

## DEDHAM FALL TOWN MEETING NOVEMBER 13, 2023

### ARTICLE ELEVEN: PROPOSED AMENDMENTS TO CHAPTER 246 (STORMWATER MANAGEMENT) OF THE GENERAL BYLAWS

To see if the Town will vote to amend the General Bylaws, Chapter 246 (Stormwater Management), to read as set forth below (other than comments marked with a “ \* ”), with text to be inserted shown in **bold**, **noting that the** full strikethrough version is found attached as Appendix A-7:

#### Chapter 246 Stormwater Management

##### § 246-1 Purpose.

A. The purpose of this by-law is to protect, maintain and enhance the public health, safety, environment and general welfare of the Town by establishing minimum requirements and procedures to control the adverse effects of soil erosion and sedimentation, construction site runoff, increased post-development stormwater runoff and nonpoint source pollution associated with new development and redevelopment. It has been determined that proper management of stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, environment and general welfare of the public, protect water and aquatic resources, protect and enhance wildlife habitat, and promote groundwater recharge to protect surface and groundwater drinking supplies. This by-law seeks to meet that purpose through the following objectives:

- (1) Establish a mechanism by which the Town can monitor and ensure compliance with requirements of its National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4) and other applicable State and Federal mandates.
- (2) Establish decision-making processes surrounding land development activities to reduce and eliminate impairments of the Charles and Neponset Rivers and to preserve the health of the Town's groundwater resources.
- (3) Establish minimum construction and post-construction stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality.
- (4) Encourage the use of nonstructural stormwater management, better site design practices or "low-impact development practices", such as reducing impervious cover, increasing site-wide infiltration, and preserving open space and other natural areas, to the maximum extent practicable.
- (5) Promote water conservation through the re-use of stormwater.
- (6) Establish provisions 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 or the environment.
- (7) Establish provisions to ensure 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 By-law.
- (8) Establish the Town of Dedham's legal authority and capacity to ensure compliance with the provisions of this By-law through funding, permitting, inspection, monitoring, and enforcement.

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B. Nothing in this By-law is intended to replace the requirements of the Dedham Flood Plain Zoning By-law, the Dedham General Wetlands Protection By-law, or any other By-law that may be adopted by the Town of Dedham, or any Rules and Regulations adopted thereunder. Any activity subject to the provisions of the above-cited By-laws or Rules and Regulations must comply with the specifications of each. In case of conflict, the more stringent provisions shall apply.

(\*Delete in its entirety existing § 246-2, Definitions.)

### § 246-2 Authority.

This By-law is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution and 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 residents of the Town of Dedham at Town Meeting dated November 16, 2015.

### § 246-3 Administration.

A. The permitting provisions of this By-law shall be overseen and administered by the **Stormwater Manager or its assigned designee**.

B. Stormwater Management Regulations ("Regulations"). The **Town Manager** may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), delegation of authority, procedures and administration of this By-law after conducting a public hearing to receive comments on the proposed rules and regulations or any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation at least seven days prior to the hearing date. Failure of the **Town Manager** to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this By-law.

(\*Delete in its entirety the text of existing Sections 246-5, Applicability, and 246-6, Exemptions)

### § 246-4 Applicability.

**A. The permitting requirements of this bylaw shall apply to any alteration, disturbance, development, and/or redevelopment activities exceeding the thresholds set forth in the regulations promulgated hereunder.**

### § 246-5 Procedures.

Permit Procedures, Permit Requirements and Performance Standards shall be established and included as Stormwater Management Regulations promulgated under § 246-~~4~~**3** of this By-law to meet the following purposes:

A. Ensure the Town's compliance with requirements of its National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4) and other applicable State and Federal mandates.

B. Reduce and eliminate impairments of the Charles and Neponset Rivers and to preserve the health of the Town's groundwater resources.

C. Regulate and control stormwater runoff quantity and quality.

D. Encourage the use of nonstructural stormwater management, better site design practices or "low-impact development practices", such as reducing impervious cover, increasing site-wide infiltration, and preserving open space and other natural areas, to the maximum extent practicable.

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E. Promote water conservation through the re-use of stormwater.

F. Establish provisions 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 or the environment.

G. Establish provisions to ensure 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 By-law.

### § 246-6 Enforcement.

The **Stormwater Manager, acting as the authorized agent for the Town Manager**, shall enforce this By-law, Regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

A. Civil relief. If a person violates the provisions of this by-law, or any associated regulations, permit, notice, or order issued thereunder, the **Stormwater Manager** may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

B. Orders. If the **Stormwater Manager** determines that a person's failure to follow the requirements of this By-law, any Regulatory provision issued hereunder, or any authorization issued pursuant to this By-law or Regulations is creating an adverse impact to a water resource, then the **Stormwater Manager** may issue a written order to the person to remediate the adverse impact, which may include requirements to:

(1) Cease and desist from land-disturbing activity until there is compliance with the By-law or provisions of an approved Stormwater Management Permit;

(2) Maintain, install or perform additional erosion and sediment control measures;

(3) Perform monitoring, analyses, and reporting;

(4) Remediate erosion and sedimentation resulting directly or indirectly from land-disturbing activity;

(5) Comply with requirements in the Stormwater Management Permit for operation and maintenance of stormwater management systems;

(6) Remediate adverse impacts resulting directly or indirectly from malfunction of the stormwater management systems; and/or

(7) Eliminate discharges, directly or indirectly, into a watercourse or into the waters of the Commonwealth.

