

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
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ATTORNEY GENERAL

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September 29, 2023

Joan M. Wordell, Town Clerk
Town of Hudson
78 Main Street
Hudson, MA 01749

RECEIVED

SEP 29 2023

HUDSON TOWN CLERK

Re: Hudson Annual Town Meeting of May 1, 2023 -- Case # 10975
Warrant Article # 35 (Zoning)
Warrant Articles # 1, 24, 25, 28 and 33 (General)

Dear Ms. Wordell:

Article 1 - We approve Article 1 from the May 1, 2023 Hudson Annual Town Meeting.¹

Under Article 1 the Town voted to amend its general by-laws to add a new Section 52, "Stormwater Utility." The by-law is adopted for purposes of administering the Town's stormwater management program ("stormwater program"). Section 1.3, "Purpose." The purposes of the stormwater program include promoting and protecting the health and safety of the public and property from flooding and runoff damage and to meet state and federal regulatory requirements under the National Pollution Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) General Permit. Section 1.3. The stormwater program will be administered by the Select Board. Section 1.2, "Responsibility for Administration." Section 4 authorizes the Town to establish a charge for the use of the stormwater management services of the Town, known as a "Stormwater Utility fee." Stormwater charges will be proportionally calculated and assessed, in accordance with G.L. c. 83, § 16, and will be used to construct, operate, maintain and regulate stormwater management systems and facilities in the Town. Section 4 (a).

We offer comments on the new by-law for the Town's consideration.

A True Copy Attest

Constable

Process Server / Disinterested Person

Date 10-3-27

¹ In a decision issued August 9, 2023 we approved Articles 24, 25, 28, 33 and 35 and, as authorized by G.L. c. 40, § 32, and by agreement with Town Counsel, we extended our deadline for review of Article 1 until October 1, 2023.

1. Section 4 – Stormwater Utility Fee

Section 4 (c) authorizes the Town to establish a dedicated Stormwater Enterprise Fund for the purpose of managing funds collected under the stormwater program. All revenues and receipts from the stormwater utility will be placed in the Stormwater Enterprise Fund as provided for in G.L. c. 44, § 53 F ½.

The Department of Revenue/Division of Local Services (DOR/DLS) has issued a guidance document advising towns that they must first vote to accept the provisions of G.L. c. 44, § 53F ½ before depositing fees into a Stormwater Enterprise Fund. In addition, DOR/DLS recommends that the fund's use begin at the start of the fiscal year. See IGR 2022-16, "Enterprise Funds," p. 3 (December 2022).²

In addition, the Town must ensure that its use of the Enterprise Fund is consistent with G.L. c. 44, § 53 F ½, that provides in relevant part as follows:

No later than one hundred and twenty days prior to the beginning of each fiscal year, an estimate of the income for the ensuing fiscal year and a proposed line item budget of the enterprise shall be submitted to the mayor, board of selectmen or other executive authority of the city or town by the appropriate local entity responsible for operations of the enterprise. Said board, mayor or other executive authority shall submit its recommendation to the town meeting, town council or city council, as the case may be, which shall act upon the budget in the same manner as all other budgets.

Section 53F ½ requires Town Meeting approval of the Enterprise Fund's budget. Any expenditures from the Enterprise Fund must be applied consistent with the Enterprise Fund's budget as approved by Town Meeting. The Town should consult with Town Counsel and DOR/DLS to ensure the proper use of the Stormwater Enterprise Fund.

2. Section 8 – