to prevent erosion, control runoff and reduce hazards at the site. All slopes shall be graded to a maximum slope of 3:1 (Horizontal:Vertical) and shall be planted or otherwise made stable in a manner determined acceptable to the Planning Board.

C. Specific Conditions:

The Planning Board shall have the authority to impose specific conditions on a Earth Removal Operation as determined necessary to meet the Purposes of the Bylaw.

SECTION 10. Inspections

The Planning Board shall require a deposit for periodic inspections of permitted earth removal sites, by an agent of the town to determine compliance with permit conditions. Upon entering the site, the town's agent will identify him/herself to an employee, if one is present. During times of active operation, the Planning Board may have its agent prepare monthly compliance review reports for the Planning Board.

Expenditures from this deposit shall be made only in connection with the review and inspection of the specific project or projects for which a review fee has been or will be collected from the applicant. Failure of an applicant to pay a review fee shall be grounds for revocation of the application permit.

SECTION 11. Surety and Performance Bond

The permittee shall furnish a performance bond or other security in a form satisfactory to the Treasurer and Town Counsel sufficient to insure satisfactory performance of the requirements of the permit,

including all phases of the earth removal operation and restoration of the site, and any conditions imposed thereupon.

After completion of the operation, and upon receipt of the permittee's written request, the Board may grant a partial release of any security posted by the applicant. The remainder of the security shall be released one year after the operation has been completed or the permit has expired, if the town's agent certifies that

1. the restoration has been completed in compliance with the permit,
2. the permittee has submitted an "as-built" plan approved by the agent,
3. no deterioration of the site has occurred for a period of one year. During the year following the partial release of the security, the applicant shall be responsible for repairing any damage to the site.

SECTION 12. Enforcement

The provisions of this bylaw shall be enforced by the Planning Board's designated agent or the Hubbardston Building Inspector.

If, after reviewing the reports from the permittee, the Town's agent, or other source the Planning Board concludes that there has been a violation of this bylaw, it shall send a notice of the specific violation to the permittee, by registered or certified mail or by process server, to the record address and applicant, as applicable. The notice shall specify a time for compliance. If compliance is not achieved by the specified date, the following penalties shall apply:

SECTION 13. Penalties

- A. Penalties - Criminal Disposition. Whoever is found to have violated any provision of this bylaw may be penalized by indictment or complaint brought to the Superior Court, Housing Court, or Gardner District Court, and a penalty of \$300.00 shall be imposed for each violation. Each day on which a violation exists shall be deemed to be a separate offense, with the first day of violation to be construed as the date on which the owner and applicants, as applicable was first notified of the violation.
- B. Penalties - Non-criminal Disposition. In addition to the procedures described above, the provisions of this bylaw may be enforced by the Planning Board by way of the non-criminal disposition procedure provided in the Mass General Laws, Chapter 40, Section 21.D. Each day on which a violation exists constitutes a separate offense. The penalty for each offense shall be Three Hundred Dollars (\$300.00).
- C. In the event the permitting authority determines that any person, firm or corporation whether or not an Owner, as defined herein, is in violation of this bylaw, the person, firm or corporation may be assessed the cost of any and all action taken to remedy the violation, including reasonable attorney's fees, as provided for by M.G.L. Ch 40, section 31.
- D. The Planning Board may revoke or suspend the permit of any person, firm or corporation holding a permit under this bylaw if such person, etc. violates, disobeys, or fails to comply with any of the provisions of this bylaw. A permit may be revoked only after a hearing, the notice of which shall be the same as described in Section 7.C. Such hearing shall be held within thirty (30) days after the deadline for correction of a violation of the bylaw. A decision on revocation must be made within thirty (30) days of the closing of the hearing.

CHAPTER XXII INTOXICATING BEVERAGES

SECTION 1. Consuming on Public Ways

Whoever shall, within the limits of any public way, county highway, state highway or a private way open to the public, consume intoxicating beverages, shall be punished by a fine not exceeding Fifty (\$50.00) dollars. This section shall also be construed so as to prohibit the following: the consumption of intoxicating beverages by any persons while standing, sitting, walking, running or otherwise present within such way or is within any vehicle whether parked or moving, which is within the limits of such public way.

SECTION 2. Consuming on Public Property

Whoever shall consume intoxicating beverages in any public building, or on any public property, including parks, cemeteries, school house and school grounds, and public squares, or in any private way or parking area regulated under the provisions of Massachusetts General Laws, Chapter 90, Section 18, shall be punished by a fine of One Hundred (\$100.00) dollars.

SECTION 3. Exemptions

The foregoing Sections 1 and 2 shall not apply to any activity duly licensed by the Board of Selectmen under the applicable provisions of Massachusetts General Laws.

CHAPTER XXIII PROCUREMENT

SECTION 1. Compliance

Every officer or board in charge of a department, and every committee of the Town, when authorized to purchase any supplies or services or to do any public work, or erect, construct, or repair any building, shall comply with applicable procurement laws: M.G.L. Ch. 30B; M.G.L. Ch. 30 §39M; M.G.L. Ch. 149, as amended.

SECTION 2. Contracts

All Contracts shall be reviewed by the Town Administrator and Town Counsel and shall be signed by the Town Administrator as per the Town Charter Section 3-4-10

SECTION 3. Prohibiting and/or Regulating Contracts

Section 3.1 Prohibited Contractors

No person or business entity shall be awarded a contract or subcontract by the Town of Hubbardston if that person or business entity:

- a) has been convicted of bribery or attempting to bribe a public officer or employee of the Town of Hubbardston, the State of Massachusetts, or any other public entity, including, but not limited to the Government of the United States, any state, any local government authority in the United States in that officer's or employee's capacity; or
- b) has been convicted of an agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise; or
- c) has made an admission of guilt of such conduct described in paragraphs a) or b) above, which is a matter of record, but has not been prosecuted for such conduct, has made an admission of guilt of such conduct which term shall be construed to include a plea of nolo contendere.

Section 3.2 Waiting Period

A person, business entity, officer or employee of a business entity, convicted of one or more of the crimes set forth in Section 3.1, shall be ineligible for the awarding of a contract or subcontract by the Town of Hubbardston for a period of three years, following such conviction or admission in the case of an admission of guilt of such conduct, which is a matter of record, but which has not been prosecuted.

Section 3.3 Business Entities

For purposes of this bylaw, where an official, agent or employee of a business entity has committed any offense under this bylaw, as set forth in Sections 1 or 2, on behalf of such entity and pursuant to the direction or authorization of an official thereof (including the person committing the offense, if he is an official of the business entity), the business entity shall be chargeable with the conduct herein above set forth. A business entity shall be chargeable with the conduct of an affiliated entity, whether wholly owned, partially owned, or one which has common ownership or a common Board of Directors. For the purposes of this section, business entities are affiliated if, directly or indirectly, one business entity controls or has the power to control another business entity, or if an individual or group of individuals controls or has the power to control both entities. Indicia of control shall include, without limitation interlocking management or ownership, identity of interests among family members, shared organization of a business entity following the ineligibility of a business entity under this section, using substantially the same management, ownership or principals as the ineligible entity.

Section 3.4 Proof of Indemnity

Any party who claims that Section 3 of this bylaw is inapplicable to him, them or it, because a conviction or judgment has been reversed by a court with proper jurisdiction, shall prove the same with documentation satisfactory to Town Counsel.

Section 3.5 Affidavit of Non-Criminality

The Town of Hubbardston shall not execute a contract with any person or business entity until such person or business entity has executed and filed with the Town Clerk an affidavit executed under the pains and penalties of perjury that such person or entity has not been convicted of any violation described in Section 3.1 paragraphs a) or b) and has not made an admission of guilt or nolo contendere as described in Section 3.1 paragraph c). In the case of a business entity such affidavit shall be executed by, in the case of a partnership, the general partner(s) and the case of a corporation, the president.

Section 3.6 Conflicting Bylaws

All bylaws or parts of bylaws in conflict herewith are hereby repealed.

SECTION 4. Public Auction

The Board of Selectmen is authorized to sell at public auction or by bid, after first giving notice of the time and place of sale in some convenient and public place in town, thirty days at least before the sale, old or obsolete equipment or supplies of at least \$500 in value, as determined by the Board of Selectmen, provided the Board of Selectmen or whomsoever they authorize to hold such a sale, may reject any bid they deem inadequate.

SECTION 5. Materials Sold to Town by Board Member/Officer

No Town officer, agent or member of any board of the Town shall sell materials, supplies or services to the Town without the permission or approval of the Board of Selectmen expressed by a vote which shall appear on the records of said Board.

