

Town of Amherst

UNOFFICIAL RECORD OF VOTES OF THE TOWN COUNCIL

Monday, May 3, 2021

6:30 p.m.

Virtual Meeting

Councilors Participating Remotely: Bahl-Milne, Brewer, De Angelis, DuMont, Griesemer, Hanneke, Pam, Ross, Ryan, Schoen, Schreiber, Steinberg, Swartz

Councilors Absent: None

Councilor Swartz left the meeting at 9:36 pm

Others Participating Remotely: Town Manager Paul Bockelman, Clerk of the Council Athena O’Keeffe, Finance Director Sean Mangano, DPW Superintendent Guilford Mooring, Minute-taker Lindsey McConnell, Regional School Finance Director Doug Slaughter, Planning Director Christine Brestrup, Comptroller Sonia Aldrich, Superintendent of Schools Mike Morris, and Senior Planner Nathaniel Malloy.

Public comment: Zoe Crabtree, Vincent O’Connor, Joanna Morse, Bailey Batty, Maria Kopicki, Mona Shadi, Lydia Irons, Adrienne Terrizzi on behalf of the League of Women Voters, Amara Donovan, and Allegra.

Pursuant to Governor Baker’s March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, this meeting of the Town Council is being conducted via remote participation.

All votes will be taken by roll call.

Per MGL Chapter 30A Section 20(f), this meeting is being recorded and broadcast by Amherst Media.

President Griesemer called the meeting to order at 6:31 p.m.

5. **Consent Agenda**

Consent Agenda: The following items were selected because they were considered to be routine and it was reasonable to expect they would pass with no controversy. To remove an item from the consent agenda for discussion later in the meeting, ask that it be removed when the President lists the consent agenda items. The request to remove an item from the consent agenda does not require a second.

MOVED: To move the following items, and the printed motions thereunder and approve those items as a single unit:

- 6.a. Waiver of Town Council Rules of Procedure rule 8.6 for agenda item 6.a. Asian American Pacific Islander Heritage Month Proclamation
- 6.a. Adoption of Asian American Pacific Islander Heritage Month Proclamation
- 8.b. Referral of FY22 Budget to Finance Committee
- 8.c. Referral of FY22 Capital Improvement Program to Finance Committee
- 9.a. Approval of Town Manager reappointments to Affordable Housing Trust and Human Rights Commission
- 11. Approval of Minutes:
 - March 25, 2021 Joint Town Council & Town Services and Outreach Committee Meeting minutes – Public Forum on Pomeroy Village Intersection
 - March 27, 2021 Joint Town Council & Town Services and Outreach Committee Meeting minutes – Public Forum on Pomeroy Village Intersection
 - April 5, 2021 Special Town Council Meeting minutes - Public Forum on Library Appropriations
 - April 5, 2021 Regular Town Council Meeting minutes

- April 12, 2021 Regular Town Council Meeting minutes

Motion by: Griesemer

Seconded by: Ross

ROLL CALL VOTE: Unanimous, 13-0

6. Resolutions and Proclamations

a. Asian American Pacific Islander Heritage Month Proclamation

VOTED VIA CONSENT AGENDA

To waive Town Council Rules of Procedure rule 8.6 for the current agenda item.

VOTED VIA CONSENT AGENDA

To adopt the Asian American Pacific Islander Heritage Month Proclamation, as presented.

8. Action Items

a. FY22 Regional School Budget

MOVED: In accordance with Section 5.5(c) of the Amherst Home Rule Charter and in compliance with Sections 5.5(a) and 5.5(b) of the Amherst Home Rule Charter, to separately consider and act on the Amherst-Pelham Regional School District budgets and assessment method for Fiscal Year 2022 due to the agreement with the three other towns in the Regional School District.

Motion by: Griesemer

Seconded by: De Angelis

ROLL CALL VOTE: Unanimous, 13-0

MOVED: In accordance with Charter Sec. 5.5, having been referred to the Finance Committee, a public hearing held on April 5, 2021, having been recommended by the Finance Committee report of May 3, 2021, a Public Hearing held on April 5, 2021, notice of which was posted for a minimum of 10 days on March 25, 2021, to adopt Council Order FY22-01: An Order Approving the Amherst-Pelham Regional School District – Assessment Method for FY 2022, as presented.

Motion by: Griesemer

Seconded by: Steinberg

ROLL CALL VOTE: Unanimous, 13-0

MOVED: In accordance with Charter Sec. 5.5, having been referred to the Finance Committee, a public hearing held on April 5, 2021, having been recommended by the Finance Committee report of May 3, 2021, a Public Hearing held on April 5, 2021, notice of which was posted for a minimum of 10 days on March 25, 2021, to adopt Council Order FY22-02: An Order Approving the Amherst-Pelham Regional School District FY2022 Budget and Appropriating the Town of Amherst Share of the Budget Assessment, as presented.

