

CHARTER AND BY-LAW REVIEW COMMITTEE MEETING

Wednesday July 15, 2009

VERSION 1

The Charter and By-Law Review Committee (CBRC) held a duly posted meeting on July 15, 2009 in the Edward Dlott meeting room in Town Hall. The Chair, Ms. Gloff called the meeting to order at 5:34 PM

Members present: Mr. Jay Ball, Mrs. Barbara Chinetti, Ms. Karen Adelman Foster, Ms. Carol Gloff (Chair), Mr. Robert Healey and Mr. Richard Sidney.

Members absent: Mr. Anthony Lista

Others present: Ms. Martha White [Town Administrator], Mr. James Sheridan [Fire Chief], Mr. Rocco Franclouis [Fire Protection Officer], Mr. Patrick Reffett [Director of Community Development] and Mr. Michael Melchiorri [Building Commissioner]

Attachments: Consolidated comment documents (Documents in which previous CBRC comments and questions have been consolidated by Ms. Gloff):

By-Law Article 60 CBRC Comments
By-Law Article 83 CBRC Comments
By-Law Article 21 CBRC Comments
By-Law Article 29 CBRC Comments
By-Law Article 72 CBRC Comments
By-Law Article 72A CBRC Comments
By-Law Article 76 CBRC Comments

Email from John P. Flynn, Town Counsel, to Carol Gloff, dated July 15, 2009, 5:32 PM, Subject By-Laws – Article 60.

Email from John P. Flynn, Town Counsel, to Carol Gloff, dated July 15, 2009, 5:48 PM, Subject By-Laws – Article 83.

Email from John P. Flynn, Town Counsel, to Carol Gloff, dated July 15, 2009, 4:40 PM, Subject By-Laws – Article 21.

Email from John P. Flynn, Town Counsel, to Carol Gloff, dated July 15, 2009, 4:47 PM, Subject By-Laws – Article 29.

Email from John P. Flynn, Town Counsel, to Carol Gloff, dated July 15, 2009, 5:53 PM, Subject By-Laws – Article 72.

Email from John P. Flynn, Town Counsel, to Carol Gloff, dated July 15, 2009, 6:10 PM, Subject By-Laws – Article 72A.

Email from John P. Flynn, Town Counsel, to Carol Gloff, dated July 15, 2009, 6:47 PM, Subject By-Laws – Article 76.

Email from John P. Flynn, Town Counsel, to Carol Gloff, dated July 15, 2009, 4:54 PM,
Subject By-Laws – Article 30.

Email from John P. Flynn, Town Counsel, to Carol Gloff, dated July 15, 2009, 4:57 PM,
Subject By-Laws – Article 32.

DISCUSSION OF BY-LAWS

[Note: the chair in consolidated comment documents compiled Comments and questions from previous CBRC meetings. These documents (listed above as attachments) were used in the meeting, as were emails from town counsel to the chair (also listed above as attachments). Specific comments on the consolidated comment documents enumerated as CG1, CG2, etc., and referred to in this way in these minutes. Specific comments on the emails from town counsel are enumerated as 1, 2, 3, etc., and are here referenced as JF1, JF2, JF3, etc.]

[Note: where a CBRC motion or vote reads, “to change,” the committee is aware that we are voting only to propose a change to Town Meeting.]

[Note: Mrs. Chinetti verbalized Mr. Flynn’s comments for the attendees during discussion of the articles.]

BY-LAW 60 FIRE REGULATIONS

Section 1: CG1 and JF1, the CBRC questioned the use of the word “reasonable”. Mr. Flynn commented that ‘reasonable’ is not defined in this By-Law or in any applicable statute.

Section 2: the committee determined to take no action.

Section 3: CG2 and JF3, the CBRC asked; “Does this include an office in some one’s home?” Mr. Flynn noted it does not and that the CBRC may wish to consider recommending an amendment to the address this issue.

Further discussion ensued regarding the wording of section three both the Fire Chief and the Fire Protection Officer did not think such an amendment appropriate. Existing CMR 527 is all that is needed. After a long discussion, the CBRC to ask, [relative to the initial words “The Chief of the Fire Department shall...” that Town Counsel ‘does this open the Chief to litigation’ and if the CBRC should add “or his designee” after the word Department?

Section 4: the committee determined to take no action.

Section 5.2: CG3 and JF3, the CBRC asked if the word ‘Factor’ [instead of “Factory”] is a typo, or does TM need to vote on change? Mr. Flynn stated approval is required if the word “Factor” appeared in the original town Meeting vote. Chair to check with Town Clerk for the original wording to see if a typo. Both representatives of the Fire Department indicated that “Factory” is the correct word.

Long discussion ensued on Section 5, the Chief, the Fire Protection Officer and the Building Commissioner all indicated that the Natick Fire and Building Departments follows the State Building Code (527 CMR, chapters 147 and 148, etc.) It was note the current By-Law does not equal the State

Code and the CBRC recommended that the fire and building departments along with the Town Administrator enter discussion with Town Counsel to see what changes are needed to comply.

Section 6: CG7 and JF 7, the committee asked; “Is there any Fine or punishment for such obstruction”? Mr. Flynn directed the committee to Article 92, Section 1 of the By-Laws for fines.

Sections 6a and 7: the committee determined to take no action.

Section 8.1.2, CG8 and JF8, the CBRC asked; “Does this [‘auxiliary cable system’] preclude replacing the existing wired fire alarm box system with a wireless system”? Mr. Flynn indicated yes. The Fire Chief suggested changing the term to allow for future technology. Mr. Flynn, in JF8, offered to draft a warrant article if needed. The CBRC determined to take no action.

Section 8.2.1, CF10 and JF10, the CBRC asked “Is the amount set by MGL or some other external authority”? Mr. Flynn indicated the fine is not set by statute or any other authority that we find.”

General discussion regarding the use of “shall” and “may” the Fire Chief would prefer “may” in all instances to allow discretion.

Section 8.5.4, CF12 questioned deliberate false alarms, JF12, the Chief and Fire Protection Officer noted false alarms covered by Chapter 269, Section 13 of MGL

Section 8.5.5, CF 13 and JF13, the CBRC questioned; “Are there interest or other financial penalties for such unpaid fines”? Mr. Flynn indicated the town can impose a lien upon the property for such an unpaid fine, per Chapter 40, Section 58 of MGL, but no authority to impose interest.

Considerable discussion ensued and Town Administrator, Fire Chief and Town Counsel to discuss section.

Section 8.6, again the question on the amount of the fine. JF16 indicates amount of fine is not set by statute or regulation.

Section 8.8, CG17 asked; “Do such regulations exist? Where are they located”? The Chief indicated Fire Protection Section of MGL, Chapter 148 and 27 CMR.

Section 10, CG18 and JF 18, the CBRC asked; “Why \$300.00, MGL or some other external authority? Can this be removed from this section and assigned to BoS”? Fire Chief and Town Administrator indicated the fee had just been changed to \$400.00, whereas Mrs. Chinetti reading Mr. Flynn (JF18) noted; ‘Mr. Flynn indicated \$300.00 is the maximum allowed under Chapter 40, Section 21 of MGL. The Board of Selectmen does not administer the program and a logical basis needed to assign this fee to the BoS.’

Fire Department and Town Administrator to discuss with Town Counsel to review limits.

Section 11, CG19 and JF19, the CBRC asked; “Does this include residential buildings and what constitutes a high-rise”? Mr. Flynn indicated it includes residential buildings and a high-rise building is more than seventy feet in height above the mean grade. Building Commissioner and Fire Department concurred.

Section 12, CG 20 and JF20, the CBRC asked; “Does this include single family homes”? Mr. Flynn replied, yes.

The CBRC questioned if the word in the section title ‘Resident’ is a typo and should read “Residential,” the Chair to check with the town Clerk regarding original wording at Town Meeting.

Mr. Flynn discussing Section 12, noted that Chapter 148, Section 26B of MGL requires, “an approved fire warning system (as opposed to an automatic sprinkler system) in residential buildings which do not exceed seventy feet in height above mean grade” and recommended a change.

The CBRC asked if carbon monoxide detectors should be added, the Chief noted that Chapter 148, Section 26B of MGL includes carbon monoxide detectors.

BY-LAW 83
NO SMOKING IN PUBLIC PLACES

Ms. Gloff noted that the CBRC received comments from Mr. Jim White, Board of Health, regarding our questions and the section. Mr. White indicated the section does not equal current MGL and is that he would re-write and present to the CBRC.

Mr. Flynn’s comments are attached and will be discussed upon further review of the section.