CHAPTER XXIV REGULATION OF DOGS

SECTION 1. Definition of Terms

As used in this bylaw, unless the context indicates otherwise:

- a) "Dog" shall mean all domestic dogs of the canine species, regardless of sex.
- b) "'Keeper" shall mean any person, adult or juvenile, corporation or society, other than the owner, harboring or having in his possession any dog.
- c) "Kennel" – one pack or collection of dogs on a single premise, whether maintained for breeding, boarding, sale, training, hunting or other purposes and including any premises where dogs are on sale, and also including every pack or collection of more than 4 dogs, 3 months old or over, owned or kept by a person on a single premises irrespective of the purpose for which they are maintained.
- d) "License Period" – the time between April 1 (first) and March 31 (thirty-first), both dates inclusive. Dogs and kennels not licensed by May 1 (first) will be subject to a fine of twenty-five dollars (\$25.00).
- e) "Owner" shall mean any person or persons, adult or juvenile, firm, association or corporation owning, keeping or harboring a dog as herein.
- f) "Personal Kennel" – a pack or collection of 4 dogs or fewer, 3 months old or older, owned or kept under single ownership, for private personal use; provided, however, that breeding of personally owned dogs may take place for the purpose of improving, exhibiting or showing the breed or for use in legal sporting activity or for other personal reasons; provided further, that selling, trading, bartering or distributing such breeding from a personal kennel shall be to other breeders or individuals by private sale only and not to wholesalers, brokers or pet shops; provided further, that a personal kennel shall not sell, trade, barter or distribute a dog not bred from its personally-owned dog; and provided further, that dogs temporarily housed at a personal kennel, in conjunction with an animal shelter or rescue registered with the department, may be sold, traded, bartered or distributed if the transfer is not for profit.
- g) "Public Nuisance" - Any dog shall be deemed a public nuisance when attacking persons, domestic animals, livestock, or fowl while said dog is on property other than that of the dog owner; when destroying property; or on a public ground, when not under restraint by its owner/keeper; or it is persistently and prolongedly barking or howling between the hours of 10:00 PM and 7:00 AM for more than two consecutive days. Each twenty-four hour period thereafter shall constitute a separate violation. Further, any non-spayed female dog, while in season, shall be deemed a public nuisance when not confined in a limited access structure by an owner thereof, or housed in a veterinary hospital or registered kennel.
- h) "Restraining of Dogs" shall mean that all dogs owned or kept within the Town of Hubbardston shall be placed under restraint and controlled from going at large by the owner or keeper thereof.

SECTION 2. Licensing Fees

Licensing Period: April 1 through March 31, annually

Fees and Penalties:

Male / Female	\$15.00
Neutered / Spayed	10.00
Personal Kennels: 4 dogs or fewer	40.00
Kennels: 10 dogs or fewer	50.00 (Special Permit Required; see Section 3)
Kennels: More than 10 dogs	60.00 (Special Permit Required; see Section 3)
Late Licensing Penalty	25.00
(for dogs licensed on or after May 1)	
Failure to License (on or after June 1)	\$50.00 (per MGL Ch 140, Sec 141)
Transfer of License	2.00
Duplicate Dog Tag	1.00

The Late License Penalty and Failure to License fee will be collected in addition to the regular License Fee. All amounts collected will be deposited in the Town Treasury.

Section 2.1 Waiver

A license is required, but no fee shall be charged for a license for a dog owned by a Hubbardston resident aged 70 years or over as of March 31 of the license year. (Effective with 2008 license year)

SECTION 3. Kennel Licenses

All kennels established after October 23, 1989 are subject to approval by the Zoning Enforcement Officer /Building Inspector (excluding kennels for 4 dogs or fewer) per Zoning By-laws, Article 4 – Use Regulation. Any change in kennel location is subject to above approval. Prior to renewing a kennel license, said kennel is subject to annual inspection by the Animal Control Officer (ACO) (excluding kennels of 4 dogs or fewer). Fee for said inspection is Ten (\$10.00) Dollars. Fee to be retained as general revenue.

SECTION 4. Public Nuisance Prohibited

No owner/keeper of any dog shall permit such dog whether licensed or unlicensed, to become a public nuisance within the Town of Hubbardston at any time.

SECTION 5. Impounding

It shall be the duty of the Animal Control Officer to apprehend any dog(s) found to be a public nuisance and to impound such dog(s) in the Regional Pound and to order the owner of such dog(s) to restrain said dog(s).

SECTION 6. Notice to Owner and Release

If such dog is so impounded and has upon it the name and/or address of the owner/keeper, or if the name of the owner is known, then the Animal Control Officer shall immediately notify the owner of animal so impounded.

The owner/keeper of any dog so impounded may reclaim such dog upon payment, to the Animal Control Officer, the sum of Ten (\$10.00) Dollars for each twenty-four (24) hour period, or any part thereof that the dog is held. A Fifteen (\$15.00) Dollar pick-up fee for each violation shall be paid by the owner/keeper of said dog to Town of Hubbardston in addition to any other fines incurred.

SECTION 7. Disposition of Unclaimed Dogs

Any dog that has been impounded and is not reclaimed by the owner within the ten day period of confinement, shall be made available for adoption provided the following criteria have been met:

- (a) The dog was detained for a period of Ten (10) days.
- (b) The description of the dog is advertised in a local newspaper, on the ACO's website and through other relevant social media outlets.
- (c) The dog is found free of disease and is not extremely aggressive as determined by the ACO.

SECTION 8. Penalty

(a) Criminal Complaint – Whosoever violates any provision of these rules and regulations may be penalized on complaint brought in the District Court. Except as may otherwise be provided by law, and as the District Court may see fit to impose, the maximum penalty for any violation of these provisions shall be \$300.00 (Three Hundred) dollars for each offense.

(b) Non-Criminal Enforcement – Whosoever violates any provision of these rules and regulations may, in the discretion of the Animal Control Officer and/or the Board of Selectmen, be penalized by a non-criminal penalty pursuant to the provisions of MGL Chapter 40, section 21D. For the purpose of this provision the penalty to apply in the event of the violation shall be as follows: \$25.00 (Twenty-five dollars) for the first offense; Fifty (\$50.00) Dollars for the second offense; One Hundred (\$100.00) dollars for the third offense; and Two Hundred (\$200.00) Dollars for the fourth and any subsequent offense. Each day on which a violation exists shall be deemed to be a separate offense.

(c) If any dog is deemed a constant problem in regard to injury to domestic animals, wildlife, and livestock, or is a threat to public safety, the owner/keeper may surrender said dog to the Animal Control Officer for disposal. Euthanasia and disposal costs to be paid by owner/keeper of said dog.

(d) All dog license renewals are subject to payment of outstanding fines. All fines are to be paid to the Town Clerk and turned in to the Treasurer. Failure to comply may result in license revocation and possible impounding of said dog.

SECTION 9. Library Dog Fund

To authorize the payment of 75 Cents per dog and per dog kennel license issued be placed in a special library account to be called "Library Dog Fund". Said monies to be expended upon appropriation under MGL Chapter 44/53.

CHAPTER XXV
THE SEX OFFENDER IN CHILD SAFETY ZONE

Section 1. Sex Offender in Child Safety Zones:

Definition of Child Safety Zone: A park, playground, any recreational facility, library, school, day care center, private youth center, video arcade, bathing beach, swimming pool, gymnasium, sports field, sports facility, including the parking area and land adjacent to any of the aforementioned facilities.

Prohibitions:

- 1) A level 3 registered sex offender is prohibited from entering upon the premises of a school or day care center unless previously authorized specifically in writing by the school administration or day care center owner.
- 2) A level 3 registered sex offender is prohibited from entering upon the premises of an elderly housing facility unless previously authorized in writing by the on-site manager of the elderly housing facility.
- 3) A level 3 registered sex offender is prohibited from entering upon the premises as listed in the definition of Child Safety Zone.
- 4) A level 3 registered sex offender, after having received notice from the Hubbardston Police Department that he/she is loitering by having remained for more than fifteen (15) minutes within a five-hundred (500) foot distance of a Child Safety Zone or elderly housing facility, is prohibited from continuing to so loiter. For purposes of determining the minimum distance separation under this section, the distance shall be measured by following a straight line from the registered sex offender to the outer property line of the Child Safety Zone or elderly housing facility.

Exceptions:

- 1) The prohibitions defined above shall not be construed or enforced so as to prohibit a registered sex offender from exercising his/her right to vote in any federal, state or municipal election, or from attending any religious service.
- 2) The prohibitions defined above do not apply to a registered sex offender's place of residence.
- 3) Any person whose name has been removed from the Massachusetts Sex Offender Registry or from the registry of any other state or in the federal or military system by act of a court or by expiration of the term such person is required to remain on such registry or reclassified as a level 1 in Massachusetts or lowest offender category in another jurisdiction.
- 4) The facility in a child safety zone also supports a church, synagogue, mosque, temple or other house of religious worship, subject to all of the following conditions:
 - The child sex offender's entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted by the public; and
 - The child sex offender shall not participate in any religious education programs that include individuals under the age of eighteen (18).
- 5) The property also supports a use lawfully attended by a child sex offender's natural or adopted child(ren), which child's use reasonably requires the attendance of the child sex offender as the child's parent upon the property, subject to the following condition:
 - The child sex offender's entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public.

Penalties:

Any violation of this section may be enforced by noncriminal disposition pursuant to M.G.L., Chapter 40, section 21D, resulting in a noncriminal fine of \$300 for each violation of this section. A registered sex offender commits a separate offense for each and every violation of this section.

Enforcement:

- A. The Hubbardston Police Department shall be charged with the enforcement of this chapter.
- B. A written list describing the prohibited areas defined in this chapter and a map depicting the safety zones, shall be created by the Town and maintained. The list, the maps and a copy of this chapter will be available to the public at the Hubbardston Police department and Town Clerk's office.

CHAPTER XXVI PUBLIC SAFETY

SECTION 1. Wells

Owner of land on which is located an abandoned well or a well in use, shall provide a covering for such well, capable of sustaining a weight of three hundred pounds per square foot, or shall fill the same to the level of the ground. Penalty for violation of this section shall be a fine of not less than One Hundred (\$100.00) Dollars, nor more than Three Hundred (\$300.00) Dollars.