Motion by: Griesemer

Seconded by: Steinberg

ROLL CALL VOTE: 12-1 (Councilors Bahl-Milne, Brewer, De Angelis, Griesemer, Hanneke, Pam, Ross, Ryan, Schoen, Schreiber, Steinberg, and Swartz voted Yes; Councilor DuMont voted No)

MOVED: In accordance with Charter Sec. 5.5, having been referred to the Finance Committee, a public hearing held on April 5, 2021, having been recommended by the Finance Committee report of May 3, 2021, a Public Hearing held on April 5, 2021, notice of which was posted for a minimum of 10 days on

March 25, 2021, to adopt Council Order FY22-03: An Order Approving the Amherst-Pelham Regional School District Debt Authorization for FY2022, as presented.

Motion by: Griesemer

Seconded by: Steinberg

ROLL CALL VOTE: Unanimous 13-0

b. FY22 Budget

VOTED VIA CONSENT AGNEDA

In accordance with Section 5.5(a) of the Amherst Home Rule Charter, to refer the FY22 budget submitted by the Town Manager to the Finance Committee for report and recommendation back to the Council by June 7, 2021.

c. Capital Improvement Program

VOTED VIA CONSENT AGENDA

To refer the Town Manager's May 3, 2021 FY22 Capital Improvement Program to the Finance Committee for a report and recommendation to the Council by June 21, 2021.

d. Proposed Zoning Amendment to Article 15: Inclusionary Zoning

MOVED: To refer the proposed amendments to Zoning Bylaw Article 15, Inclusionary Zoning, to the Planning Board and the Community Resources for a joint hearing held no later than July 7, 2021, and for a written recommendation and an explanation as to whether the proposed bylaw is not inconsistent with the Master Plan from the Planning Board to the Town Council and to the Community Resources Committee no later than 21 days after the joint hearing, and for the Community Resources Committee to send a written recommendation to the Town Council and to submit all materials to the Governance, Organization, and Legislation Committee for review of clarity, consistency, and actionability within 60 days of the hearing held by the Community Resources Committee. .

Motion by: Griesemer

Seconded by: Hanneke

ROLL CALL VOTE: 12-0, 1 absent (Councilors Bahl-Milne, Brewer, De Angelis, DuMont, Griesemer, Hanneke, Pam, Ross, Ryan, Schoen, Schreiber, and Steinberg voted Yes; Councilor Swartz was absent)

e. Pomeroy Village Intersection – First Discussion

First discussion; no action.

f. Illicit Discharge Detection and Elimination (IDDE) Bylaw

MOVED: To adopt the Illicit Discharge Detection and Elimination (IDDE) Bylaw, as shown on pages 5-11.

Motion by: Griesemer

Seconded by: Ryan

ROLL CALL VOTE: 12-0, 1 absent (Councilors Bahl-Milne, Brewer, De Angelis, DuMont, Griesemer, Hanneke, Pam, Ross, Ryan, Schoen, Schreiber, and Steinberg voted Yes; Councilor Swartz was absent)

g. Stormwater Management Bylaw

MOVED: To adopt the Stormwater Management Bylaw, as shown on pages 11-18.

Motion by: Griesemer

Seconded by: Ryan

ROLL CALL VOTE: 12-0, 1 absent (Councilors Bahl-Milne, Brewer, De Angelis, DuMont, Griesemer, Hanneke, Pam, Ross, Ryan, Schoen, Schreiber, and Steinberg voted Yes; Councilor Swartz was absent)

h. Districting Advisory Board

MOVED: To adopt the Districting Advisory Board charge, as recommended by the Governance, Organization, and Legislation Committee report of May 3, 2021, as presented.

Motion by: Griesemer

Seconded by: De Angelis

ROLL CALL VOTE: 12-0, 1 absent (Councilors Bahl-Milne, Brewer, De Angelis, DuMont, Griesemer, Hanneke, Pam, Ross, Ryan, Schoen, Schreiber, and Steinberg voted Yes; Councilor Swartz was absent)

MOVED: To refer to the Governance, Organization, and Legislation Committee recommendation to the Council of appointments to the Districting Advisory Board, including publication of a Charter 9.12(e) vacancy notice, solicitation of statements of interest, interviews, and recommendation to the Town Council by June 21, 2021