C. If the **Stormwater Manager** determines that abatement or remediation of pollutants is required, the order shall set forth a deadline for completion of the abatement or remediation. 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 or property owner. Within 30 days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town, including administrative costs.

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The violator or property owner may file a written protest objecting to the amount or basis of costs with the **Town Manager** within 30 days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within 30 days following a decision of the **Town Manager** affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the cost shall become a special assessment against the property owner of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. c.59, § 57 after the 30th day at which the costs first become due.

D. Criminal and Civil Penalties. Any person who violates any provision of this by-law, valid regulation, or the terms or conditions in any permit or order prescribed or issued there under, shall be subject to a fine not to exceed \$300 for each day such violation occurs or continues or subject to a civil penalty, which may be assessed in an action brought on behalf of the Town in any court of competent jurisdiction.

E. Noncriminal disposition. As an alternative to criminal prosecution or civil action, the Town may elect to utilize the noncriminal disposition procedure set forth in G.L. c.40, § 21D and § 1-6B of the Town of Dedham General By-laws, in which case any police officer of the Town of Dedham, the **Stormwater Manager**, and such other persons as are authorized by the **Town Manager** shall be the enforcing person. The penalty for the first violation shall be a warning. The penalty for the second violation shall be \$100. The penalty for the third and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

F. Entry to perform duties under this by-law. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the **Stormwater Manager**, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this by-law and regulations and may make or cause to be made such examinations, surveys or sampling as the **Stormwater Manager** deems reasonably necessary.

G. Appeals. The decisions or orders of the **Town Manager** shall be final. Further relief shall be to a court of competent jurisdiction.

H. Remedies Not Exclusive. The remedies listed in this by-law are not exclusive of any other remedies available under any applicable federal, state or local law.

### § 246-7 Burden of proof.

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have unacceptable adverse or cumulative effect on the resource areas protected by this by-law. Failure to provide adequate evidence to show the effect the proposed project may have on the surface waters or ground waters of the Commonwealth, and/or the storm drainage system of the Town of Dedham shall be sufficient cause for the **Stormwater Manager** to deny a permit or grant a permit with conditions.

### § 246-8 Stormwater management compliance certificate.

A. Because a SMP runs with the title of a property, a person shall request the **Stormwater Manager** to issue a Stormwater Management Compliance Certificate (SMCC) upon completion of all work authorized under a Stormwater Management Permit (SMP).

B. The following procedure shall be followed in the application for a SMCC:

(1) A person who has been issued a SMP or their legal representative shall submit a letter or appropriate form with the **Stormwater Manager** to request an issuance of a SMCC.

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(2) Any as-built plans or other documentation required under the SMP shall accompany the SMCC request.

(\*Delete subsections 3 and 4 of existing Section 246-10)

C. The SMCC shall be recorded at the Norfolk County Registry of Deeds and shall run with the title of the property. Proof of recording, including Registry Book and Page or Land Court Instrument Number shall be provided to the **Stormwater Manager** for its records.

§ 246-9 Fee schedule.

A. Rules.

(1) Permit and application fees are payable at the time of application and are non-refundable.

(2) Permit fees shall be calculated by the **Stormwater Manager** in accordance with the fee schedule below.

(3) Town, County, State and Federal projects are exempt from fees.

(4) Failure to comply with the by-law after official notification shall result in fees twice those normally assessed.

B. Fees. [Amended 5-15-2017 ATM by Art. 29; 11-30-2020ATM by Art. 28]

(1) Fees for applications, permits, and direct connections, as well as all other fees that may be assessed in connection with implementation of this by-law shall be established in accord with the provisions of § 150-3 of these By-laws, and shall be in addition to any other fees required by state or local law or regulation.

(2) Consultant fees shall be determined on a case by case basis in accord with the then-current version of the Stormwater Management Rules and Regulations promulgated hereunder.

§ 246-10 Severability.

The invalidity of any section, provision, paragraph, sentence, or clause of this By-law shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

§ 246-11 Appeals

**The Town Manager shall make the final decision regarding any interpretation and execution of the provisions of this bylaw.**

or take any other action relative thereto. **Referred to Bylaw Review Committee and Finance and Warrant Committee for study and report.**

VOTED

That it be so voted with the following changes, noted below in bold, italicized, and underlined:

Chapter 246

Stormwater Management  
§ 246-1 Purpose.

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- (2) Establish decision-making processes surrounding land development activities to reduce and eliminate impairments of the Charles and Neponset Rivers and to preserve the health of the Town's groundwater resources.
- (3) Establish minimum construction and post-construction stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality.
- (4) Encourage the use of nonstructural stormwater management, better site design practices or "low-impact development practices", such as reducing impervious cover, increasing site-wide infiltration, and preserving open space and other natural areas, to the maximum extent practicable.
- (5) Promote water conservation through the re-use of stormwater.
- (6) Establish provisions 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 or the environment.
- (7) Establish provisions to ensure 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 By-law.

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(8) Establish the Town of Dedham's legal authority and capacity to ensure compliance with the provisions of this By-law through funding, permitting, inspection, monitoring, and enforcement.

B. Nothing in this By-law is intended to replace the requirements of the Dedham Flood Plain Zoning By-law, the Dedham General Wetlands Protection By-law, or any other By-law that may be adopted by the Town of Dedham, or any Rules and Regulations adopted thereunder. Any activity subject to the provisions of the above-cited By-laws or Rules and Regulations must comply with the specifications of each. In case of conflict, the more stringent provisions shall apply.

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B. Stormwater Management Regulations ("Regulations"). The **Town Manager** may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), delegation of authority, procedures and administration of this Bylaw after conducting a public hearing to receive comments on the proposed rules and regulations or any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation at least seven days prior to the hearing date. Failure of the **Town Manager** to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this By-law.

(\*Delete in its entirety the text of existing Sections 246-5, Applicability, and 246-6, Exemptions)

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2. Maintain, install or perform additional erosion and sediment control measures;
3. Perform monitoring, analyses, and reporting;
4. Remediate erosion and sedimentation resulting directly or indirectly from land-disturbing activity;



5. Comply with requirements in the Stormwater Management Permit for operation and maintenance of stormwater management systems;
6. Remediate adverse impacts resulting directly or indirectly from malfunction of the stormwater management systems; and/or
7. Eliminate discharges, directly or indirectly, into a watercourse or into the waters of the Commonwealth.

C. **Orders: Form and Process.** If the **Stormwater Manager** determines that abatement or remediation of pollutants is required, the order shall set forth a deadline for completion of the abatement or remediation. 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 or property owner. Within 30 days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the **Town Manager** within 30 days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within 30 days following a decision of the **Town Manager** affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the cost shall become a special assessment against the property owner of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. c.59, § 57 after the 30th day at which the costs first become due.

D. **Criminal and Civil Penalties.** Any person who violates any provision of this by-law, valid regulation, or the terms or conditions in any permit or order prescribed or issued there under, shall be subject to a fine not to exceed \$300 for each day such violation occurs or continues or subject to a civil penalty, which may be assessed in an action brought on behalf of the Town in any court of competent jurisdiction.

E. **Noncriminal disposition.** As an alternative to criminal prosecution or civil action, the Town may elect to utilize the noncriminal disposition procedure set forth in G.L. c.40, § 21D and § 1-6B of the Town of Dedham General By-laws, in which case any police officer of the Town of Dedham, the **Stormwater Manager**, and such other persons as are authorized by the **Town Manager** shall be the enforcing person. The penalty for the first violation shall be a warning. The penalty for the second violation shall be \$100. The penalty for the third and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

F. **Entry to perform duties under this by-law.** To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the **Stormwater Manager**, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this by-law and regulations and may make or cause to be made such examinations, surveys or sampling as the **Stormwater Manager** deems reasonably necessary.

G. Appeals. The decisions or orders of the **Town Manager** shall be final. Further relief shall be to a court of competent jurisdiction.

H. Remedies Not Exclusive. The remedies listed in this by-law are not exclusive of any other remedies available under any applicable federal, state or local law.

§ 246-7 Burden of proof.

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have unacceptable adverse or cumulative effect on the resource areas protected by this by-law. Failure to provide adequate evidence to show the effect the proposed project may have on the surface waters or ground waters of the Commonwealth, and/or the storm drainage system of the Town of Dedham shall be sufficient cause for the **Stormwater Manager** to deny a permit or grant a permit with conditions.

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(\*Delete subsections 3 and 4 of existing Section 246-10)

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(2) Permit fees shall be calculated by the **Stormwater Manager** in accordance with the fee schedule below.

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B. Fees. [Amended 5-15-2017 ATM by Art. 29; 11-30-2020ATM by Art. 28]

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(1) Fees for applications, permits, and direct connections, as well as all other fees that may be assessed in connection with implementation of this by-law shall be established in accord with the provisions of § 150-3 of these By-laws, and shall be in addition to any other fees required by state or local law or regulation.

(2) Consultant fees shall be determined on a case by case basis in accord with the then-current version of the Stormwater Management Rules and Regulations promulgated hereunder.

### § 246-10 Severability.

The invalidity of any section, provision, paragraph, sentence, or clause of this By-law shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

### § 246-11 ***Final Interpretation; Appeals***

The Town Manager shall make the final decision regarding any interpretation and execution of the provisions of this bylaw. Such decision may be appealed to a court of competent jurisdiction.

**AS DECLARED BY THE MODERATOR A  
MAJORITY VOTE**