SECTION 2. Property, Numbering Of

1. Number to be provided for each building

Street numbers shall be provided for each dwelling, industry and other buildings in the Town of Hubbardston.

2. Materials and size of numbers

The numbers shall be made of permanent, weatherproof 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.

3. Placement

The numbers shall be placed on each structure or a suitable support near the main entrance to the structure so as to be visible.

4. Assignment

Street numbers will be assigned by the Building Department. Any applicant aggrieved by the Building Department's assignment of their street number shall have the right to appeal said assignment to the Board of Selectmen within 30 days of notification.

5. Responsibility of Property Owner

It shall be the responsibility of the property owner in the Town to obtain and display the appropriate street number within ninety (90) days of the effective date of this chapter.

6. Enforcement Authority

This chapter shall be enforced by the Board of Selectmen through the office of the Building Inspector.

7. Violations & Penalties

Failure to comply with this chapter shall subject the property owner to a fine of twenty (\$20.00) Dollars. Each day shall demand a separate offense.

SECTION 3. Alarm Systems

PURPOSE

The purpose of this bylaw is to protect the public safety and well-being by ensuring that alarm systems installed in the Town of Hubbardston are designed, installed and maintained to achieve the following:

- Maximum protection for life and property.
- Conformity of system design with local, state and national standards and Hubbardston Police and Fire Departments standard operating guidelines.
- Reduction of needless and/or false alarms.
- High reliability.
- Ease of operation and understanding.

I. DEFINITIONS

- A. For the purpose of this chapter, the following terms, phrases, words, and their derivations shall have the meanings given herein when not inconsistent with the context, words used in the present tense include the future; words used in the plural number include the singular number; and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.
- B. As used in this chapter, the following terms shall have the meanings indicated:

Alarm Receiving Equipment:

The instrumentation on an alarm console at the receiving terminal of a signal line that, through both visual and audible signals, indicates activation of an alarm system at a particular location or which indicates line trouble.

Alarm System:

An assembly of equipment and devices or a signal device such as a solid-state unit that plugs directly into a one-hundred-ten-volt AC line, arranged to signal the presence of a hazard requiring urgent attention and to which the Police and/or Fire Department are expected to respond.

Alarm User or User:

Any person on whose premises an alarm system is maintained within the town except for alarm systems on motor vehicles or proprietary systems. Excluded from this definition and from the coverage of this chapter are central station personnel and persons who use alarm systems to alert or signal persons within the premises in which the alarm system is located of an attempted unauthorized intrusion or holdup attempt. If such a system employs an audible signal emitting sounds or a flashing light or beacon designed to signal persons outside the premises, such a system shall be within the definitions of “alarm system” as that term is used in this chapter and shall be subject to this chapter.

Annunciator:

A device containing two (2) or more targets or indicator lamps which each target or lamp indicates the circuit condition or location to be annunciated.

Audio Visual Alarm:

A UL listed device that will sound a distinct audible signal rated at eighty-five (85) Db at ten (10) feet and will initiate a flashing visual signal that backlights the word, “FIRE”.

Authority Having Jurisdiction:

The municipal approving authority that is responsible for response to the specific alarm signal that the system is designed to transmit.

- 1) Fire Alarms: Fire Department;
- 2) Emergency medical alarms: Fire Department;
- 3) Security alarms: Police Department

Automatic Dialing Device:

An alarm system that automatically sends over telephone lines or by direct connection or otherwise a coded signal indicating the existence and location of the emergency situation that the alarm system is designated to detect.

Central Station:

An office to which alarm and supervisory signaling devices are connected, where operators supervise circuits or where guards are maintained continuously to investigate signals.

Certified Fire Alarm Installer:

A person licensed by the Commonwealth of Massachusetts to install fire alarm systems.

Direct Connect:

An alarm system that has the capability of transmitting system signals to the municipal alarm-receiving equipment at the Rutland Regional Dispatch Center.

Double Action Pull Station:

A UL-listed device designated so that an occupant can manually signal the presence of fire, and sound the fire alarm system. To avoid false alarms, this device requires two (2) actions to initiate a signal.

Emergency Medical Services:

Basic life support services offered by Hubbardston Fire Department.

False Alarm:

An activation of an alarm system due to mechanical failure, malfunction, improper installation or negligence of the user of an alarm system, his/her employees or agents, which produces any signal requesting, requiring or resulting in the response of the Police or Fire Department when in fact there has been no unauthorized intrusion, attempted unauthorized intrusion, attempted robbery, attempted burglary, medical emergency or detection of fire, smoke, heat, waterflow or other condition designed to be detected by fire, security and emergency medical alarm systems. Excluded from this definition are activations of alarm systems caused by natural disasters.

Fire Alarm Control Panel:

UL-listed FM-approved control unit that will receive signals from remote devices, sound an audible and visual evacuation alarm and signal the Fire Department through a direct connection.

Fire Chief:

The Chief of the Hubbardston Fire Department or his designated representative.

Fire Department:

The Town of Hubbardston Fire Department or any authorized agent thereof.

Fire Prevention Officer:

The officer who serves as a representative of the Fire Chief and has authority relative to the acceptance and approval of alarm systems.

FM-Approved:

A device that has been tested and approved by Factory Mutual Systems.

Graphic Annunciator:

A permanently mounted electronically controlled graphic representation of the structure which, through the use of light-emitting diodes or backlighting, indicates the fire alarm system status, including alarm location, AC power and system trouble (visual and audible). In addition, this unit must meet the approval of the Fire Prevention Officer prior to the fabrication and be consistent with the standards of the Newton Graphic System.

Heat Detector:

A UL-listed device designed for property protection that detects and signals the presence of heat by fixed-temperature monitoring. Rate-of-rise detectors are not permitted as they automatically reset.

IMSA:

The International Municipal Signal Association.

Interconnect:

To connect an alarm system to a voice-grade telephone line, either directly or through a mechanical device that utilizes a standard telephone, for the purpose of using the telephone line to transmit an emergency message upon the activation of the alarm system.

Knox Box:

A secured key box located on the exterior of all structures with fire alarm systems to which only the Fire Department has access.

Locating Strobe Light:

A red strobe light centered over the Knox Box that will flash upon the activation of the fire or emergency medical alarm system so as to draw attention to the structure and indicate the location of the Knox Box.

National Fire Code:

The fire codes developed and published by the NFPA through a consensus process and referenced as part of this chapter.

NEC:

The current edition of the National Electrical Code (NFPA 70).

NFPA:

The National Fire Protection Association

NFPA 72C:

The current edition of Installation, Maintenance and Use of Remote Station Protective Signaling Systems.

NFPA 72E:

The current edition of Automatic Fire Detectors.

NFPA 72G:

The current edition of Installation, Maintenance and Use of Notification Appliances for Protective Signaling.

NFPA 72H:

The current edition of Testing Procedures for Local, Auxiliary, Remote Station and Proprietary Protective Signaling Systems.

NFPA 74:

The current edition of Installation, Maintenance and Use of Household Fire Warning Equipment.

NFPA 90A:

The current edition of Installation of Air Conditioning and Ventilation Systems.

NFPA 101:

The current edition of the Life Safety Code.

Notice of Violation:

A legal notice issued by the Fire Chief under CMR 527, CMR 780 or this chapter that indicates noncompliance.

Point Identification:

Utilizing “smart” system technology, identifies the exact device of alarm origination and communicates this information locally to the fire alarm control panel and fire alarm annunciator through the use of light-emitting diodes, backlighting or alphanumeric description and, at the discretion of the authority having jurisdiction, transmits this information directly to the municipal system through the use of a digital dialer.

Police Chief:

The Chief of Police of the Town of Hubbardston or his/her designated representative.

Police or Police Department:

The Town of Hubbardston Police Department or any authorized agent thereof.

Public Nuisance:

Anything that annoys, injures or endangers the comfort, repose, health and safety of any considerable number of persons of any community or neighborhood.

Smoke Detector:

A UL-listed detection device designed to enhance life safety which is powered by battery or one-hundred-ten volt AC current for local residential systems and twenty-four (24) volts for non-residential systems.

Town: The Town of Hubbardston

UL-Listed:

Listed and approved for the specific use by Underwriters’ Laboratories, Inc.

Verification:

A fire alarm option that delays the transmission of an alarm from the smoke detector circuits until two (2) devices indicate an alarm or a single smoke detector holds an alarm condition for two (2) cycles. This option greatly reduces false alarms while maintaining a high level of life safety.

Waterflow Alarm:

An alarm signal initiated by activation of a sprinkler or other fire-suppression system.

Zone:

A specific physical area protected by a group of fire alarm initiating devices. A complete fire alarm system may consist of many “zones.”

II. GENERAL REGULATIONS

- A. The alarm user shall be responsible to provide the Fire or Police Chief with current information relative to the emergency contacts, hazardous operations, hazardous materials and access keys.
- B. Alarms that automatically dial the dispatcher-answered telephones in the Rutland Regional Dispatch Center and deliver a recorded message must use the telephone number(s) provided by the Chief of Police or Fire Chief.