BY-LAW 21
PLANNING DIRECTOR

Section title: CG1 and JF1, the CBRC noted; “We no longer have a Planning Director, should this title change”? Mr. Flynn indicated Natick does not had a Planning Director since the position of Community Development Director was created.

Ms. Adelman Foster moved, seconded by Mr. Sidney to change the title to “Community Development Director”, in this section and all other references in the By-Laws, the motion was approved by a 6-0-0 vote.

Section 1: CG2 and JF2, the CBRC asked; “If this should be changed”? Mr. Flynn recommended that the committee consider the language ‘shall be especially suited by education, training and experience to perform the duties of the position and shall hold no less than a bachelor’s degree from an accredited college or university’.

Mr. Sidney moved, seconded by Ms. Adelman Foster, to use Mr. Flynn’s words, after discussion the committee took no action.

Section 2, Mr. Reffett, Director of Community Development, noted the current position has more duties than described in the section. Mr. Flynn, JF3, recommend adding the language “and such other duties as the town Administrator may assign or require from time to time.”

After discussion Mrs. Chinetti suggested that the Town Administrator, the Director of Community Development and Town Counsel re-writ the entire Article 21 and submit to the Committee on July 29 for further review. The committee and participants present agreed to the task.

BY-LAW 29
BOARD OF APPEALS

Section 1: CG1 and JF1, the CBRC noted; “In Natick this is, at least commonly, referred to as the Zoning Board of Appeals. Should we change the wording here? IS this defined under MGL? If so, should we add a reference to relevant MGL in this section”? Mr. Flynn indicated the “Board of Appeals” and Zoning Board of Appeals are both used in the applicable statutes. In my opinion no change is required and reference to a statute is not legally required.

Mr. Ball questioned if we need to add a section spelling out duties, after discussion no action taken.

Mr. Ball departed 7:15 PM. A quorum present the meeting continued.

BY-LAW 30
CONSERVATION COMMISSION

The committee agreed to hold off discussion until August 5, 2009.

BY-LAW 72
BUILDING REGULATIONS

Section 1, CG1 and JF1, the CBRC referencing line one the term “Building Inspector” asked; “Is this the correct title”? Mr. Flynn noted the correct title is Building Commissioner.

Mr. Sidney moved, seconded by Ms. Adelman Foster to change the title to “Building Commissioner”, in this section and all other references in the By-Laws, the motion was approved by a 5-0-0 vote.

CG2, the CBRC asked; “Do we have serial numbers on all of these documents when issued”? Mr. Melchiorri, Building Commissioner, answered yes.

Section 2, CG3 and JF3, the CBRC, regarding affixed or displayed numbers, asked: “What happens if the owner dies not comply. Is there a fine or other enforcement?” Mr. Flynn directed attention to section 92 of the By-Laws for fines. The Building Commissioner, note no occupancy permit issued without number displayed. Mr. Melchiorri noted that the police and/or fire department will have difficulty locating home, and would not be in owner’s interest not to display number. His department does not look for missing numbers in daily activity.

Section 5, CG4 and JF4, the CBRC asked; “What about piles of snow?” Mr. Flynn indicated the town may regulate in the By-Laws height of snow, but snow emergencies may present practical problems. After discussion, Mr. Melchiorri indicated we do the best we can facing the real world.

Section 6, CG6 and JF6, the CBRC asked, “If this should be moved to the Sign By-Law section?” Mr. Flynn stated section 6 could reasonably be moved to the Sign By-Law. There is no legal problem with its present location.

Discussion continued regarding CG7 and JF6, expanding authorization for the removal of signs.

Mr. Sidney moved, seconded by Ms. Adelman Foster to change the second sentence by after the term ‘The Building Commissioner’ and before the word “is”, insert the phrase “or his designee” the motion was approved by a 5-0-0 vote.

BY-LAW 72A
NEWSRACKS ON PUBLIC PROPERTY AND PUBLIC WAYS

NOTE:

There was discussion about the term ‘public property’ asking if we should add “Public Property” to the title and in the first sentence. There was a 4-0-1 vote to do so motion by Ms. Adelman Foster and seconded by Mrs. Chinetti, I did not understand the discussion considering the term currently exists in the By-Law. I’ll need help here for the minutes. After long discussion we felt Mr. Flynn should be asked to comment about the term, again I’m lost here, help

Section 3: CG1 and JF1, the CBR asked: “Could/should a fee be charged for the placing a news rack on the streets of Natick”? Mr. Flynn, commented on first amendment issues but concluded “any fee would need to be related to the siting of the news rack, and must be reasonably related to the cost of providing the service, i.e., the cost of determining the location, of monitoring compliance, and the related administrative costs.”

Mr. Melchiorri noted the Town of Brookline charges a big fee for locating ‘news racks’.

Section 6, by **Mr. Sidney motioned, seconded by Ms Adelman Foster to change the term “Inspector of Buildings” to the ‘Building Commissioner’ motion approved by a 5-0-0 vote.**

CG2 and JF 2, the CBRC asked; “Who is responsible for removing the nonconforming news racks?” Mr. Flynn noted the Building Commissioner under Article 72A, Section 6. Police Officers also have enforcement authority under Article 92, Section 3 of the By-Laws.

CF3 and JF3, the CBRC questioned the setting of fines. Mr. Flynn note Article 92, Section 1 of the By-Law sets the fines.

Section 6(2), CG4 asked if the BoS have a policy, Ms Gloff and Town Administrator answered in the negative.

BY-LAW 76
REGULATIONS FOR THE DEMOLITION, ALTERATION OR RELOCATION OF
HISTORICALLY SIGNIFICANT BUILDINGS OR STRUCTURES

A general question asked by the CBRC to Town Counsel; “How should ‘bylaw’ be spelled? by-law, bylaw, By-law or By-Law”? Mr. Flynn indicated there is no legal requirement. The most common spelling found in the statutes is “By-Law” for upper case use and “by-law” for lower case use.

Section 1, CG2 and JF2, the CBRC asked: “Does this section need to specifically reference exteriors of buildings”? Mr. Flynn opined that the exterior of buildings is implicit and does not need to be specifically referenced.

Section 2E, **Mr. Sidney moved, seconded by Mrs. Chinetti to substitute throughout Article 76, the term “Inspector of Buildings” with the term ‘Building Commissioner’, the motion was approved by a 5-0-0 vote.**

Section 3B, CG 5 and JF5, the CBRC asked; “Is this (Historic and Prehistoric assets of the Commonwealth) still the correct title”? Mr. Flynn noted the correct title is “Inventory of the Historic and Archaeological Assets of the Commonwealth”.

Mr. Sidney moved, seconded by Mrs. Chinetti to delete in Section 3B, line one, all words in the first sentence after the words ‘of the’ the substitute the term “Inventory of the Historic and Archaeological Assets of the Commonwealth.” The motion was approved by a 5-0-0 vote.

Section 3C, CG6 asked if this list exists. Town Administrator would investigate.

Section 5A, CG7 and JF7, the CBRC asked; “should this also mention to alter (or alteration)”? Mr. Flynn stated if the intent is for the by-law to apply to alterations as well as demolition, the by-law should specifically refer to alteration. If the Committee wishes to propose such an amendment< I will draft the warrant article.

After discussion, **Mr. Sidney moved, seconded by Mrs. Chinetti to add, in line one, after the word ‘demolish’ ‘, alter’ the motion was approved by a 5-0-0 vote.**

An additional motion was made by Ms. Adelman Foster and seconded by Ms. Carol Gloff, to delete from line two (Section 5A) the word “same” and substitute the term ‘said application’ in place. The motion was approved by a 5-0-0 vote.

The Chair will check for a typo in section 5D, last line a comma that appears incorrectly.

The Chair will check for a typo in section 5H, line three the placing of an incorrect comma.

Section 7A, CG12 and JF10, the CBRC questions the term “in law or in equity”. Mr. Flynn states this is common legal terminology. In essence it preserves all legal and equitable remedies available to the Town, such as fines or other money damages, injunctive relief, and any other court orders.

Section 7B, CG13 asks if this is being done, response from Building Commissioner is the state form and process is used.

APPROVAL OF MINUTES

Mr. Sidney moved to accept, as amended (see attachment) the minutes of June 18, 2009, seconded by Mr. Healey, motion approved 4-0-1 vote with Ms. Adelman Foster abstaining.

Mr. Sidney moved to accept, as amended (see attachment) the minutes of June 24, 2009, seconded by Ms. Gloff, motion approved 4-0-1 vote with Mr. Healey abstaining.

Mr. Sidney moved to accept, as amended (see attachment) the minutes of July 1, 2009, seconded by Ms. Adelman Foster, motion approved 5-0-0 vote.

OTHER DISCUSSIONS

The Committee voted 5-0-0 to cancel the next two-scheduled meetings, June 16, 2009 and July 23, 2009 (Thursday morning's).

The next scheduled and posted meeting is Wednesday evening July 29, 2009 at 5:30 PM at the Board of Selectmen meeting room second floor Town Hall.

Motion to adjourn made by Ms. Adelman Foster and seconded by Mr. Sidney.

Meeting adjourned at 8:40 PM

Respectfully submitted by Bob Healey, CBRC member.

Minutes approved on December 14, 2009 by a vote of 4-0-0.

ARTICLE 60

FIRE REGULATIONS

Section 1 Investigations and Inspections

The Chief of the Fire Department, or any members of said Department authorized by the Chief as Inspectors, may at all reasonable hours enter any building or premises for the purposes of making an inspection or investigation which they may be authorized to make under the provisions of (1) the Town By-Laws, (2) Chapter 148 of the General Laws, (3) Fire Prevention Codes as set forth in Chapter 527 of the Codes of Massachusetts Regulations, (4) the Massachusetts State Building Code, and (5) other pertinent rules or regulations.

Comment [CG1]: What is deemed "reasonable"?

Section 2 Removal of Dangerous or Hazardous Conditions

Whenever the Chief or any Inspector of the Fire Department shall find in any building or upon any premises dangerous or hazardous conditions as hereinafter defined, such conditions shall be removed or remedied in any reasonable manner and within such time as ordered by the Chief of the Fire Department.

- (1) Dangerous or unlawful amounts of combustible or explosive matter
- (2) Hazardous conditions arising from defective or improperly installed equipment for handling or using combustible or explosive matter
- (3) Dangerous accumulations of rubbish, waste paper, boxes, shavings or other highly flammable materials
- (4) Accumulations of dust or waste material in air conditioning systems or of grease in kitchen exhaust ducts
- (5) Obstructions to or on fire escapes, stairs, passageways, doors or windows liable to interfere with the operations of the Fire Department or egress of occupants in case of fire
- (6) Any building or other structure which, for want of repairs, lack of exit facilities, or dilapidated condition, or from any other cause, creates a fire hazard
- (7) Any discarded or unused appliance which may pose a danger to the public, especially children.

The service of such orders as mentioned in this section may be made upon the owner or occupant either by delivering a copy to him personally, or in case no such person is found, by affixing a copy thereof in a conspicuous place on said premises, or by mailing such copy by certified mail, with return receipt requested, to the owner's last known post office address as appearing on the Assessors' records.

Section 3 Maintenance of Fire Prevention Equipment

The Chief of the Fire Department shall inspect each business, mercantile and manufacturing establishment, school, place of assembly, hospital, place of detention, rooming house, motel, hotel, nursing home, rest home and multi-family house; and shall specify suitable fire detecting devices or extinguishing appliances which shall be provided, in or near furnace rooms, kitchens of restaurants and like establishments, storage rooms containing combustible material, rooms in which hazardous manufacturing processes are conducted, garage sections, and other places of a generally hazardous nature. Such devices or appliances may be approved by the Chief of the Fire Department. In specially hazardous processes or storages, appliances of more than one type or special systems may be required.

Comment [CG2]: Does this include an office in someone's home? If not, should they be specifically excluded?

Sprinkler systems, standpipe systems, fire alarm systems, and other fire protective or extinguishing systems or appliances which have been installed in compliance with this By-Law, shall be maintained in operative condition at all times and it shall be unlawful for any owner or occupant to reduce the effectiveness of the protection so required; except that this shall not prohibit the owner or occupant from temporarily reducing or discontinuing the protection where necessary to make tests, repairs, alterations or additions. The Chief of the Fire Department shall be notified before such tests, repairs, alterations or additions are started, unless the work is to be continuous until completion.

Section 4 Fire Permits

No person shall make a fire in any public way or public place without first having obtained in writing the permission of the Chief of the Fire Department or his authorized representative.

Section 5 Fire Detection System

5.1 **Applicability** - Every multiple dwelling of more than four (4) units shall have an approved Fire Detection System - said system shall be connected to Fire Department Headquarters through the municipal fire alarm system.

5.2 **Equipment and Installation** - All equipment used shall be listed with the Underwriters Laboratories or Factory Mutual and as specified by the Natick Fire Department. Equipment shall be installed in accordance with practices outlined by the National Fire Protection Association.

Comment [CG3]: To fix this typo, would we need an article before TM?

5.3 **Heat Detectors** - Rate of Rise Heat Detectors shall be installed in utility rooms, service closets, basements, heating rooms, hallways and stairways in a manner approved by the Chief of the Fire Department.

5.4 **Manual Pull Stations** - Manual pull stations shall be located in the hallways and connected to the building fire alarm system. The number and location of such stations shall be determined by the Chief of the Fire Department.

5.5 **Audible Warning Devices** - Audible warning devices such as horns shall be installed above each manual pull station. The warning devices must be audible throughout the building.

5.6 **Master Fire Alarm Box** - The Master Fire Alarm Box shall conform to Natick Fire Department specifications. Where there is more than one multiple dwelling located so as to form a complex, one (1) master fire alarm box may be used, provided that each building has its own

annunciator panel with a visible flashing red light mounted near the main entrance: the light must indicate the location of the building sending the alarm.

5.7 **Annunciator Panel** - An Annunciator Panel of a positive indication type shall be required in each building located adjacent to the Master Box. In complexes having more than one building connected to the Master Box, a separate annunciator panel will be located at each building adjacent to the main entrance.

Comment [CG4]: What does this mean? Ask Chief Sheridan.

5.8 **Supervisory Panel** - A Supervisory Panel and auxiliary power source shall be provided to continue operation of the building alarm system during a loss of power. Auxiliary power sources shall consist of rechargeable wet cell batteries or a standby generator. The supervisory panel shall supervise the condition of the auxiliary trip and may be incorporated in the auxiliary control panel.

5.9 **System Approval** - A complete set of plans with an equipment list shall be furnished the Chief of the Fire Department for his approval prior to installation. The Chief of the Fire Department shall make available a list of specifications and regulations governing fire protection systems which are to be connected to the Natick Municipal fire alarm system.

Comment [CG5]: Does the Chief have this list and make it available?

Comment [CG6]: Is this section intended to apply to existing buildings in addition to new construction and rehabs? Chief Sheridan needs to be asked.

Section 6 Obstructing Fire Apparatus

It shall be unlawful to obstruct or block a private way with a vehicle or other means so as to prevent access by Fire Apparatus of equipment to any building.

Comment [CG7]: Is there any fine or punishment for such obstruction?

Section 6 a Fire Lanes

It shall be unlawful to obstruct or park a vehicle in any Fire Lane, such Fire Lane to be designated by the Chief of the Fire Department and posted as such, said Fire Lane to be distance of twelve (12) feet from the curbing of a sidewalk in a shopping center, bowling establishment, theater and similar locations. Where no sidewalk with curbing exists, the distance shall be eighteen (18) feet from the building.

Any object or vehicle obstructing or blocking any Fire Lane or private way, may be removed or towed by the Town at the expense of the owner and without liability to the Town of Natick.

The building owner of record shall provide and install signs as provided in this section.

Section 7 Standpipe Systems

Any building hereinafter constructed and having three (3) or more stories shall have a standpipe system installed. Said standpipe system shall be installed in accordance with the National Fire Protection Association Installation of Standpipes and Hose Systems, NFPA No. 14. Plans shall be submitted to the Chief of the Fire Department for approval prior to installation.

Section 8 Use of Mechanical Protection Devices

8.1 Definitions

When used in the context of this By-law, the following terminologies shall convey the following meanings:

- 8.1.1 Fire Chief: The Chief of the Natick Fire Department.
- 8.1.2 Fire Alarm System: Any heat-activated, smoke-activated, water flow activated, flame energy activated or other such automatic device capable of transmitting a fire alarm signal to either a central station operating company or directly to the Natick Fire Department via a master fire alarm box on the Town's auxiliary cable system.
- 8.1.3 Central Station Operating Company: A company equipped to receive a fire alarm signal from each of its customers and the re-transmission of that alarm to the Natick Fire Department.
- 8.1.4 Fire Alarm System Malfunction: The transmittal of a false fire alarm to a central station operating company or directly to the Natick Fire Department via a master fire alarm box, and the cause of which is due to improper installation of a fire alarm system, a mechanically defective fire alarm system, lack of maintenance or some other reason that causes a fire alarm to activate, even though there is no actual fire or situation that reasonable could evolve into a fire.
- 8.1.5 Fire Alarm System Owner: An individual or entity who owns the title to and/or has on his/her business or residential premises a fire alarm system equipped to transmit a fire alarm signal to a central station operating company or directly to the Natick Fire Department via a master alarm box.
- 8.1.6 Master Box Owner: An individual or entity who has on his/her business or residential premises a fire alarm system equipped, to transmit a fire alarm signal directly to the Natick Fire Department via the Town's auxiliary fire alarm circuit.