Motion by: Griesemer

Seconded by: Ryan

ROLL CALL VOTE: 12-0, 1 absent (Councilors Bahl-Milne, Brewer, De Angelis, DuMont, Griesemer, Hanneke, Pam, Ross, Ryan, Schoen, Schreiber, and Steinberg voted Yes; Councilor Swartz was absent)

9. Appointments

a. Town Manager Appointments

VOTED VIA CONSENT AGENDA

To approve the following Town Manager reappointments under Charter Section 2.11(b):

- For terms expiring June 30, 2023, reappointments to the Affordable Housing Trust:
 - Robert Crowner
 - Carol Lewis
 - Erica Piedade
 - William Van Heuvelen
- For terms expiring June 30, 2024, reappointments to the Human Rights Commission:
 - Benjamin Herrington June 30, 2024
 - Deborah Neubauer June 30, 2024

11. Approval of Minutes

a-e. VOTED VIA CONSENT AGENDA

To adopt the following Town Council minutes, as presented:

- March 25, 2021 Joint Town Council & Town Services and Outreach Committee Meeting minutes – Public Forum on Pomeroy Village Intersection
- March 27, 2021 Joint Town Council & Town Services and Outreach Committee Meeting minutes – Public Forum on Pomeroy Village Intersection
- April 5, 2021 Special Town Council Meeting minutes - Public Forum on Library Appropriations

- April 5, 2021 Regular Town Council Meeting minutes
- April 12, 2021 Regular Town Council Meeting minutes

The Council adjourned at 11:12 p.m.

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X.XX Illicit Discharge Detection & Elimination (IDDE) Bylaw

PENALTIES FOR VIOLATION OF ILLICIT DISCHARGE & ELIMINATION BYLAW

Criminal Enforcement:

- \$300 fine

Noncriminal Disposition:

- First Violation: Warning
- Second Violation: \$100 penalty
- Third Violation: \$200 penalty
- Fourth and subsequent violations: \$300 penalty
- Enforcement by Police Officers or Superintendent of Public Works

See Section K for non-monetary penalties

A. Purpose and Authority

The purpose of this Bylaw is to protect the public health, safety, environment, and general welfare of the Town through the regulation of Non-Storm Water Discharges into the Municipal Separate Storm Sewer System (MS4). Increased and contaminated Stormwater Runoff is a major cause of water pollution in our ponds, streams, rivers, wetlands and groundwater. This Bylaw establishes methods for controlling the introduction of Pollutants into the MS4 system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process and protect our Town's water bodies and groundwater from pollution. The objectives of this Bylaw are:

1. To prevent Pollutants from entering the Town's Municipal Separate Storm Sewer System;
2. To prohibit Illicit Connections and unauthorized discharges to the MS4;
3. To require the removal of all such Illicit Discharges;
4. To comply with state and federal regulations relating to Stormwater discharges; and
5. To establish legal authority to ensure compliance with the provisions of this Bylaw through inspection, monitoring, and enforcement.

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34, and as authorized by the Charter & Town Council.

Nothing in this Bylaw is intended to replace the requirements of the Zoning Bylaw, the Wetlands Bylaw, or any other Bylaw that may be adopted by the Town, or any Rules and Regulations adopted thereunder. Any activity subject to the provisions of the above-cited Bylaws must comply with the specifications of each.

B. Definitions

"Best Management Practices (BMPs)" means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of Pollutants directly or indirectly to Stormwater, receiving waters, or Stormwater conveyance systems. BMPs also include treatment practices, operating

procedures, and practices to control site Runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

“Clean Water Act” means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

“Hazardous Materials” means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

“Illicit Connections” means either of the following: Any drain or conveyance, whether on the surface or subsurface, which allows an Illicit Discharge to enter the Municipal Storm Drain System including but not limited to sewage, Process Wastewater, or wash water and any connections from indoor drains, sinks, or toilets regardless of whether said drain or connection was previously allowed, permitted, or approved before the effective date of this Bylaw; or, any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by the Department of Public Works.

“Illicit Discharge” means any direct or indirect Non-Stormwater Discharge to the storm drain system, except as exempted in Section G of this Bylaw.

“Municipal Separate Storm Sewer System (MS4)” or “Municipal Storm Drain System” means the system of conveyances designed or used for collecting or conveying Stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or human-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town.

“National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit” means a permit issued by the United States Environmental Protection Agency (EPA) (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of Pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

“Non-Storm Water Discharge” means any discharge to the storm drain system that is not composed entirely of Stormwater.

“Person” means any individual, association, organization, partnership, firm, corporation, or other entity recognized by law and acting as either the owner or as the owner's agent.

“Pollutant” means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; rock, sand, salt, soils; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

“Premises” means any building, lot, parcel of land, or portion of land whether improved or unimproved

including adjacent sidewalks and parking strips.