III. CONTROL REQUIREMENTS; CURTAILMENT OF SIGNALS

- A. Every alarm user shall submit to the Police or Fire Chief the names and telephone numbers of at least two (2) other persons who can be reached at any time, day or night, and who are authorized to respond to an emergency signal transmitted by an alarm and who can open the premises where in the alarm system is installed.
- B. If entry upon the property outside the home or building in which the alarm system is located is made in accordance with this section, the police officer so entering upon such property shall not conduct, engage in or undertake any search, seizure, inspection or investigation while he is upon the property; shall not cause any unnecessary damage to the alarm system or to any part of the home or building; and shall leave the property immediately after the audible signal had ceased. After an entry upon a property has been made in accordance with this section, the Police Chief shall have the property secured, if necessary. The reasonable costs and expenses of abating the nuisance in accordance with this section may be assessed to the alarm user; said assessment is not to exceed (Fifty and 00/100 Dollars) \$50.
- C. Within ten (10) days after abatement of a nuisance in accordance with this section, the alarm user may request a hearing before the Board of Selectmen and may present evidence showing that the signal emitted by his/her alarm system was not a public nuisance at the time of abatement; that unnecessary damage was caused to his/her property in the course of abatement; that the costs of the abatement should not be assessed to him/her; or that the requirements of this section were not fulfilled. The Board shall hear all interested parties and may, at its discretion, reimburse the alarm user for the repairs to his property necessitated by the abatement or excuse the alarm user from paying the costs of abatement.

IV. FALSE ALARMS

- A. When emergency messages are received by the Rutland Regional Dispatch Center that evidence false alarms, the Police Chief or Fire Chief shall take such action as may be appropriate under Subsections B, C, D, and E of this section and when so required by the terms of the aforementioned subsections, order that the use of a security alarm system, be discontinued or order the immediate repair and upgrade of a fire alarm system in such a manner as to reduce the occurrence of false alarms.
- B. After the Police or Fire Department has recorded three (3) separate false alarms within the calendar year from an alarm system, the Police Chief or Fire Chief shall notify the alarm user, in writing and by certified mail, of such fact and require said user to submit within fifteen (15) days after receipt of such notice a report describing efforts to discover and eliminate the cause or causes of the false alarms. The Police Chief or Fire Chief may extend the fifteen (15) day period at their discretion. If said user fails to submit such a report within fifteen (15) days or within any such extended period, the Police Chief shall order that the use of the security alarm system be discontinued, and in the case of a fire alarm system, the Fire Chief shall issue a notice of violation ordering the repair of the system and notifying the Building Inspector. Any such discontinuance or repair shall be effectuated within fifteen (15) days from the date of receipt of the Police or Fire Chief's order.
- C. In the event that the Police or Fire Chief determines that a report submitted in accordance with Subsection B of this section is unsatisfactory or that the alarm user has failed to show by the report that he has taken or will take reasonable steps to eliminate or reduce false alarms, then the Police Chief shall order the use of security alarms discontinued, and in the case of fire alarms, the

Fire Chief shall order repair and notify the Building Inspector of the violation. Any such action shall be effectuated within fifteen (15) days of the Police or Fire Chief's order.

- D. In the event that the Police or Fire Department records five (5) false alarms within the calendar year from an alarm system, the Police Chief may order the use of the burglar alarm system discontinued for the calendar year, but for not less than six (6) months from the date the alarm was discontinued. The Fire Chief may order a fire alarm or emergency medical alarm system repaired or replaced so that it meets the requirements of this chapter. In the event that the Police or Fire Department records eight (8) false alarms within the calendar year from an alarm system, the Police Chief shall order the user of the burglar alarm system to discontinue use of the alarm system for the calendar year, but for not less than six (6) months from the date the alarm was disconnected. If eight (8) false alarms are recorded from a fire or emergency medical alarm, the Fire Chief shall determine the extent of repairs and order the system repaired or replaced within fifteen (15) days from the date of the eighth false alarm. At this point the Fire Chief shall pursue action through the Building Inspector when the system creating the problem is a nonresidential fire alarm system.

E. Fees

1. Any user of an alarm system that transmits false alarms shall be assessed a fine more commensurate with the Department's costs in accordance with the following schedule for each false alarm in excess of three (3) occurring within the calendar year. At the request of Fire or Police Chief, they may be adjusted by a majority vote of the Board of Selectmen.
 - a) Burglar or security alarms: fifty dollars (\$50) per alarm;
 - b) Emergency medical alarms: fifty dollars (\$50) per alarm;
 - c) Fire Alarms:
 - i. One hundred dollars (\$100) per alarm [four (4) to nine (9)];
 - ii. Two hundred dollars (\$200) per alarm [ten (10) or more].
2. All fines assessed hereunder shall be paid to the Town Treasurer for deposit into the general fund. Upon failure of the user to pay two (2) consecutive fines assessed hereunder within sixty (60) days of assessment, the Police Chief shall order the user to discontinue the use of the burglar alarm system, and if a fire alarm system is not repaired, the Fire Chief shall pursue court action pursuant to 780 CMR 1200.3 for failure to maintain a fire protection system. If a fire alarm system has been repaired but the fee not paid, then the Fire Chief shall notify the Town Treasurer to attach the amount owed to the tax bill of the property. Any such discontinuance or court action shall be effectuated within fifteen (15) days of the Police or Fire Chief's order.

- F. Any user of a burglar alarm system who has, in accordance with this section, been ordered by the Police Chief to discontinue use of an alarm system or any fire alarm user issued a notice of violation may appeal the order of discontinuance or the notice of violation to the Board of Selectmen. Notice of an appeal shall be filed with the Board of Selectmen within thirty (30) days of the date of the order or notice of violation. Thereafter, the Board shall consider the merits of the appeal and in connection therewith shall hear evidence presented by all interested persons. After hearing such evidence, the Board may affirm, vacate or modify the order of discontinuance or the notice of violation.

V. VIOLATIONS AND PENALTIES

- A. The following acts and omissions shall constitute violations of this chapter punishable by fines of up to one hundred dollars (\$100):

1. Failure to obey an order of the Police Chief to discontinue the use of a burglar alarm system or failure to repair a fire alarm system as outlined in the Fire Chief's notice of violation after exhaustion of the right of appeal.
2. Failure to pay two (2) or more consecutive fines assessed under this chapter within sixty (60) days from the date of assessment.
3. Failure to comply with the requirements of Section 3 of this chapter.
4. Second and subsequent use of either the Police Department or Fire Department emergency number for automatically dialed alarms.

B. Each day during which the aforesaid violations continue shall constitute a separate offense.

VI. ENFORCEMENT AND APPEAL

- A. The terms of this bylaw shall be enforced by the Hubbardston Police Chief or Fire Chief or his/her designee.
- B. Appeals from the Chief's determinations shall be made to the Hubbardston Board of Selectmen within 30 days from their receipt by the appellant.

SECTION 4. Hazardous Materials

SECTION 4.1. Authority

This bylaw is adopted by the Town under its home rule powers, its police powers to protect the public health and welfare, and its authorization under Massachusetts General Laws, Chapter 40, Section 21.

SECTION 4.2. Purpose

The purpose of this bylaw is to protect, preserve and maintain the existing and potential groundwater supply, groundwater recharge areas and surface water within the Town from contamination with hazardous materials.

SECTION 4.3 Hazardous Material

"Hazardous material" means a product or waste, or combination of substances which because of quantity, concentration or physical, chemical, radioactive or infectious characteristics, poses, in the Board of Health's judgment a substantial present or potential hazard to human health, safety, welfare or the environment when properly treated, stored, transported, used or disposed of, or otherwise managed excluding those petroleum products and/or other materials when used for domestic heating and transportation purposes. Any substance deemed a hazardous waste in Massachusetts General Laws, Chapter 21C, shall also be deemed a hazardous material for the purpose of this bylaw.

SECTION 4.4 Discharge

"Discharge" means the disposal, deposit, injection, dumping, spilling leaking, incineration or placing of any hazardous material into or on any land or water so that such hazardous material or constituent thereof may enter the environment or be emitted into the air or discharged into any waters including ground waters.

SECTION 4.5 Registration, Storage, Inventory & Wastes

SECTION 4.5.1 Registration

Every owner or operator of a commercial or industrial establishment (including home occupations) storing hazardous materials in quantities totaling more than fifty gallons (50) liquid volume or twenty-five (25) pounds dry weight shall register with the Board of Health, quantities, location and method of storage of said hazardous materials.

SECTION 4.5.2 Regulation

The Board of Health is to issue regulations and to define the hazardous materials covering this bylaw. Storage, handling and inventory of hazardous materials shall comply with regulations of the Board of Health.

SECTION 4.5.3 General Hazardous Wastes

Wastes containing hazardous materials shall be held on the premises in product-tight containers for removal by a licensed carrier and for disposal in accordance with Massachusetts Hazardous Wastes Management Act, Massachusetts General Laws, Chapter 21C.

SECTION 4.6. Underground Storage

The following provisions shall apply to all underground liquid hazardous material storage systems with capacities of fifty-five (55) gallons or greater.

SECTION 4.6.1 Leaking Tanks

All leaking tanks must be emptied by the owner or operator within twelve hours of leak detection and removed by the owner or operator in a time period to be determined by the Board of Health.

SECTION 4.6.2 Installations Prior to Bylaw Adoption

Tank installation on lots not having a permit prior to adoption of this by-law are not permitted within four feet of maximum high-water table or within one hundred feet of a surface body.

SECTION 4.7. Variances

The Board of Health may vary the application of any provision of this bylaw, unless otherwise required by law, in any case when, in its opinion, the applicant has demonstrated that an equivalent degree of environmental protection required under this bylaw will still be achieved. The applicant at his own expense must notify all abutters by certified mail 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 reasons therefor. Any variance granted by the Board of Health shall be in writing and reasons therefor granted. Any denial of a variance shall also be in writing and shall contain a brief statement of the reasons for the denial.