Comment [CG8]: Does this preclude replacing the existing wired fire alarm box system with a wireless system?

8.2 **Connection of Fire Alarm Systems to the Natick Fire Department Auxiliary Alarm Circuit Via a Master Box**

- 8.2.1 Before any fire alarm system is connected to the Natick Fire Department auxiliary alarm circuit, the master box owner shall provide the following information to the Fire Chief:
 - a. The name, address and home and work telephone numbers of the master box owner.
 - b. The name, address(es) and telephone number(s) of the person(s) or business(es) protected by the fire alarm system connected to the master box.
 - c. The names, addresses and home and work numbers of at least two (2) persons other than the owner who can be contacted twenty-four hours per day, who are authorized by the master box owner to respond to an alarm signal when requested and who have access to the premises where the master box is located.

Owners of existing fire alarm systems connected to the Natick Fire Department auxiliary alarm circuit shall, after notification by first class mail, have sixty (60) days to comply with the requirements of this section.

If a master box owner fails to comply with any requirements of this section, the Fire Chief may assess a fine of fifty dollars (\$50.00) for each twenty-four (24) hour period of non-compliance following the sixty (60) day notification period.

Comment [CG9]: Why "may"? Is there a specific reason why "may" is used rather than "shall"?

Comment [CG10]: Is this amount set by MGL or some other external authority?

8.3 Connection of Central Station Operating Companies to the Natick Fire Department

8.3.1 Before any central station operating company is connected with the Natick Fire Department, it shall provide the Fire Chief with the following information:

- a. The name, address and home and work telephone numbers of the central station alarm company.
- b. The name, address(es) and telephone number(s) of the person(s) or business(es) protected by the fire alarm system connected to the central station alarm company.
- c. The names, addresses and home and work numbers of at least two (2) persons other than the owner who can be contacted twenty-four hours per day, who are authorized by the master box owner to respond to an alarm signal when requested and who have access to the premises where the central station alarm company monitors the fire alarm notification signal and retransmission of that signal.

Owners of existing fire alarm systems previously connected to a central station operating company shall, after notification by first class mail, have sixty (60) days to comply with the requirements of this section.

If a central station alarm company fails to comply with any requirements of this section, the Fire Chief may assess a fine of fifty dollars (\$50.00) for each twenty-four (24) hour period of non-compliance following the sixty (60) day notification period.

8.4 Updating Information

Every master box owner and every central station operating company shall be responsible for updating information herein required to be provided to the Fire Chief.

8.5 Fire Alarm System Malfunctions (False Alarms) and Fines Structure

8.5.1 In order to alleviate the number of unnecessary responses by the Natick Fire Department to occupancies serviced by faulty fire alarm systems, the Fire Chief may assess a fine against a fire alarm system owner for each fire alarm system malfunction per calendar year according to the following schedule:

Comment [CG11]: Why "may" instead of "shall" or "will"?

- a. First through third malfunction. No Charge.

Upon receipt of the third such false alarm by the Natick Fire Department the Fire

Chief shall notify the owner of the fire alarm system in writing and by registered mail, return receipt requested, of such fact, and inform the owner of the Department's policy relative to charging for false fire alarms. A copy of the By-law shall be enclosed with the formal notice.

- b. Fourth through sixth malfunction \$100.00/call.
- c. Seventh through eleventh malfunction \$200.00/call.
- d. Each malfunction after the eleventh \$300.00/call.

8.5.2 Private fire alarm systems connected to the Natick Fire Department by other automatic means or through a central station system shall also be subject to the aforementioned fee structure (8.5.1).

8.5.3 Any false fire alarm which is the result of the failure of the property owner, occupant or their agent(s) to notify the Natick Fire Department of repair, maintenance or testing of the internal fire alarm system within the protected premises shall cause a penalty to be assessed in accordance with subsection 8.5.1.

8.5.4 For the purposes of this regulation a false fire alarm shall be defined as follows:

- a. The operation of a faulty smoke or heat or water flow detection device.
- b. Faulty control panel or associated equipment.
- c. A water pressure surge in automatic sprinkler system.
- d. Accidental operation of an automatic sprinkler system.
- e. An action by an employee of the owner or occupant of the protected premises or a contractor employed by the owner or the occupant, causing accidental activation of the internal fire alarm system.

Comment [CG12]: Deliberate false alarms do not seem to be forbidden here. Are such covered by MGL? For example, activation of a fire alarm when no smoke or fire is evident, call to 911 to report a fire or smoke when no smoke or fire is evident.

8.5.5 Property owners will be billed once a month for the previous month's malfunction activity. All fines assessed shall be paid to the Town Treasurer for deposit in the general fund. If the bill is not paid within 30 days, a second notice will be sent; if the bill is not paid after another 30 day period, a final notice will be sent informing the owner and/or occupant that the master box will be disconnected and the insurance company notified after 30 days of said final notice.

Comment [CG14]: Does disconnecting the master box give the town some liability, by potentially putting business employees in jeopardy?

8.6 Restrictions on Tape Dialers and Similar Automatic Telephone Devices

No fire alarm system shall be equipped with a tape dialer or similar automatic telephone device which will transmit an alarm message to any telephone lines of the Natick Fire Department. If at the passage of this bylaw a fire alarm system is equipped with such a tape dialer or similar automatic telephone device, the fire alarm system owner shall have sixty (60) days from the passage of this bylaw to disconnect such tape dialer or similar automatic telephone

Comment [CG13]: Are there interest or other financial penalties for such unpaid fines?

device. If a fire alarm system owner fails to comply with this section, the Fire Chief may assess a fine of fifty dollars (\$50.00).

Comment [CG16]: How is this fine set? By MGL or other external authority? Could/should it be removed from here and addressed by the BoS?

8.7 Appeal Procedure

Any fire alarm system owner who is aggrieved by an action taken by the Fire Chief under this bylaw may, within ten (10) days of such action, file an appeal in writing, to the Board of Selectmen of the Town of Natick (the Board). After notice the Board shall hold a hearing, after which it shall issue a decision in which it affirms, annuls or modifies the action taken by the Fire Chief giving its reasons thereof. The Board shall send its decision to the owner by first class mail within ten (10) days after the hearing. The decision of the Board shall be a final administrative decision. The owner shall have thirty (30) days from the date of the written decision to seek judicial review in the Middlesex County Superior Court.

Comment [CG15]: "May"? Why not "shall"?

8.8 Regulations and Enforcement

The Fire Chief may promulgate such regulations as may be necessary to implement this bylaw. The Fire Chief is authorized to pursue such legal action as may be necessary to enforce this bylaw.

Comment [CG17]: Do such regulations exist? Where are they located?

Section 9 Smoke or Heat Detectors for Dwellings Not Otherwise Regulated

As required by and as defined in Section 26C of Chapter 148 of the General Laws, apartment houses containing six or more dwelling units, hotels, boarding or lodging houses, or family hotels, which are not regulated by Sections 26A or 26B of said chapter, shall be equipped with automatic smoke or heat detectors in each dwelling unit and each hallway floor.

The head of the Fire Department, as defined in Section 1 of said chapter, shall enforce the provisions of this section.

Section 10 Annual Service Fee

An annual service and users fee of \$300.00 for all master fire alarm boxes connected to the Municipal Fire Alarm System, from mercantile, commercial and/or industrial occupancies.

Comment [CG18]: Why \$300? MGL or some other external authority? Could this be removed from here and assigned to the BoS?

Section 11 Sprinklers in High Rise Buildings

As required by and as defined in Sections 26A and 26A1/2 of Chapter 148 of the General Laws, all high rise buildings shall have an adequate system of automatic sprinklers.

Comment [CG19]: Does this include residential buildings? What constitutes a "high rise" building?

Section 12 Automatic Fire Warning Systems in Certain Residential Buildings

As required by and as defined in Section 26B of Chapter 148 of the General Laws, all buildings occupied or to be occupied for residential purposes shall have an adequate system of automatic sprinklers.

Comment [CG20]: Does this include single family homes?

Section 13 Smoke Detectors in Private Dwellings

Comment [CG21]: Should we add a section on carbon monoxide detectors and a reference to the relevant MGL?

As required by and as defined in Sections 26D and 26E of Chapter 148 of the General Laws, all private dwellings shall be equipped with smoke detectors.

As required by Section 26F of said chapter, the seller shall equip the building or structure with smoke detectors upon the sale or transfer of such building or structure.