“Process Wastewater” means water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product. Process Wastewater includes water which has increased in temperature as a result of manufacturing or other processes.

“Stormwater” or “Runoff” means rainwater, snowmelt, and/or other water that flows off surfaces and across or over the ground surface rather than being absorbed into the soil.

“Stormwater Pollution Prevention Plan (SWPPP)” means a document which describes the Best Management Practices and activities to be implemented by a Person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce Pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

“Surface Water Discharge Permit” means a permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of Pollutants to Waters of the Commonwealth of Massachusetts.

“Watercourse” means a natural or human-made channel through which water flows or a stream of water, including a river, brook, or underground stream.

“Wastewater” means any sanitary waste, sludge, or septic tank or cesspool contents or discharge, and/or Process Wastewater.

“Waters of the Commonwealth” means all waters within the jurisdiction of the Commonwealth of Massachusetts, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

C. Applicability

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

D. Administration

1. The Town Manager through the Department of Public Works shall be responsible for the administration, implementation, and enforcement of this Bylaw.
2. The Town Manager may develop and periodically amend, regulations, rules and/or written guidance relating to the terms, conditions, definitions, enforcement, fees, procedures and administration of this Bylaw. Failure of the Town Manager to create such rules or regulations shall not have the effect of suspending or invalidating this Bylaw.

E. Ultimate Responsibility

The standards set forth herein and promulgated pursuant to this Bylaw are minimum standards; therefore, this Bylaw does not intend nor imply that compliance by any Person will ensure that there will be no

contamination, pollution, nor unauthorized discharge of Pollutants.

F. Prohibited Activities

1. Illicit Discharges. No Person shall dump, discharge, cause, or allow to be discharged any Pollutant or non-Stormwater discharge into the Municipal Separate Storm Sewer System (MS4), into a Watercourse, wetland resource area, or the Waters of the Commonwealth, except as exempted in Section G.
2. Illicit Connections. The construction, use, maintenance, or continued existence of Illicit Connections to the MS4 system is prohibited. This prohibition expressly includes, without limitation, Illicit Connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
3. Obstruction of Municipal Storm Drain System. No Person shall obstruct or interfere with the normal flow of Stormwater into or out of the MS4 without prior written approval from the DPW Superintendent or their designee.

G. Exemptions: This section shall not apply to any of the following non-Stormwater discharges or flows, provided that the source is not a significant contributor of a Pollutant to the MS4 system:

1. Waterline flushing and flow from potable water sources, provided verbal notification by telephone or email is given to the Department of Public Works at least 24 hours prior to the time of the test;
2. Springs, natural flow from riparian habitats and wetlands, diverted stream flow, and rising groundwater;
3. Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
4. Water from exterior foundation drains, footing drains, crawl space pumps, sump pumps, or air conditioning condensation;
5. Discharge from landscape irrigation or lawn watering;
6. Water from non-commercial car washing;
7. Discharge from de-chlorinated swimming pool or hot tub water (less than one ppm chlorine) provided the pool or hot tub is drained in such a way as not to cause a nuisance;
8. Discharge from street sweeping, and Stormwater Runoff containing sand and deicers used for public safety purposes on public or private property;
9. Emergency repairs to the Municipal Storm Drain System, and any Stormwater management structure or practice that poses a threat to public health or safety, or as deemed necessary by the Superintendent of Public Works or their designee;
10. Dye testing, provided verbal notification by telephone or email is given to the Department of Public Works at least 24 hours prior to the time of the test;
11. Non-Stormwater discharge permitted under an NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations, and
12. Discharge for which advanced written approval is received from the Department of Public Works as necessary to protect public health, safety, welfare or the environment.

H. Suspension of Storm Drainage System Access

1. The Department of Public Works may suspend Municipal Storm Drain System access to any Person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of Pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event any Person fails to comply with an emergency suspension order, the Superintendent of Public Works or their designee may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.
2. Any Person discharging to the MS4 in violation of this Bylaw may have their MS4 access terminated if such termination would abate or reduce an Illicit Discharge. The Superintendent of Public Works or their designee will issue a written order in compliance with Section K(4) of this Bylaw notifying the violator of the proposed termination of its MS4 access. The violator may appeal the order in accordance with Section K(5) of this Bylaw. A Person commits an offense if the Person reinstates MS4 access to Premises terminated pursuant to this Section, without the prior approval of the Public Works Department.