SECTION 4.8 Protection

All discharges of hazardous material within the Town are prohibited.

SECTION 4.9 Enforcement

SECTION 4.9.1 Reporting of Discharge

Any person having knowledge of a discharge of hazardous material shall immediately report the discharge to the Board of Health, and if involving inflammable or explosive materials, to the head of the Fire Department.

SECTION 4.9.2 Right of Entry

The Board of Health and its agents may enter upon privately owned property for the purpose of performing their duties under this bylaw.

SECTION 4.9.3 Clean Up and Disposal Costs Incurred by the Town

Pursuant to MGL Ch. 40, Sec. 31, any person in violation of this bylaw shall be liable for costs incurred by the Town to properly clean up and dispose of hazardous waste material(s).

SECTION 4.10 Fees

Any person registering storage of hazardous materials pursuant to Section 4.5.1 shall pay to the (Town Board of Health) an annual registration fee of five dollars (\$5.00) for every fifty (50) gallons

or fraction thereof, every twenty-five (25) pounds dry weight of storage capacity. Such fee shall be due on the same date as the annual registration. Failure to pay shall constitute a violation and shall subject the violator to the penalties of Chapter I, Section 4 of these bylaws. The Board of Health may charge for expenses incurred in the enforcement of this bylaw.

CHAPTER XXVII CONDUCT IN OR ON LICENSED PREMISES

SECTION 1. Purpose

The acts or conduct enumerated in Section 2 of this Chapter are deemed contrary to the public need and to the common good and therefore are prohibited in or on premises licensed under the provisions of MGL, Chapter 138, Section 1 and 12; or Chapter 140, Sections 181 or 183A.

SECTION 2. Prohibited Acts

The following acts or conduct are prohibited as provided in Section 1 of this Chapter:

- a) To employ or permit any person in or on the licensed premises while such person is unclothed or in such attire as to expose to view any portion of the areola of the female breast or any portion of the pubic hair, cleft of the buttocks or genitals.
- b) To employ or permit any hostess or other person to mingle with the patrons while such hostess or other person is unclothed or in such attire as described in paragraph a. above.
- c) To employ or permit any person in or on the premises to touch, caress or fondle the breasts, buttocks or genitals of any other person.
- d) To employ or permit any person to wear or use any device or covering exposed to view which simulates breasts, buttocks, pubic hair or genitals or any portion thereof.
- e) To employ or permit any person in or on the licensed premises to perform any acts or acts, or to simulate the act of:
 - i. Sexual intercourse, masturbation, sodomy, flagellation or any sexual acts prohibited by law.
 - ii. Touching, caressing or fondling of the breasts, buttocks, or genitals of another.
- f) To employ or permit any person in or on the licensed premises to show motion pictures, films, television-type cassettes, still pictures or other photographic reproductions, depicting any of the acts, or any simulation of the acts, prohibited in paragraphs a) through e) hereof.

SECTION 3. Applicability

Nothing contained in this Chapter shall permit any other conduct or activity in or on any licensed premises in violation of any general or special law or bylaw now in force or hereafter enacted or adopted.

SECTION 4. Additional Regulations

Nothing contained this Chapter shall limit or prohibit the appropriate licensing authority from adopting additional regulations relating to conduct or activity on licensed premises or from imposing additional conditions on the issuance of any license.

SECTION 5. Penalties

Violation of the provisions of this Article shall be cause of suspension or revocation of any license granted pursuant to MGL, Chapter 138, Section 1 and 12 or MGL Chapter 140, Sections 181 and 183A.

SECTION 6. Fines

In addition to the penalty imposed by Section 5 hereof, violations of this bylaw shall be punished by a fine of not less than Fifty (\$50.00) Dollars and not more than One Hundred (\$100.00) Dollars. Each day a prohibited activity occurs shall constitute as a separate offense.

CHAPTER XXVIII IMPORTATION OF MATERIAL

SECTION 1. Prohibited Materials

No person shall import or deposit within the Town of Hubbardston any hazardous wastes or contaminated soils taken from without the Town limits, including but not limited to, those wastes or contaminates or soils as defined in DEP Policy # COMM-97-001, DEP Policy COMM-94-007, DEP Policy COMM-15-01 Soils defined in 310 CMR 40.000.

CHAPTER XXIX PERSONNEL

SECTION 1. Purpose and Authorization

The purpose of the personnel bylaw is to establish a system of personnel administration based on merit principles that ensures a uniform, fair and efficient application of personnel policies. It shall be the policy of the Town of Hubbardston to guarantee equal opportunity to all qualified applicants and to all employees with respect to initial appointment, advancement, compensation, and general working conditions without regard to age, race, creed, color, gender, national origin, sexual orientation, religion, or physical condition. This bylaw is adopted pursuant to the authority granted by Article LXXXIX of the Constitution of the Commonwealth and General Law, Chapter 41, §108A and §108C.

SECTION 2. Application

All Town departments and positions shall be subject to the provisions of the personnel system established pursuant to this bylaw except officials elected by popular vote, employees under the direction and control of the School Committee, employees covered by collective bargaining agreement, contract employees, Library personnel, and those who serve on voluntary boards and committees. All persons covered hereby shall receive the rate of pay and be subject to the provisions set forth in the personnel system established pursuant to this bylaw as determined to be applicable to them by the Human Resources Advisory Board hereinafter established. Nothing in this bylaw shall be construed to be in conflict with Chapter 31 of the General Laws relating to Civil Service, or with Chapter 150E of the General Laws relating to Public Employee Collective Bargaining, which shall prevail if there is any conflict.

SECTION 3. Human Resources Advisory Board

A. Composition, Mode of Selection, Term of Office, Qualifications

The Board of Selectmen shall appoint a Human Resources Advisory Board consisting of five persons for three-year overlapping terms. No member shall be an employee of or a paid elected or appointed official of the town. The board shall annually elect a Chairperson from its membership. Any three members of the board shall constitute a quorum for the transaction of business. The affirmative vote of three members shall be necessary for any official act of the board to be effective.

B. Powers and Duties

The board shall make recommendations for the establishment and maintenance of a personnel system based on merit principles, the classification and reclassification of positions, an annual compensation plan, and the development of personnel policies pursuant to Section 5 of this bylaw and Section 6-7-3 of the Town Charter.

SECTION 4. Personnel System

A personnel system shall be established by promulgation of policies pursuant to Section 5. The personnel system shall make use of current concepts of personnel management and shall include, but not be limited to the following elements:

A. Method of Administration

A system of administration that assigns specific responsibility for all elements of the personnel system, including: maintaining personnel records, implementing effective recruitment and selection processes, maintaining the classification and compensation plans, monitoring the application of personnel policies, including periodic reviews, and evaluation the personnel system.

B. Classification Policy

A position classification plan for all employees subject to this bylaw based on similarity of duties performed and the responsibilities assumed so that the same qualifications may be reasonably required

for, and the same schedule of pay may be equitably applied to, all positions in the same class. No employee may be appointed to a position not included in the classification plan.

C. Compensation Plan/Policy

A compensation plan for all positions subject to this bylaw consisting of: 1. a schedule of pay grades including minimum, maximum and intermediate rates for each grade; and 2. an official list indicating the assignment of each position to specific pay grades.

D. Recruitment and Staffing Policy

A recruitment and staffing policy (employment, transfer and promotion) ensuring that reasonable efforts are made to attract qualified persons and that selection criteria are job related.

E. Personnel Records

A centralized record keeping system ensuring the maintenance of essential personnel records.

F. Personnel Policies

A series of personnel policies establishing the rights and benefits to which personnel employed by the Town are entitled and the obligations of said employees to the Town.

G. Other Elements

Other elements of personnel systems as deemed appropriate or required by law.

SECTION 5. Adoption and Amendment of Classification, Compensation and Personnel Policies

The Human Resources Advisory Board shall promulgate personnel policies defining the compensation, classification, rights, benefits and obligations of employees subject to this bylaw. Policies shall be adopted or amended as follows:

A. Initiation and Review

Any member of the Human Resources Advisory Board or any employee may suggest policies for consideration by the Human Resources Advisory Board. The Human Resources Advisory Board shall consider policies or amendments to policies. The Board need not consider any proposal already considered in the preceding twelve months. The Board shall post an agenda of all meetings.

B. Recommendation of Policies

The recommendations of the Human Resources Advisory Board shall contain the text of the proposed policy or amended policy, an explanation of the policy and the implications of the policy. The Board of Selectmen shall consider recommendations of the Human Resources Advisory Board and may adopt, reject or return recommendations to the Board for further action. Policies shall become effective upon the approval of the Board of Selectmen, unless some other date is specified or Town Meeting appropriation is required.

C. Time Requirements

The Human Resources Advisory Board shall transmit recommendations in writing to the Board of Selectmen within sixty (60) days of receiving a proposed policy or policy amendment for consideration. If the Human Resources Advisory Board fails to transmit a recommendation, the Board of Selectmen may adopt the policy amendment.

CHAPTER XXX GENERAL WETLANDS BYLAW

The purpose of this bylaw is to protect the wetlands of the Town of Hubbardston by controlling activities deemed to have a significant effect upon wetland values, including, but not limited to, the following: public or private water supply, groundwater, flood control, storm damage prevention, water pollution, fisheries, shellfish, wildlife, recreation, vernal pools, and aesthetics, (collectively, the "interests" protected by this bylaw).