Section 14 Sprinkler Systems in Buildings, General

As required by and as defined in Section 26G of Chapter 148 of the General Laws, all buildings shall be equipped with an automatic sprinkler system.

Section 15 Sprinkler Systems in Boarding Houses

As required by and as defined in Section 26H of Chapter 148 of the General Laws, all boarding houses shall be equipped with an automatic sprinkler system.

ARTICLE 83

NO SMOKING IN PUBLIC PLACES

Comment [CG22]: We think this needs to be revised to match current MGL and any relevant Federal laws or regulations.

- a. It is hereby declared that smoking in public places is a public nuisance, dangerous and hazardous to the public health, and violates the rights of non-smokers to breathe air which is free of smoke contamination.
- b. As used herein, "Smoking" shall include carrying a lighted cigarette, cigar, pipe or other tobacco product, and any other smoking materials, e.g., marijuana, clove cigarettes.
- c. No person shall smoke in any elevator accessible to the public.
- d. No person shall smoke nor shall any person, employee, or other person having control of the premises upon which smoking is prohibited by this regulation, or the agent or designee of such person, permit a person to smoke in any room to which the public is invited or in which the public is permitted, including, but not limited to, any restaurant, health care facility, classroom, lecture hall, theater, motion picture theater, opera house, concert hall, library, auditorium, school, retail store, reception area, restroom or lavatory, waiting room, or public area of a bank, but not including any private residence or other place mentioned in subsection (e) nor any party, beano game, social reception, or fraternal or veteran's organization.
- e. Smoking is permitted in the bar area of a restaurant, provided that 1) the bar area shall not include any common area of the premises to which any patron seated in the non-smoking area may need access, including but not limited to waiting areas, restrooms, and access routes thereto; 2) the perimeter of a bar area of a restaurant in which smoking is permitted shall be separated by a floor -to-ceiling physical barrier; 3) the bar area of the restaurant shall be marked with signs that warn patrons of the dangers of exposure to secondhand smoke; and 4) no person under the age of eighteen (18) years old is permitted to enter the bar area of the restaurant.

This prohibition does not apply in cases in which an entire room or hall is used for a private social function and not by the proprietor or person in charge of the restaurant.

In addition to the remedies provided by subsections (h) and (i), the Director of Public Health or any person aggrieved by the willful failure of the proprietor or other person in charge of a restaurant to comply with any provision of this subsection may apply for injunctive relief to enforce the provisions of this subsection in any court of competent jurisdiction.

Nothing in this subsection shall make lawful smoking in any area in which smoking is or may hereafter be prohibited by law.

Comment [CG23]: Is smoking allowed at Memorial Beach, on the gold course, other outdoor public (town-owned) areas? Can people smoke right outside of Town Hall? What other changes are needed?

- f.
 - (1) Except as provided in paragraph (2) no person shall smoke in any room under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference rooms, and hallways, but not including any private residence unless it is used as a child care or health care facility, or any other place mentioned in subsection (e).

(2) At the written request of one or more employees, an employer may (but is not required to) make other reasonable accommodations to smoking employees, including provision of a separate employee lounge for smoking, no larger in floor area or seating capacity than the employee lounge for non-smokers. Upon request in writing, an employer shall provide a copy in writing of its smoking policy under this paragraph, including any designated smoking areas or other accommodation for smoking employees, to any employee, prospective employee, and the Director of Public Health. Any employee aggrieved by an employer's smoking policy or any portion thereof may appeal in writing to the Director who may modify it in any manner to carry out the purpose of this section. In any dispute arising from such a smoking policy, the health concerns of non-smokers shall be given precedence.

(3) The Director of Public Health shall enforce this subsection and subsection (d), and for this purpose shall have the assistance of the Town Administrator, Town Counsel and the Police and Building Department. In addition to the remedies provided by subsections (h) and (i), the Director or any person aggrieved by any violation of this subsection or subsection (d) may apply for injunctive relief to enforce said provision in any court with jurisdiction. This does not apply to small businesses which occupy only fifteen hundred (1,500) square feet of office space and where one hundred (100) percent of the employees have no objection.

g. Every person having control of premises upon which smoking is prohibited by this article or his or her agent or designee, shall conspicuously display upon the premises a sign reading "Smoking Prohibited by Law".

h. It shall be unlawful for any person having control of any premises or place in which smoking is prohibited by this ordinance to knowingly permit a violation of this article. A person shall be held to have knowingly permitted a violation of this article if a visitor to his or her premises observes one or more people smoking (other than in properly designated smoking areas) on three successive visits. Any licenses issued by the Town to such person shall be subject to suspension for up to fifteen (15) days for a single violation of this subsection, and shall be subject to suspension for up to one year, or to revocation, for any successive violation.

i. Any person who knowingly violates any provision of the Article, or who smokes in an area in which a "Smoking Prohibited by Law" notice is conspicuously posted as required by subsection (h) of this article shall be subject to a fine in an amount of one hundred dollars (\$100) for the first offense, two hundred dollars (\$200) for a second offense and three hundred dollars (\$300) for a third or subsequent offense. All violations will be written against the establishment.

Comment [CG24]: Are these fines set by MGL or some other external authority?

j. If any section, subsection, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

ARTICLE 21

PLANNING DIRECTOR

Comment [CG25]: We no longer have a Planning Director; should this title change?

Section 1 Responsibilities

There shall be a Planning Director, responsible to the Town Administrator, who shall be competent by virtue of professional training in civil engineering or municipal planning, or equivalent experience or education.

Comment [CG26]: Should this be changed?

Section 2 Duties

The duties of the Planning Director shall include, but not be limited to, those described in this section. Upon the request of the Planning Board, the Planning Director shall be assigned professional, administrative and technical work relating to the application of the zoning by-law, subdivision control law, planning studies and design, review of proposals and like work of a professional nature.

Comment [CG27]: Should this be modified?

Section 3 Appointment, Term of Office

The Town Administrator shall appoint the Planning Director after hearing the recommendation of the majority of the members of the Planning Board. The term of office shall be at least one year but not more than three years, as determined by the Town Administrator, and the compensation for the position shall be established under Article 24 of the By-Laws.

Comment [CG28]: Is the Town Administrator following this?

Comment [CG30]: Martha, how would you recommend that this be rewritten or is it okay as written?

Comment [CG29]: Is the TA following this?

ARTICLE 29

BOARD OF APPEALS

Comment [CG31]: In Natick this is, at least commonly, referred to as the Zoning Board of Appeals. Should we change the wording here? Is this defined under MGL? If so, should we add a reference to relevant MGL in this section?

Section 1 Composition, Term of Office

There shall be a Board of Appeals appointed by the Board of Selectmen, consisting of five members appointed for terms of three years each, so arranged that as nearly an equal number of such terms as is possible shall expire each year, and three associate members appointed for terms of three years each, so arranged that one such term shall expire each year.

ARTICLE 72

BUILDING REGULATIONS

Section 1 Building Permits, Orders, and Certificates

Each permit, order and certificate issued by the Building Inspector shall bear a serial number and date, identical on all copies, and shall definitely locate the premises referred to by street and number or otherwise.

Comment [CG32]: Is this the correct title?

Comment [CG33]: Do we have serial numbers on all of these documents when issued?

Section 2 Identification of Structures by Street Number

At the time of issuing a certificate of occupancy for a building or structure, whether same be new, added to or altered, or for a change of occupancy if no street number has been assigned thereto, the Building Inspector shall, wherever it is practicable, assign a number or numbers in accordance with the existing numbering system. The Building Inspector shall also assign and order street numbers in accordance with the said system to be affixed or displayed on any buildings not already so numbered on any street. Such numbers shall be affixed or displayed in such a manner as to be readily visible from the street. Owners shall be allowed ten (10) days after the giving of written notice by the Building Inspector to comply with such order.

Comment [CG34]: What happens if the owner does not comply? Is there a fine or other enforcement?

The street number of an existing building or structure may be changed only by vote of the Board of Selectmen, after a Public Hearing by the Board of Selectmen for which fourteen (14) days written notice has been given to the owner of each building or structure for which the number is proposed to be changed and after receipt by the Board of Selectmen of a written recommendation from the Safety Committee of the Town.

Section 3 Fees

A fee schedule for permits and certificates may be established or amended by the Selectmen and the Building Inspector after due notice has been given by publication in a local newspaper at least fourteen (14) days prior to approval.

Section 4 Fences

All fences shall be erected with the finished side of the fence facing the property of the abutters and the frame side of the fence facing the property on which it is erected. The fence owner shall not use the land between the fence and the boundary line for the storage or disposal of any material. The fence owner shall have access to any abutter's side of the fence for maintenance and repairs.