I. Use of Best Management Practices

The Department of Public Works has adopted requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of Stormwater, the storm drain system, or waters of the United States. The owner or operator of a commercial or industrial establishment or construction site shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the Municipal Storm Drain System or Watercourses through the use of these structural and non-structural BMPs. Further, any Person responsible for a property or Premises, which is, or may be, the source of an Illicit Discharge, may be required to implement, at said Person's expense, additional structural and non-structural BMPs to prevent the further discharge of Pollutants to the Municipal Separate Storm Sewer System. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of Stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this Section. These BMPs shall be part of a Stormwater Pollution Prevention Plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

J. Notification of Spills

Notwithstanding other requirements of local, state or Federal law, as soon as a Person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of Pollutants into the municipal drainage system, a wetland resource area, or the Waters of the Commonwealth, the Person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or Hazardous Materials, the Person shall immediately notify the Department of Public Works. In the event of a release of non-Hazardous Material, the reporting Person shall notify the Department of Public Works no later than the next business day. The reporting Person shall provide to the Department of Public Works written confirmation of all telephone, email or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions

taken to prevent its recurrence. Such records shall be retained for at least three years.

K. Enforcement

1. The Superintendent of Public Works or their designee shall enforce this Bylaw, and any regulations, permits, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for violations.
2. If a Person violates the provisions of this Bylaw or its regulations, or of any permit, notice, or order issued there under, the Town may seek injunctive relief in a court of competent jurisdiction to restrain the Person from activities which would create further violations, or to compel the Person to perform abatement or remediation of the violation.
3. The Superintendent of Public Works or their designee may, to the extent permitted by law, enter a property to perform their duties under this Bylaw and regulations including inspections, surveys, or sampling they deem necessary to investigate Illicit Discharges, connections, or obstructions of the MS4 system. The Superintendent of Public Works or their designee may, to the extent permitted by law, enter a property to inspect work being performed under a permit issued pursuant to this Bylaw to confirm work is being done in accordance with said permit. The Superintendent of Public Works or their designee may, to the extent permitted by law, enter a property where work is being done without a permit to determine if that work is in violation of this Bylaw or regulations.
4. The Superintendent of Public Works or their designee may issue a written order to enforce the provisions of this Bylaw or regulations, which may include but not be limited to requirements to:
 - a. eliminate Illicit Connections or discharges to the MS4;
 - b. perform monitoring, analyses, and reporting;
 - c. cease and desist unlawful discharges, practices, or operations;
 - d. remediate contamination in connection therewith.
 - 1.If the Superintendent of Public Works or their designee determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town may, at its option, undertake such work, and expenses thereof shall be charged to the violator.
 - 2.Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of any costs incurred by the Town including administrative costs.
 - 3.The violator or property owner may appeal the amount or basis of costs within thirty (30) days of receipt of the notification of the costs incurred in accordance with Section K(5) of this Bylaw.
 - 4.If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the Superintendent of Public Works or their designee affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Ch. 59, 57 after the thirty-first day at which the costs first become due.

5. Appeals. The decisions or orders of the Superintendent of Public Works or their designee may be appealed to the Town Manager by the party who is the subject of the decision or order. A written notice of appeal shall be filed with the Town Manager within 30 days of receipt of the order or decision being appealed. The Town Manager shall hold a hearing within 30 days of receipt of the notice of appeal and shall issue a decision within 30 days of conclusion of the hearing. Further relief from a decision by the Town Manager shall be to a court of competent jurisdiction.
6. Compensatory Action. In lieu of enforcement proceedings, penalties, and remedies authorized by this Bylaw, the Superintendent of Public Works or their designee may impose upon a violator alternative compensatory actions consistent with the objectives of the Town's Stormwater management program, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.
7. Remedies Not Exclusive. The remedies listed in this Bylaw are not exclusive of any other remedies available to the Town under any applicable federal, state or local law.

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X.XX Stormwater Management Bylaw

PENALTIES FOR VIOLATION OF STORMWATER MANAGEMENT BYLAW

Criminal Enforcement:

- \$300 fine

Noncriminal Disposition:

- First Violation: Warning
- Second Violation: \$100 penalty
- Third Violation: \$200 penalty
- Fourth and subsequent violations: \$300 penalty
- Enforcement by Police Officers or Superintendent of Public Works

See Section G for non-monetary penalties

A. Purpose & Authority

The purpose of this Bylaw is to protect the public health, safety, environment and general welfare of the Town by establishing requirements and procedures to manage stormwater Runoff, promote groundwater Recharge, and to prevent water pollution from new Development and Redevelopment. Increased and contaminated stormwater Runoff associated with developed land uses and the accompanying increase in Impervious surface, along with construction Site Runoff are major causes of impairment of water quality and flow in ponds, streams, rivers, wetlands and groundwater. The objectives of this Bylaw are:

1. Establish decision-making processes surrounding land Development activities that protect the integrity of the watershed and preserve the health of water resources;
2. Require that new Development, Redevelopment and all land conversion activities maintain the after-development Runoff characteristics as equal to or less than the Pre-Development Runoff characteristics in order to reduce flooding, stream bank erosion, siltation, Nonpoint Source Pollution, property damage, and to maintain the integrity of stream channels and aquatic habitats;
3. Establish minimum Post-Development Stormwater Management standards and design criteria for the regulation and control of stormwater Runoff quantity and quality; establish minimum design criteria for the protection of properties and aquatic resources downstream from land Development and land conversion activities from damages due to increases in volume, velocity, frequency, duration, and peak flow rate of storm water Runoff; establish minimum design criteria for measures to minimize Nonpoint Source Pollution from stormwater Runoff which would otherwise degrade water quality;
4. Establish design and application criteria for the construction and use of structural stormwater control facilities that can be used to meet the minimum Post-Development Stormwater Management standards;
5. Encourage the use of nonstructural Stormwater Management, stormwater Better Site Design practices or “low-impact Development practices”, such as reducing Impervious cover and the preservation of greenspace and other natural areas, to the maximum extent practicable;

6. Establish provisions to ensure that soil erosion and sedimentation control measures, and stormwater Runoff control practices are incorporated into the Site planning and design process, and are implemented and maintained;
7. Provide for the long-term responsibility for and maintenance of structural stormwater control facilities and nonstructural Stormwater Management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety;
8. Ensure that there is an adequate funding mechanism, including surety, for the proper review, inspection, and long-term maintenance of stormwater facilities implemented as part of this Bylaw;
9. Establish administrative procedures and fees for the submission, review, approval or disapproval of Stormwater Management plans, and for the inspection of approved active projects, and long term follow up;
10. Ensure that construction and waste materials, toxic materials, hazardous materials, and other pollutants are prevented from mixing with stormwater Runoff, which would degrade water quality;
11. Comply with state and federal statutes and regulations relating to stormwater discharges;
12. Establish the Town's legal authority to ensure compliance with the provisions of this Bylaw through inspection, monitoring, and enforcement.

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34, and as authorized by the Charter & Town Council.

Nothing in this Bylaw is intended to replace the requirements of the Zoning Bylaw, the Wetlands Bylaw, or any other Bylaw that may be adopted by the Town, or any Rules and Regulations adopted thereunder. Any activity subject to the provisions of the above-cited Bylaws must comply with the specifications of each.

B. Definitions

“Alter” means any activity that will measurably change the ability of a ground surface area to absorb water, will change existing surface drainage patterns, or will increase or decrease the rate or volume of flow from a Site.

“Best Management Practice (BMP)” means structural, non-structural, and managerial techniques that are recognized to be the most effective and practical means to prevent and/or reduce increases in stormwater volumes and flows, reduce point source and Nonpoint Source Pollution, and promote stormwater quality and protection of the environment. “Structural” BMPs are devices that are engineered and constructed to provide temporary storage and treatment of stormwater Runoff. “Nonstructural” BMPs use natural measures to reduce pollution levels, do not require extensive construction efforts, and/or promote pollutant reduction by eliminating the pollutant source.

“Better Site Design” means Site design approaches and techniques, including Low Impact Development (LID) that can reduce a Site's impact on the watershed through the use of nonstructural Stormwater Management practices. Better Site Design includes conserving and protecting natural areas and green space, reducing Impervious cover, using natural features for Stormwater Management, and providing Site-wide Infiltration.

“Development” means any construction that disturbs or Alters a parcel of land.

“Disturbance of Land (Land Disturbance)” means any action causing the importation, removal or redistribution of soil, sand, rock, gravel, or similar earth material; results in an increased amount of Runoff or pollutants; measurably changes the ability of a ground surface to absorb waters; involves clearing and grading; or results in an alteration of drainage characteristics.

“Existing Lawn” means the grass area which has been maintained and mowed in the previous two years.

“Impervious” means any material or structure on, above or below the ground that prevents water from infiltrating through the underlying soil. Impervious surface is defined to include, without limitation: paved surfaces (parking lots, sidewalks, and driveways), concrete, brick, stone, and roof tops.

“Infiltration” means the act of conveying surface water into the ground to permit groundwater Recharge and the reduction of stormwater Runoff from a project Site.

“Low Impact Development (LID)” means an ecosystem-based approach to land Development and stormwater management that ensures that each Development Site is designed to protect, or restore, the natural hydrology of the Site.

“Stormwater Management Handbook” means the latest version as may be amended from time to time of the Massachusetts Stormwater Management Standards and accompanying Stormwater Management Handbook issued by the Department of Environmental Protection pursuant to authority under the Wetlands Protection Act, M.G.L. c. 131, § 40, and the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53. The Stormwater Management Standards are incorporated in the Wetlands Protection Act Regulations, 310 CMR 10.05(6)(k) and the Water Quality Certification Regulations, 314 CMR 9.06(6)(a).

“Municipal Separate Storm Sewer System (MS4)” or “Municipal Storm Drain System” means the system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Amherst.

“Nonpoint Source Pollution” means pollution from many diffuse sources caused by rainfall, snowmelt, or other method of pollutant transport moving over and through the ground. As the Runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into water resource areas.

“Person” means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

“Pre-Development” means the conditions that exist prior to the proposed disturbance activity. Where phased Development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first plan submission shall establish Pre-Development conditions.

“Post-Development” means the conditions that reasonably may be expected or anticipated to exist after completion of the land Development activity in accordance with approved plans on a specific Site or tract of land. Post-Development refers to the phase of a new Development or Redevelopment project after completion, and does not refer to the construction phase of a project.

“Recharge” means the replenishment of underground water reserves.

“Redevelopment” means Development, rehabilitation, expansion, demolition, construction, land alteration,

or phased projects that disturb the ground surface, including Impervious surfaces, on previously developed Sites. Redevelopment includes maintenance and improvement of existing roadways including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems and repaving; and remedial projects specifically designed to provide improved Stormwater Management such as stormwater retrofit projects.

“Runoff” means rainfall or snowmelt water flowing over the ground surface or other source which may result in transport of pollutants.

“Site” means the entire parcel of land being developed.

“Stormwater Management” means the use of structural or non-structural practices that are designed to control or treat stormwater Runoff pollutant loads, discharge volumes, and/or peak flow discharge rates. Stormwater Management includes the use of Low Impact Development (LID) management practices.

“Stormwater Management Permit (SMP)” means a permit issued by the Department of Public Works after review of an application, plans, calculations, and other supporting documents, which is designed to protect the environment of the Town from the deleterious effects of uncontrolled and untreated stormwater Runoff.

C. Applicability

This Bylaw shall apply to the following activities, whether or not stormwater discharges from these activities enter the Municipal Stormwater Drainage System (MS4):

1. All new Development and Redevelopment, Land Disturbance, and any other activity disturbing the drainage characteristics of one acre (43,560 square feet) or more of land, or is part of a common plan of Development or construction that will disturb one acre or more of land, unless exempt pursuant to Section D of this Bylaw;
2. Multifamily residential Developments involving four or more units;
3. Any new, Redevelopment or additions to commercial, industrial, institutional, or mixed-use properties which results in an additional gross floor area of greater than 5,000 square feet or an additional Impervious surface greater than 10,000 square feet;
4. Activities that affect less than an acre, but could adversely affect the Municipal Separate Storm Sewer System (MS4), or can reasonably be expected to cause or contribute to a violation of State Surface Water Quality Standards, may also require a permit subject to the discretion of the Superintendent of Public Works or their designee.

Prior to the issuance of any Site plan approval or Development permit for activities where these regulations apply, a Stormwater Management Permit (SMP) must be approved by the Department of Public Works.

D. Exemptions

Exemptions from this Bylaw apply to the following activities, provided that a project is solely comprised of any one of these activities:

1. Normal maintenance and improvement of land in agricultural or aquacultural use, as defined by the Wetlands Protection Act regulation 310 CMR 10.04 and MGL Chapter 40A Section 3;
2. Timber harvesting under an approved forest cutting plan as defined by the Forest Cutting Practices Act regulation 304 CMR 11.00 and MGL Chapter 132 Sections 40-46;

3. Activities that are exclusively limited to maintenance and improvement of existing roadways (including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems, and repaving projects);
4. Construction of utilities (gas, water, sanitary sewer, electric, communications), other than drainage, which will not Alter terrain, ground cover, or drainage patterns, so long as Best Management Practices (BMPs) are used to prevent erosion, sedimentation and release of pollutants;
5. Any emergency activity that poses a threat to public health or safety as determined by the Superintendent of Public Works or their designee;
6. Maintenance of existing landscaping, gardens or Lawn areas;
7. Construction of any fence that will not Alter existing terrain or drainage patterns;
8. Repairs to any stormwater treatment system deemed necessary by the Department of Public Works;
9. Any work or projects for which all necessary approvals and permits were issued before the effective date of this Bylaw.