SECTION 1. Application

No person shall remove, fill, dredge, alter or build upon or within one hundred (100) feet of any bank, fresh water wetland, coastal wetland, beach dune, flat, marsh, meadow, bog, swamp, or upon or within one hundred (100) feet of lands bordering on the ocean or upon or within one hundred (100) feet of any estuary, creek, river, stream, pond or lake, or within one hundred (100) feet of any land subject to tidal action, coastal storm flowage, flooding or inundation or within one hundred (100) feet of the one hundred (100)-year storm line or on or within one hundred (100) feet of any vernal pool other than in the course of maintaining, repairing or replacing but not substantially changing or enlarging any existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, telephone, telegraph and other telecommunication services, without filing written application for a permit so to remove, fill, dredge, alter or build upon, including such plans as may be necessary to describe such proposed activity and its effect on the environment and receiving and complying with a permit issued pursuant to this bylaw.

The provisions of this section shall not apply to work performed for normal maintenance or improvement of land in agricultural use.

Such application may be identical in form to a Notice of Intention filed pursuant to Massachusetts General Law (MGL) Chap. 131, §40, shall be sent by certified mail to the Hubbardston Conservation Commission (the "Commission") and must be filed concurrently with, or after, applications for all other variances and approvals required by Zoning Bylaws, the Subdivision Control Law, or any other bylaw or regulation has been obtained.

The Commission shall set a filing fee by regulation, but no filing fee is required when the Town of Hubbardston files an application for a permit. Copies of the application shall be sent at the same time, by certified mail, to the Board of Selectmen, Planning Board and the Board of Health.

Upon written request of any person, the Commission shall, within twenty-one (21) days, make written determination as to whether this bylaw is applicable to any land or work thereon. When the person requesting a determination is other than the owner, notice of the determination shall be sent to the owner as well as the requesting person.

SECTION 2. Hearing

The Commission shall hold a public hearing on the application within twenty-one (21) days of its receipt. Notice of the time and place of the hearing shall be given by the Commission at the expense of the applicant, not less than five (5) days prior to the hearing, by publication in a newspaper of general circulation (in Hubbardston) and by mailing a notice to the applicant, Board of Health, Board of Selectmen, Planning Board and to such other persons as the Commission may, by regulation, determine. The Commission, its agents, officers, and employees, may enter upon privately owned land for the purpose of performing their duties under this bylaw.

SECTION 2.1 Permit & Conditions

If, after the public hearing, the Commission determines that the area which is the subject of the application is significant to the interests protected by this bylaw, the Commission shall, within twenty-one (21) days of such hearing, issue or deny a permit for the work requested. If it issues a permit after making such determination, the Commission shall impose such conditions as it determines are necessary or desirable for protection of these interests, and all work shall be done in accordance with conditions. If the Commission determines that the area which is the subject of the application is not significant to the interests protected by this bylaw, or that proposed activity does not require the imposition of conditions, it shall issue a permit without conditions within twenty-one (21) days of the public hearing.

Permits shall expire three (3) years from the date of the issuance, unless renewed prior to the expiration, and all work shall be completed prior to expiration.

SECTION 2.2 Relationship to MGL Chap 131, Sec 40

The Commission shall not impose additional or more stringent conditions pursuant to MGL Chap. 131 §40 than it imposes pursuant to the bylaw, nor shall it require a Notice of Intention pursuant to §40 to provide materials or data in addition to those required pursuant to this bylaw.

SECTION 3. Emergency Projects

This bylaw shall not apply to any emergency project as defined in MGL Chap. 131 §40.

SECTION 4. Pre-Acquisition Violation

Any person who purchases, inherits, or otherwise acquires real estate upon which work has been done in violation of the provisions of the bylaw or in violation of any permit issued pursuant to this bylaw, shall forthwith comply with any such order, or restore such land to its condition prior to any such violation.

SECTION 5. Regulations

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

SECTION 6. Burden of Proof

The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not harm the interests protected by this bylaw. Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will not harm the interests protected by this bylaw shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions, or, in the Commission's discretion, to continue the hearing to another date to enable the applicant or others to present additional evidence.

SECTION 7. Definitions

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

SECTION 7.1 Person

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 the Town bylaws administrative agencies, public or quasi-public corporations or bodies, the Town of Hubbardston, and any other legal entity, its legal representative agents or assigns.

SECTION 7.2 Alter

The term *alter* shall include, without limitation, the following actions when undertaken in areas subject to this bylaw:

- a) Removal, excavation, or dredging of soil, sand, gravel or aggregate materials of any kind;
- b) Changing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, and 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) Driving of piles, erection of buildings or structures of any kind;
- f) Placing of obstructions whether or not they interfere with the flow of water;
- g) Destruction of plant life, including cutting of trees;
- h) Changing of water temperature, biochemical oxygen demand or other physical or chemical characteristics of the water.

SECTION 7.3 Banks

The term *banks* shall mean that part of the land adjoining any body of water which confines the water.

SECTION 7.4 Agricultural Practices

- (a) The term *land in agricultural use* shall mean any qualifying wetland within a farm which is qualified or eligible to be qualified under the Farmland Assessment Act, MGL Chap. 61A §1-5.
- (b) The term *qualifying wetland* shall mean only inland fresh water areas which are seasonally flooded basins or flats or inland fresh meadows.
- (c) The term *normal maintenance or improvement* of land in agricultural use shall mean only:
 1. Tilling practices customarily employed in the raising of crops;
 2. Pasturing of animals, including such fences and protective structures as may be required;
 3. Use of fertilizers, pesticides, herbicides, and similar materials subject to state and federal regulations covering their use;
 4. Constructing, grading, or restoring of field ditches, surface drains, grass waterways, culverts, access roads, and similar practices to improve drainage, prevent erosion, provide more effective use of rainfall, improve equipment operation and efficiency in order to improve conditions for the growing of crops.

SECTION 7.5 Vernal Pools

The term *vernal pool* shall mean a water body that has been certified by the Massachusetts Division of Fisheries and Wildlife as a vernal pool.

SECTION 7.6 Additional Definitions

The Commission may adopt additional definitions not inconsistent with this Section 7 in its regulations promulgated pursuant to Section 5 of this by-law.

SECTION 8. Security

The Commission may require, as a permit condition, that the performance and observance of other conditions be secured by one or both of the following methods:

- (a) By a bond or deposit of money or negotiable securities in the amount determined by the Commission to be sufficient and payable to the Town of Hubbardston.

- (b) By a conservative restriction, easement, or other covenant running with the land, executed and properly recorded (or registered, in the case of registered land).

SECTION 9. Enforcement

Any person who violates any provision of this bylaw or of any condition of a permit issued pursuant to it, shall be punished by a fine of not more than \$200 (Two Hundred and 00/100 Dollars).

Each day or portion thereof during which a violation continues shall constitute a separate offense; if more than one, each condition violated shall constitute a separate offense. This bylaw may be enforced pursuant to MGL Chap. 40 §21D by a Town Police Officer or other officer having police powers. Upon request of the Commission, the Board or Selectmen and Town Counsel shall take such legal action as may be necessary to enforce this bylaw and permits issued pursuant to it.

SECTION 10. Consulting Fees

In addition to the filing fee imposed by this bylaw, the Commission may require an applicant to pay a consultant fee to cover reasonable costs and expenses required for specific expert engineering and other services deemed necessary by the Commission for the review of the application. The decision to engage an outside consultant shall be at the discretion of the Commission and its finding that additional information acquirable only through outside consultants is necessary for making an informed and objective decision. The Commission shall notify the applicant prior to engaging a consultant at the applicant's expense. Consultant services may include but are not limited to: performing or verifying the accuracy of resource area survey and delineation, hydro geologic and drainage analysis, and erosion and sedimentation potential, and researching environmental land use law.

The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision. The amount of the consulting fee shall be based on an estimate given by an expert in the required field and chosen by the Commission. The Commission at one of its public meetings shall approve payments. The Commission may waive the consultant fee for an application filed by a governmental agency.

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 Massachusetts General Laws.

NOTE:

VERNAL POOLS

As defined by Mass. Natural Heritage Program
(MA Division of Fisheries & Wildlife)

What is a Vernal Pool?

Vernal pools are temporary bodies of fresh water that provide crucial habitat to several vertebrate and many invertebrate species of wildlife. The word "vernal" means spring, and indeed, most vernal pools are filled by spring rains and snowmelt, only to dry up during the hot dry months of summer. Many vernal pools are filled again by the rains of autumn and may persist throughout the winter. Vernal pools are typically small; they rarely exceed 150 (One Hundred Fifty) feet in width and are usually shallow. In fact, vernal pools that support rich communities of amphibians and invertebrates may measure only a few yards across.

Where are Vernal Pools Found?

Vernal pools are common in Massachusetts, probably occurring in every town in the state. Vernal pools may be found anywhere where small depressions, swales or kettle holes collect spring runoff or intercept seasonally high groundwater tables. Although many people associate vernal pools with wooded areas, ecologically valuable vernal pools may also be found in meadows, sand flats and river floodplains.

Why are Vernal Pools Valuable?