Unless written permission is secured from the abutters to erect fence on property lines, fence must be erected at least one (1) foot in from boundary lines.

Section 5 Height Requirements at Intersection

In any lot which abuts an intersection of two or more streets, no fence, shrubbery or other object which is located within fifteen (15) feet of such an intersection, shall be maintained more than three (3) feet above the street grade measured at said intersection.

Comment [CG36]: How is this enforced? Fines or other enforcement?

Comment [CG35]: What about piles of snow?

Section 6 **Signs in Public Ways**

No person shall place any unauthorized or non-conforming sign within the right-of-way of any street. The Building Inspector is authorized to take down and remove such an unauthorized or non-conforming sign. Such sign shall be retained by the Building Inspector for a period of thirty days after its removal. The owner of such sign may reclaim it within thirty days of its removal by submitting satisfactory proof of ownership to the Building Inspector. If such sign is not claimed within such thirty day period, the Building Inspector may cause such sign to be destroyed without incurring any liability to the Town or any of its Agents.

Comment [CG37]: Should this section be moved to the Sign By-law?

Comment [CG38R37]: Should we add something that says that the police (or whoever else we want) is authorized to remove signs?

ARTICLE 72. A.

NEWSRACKS ON PUBLIC PROPERTY AND PUBLIC WAYS

Section 1 Purpose and criteria

The purpose of this by-law is to promote the public health, safety and welfare of the inhabitants of Natick through the regulation of placement, type, appearance and servicing of newsracks on public property and in public ways so as to:

- (1) Provide for pedestrian and vehicular safety and convenience;
- (2) Minimize to the greatest extent possible interference with the safe and efficient movement of pedestrians and vehicular traffic, including ingress into or egress from any building situated along a public way, or movement along any public sidewalk or between a public way and a public sidewalk;
- (3) Provide for safe and adequate access to poles, posts, traffic signs and signals, hydrants, mailboxes and areas used for public transportation services;
- (4) Relocate and/or replace newsracks which result in a visual blight and/or excessive space allocation on public property and public ways, or which unreasonably detract from surrounding aesthetics, including adjacent properties, landscaping and other improvements, as well as to have abandoned or unused newsracks removed;
- (5) To regulate in a fair and equal manner all newsracks and their contents.

Section 2 Definitions

As used in this by-law, the following terms shall have the meanings indicated:

- (1) Newsrack - Any type of unmanned device or enclosure intended for the vending or free distribution of newspapers, periodicals, magazines or other literature.
- (2) Public property - Any municipally owned land or building located in the Town of Natick.
- (3) Public way - Any public street, highway, sidewalk, parkway or alley located in the Town of Natick.

Section 3 General placement of newsracks

Subject to the specifications and prohibitions set forth in this by-law, newsracks may be installed on public property and in public ways, however, such newsracks shall be placed parallel to and no closer than eighteen (18) inches from the curb, or near the wall of a building parallel to and not more than six (6) inches from the wall.

Comment [CG39]: Could/should a fee be charged for placing a newsrack on the streets of Natick? Would this be legal? If so, how would it be administered and enforced?

Section 4 Newsrack specifications

- (1) Newsracks shall be maintained in good working order at all times, freshly painted and with unbroken handles. There shall be no sharp or jagged edges or protrusions on any newsrack which could cause injury or damage to persons or vehicles;
- (2) The name, address and telephone number of a responsible person who may be contacted at any time shall be displayed on the newsrack in such manner as to be readily visible and readable.
- (3) Newsracks shall be either freestanding or shall be bolted in place through four (4) standard holes in the newsrack base to pavement or a pad. No newsrack may be chained, wired, cabled, attached or fixed to any pole, post, tree, fence, bench, trash receptacle or any other structure on public property or in a public way unless such anchor has been provided specifically for such purpose. If a bolted newsrack is removed, the bolts shall be likewise removed entirely and the holes shall be filled with suitable material;
- (4) Newsracks shall carry no cardholders or advertising except the name of the newspaper or material being dispensed limited to two (2) square feet per side and six (6) square feet in total, and/or a copy of the latest edition of such material behind a clear panel in the door of the newsrack.
- (5) Except for the clear panel, all surfaces of a newsrack shall be either green, beige, brown, black, yellow, blue or gray in color with a flat finish. Brilliant or flourescent-type finish is not permitted.

Section 5 Newsrack prohibitions

No newsrack shall be placed, installed, used or maintained:

- (1) Within ten (10) feet of any marked crosswalk;
- (2) Within ten (10) feet of any fire hydrant, fire or police call box, or other emergency facility or device;
- (3) Within ten (10) feet of any driveway;
- (4) Within ten (10) feet ahead of and ten (10) feet to the rear of any sign marking a designated bus stop, as measured along the edge of the pavement or curb line;
- (5) At any location where the clear space for passage of pedestrians would be reduced to less than six (6) feet;
- (6) Within five (5) feet of any display window of any building abutting any sidewalk or in such a manner as to impede or interfere with the use of such window display purpose, or within six (6) feet of any building entrance;
- (7) Facing another newsrack, separated only by the width of a sidewalk or pedestrian walkway;

- (8) Within five (5) feet of any sign, street light pole, traffic signal pole, utility poles or parking meters.
- (9) Within five (5) feet of any stairway, ramp or handicap access device.
- (10) Within twenty (20) feet of any fixed flagpole, commemorative monument, school or school ground, playground or athletic field, cemetery, funeral home or building or site of regular secular or religious ceremony and observance.

Section 6 Enforcement

This by-law shall be enforced by the Inspector of Buildings subject to the following:

- (1) Nonconforming newsracks. Within one hundred (100) days after the effective date of this by-law, and at any time thereafter, any newsrack in violation or nonconformance with any provision of this by-law shall be subject to remedy as provided by law, including but not limited to the imposition of fines, and removal by the Town;
- (2) Abandonment. In the event that any newsrack installed pursuant to this by-law does not contain the publication specified therefor within a period of forty-eight (48) hours after release of the current issue or when no publication is in the newsrack for a period of more than seven (7) consecutive days, the newsrack shall be considered abandoned and the Town shall thereafter remove such newsrack. In the event that a newspaper publishing company or its distributor desires to voluntarily abandon or discontinue a newsrack location, said newsrack shall be completely removed, and the public property or public way shall be promptly restored to a safe condition, leaving no holes or projections in any surface.

Comment [CG40]: Who is responsible for removing the nonconforming newsracks?

Comment [CG41]: Who sets these fines? MGL, the BoS, or someone else?

Comment [CG42]: Does the BoS have a policy on this?

Section 7 Severability.

If any subsection, paragraph, term or provision of this article of this by-law is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction, such determination shall have no effect on any other paragraph, term or provision hereof, all of which shall remain in full force and effect.

ARTICLE 76

Comment [CG43]: General question: how should "bylaw" be spelled? by-law, bylaw, By-law or By-Law?

REGULATIONS FOR THE DEMOLITION, ALTERATION OR RELOCATION OF HISTORICALLY SIGNIFICANT BUILDINGS OR STRUCTURES

Section 1 Intent and Purpose

Pursuant to the general powers granted to cities and towns by Article 89 of the Amendments to the Massachusetts Constitution and the specific powers granted by the Massachusetts General Laws, this bylaw is adopted for the purpose of protecting and preserving significant buildings and structures which constitute or reflect distinctive features pertaining to the history of the Town of Natick and for the purpose of promoting the public welfare through the retention of the architectural, historical, cultural and aesthetic heritage of the Town. The intent of this bylaw is to encourage owners, and others, to preserve, rehabilitate and restore significant buildings or structures rather than demolishing them.

Comment [CG44]: Does this need to specifically reference exteriors of buildings?

Section 2 Definitions

For the purpose of this bylaw, the following words and phrases shall have the following meanings:

- A. Applicant: The party that seeks permission to alter a regulated structure.
- B. Building: A structure designed for the shelter or housing of persons, animals, chattels, business uses or property of any kind.
- C. Commission: The Natick Historical Commission.
- D. Demolition: Any act of pulling down, destroying, or razing a structure, or any part or attached portion thereof.
- E. Permit: The document issued by the Inspector of Buildings as required by the State Building Code for the demolition or relocation of a regulated building or structure.
- F. Historically Significant Building or Structure: Any regulated building or structure which is (1) associated with one or more historic persons or events or with the architectural, cultural, economic, political or social history of the Town of Natick, the Commonwealth of Massachusetts, and/or the United States of America; or (2) is historically or architecturally important by reason of type, period, style and method of building construction, or represents the work of a particular architect or builder, either by itself or in the context of a group of buildings or structures.
- G. Inspector: The Natick Inspector of Buildings.

Comment [CG45]: Is this the correct title?

Comment [CG46]: Is this the correct title?

- H. Preferably Preserved Historically Significant Building or Structure: Any regulated building or structure which, at a Public Hearing, is determined by the Commission to be worthy of preservation.
- I. Relocation or Removal: To transfer a structure from its existing location.
- J. Structure: Any combination of materials assembled or constructed in or on the ground.

Section 3 Regulated Buildings and Structures

The provisions of this bylaw shall apply only to the following buildings and structures:

- A. Any building or structure listed on, or which is subject of a pending application for inclusion on, the National Register of Historic Places or the Massachusetts State Register of Historic Places; or
- B. Any building or structure included in the Inventory of the Historic and Prehistoric assets of the Commonwealth. Futher nominations to said inventory shall occur only after notice to the assessed owner of the building or structure and a public hearing on said proposed nomination.
- C. The Commission shall, after the adoption of this bylaw, prepare and file with the Inspector and the Town Clerk of Natick a list of regulated buildings and structures which list as amended, from time to time, may be relied upon by the Inspector in determining which structures are regulated.
- D. The provisions of this bylaw shall not apply to any building or structure located in a local historical district subject to regulation under the provisions of General Laws Chapter 40C.

Comment [CG47]: Is this still the correct title?

Comment [CG48]: Does this list exist? Is it on file as stated?

Section 4 Prohibition

No permit for the demolition or relocation of any building or structure regulated under this section shall be issued other than in conformity with the provisions of this bylaw.

Section 5 Procedures

- A. Upon receipt of an application for a permit to demolish or relocate a building or structure that is regulated by this bylaw the Inspector shall forward a copy of same to the Commission and the Planning Director of the Town. The Inspector is encouraged to submit said copy as quickly as possible by hand delivery or electronic transmission to the chairperson or contact person established by the Commission.

Comment [CG49]: Should this also mention to alter (or alteration)?

Comment [CG50]: What is "same" referring to? It's rather unclear.

Comment [CG51]: We do not have a Planning Director in Natick.

B. Within ten (10) business days from receipt by the Commission of a copy of such application the Commission shall make a preliminary determination of whether or not the building or structure is a regulated building or structure and if the Commission determines that the building or structure is regulated by this by-law, the Commission shall also preliminarily determine within the same ten (10) business days whether or not the building or structure may be a Historically Significant Building or Structure.

C. If the Commission determines that the building or structure is not regulated by this by-law, or is not Historically Significant, the permit application shall be signed as approved by the Commission and returned to the Inspector. Upon receipt of same, the Inspector may, subject to the requirements of the building code and other applicable laws, issue such permit.

D. If the Inspector does not receive the opinion of the Commission in regard to these preliminary determinations within ten (10) business days of the date of the receipt of the application by the Commission, then the Inspector may grant the permit applied for.

E. If the Commission preliminarily determines that the building or structure may be a Historically Significant Building or Structure as defined in Section II F hereof, the Commission shall review the application for such permit at a public hearing to be held within twenty (20) business days of determination that the subject building or structure may be a Historically Significant Building or structure. The Commission shall cause to be published in a newspaper of local circulation notice of the date and place of such public hearing. Such notice shall specify the address of the subject building or structure, and shall be published in said newspaper once during the two weeks preceding the date of such public hearing. All estimated expenses of publication, posting and mailing shall be reimbursed to the Commission by the applicant at the time of the hearing.

F. No less than five (5) business days before the public hearing the applicant for such permit shall submit to the Commission the following in triplicate:

1. A plan showing the location of the building or structure;
2. Photographs of all street facade elevations;
3. A thorough and detailed description of any intended construction with copies of site plans, building plans and elevation drawings;
4. The reasons for the proposed demolition or relocation and data supporting said reason;
5. A brief description of the proposed reuse of the premises.

G. Notice of a hearing or determination provided for in this bylaw shall be sent by the Commission to the assessed owner of record, the applicant for the demolition permit (if different from owner of record), the Inspector and to such other persons and organizations in such manner as the Commission may determine appropriate. The Commission may require that the applicant post and maintain on the building which is the subject of an application governed by this bylaw a notice, in a form designated by the Commission, visible from the nearest public way, of any

public hearing on the subject matter or such application; and applicant shall comply with such requirement.

H. After said public hearing the Commission shall, within ten (10) business days, determine whether or not the subject building or structure is a Preferably Preserved Building or Structure and notify in writing the applicant and the Inspector of its determination stating the reasons for such decision.

I. If the determination is that the subject building or structure is Preferably Preserved, the Inspector shall not issue a permit for a period of six (6) months from the date of such determination, unless the Commission informs the Inspector in writing prior to the expiration of the six (6) month period that:

1. The Commission is satisfied that the applicant has made a bona fide, reasonable, and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, move, rehabilitate or restore the building or structure; or
2. The applicant has agreed to accept such permit subject to conditions approved by the commission.

Section 6 Emergency Demolition

Nothing in this bylaw shall be deemed inconsistent with the procedures for the demolition and/or securing of buildings and structures established by General Laws Chapter 143, Sections 6-10.

Section 7 Non-compliance with Bylaw

A. The Inspector is authorized to institute any actions, **in law or in equity**, as he deems necessary to obtain compliance with the requirement of this bylaw in order to prevent a threatened or continuing violation thereof.

Comment [CG52]: The CBRC is not certain what this phrase means.

B. The Inspector shall not issue any permits pertaining to any lot or parcel upon which such non-compliances occurred for a period of two (2) years from the date of such violation and **notice of such moratorium shall be recorded by the Inspector at the Registry of Deeds on a form to be supplied by the Commission.**

Comment [CG53]: Is this being done?

Section 8 Right of Appeal

Any person aggrieved by a determination of the Commission may, within twenty (20) days after filing of the notice of such determination with the Inspector, appeal to the Superior Court for Middlesex County. The Court shall hear all pertinent evidence and may annul the determination of the Commission or may remand the case for further action by the Commission or make such other decree as justice and equity shall require.

Section 9 Severability

In case any section, paragraph or part of this bylaw is declared invalid or unconstitutional by a court of competent jurisdiction, every other section, paragraph and part shall continue in full force and effect.

From: John P. Flynn [jflynn@mhtl.com]
Sent: Wednesday, July 15, 2009 5:32 PM
To: 'Carol Gloff'
Cc: 'White, Martha'; jsheridan@natickma.org
Subject: By-Laws, Article 60
Carol:

My responses to the Committee's questions and comments regarding Article 60 of the By-Laws are as follows.

1. "Reasonable" is not defined in this by-law or in any applicable statute. In my opinion, there is legitimate basis for that, because what is reasonable depends upon the particular circumstances, for example, single family, multi-family, commercial or industrial property, prior history of noncompliance, age of the occupants, type of products being stored or manufactured on the premises, etc.
2. In my opinion this should include a business in a home or a home occupation, because that fact may create different fire risks (increased use of electrical equipment, etc).. The Committee may wish to consider recommending an amendment to address this issue.
3. Town Meeting approval is required if the word "Factor" appeared in the original town Meeting vote.
4. Defer to the Chief.
5. Defer to the Chief.
6. Defer to the Chief.
7. Enforcement is covered in Article 92, Section 1 of the By-Laws. The fine is \$50.00 except where other penalties are specifically authorized by general laws, by charter, or by by-law. No other fine is provided in this situation.
8. The present language does prohibit replacing with a wireless system. If the Committee wishes to recommend an amendment to include a wireless system, I will draft the warrant article.
9. "May" rather than "shall" gives the Chief discretion, for example in a situation where the violator is proceeding in good faith to correct the violation.
10. The amount of the fine is not set by statute or any other authority that we find.
11. See item 11 above.
12. I believe that a deliberate false alarm is covered by Chapter 269, Section 13 of the Massachusetts General Laws.
13. The Town can impose a lien upon the property for such an unpaid fine, per Chapter 40, Section 58 of the Massachusetts General Laws. We find no authority to charge interest on that amount.
14. There is no simple answer to the question. The town would be liable if it were negligent in enforcing this provision. If town employees were exercising due care in the performance of their duties. The town should not be liable.
15. See item 9 above.
16. The amount of this fine is not set by any statute or regulation that we find.
17. Defer to the Chief.
18. \$300.00 is the maximum allowed by Chapter 40, Section 21 of the Massachusetts General Laws. The amount of the fee must be reasonably related to the cost of providing the service, inspections, monitoring, etc. The Board of Selectmen does not administer the program. There would need to be a logical basis to assign this fee to the Board of Selectmen.
19. It includes residential buildings. I interpret the applicable statutes to mean that a high rise building is more than seventy feet in height above the mean grade. .
20. Yes.
21. If the Committee wishes to propose an amendment to address carbon monoxide detectors, I will draft the warrant article.