E. Administration

1. The Town Manager through the Department of Public Works shall be responsible for the administration, implementation, and enforcement of this Bylaw.
2. The Town Manager shall develop and may periodically amend, regulations, rules and/or written guidance relating to the terms, conditions, definitions, enforcement, fees, procedures and administration of this Bylaw. Failure of the Town Manager to create such rules or regulations shall not have the effect of suspending or invalidating this Bylaw.
3. Stormwater Management Handbook. The Department of Public Works will utilize the policy, criteria, and information, including specifications and standards, of the latest edition of the Massachusetts Department of Environmental Protection (MADEP) Stormwater Handbook and any amendments thereto for execution of the provisions of this Bylaw. This Handbook includes a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice.
4. Stormwater Management Permits (SMPs). The Superintendent of Public Works or their designee shall have the authority to issue a SMP for projects of one acre or more of Land Disturbance and not otherwise exempted under Section D of this Bylaw. Procedures and requirements of the SMP shall be defined and included within the Stormwater Regulations promulgated pursuant to Section E(2) of this Bylaw, and shall be consistent with or more stringent than the most recent Small Municipal Separate Storm Sewer System General Permit (MS4).
5. Actions. The Superintendent of Public Works or their designee may take any of the following actions as a result of an application for a SMP as more specifically defined as part of Stormwater Regulations promulgated pursuant to this Bylaw: Approval, Approval with Conditions, Disapproval, Partial Disapproval, or Disapproval without Prejudice.
6. Appeals of Action. Further relief of a decision by the Superintendent of Public Works or their designee made under this Bylaw shall be reviewable in compliance with Section G(5) of this Bylaw.

7. Waivers. The Superintendent of Public Works or their designee may waive strict compliance with any requirement of this Bylaw or the rules and regulations promulgated hereunder where such action is allowed by Federal, state, and local statutes, and/or regulations, is in the public interest, and is not inconsistent with the purpose and intent of this Bylaw.
8. Stormwater Utility. The Town Council may adopt a Stormwater Utility pursuant to M.G.L. Chapter 83 Section 16 and Chapter 40 Section 1A. Failure by the Town Council to promulgate such a Stormwater Utility or a legal declaration of its invalidity by a court shall not act to suspend or invalidate the effect of the other provisions of this Bylaw.

F. Performance Standards

Criteria for Stormwater Management Standards shall be defined and included as part of any Stormwater Regulations promulgated pursuant to Section E(2) of this Bylaw.

G. Enforcement

1. The Superintendent of Public Works or their designee shall enforce this Bylaw, and any regulations, permits, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for violations.
2. If a Person violates the provisions of this Bylaw or its regulations, or of any permit, notice, or order issued thereunder, the Town may seek injunctive relief in a court of competent jurisdiction to restrain the Person from activities which would create further violations, or to compel the Person to perform abatement or remediation of the violation.
3. The Superintendent of Public Works or their designee may, to the extent permitted by law, enter a property to inspect work being performed under a permit issued pursuant to this Bylaw to confirm work is being done in accordance with said permit. The Superintendent of Public Works or their designee may, to the extent permitted by law, enter a property where work is being done without a permit to determine if that work is in violation of this Bylaw or regulations.
4. The Superintendent of Public Works or their designee may issue a written order to enforce the provisions of this Bylaw or regulations, which may include but not be limited to requirements to:
 - a. Cease and desist from land-disturbing activity until there is compliance with the Bylaw and provisions of any approved Stormwater Management Permit;
 - b. Maintain, install, or perform additional erosion and sediment control measures;
 - c. Perform monitoring, analyses, and reporting;
 - d. Remediate erosion and sedimentation resulting directly or indirectly from land-disturbing activity;
 - e. Comply with requirements in the Stormwater Management Permit for operation and maintenance of Stormwater Management systems;
 - f. Remediate adverse impacts resulting directly or indirectly from malfunction of the Stormwater Management systems; and,
 - g. If the Superintendent of Public Works or their designee determines that abatement or remediation of erosion and sedimentation is required, the order shall set forth a deadline by which such abatement or remediation must be completed.

5. Appeals. The decisions or orders of the Superintendent of Public Works or their designee may be appealed to the Town Manager by the party who is the subject of the decision or order. A written notice of appeal shall be filed with the Town Manager within 30 days of receipt of the order or decision being appealed. The Town Manager shall hold a hearing within 30 days of receipt of the notice of appeal and shall issue a decision within 30 days of conclusion of the hearing. Further relief from a decision by the Town Manager shall be to a court of competent jurisdiction.
6. Remedies Not Exclusive. The remedies listed in this Bylaw are not exclusive of any other remedies available to the Town under any applicable federal, state or local law.

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