Vernal pools constitute a unique and increasingly valuable type of wetland that is inhabited by many species of wildlife, some of which are totally dependent on vernal pool habitat for their survival. Since vernal pools are temporary bodies of water, they cannot support fish populations. The absence of fish predation on amphibian eggs and larvae is crucial to the successful breeding of the Wood Frog (Rana sylvatica) and the four local species of mole salamanders (Ambystoma spp.). Other amphibian species, including the American Toad (Bufo americanus), Green Frog (Rana clamitans) and Red-Spotted Newt (Notophthalmus veridescens), often exploit the fish-free waters of vernal pools, although they regularly breed in permanent ponds as well. Vernal pools also support a rich and diverse invertebrate fauna. Some invertebrate species, such as fairy shrimp, spend their entire lives in vernal pools. The invertebrates constitute a rich source of food for amphibian larvae, and also attract various species of birds, mammals and reptiles to vernal pools.

Are Vernal Pools a Threatened Resource?

Yes. Prior to November 1987, vernal pools in Massachusetts were not given protection under the state's Wetlands Protection Act. As a result, many vernal pool depressions were filled as part of the rapid development that has occurred throughout the Commonwealth in the past several decades. Three species of mole salamanders that require vernal pools for breeding are now considered rare in Massachusetts.

CHAPTER XXXI AGRICULTURE

SECTION 1. Agricultural Commission

The Town will establish an Agricultural Commission to represent the Hubbardston farming community. The commission shall consist of five members appointed by the Board of Selectmen. The Commission will have a minimum of three members who are actively engaged in agriculture in Hubbardston and another two who are “supporters” of agriculture. The three actively engaged in agriculture will be appointed to initial terms of one, two and three years with staggered three-year terms thereafter and the two “supporters” of agriculture will to be appointed to one and two year terms with staggered three year terms thereafter.

Said Commission once appointed shall develop a work plan to guide its activities. Such activities include, but are not limited, to the following: serve as facilitators for encouraging the pursuit of agriculture in Hubbardston; promote agricultural-based economic opportunities in Town; act as mediators, advocates, educators, and/or negotiators on farming issues; work for preservation of prime agricultural lands; pursue all initiatives appropriate to creating a sustainable agricultural community and preserving the rural character of Hubbardston.

The Board of Selectmen shall fill any vacancies based on the unexpired term of the vacancy in order to maintain the staggered cycle of appointments and such appointments will based on recommendations from the Agricultural Commission.

SECTION 2. Right to Farm

Section 2.1 Purpose and Intent

The purpose and intent of this bylaw is to state with emphasis the Right to Farm accorded to all citizens of the Commonwealth under Article 97 of the Constitution, and all state statutes and regulations there under including but not limited to Massachusetts General Laws Chapter 40A, Section 3, Paragraph 1; Chapter 90, Section 9, Chapter III, Section 125A and Chapter 128 Section 1A.

We the citizens of Hubbardston restate and republish these rights pursuant to the Town's authority conferred by Article 89 of the Articles of Amendment of the Massachusetts Constitution, ("Home Rule Amendment").

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

Section 2.2 Definitions

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

The words *farming* or *agriculture* or their derivatives shall include, but are not limited to, the following:

- Farming in all its branches and the cultivation and tillage of the soil;
- Dairying;
- Production, cultivation, growing, and harvesting of any agricultural, aquaculture, floriculture, viticulture, or horticulture 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; and

- Keeping and raising of poultry, swine, cattle, sheep, ratites (such as emus, ostriches and rheas) and camelids (such as llamas, alpacas and camels), and other domesticated animals for food and other agricultural purposes, including bees and fur-bearing animals.

Farming shall encompass activities including, but not limited to, the following:

- Operation and transportation of slow-moving farm equipment over roads within the Town;
- Control of pests, including, but not limited to, insects, weeds, predators and disease organisms 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 the agricultural output or services of the farm;
- Slaughtering, processing and packaging of the agricultural output of the farm and the operation of a farmers' market or farm stand including signage thereto;
- Maintenance, repair, or storage of seasonal equipment, or apparatus owned or leased by the farm owner or manager used expressly for the purpose of propagation, processing, management, or sale of the agricultural products; and
- On-farm relocation of earth and the clearing of ground for farming operations.

Section 2.3 Right to Farm Declaration

The Right to Farm is hereby recognized to exist within the Town of Hubbardston. 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 bylaw are intended to apply to those agricultural and farming operations and activities conducted in accordance with generally accepted agricultural practices. Moreover, nothing in this Right to Farm bylaw 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 2.4 Disclosure Notification

Within 30 days after this bylaw becomes effective, the Board of Selectmen shall prominently post within the town limits the following disclosure:

It is the policy of this community to conserve, protect, and encourage the maintenance and improvement of agricultural land for the production of food and other agricultural products, and also for its natural and ecological value. This disclosure notification is to inform buyers or occupants that the property they are about to acquire or occupy lies within a town where farming activities occur. Such farming activities may include, but are not limited to, activities that may cause noise, dust and odors. Buyers or occupants are also informed that the location of property within the town may be impacted by agricultural operations.

Section 2.5 Resolution of Disputes

Any person who seeks to complain about the operation of a farm may, notwithstanding pursuing any other available remedy, file a grievance with the Board of Selectmen, the Zoning Enforcement Officer, or the Board of Health, depending upon the nature of the grievance.

The filing of a 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 to the 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.

CHAPTER XXXII SCENIC ROADS

32.1 Authority and Purpose

Authority. This bylaw is adopted under authority of MGL c. 40, § 15C, and MGL c. 40, § 21.

Purpose. The purpose of a Scenic Road Bylaw is to help the Town maintain and enhance its rural, small town character by ensuring that work done to trees and stone walls on the public right-of-way of scenic roads is done in a way that helps preserve the scenic, historic and aesthetic characteristics of the public right-of-way.

Whereas the Town of Hubbardston has designated scenic roads (see addendum) pursuant to MGL Chapter 40, Section 15C, the additional purpose of this bylaw is to define, clarify and regulate Hubbardston Scenic Roads.

32.2 Applicability

This bylaw applies to all roads in Hubbardston previously identified by Town Meeting as “Scenic” and all future roads to be so identified.

32.3 Definitions

32.3.1 Abutter: Shall mean all property owners, including those across the street, abutting the property where work requiring a scenic road hearing is required.

32.3.2 Cutting or Removal of Trees: Shall mean the removal of one or more trees, trimming of major branches, (as defined herein), cutting of roots, or any other work that would otherwise compromise a tree’s health, such as soil and/or root compaction, water deprivation, or other conditions resulting from proposed work along a scenic road sufficient in the opinion of the Planning Board or the Tree Warden to cause eventual destruction of a tree. This definition does not apply to routine or emergency tree maintenance that removes only permanently diseased or damaged limbs, trunks, roots and dead whole trees. Nor does this definition apply to trimming work, including cutting of major branches, by the Town’s Department of Public Works Department, provided that the Planning Board has reviewed the proposed work and determined it to be in accordance with good practices. However, the removal of whole, live trees by the DPW is included in this definition.

32.3.3 Major Branch: Shall mean a living branch that is fully attached to a tree (as defined herein) and that has a diameter of three inches or more, 12 inches from the point at which said branch connects to the tree.

32.3.4 Posting: Shall mean the marking of a tree or stone wall along a road for the purpose of a scenic road hearing. For trees, such marking as described in MGL c. 87, § 3 (Shade Tree Act). For stone walls, a ribbon or other appropriate flagging material shall be temporarily affixed at the limit of work on both ends of the stone wall.

32.3.5 Repair, Maintenance, Reconstruction or Paving Work: Shall mean any work done within the right-of-way by any person or agency, public or private. Within this definition is any work on any portion of the right-of-way which was not physically commenced at the time the road was designated as a scenic road. Construction of new driveways, bicycle paths, sidewalks or roadside paths, or alteration of existing ones is included, insofar as it takes place within the right-of-way. Roadside clearing of trees to provide for vehicular clearance or for improvements to the line-of-sight shall also be included in this definition. Construction or alteration of water, sewer, drainage, electric, telephone, cable TV, or other utilities within the right-of-way is also included to the degree that they impact trees and stone walls, except as exempted in Subsection 22.1.2 above.

32.3.6 Right of Way: The area on and within the boundaries of the public way. If the boundaries are unknown, any affected trees or stone walls shall be presumed to be within the public right-of-way until shown to be otherwise.

32.3.7 Roads: Shall mean a right-of-way of any way used and maintained as a public way, including the vehicular traveled way plus necessary appurtenances within the right-of-way, such as bridge structures, drainage systems, retaining walls, traffic control devices, and sidewalks, but not intersecting streets or driveways. When the boundary of the right-of-way is an issue so that a dispute arises as to whether or not certain trees or stone walls or portions thereof are within or without the way, the trees and stone walls shall be presumed to be within the way until the contrary is shown. Trees and stone walls existing on or partially within the boundary of the right-of-way shall be considered to be within the right-of-way.

32.3.8 Tearing Down or Destruction of Stone Walls: Shall mean the destruction removal, covering or painting of more than 10 total linear feet of stone wall involving more than one cubic foot of wall material per linear foot above existing grade. Temporary removal and replacement at the same location with the same materials is permitted without Planning Board approval if the Town Highway Department is notified before the work begins so that it can confirm that the wall is properly replaced. Repair of a stone wall that does not involving tearing down or destroying the wall is not covered by this bylaw.

32.3.9 Shade Trees: Under MGL c. 87, Public Shade Trees are defined as all trees within a public way or on the boundaries thereof including trees planted in accordance with the provisions of section 7; and when it appears in any proceeding in which the ownership of or rights in a tree are material to the issue, that, from length of time or otherwise, the boundaries of the highway cannot be made certain by records or monuments, and that for that reason it is doubtful whether the tree is within the highway, it shall be taken to be within the highway and to be public property until the contrary is shown.

32.3.10 Trees: Shall include any living tree whose trunk has a diameter of four inches or more as measured four feet above the ground. Nothing in this definition shall be construed to permit a person, other than the Tree Warden or his deputy, to trim, cut down, or remove a public shade tree more than 1 1/2 inches in diameter one foot from the ground.

32.3.11 Warden: Shall mean the Town of Hubbardston Tree Warden or designated deputy.

32.4 Criteria for designation as scenic road

In determining which roads or portions of roads should be recommended to Town Meeting for designation as scenic roads, the following criteria should be considered:

- (1) Overall scenic beauty;
- (2) Contribution of trees to scenic beauty;
- (3) Contribution of stone walls to scenic beauty;
- (4) Age and historic significance of roads, trees, and stone walls;
- (5) Built features such as historic buildings, historic monuments, historic burial grounds, historic structures, farm buildings and fencing; and
- (6) Road features such as historic layout, surface, carriage width, use restrictions, and non-historic bridges.

32.5 Procedure for designating scenic roads

The Planning Board, the Board of Selectmen, the Conservation Commission, the Historical Commission, or a petition of 10 citizens of the Town may propose "scenic road" designation of any Hubbardston road other than a state highway. The Planning Board shall then hold a Public Hearing notifying the Board of Selectmen, the Tree Warden, the Department of Public Works, the Conservation Commission, and the Historical Commission, all property owners with land bordering the right-of-way and the public by

advertising on the Town website and twice in a newspaper of general circulation in the area, the last publication to occur at least seven days prior to the date of the hearing. The Planning Board shall make a recommendation to Town Meeting on the merits of designation of the proposed road as a scenic way. No road shall be designated a scenic road by Town Meeting unless such designation is favorably recommended by the Planning Board, the Conservation Commission or the Historical Commission. A majority vote of Town Meeting is required for designation.

Following designation by Town Meeting, the Planning Board shall:

- A) Notify all municipal departments that may take action with respect to such roads;
- B) Notify the Massachusetts Highway Department;
- C) Indicate such designation on all maps currently in use by municipal departments;
- D) Notify all utility companies or other such parties, which may be working on the border of such road.
- E) The roads already designated as scenic roads under the Scenic Roads Act of 1973 (MGL c. 40, § 15C) shall retain their status as scenic for the purpose of this Scenic Road bylaw. These roads are listed on addendum.

32.5.1 Procedures for altering, repairing, modifying a scenic road

32.5.1.1 Filing. Any person, organization or agency seeking the consent of the Planning Board under MGL c. 40, § 15C, regarding road repair, maintenance, reconstruction, or paving work that may involve the cutting or removal of trees or the tearing down of stone walls, or portions thereof, shall file an application with the Planning Board and submit the following information:

- a) A completed scenic road application, including two copies of a plan showing proposed work and the extent of alterations or removal of trees or stone walls, so that readers may locate it with reasonable specificity on the ground without the need for additional plats or references, and describing in reasonable detail the proposed changes to trees and stone walls, and a statement of purpose, or purposes, for the proposed action. The plan shall show the name of the street or streets, the extent of the Scenic Road right-of-way, names of abutters within 100 feet of the proposed work, a title block and suitable space to record the action of the Planning Board. A plan drawn to scale is preferred, but not required.
- (b) One copy of the completed application and one copy of the plan shall also be submitted to the Town Clerk.
- c) Any further explanatory material useful to adequately inform the Planning Board, including clearly identifiable digital or printed photographs of the proposed work area and its existing conditions.
- d) A certified list of abutters within 100 feet of the subject property.

32.5.1.2 Notice. The Planning Board shall, as required by statute, give notice of the public hearing to discuss the alterations that the applicant wants to have done. Notice will be posted on the official Town website and twice in a newspaper of general circulation in the area, with the last publication occurring at least seven days prior to the hearing.

- a) The Applicant shall be responsible for the cost of advertising and noticing the abutters of the public hearing.
- b) The notice will contain the time, date, place and purpose of the hearing.
- c) Copies of the notice shall be sent to the Board of Selectmen, the Tree Warden, the Department of Public Works, the Conservation Commission and the Historical Commission before the public hearing commences.
- d) Timing of the hearing. The Planning Board shall hold a public hearing within 30 days of receipt of a properly filed request and shall take action on the request within 45 days of the hearing being held.
- e) Decision. The Planning Board shall provide its written decision to the applicant, with copy filed with the Town Clerk, within seven days of taking action on the application. If a consolidated meeting has been held involving the Tree Warden, then the Tree Warden shall issue a separate written decision related to

the public shade trees. The Planning Board and, or the Tree Warden shall also provide copy of the decision to the applicant, the Conservation Commission, the Historical Commission, the Tree Warden, and Department of Public Works.

f) Tree replacement. If the cutting or removal of whole trees is approved by the Planning Board or Tree Warden, the Planning Board, at its discretion, may require the applicant to replace the trees cut with nursery quality trees, which are of Zone 6 hardiness at a minimum, that are native to the region, and that are acceptable to the Planning Board, in consultation with the Tree Warden. For trees that are 18 inches or more in caliper, measured four feet from the ground, the Planning Board may require the removed tree to be replaced with two trees of at least a two-and-one-half-inch caliper, measured four feet from the ground. The location of the replacement trees shall be at the direction of the Tree Warden, in consultation with the Planning Board.

g) Public shade trees. When required by MGL c. 87 (Shade Trees), notice shall be given and the Planning Board hearing required by MGL c. 40, § 15C (Scenic Roads) shall be held in conjunction with those held by the Tree Warden, with the Tree Warden responsible for the consolidated notice acting under MGL c. 87 (Shade Trees). Consent to an action by the Planning Board shall not be construed as consent by the Tree Warden or vice versa. A Planning Board decision shall contain a condition that no work shall take place until any applicable provisions of MGL c. 87 (Shade Trees) have been complied with.

h) Statute of limitations. The approval of the Planning Board or Tree Warden under these regulations for any proposed work shall be valid for two years from the date the decision is filed with the Town Clerk. After two years from this date, the decision is void unless an extension is granted before the expiration.

i) Emergency repair. The requirements of this bylaw shall not apply when the Tree Warden acts in an emergency in accordance with law. In cases where a tree or branch poses a threat to public safety and there is not sufficient time to obtain prior approval from the Planning Board, the Planning Board shall be notified by the Tree Warden within the calendar week after any action which would have been a violation of this bylaw if the threat had not existed. Under no circumstances are stone walls to be torn down or destroyed on a scenic road under the auspices of emergency repair.

32.5.3 Considerations

In acting on applications concerning scenic roads, the Planning Board shall take into consideration the following:

- A. Contribution of trees and/or stonewalls to scenic beauty;
- B. Age and historic significance of roads, trees and stone walls;
- C. Features of the road, such as surface, pavement width and bridges;
- D. Public safety;
- E. Local residential traffic patterns and overall traffic volume and congestion;
- F. Compensatory actions proposed, such as tree and stone wall replacement;
- G. Functional importance and urgency of repair, maintenance, reconstruction or paving;
- H. Additional evidence contributed by abutters, Town agencies and other interested parties;
- I. Recreational uses of the road;
- J. Preservation of natural resources and historic resources;
- K. Scenic and aesthetic characteristics;
- L. Environmental values;
- M. Other planning information;
- N. Existence or absence of reasonable alternatives.
- O. Applicants reasons and considerations

32.6 Enforcement; violations and penalties

32.6.1 This bylaw shall be administered by the Planning Board and enforced by the Planning Board, Building Inspector, Tree Warden, Department of Public Works Director or others designated by the Town Administrator. Enforcing officials may issue a citation for the violation of this bylaw and shall take

appropriate action in the name of the Town of Hubbardston to prevent, correct, restrain or abate such violations.

32.6.2 Failure to file with the Planning Board for permission to cut or remove trees or for destruction of any portion of a stone wall within the layout of any scenic road will require an immediate cessation of work and an immediate filing as detailed above and the applicant shall be required to restore the features if required by the Planning Board. Unless waived, the required restoration shall consist of restoring the stone wall to its previously existing condition and/or replacing the trees cut with nursery quality trees that are acceptable to the Planning Board. For every three inches of tree cut, measured across the stump, a nursery quality replacement tree with a two-and-one-half-inch caliper, measured four feet from the ground, shall be planted by the applicant. Failure to comply with a duly issued decision of the Planning Board shall subject the applicant to restoration as detailed above and other remedial measures that the Planning Board deems necessary.

32.6.3 Any violation of this bylaw, MGL c. 40, § 15C, or a Planning Board decision issued under this bylaw or MGL c. 40, § 15C, shall be punishable by a fine not to exceed \$300 per violation, any such violation may also be enforced through the non-criminal disposition in accordance with this bylaw. Each day, or portion thereof, that a violation of this bylaw continues without a Planning Board approved decision to take restorative action shall be deemed a separate offense.

32.6.4 In addition to the foregoing remedies, the Town of Hubbardston, acting by and through its Planning Board, and with the approval of the Board of Selectmen, shall have all other legal and equitable remedies which may exist, including without limitation the right to seek injunctive relief. In addition, the Town of Hubbardston may in its discretion enforce the provisions of this bylaw in the manner provided in MGL c. 40, § 21D.

32.6.5 In all other aspects, all provisions of this bylaw shall remain in full force.