I recommend that the Committee consider an amendment regarding Section 12. Chapter 148, Section 26B requires an approved fire warning system (as opposed to an automatic sprinkler system) in residential buildings which do not exceed seventy feet in height above the mean grade.

From: John P. Flynn [jflynn@mhtl.com]
Sent: Wednesday, July 15, 2009 5:48 PM
To: 'Carol Gloff'
Cc: 'White, Martha'
Subject: By-Laws, Article 83
Carol:

My responses to the Committee's questions and comments regarding Article 83 of the By-Laws are as follows.

1. It is not necessary that this By-Law mirror existing State and Federal Law. The Federal Law of which we are aware is Executive order 13058 which prohibits smoking in Federal facilities. Natick has the authority to enact provisions that are in addition to, and more stringent than, those provided in Massachusetts law.
2. Section a. of the by-law refers to public places, whereas section d. of the by-law concentrates on buildings or portions of buildings. The applicability of this by-law to Memorial Beach, Sassamon Trace Golf Course, and other outdoor locations is not entirely clear.
3. This fine is not fixed by the Massachusetts General Laws. The fine set forth in Article 83 is valid.

In my copy of the By-Laws there is no colon after "(100)" in the second last line of Section 83 f. (3) of the By-Laws.

Please inform the members of the Charter and By-Law Review Committee.

John Flynn

From: John P. Flynn [jflynn@mhtl.com]
Sent: Wednesday, July 15, 2009 4:40 PM
To: 'Carol Gloff'
Cc: 'White, Martha'
Subject: By Laws, Article 21
Carol:

My responses to the Committee's questions and comments regarding Article 21 of the By-Laws are as follows:

1. As I understand it, Natick has not had a Planning Director since the position of Community Development Director was created.
2. I recommend that the Committee consider the language "shall be especially suited by education, training and experience to perform the duties of the position and shall hold no less than a bachelor's degree from an accredited college or university".
3. I recommend adding the language "and such other duties as the town Administrator may assign or require from time to time".
4. For 4 through 6, I defer to the town Administrator.

John Flynn

From: John P. Flynn [jflynn@mhtl.com]
Sent: Wednesday, July 15, 2009 4:47 PM
To: 'Carol Gloff'
Cc: 'White, Martha'
Subject: By-Laws, Article 29
Carol:

Regarding the Committee's questions for Article 29 of the By-Laws, the words "Board of Appeals" and "Zoning Board of Appeals" are both used in the applicable statutes. For example, Chapter 40A, Section 12 of the Massachusetts General Laws provides in part: "Zoning ordinances or by-laws shall provide for a zoning board of appeals,...". That statute and other sections of Chapter 40A then use the words "board of appeals" more frequently than "Zoning Board of Appeals". In my opinion no change is required and reference to a statute is not legally required.

Please inform the members of the Charter and By-Law Review Committee.

John Flynn

From: John P. Flynn [jflynn@mhtl.com]
Sent: Wednesday, July 15, 2009 5:53 PM
To: 'Carol Gloff'
Cc: 'White, Martha'
Subject: FW: By Laws, Article 72
Carol:

Please refer to my June 24, 2009 response below to the Committee's questions and comments regarding Article 72 of the By-Laws. I would add that under Article 92, Section 1 of the By-Laws, police officers, in all cases, are enforcing persons for violations of the By-Laws.

Please inform the members of the Charter and By-law Review Committee.

John Flynn

From: John P. Flynn
Sent: Wednesday, June 24, 2009 6:29 PM
To: Carol Gloff
Cc: 'mannix@natickpolice.com'; 'White, Martha'
Subject: By Laws, Article 72

Carol:

These are my responses to the comments of the Charter and By Law Review Committee regarding Article 72 of the By Laws.

1. The correct title is Building Commissioner.
2. I defer to the Building Commissioner on this issue.
3. Article 92 of the By Laws provides for criminal or non criminal enforcement in the event of a violation of any provision of the By Laws. If no other fine is provided for a particular violation, the fine is \$50 for each offense.
4. The town may regulate in the By Laws the height of snow at intersections. This may present practical problems in the event of a major snow storm which substantially reduces the available area in which to deposit snow which has been removed.
5. See the response to comment number 3.
6. Section 6 could reasonably be moved to the Sign By Law. There is no legal problem with its present location. It is more an issue of consistency and organization.
7. It would be legally permissible to include police officers or other Town personnel among the authorized enforcement personnel.

John Flynn

From: John P. Flynn [jflynn@mhtl.com]
Sent: Wednesday, July 15, 2009 6:10 PM
To: 'Carol Gloff'
Cc: 'White, Martha'
Subject: By-Laws, Article 72A
Carol:

My responses to the questions and comments of the Charter and By-Law Review Committee regarding Article 72A of the By-Laws are as follows.

1. The First Amendment to the United States Constitution applies to this situation, and no such fee can target the expression, and, most particularly, the content of the materials. Any fee would need to be related to the siting of the newsrack, and must be reasonably related to the cost of providing the service, i.e., the cost of determining the location, of monitoring compliance, and the related administrative costs.
2. The Inspector of Buildings according to Article 72A, Section 6. Police officers also have enforcement authority under Article 92, Section 3 of the By-Laws.
3. Fines are established by Article 92, Section 1 of the By-Laws. Where, as here, no other fine is established by Massachusetts law, by the Natick Home Rule Charter, or by the By-Laws, the fine for a violation is fifty dollars (\$50.00).
4. Defer to the board of Selectmen or the Town Administrator.

Please inform the members of the Charter and By-Law Review Committee.

John Flynn

From: John P. Flynn [jflynn@mhtl.com]
Sent: Wednesday, July 15, 2009 6:47 PM
To: 'Carol Gloff'
Cc: 'White, Martha'
Subject: By-Laws, Article 76
Carol:

My responses to the Committee's questions and comments regarding Article 76 of the By-Laws are as follows.

1. There is no legal requirement. The most common spelling that we find in the statutes is By-Law where capital letters are involved, and by-law where lower case is involved.
2. In my opinion the exterior of buildings is implicit and does not need to be specifically referenced
3. The title is Building Commissioner in the Classification and Pay Plan although the position is referred to as Building Inspector in other locations, such as Article 20 (the appointment chart), Article 72, Sections 1, 2 and 3 and is referred to as the Inspector of Buildings in Article 76, Sections 2. G. and is referred to as the Inspector in Article 76, Sections 5. C., 5.D., 5.I., and 7.B.
4. See item 3.
5. According to the information available to us, the correct title is Inventory of the Historic and Archaeological Assets of the Commonwealth.
6. Defer to the Community Development Department.
7. If the intent is for the by-law to apply to alteration as well as demolition, the by-law should specifically refer to alteration. If the Committee wishes to propose such an amendment, I will draft the warrant article.
8. In my opinion, "same" refers to the application for a permit mentioned in the first line.
9. The comment is correct.
10. This is common legal terminology. In essence it preserves all legal and equitable remedies available to the Town, such as fines or other money damages, injunctive relief, and any other court orders.
11. Defer to the Community Development Department.

With respect to the deletions in Sections 5.D and 5.H, if the present text appeared in the Town Meeting vote which adopted the provision, a vote of the Town Meeting is required to change the provision.

Please inform the members of the Charter and By-Law Review Committee.

John Flynn

From: John P. Flynn [jflynn@mhtl.com]
Sent: Wednesday, July 15, 2009 4:54 PM
To: 'Carol Gloff'
Cc: 'White, Martha'
Subject: By-Laws, Article 30
Carol:

My responses to the Committee's questions regarding Article 30 of the By-Laws are as follows.

1. The proposed addition is legally permissible. A sentence about resignation is not legally necessary. Chapter 41, Section 109 of the Massachusetts General Laws and Section 7-10 of the Natick Home Rule Charter address this issue.
2. In my opinion a general severability clause for the By-Laws would be preferable to recommending insertion of such a clause in many By-Law provisions. If the Committee wishes to recommend such an amendment, I will draft it.

Please inform the members of the Charter and By-Law Review Committee.

John Flynn

From: John P. Flynn [jflynn@mhtl.com]
Sent: Wednesday, July 15, 2009 4:57 PM
To: 'Carol Gloff'
Cc: 'White, Martha'
Subject: By-Laws, Article 32
Carol:

If the word "lease:" appears in the text of the Town Meeting vote which adopted this Charter provision, a Town Meeting vote is necessary to amend the provision.

Please inform the members of the Charter and By-Law Review Committee.

John Flynn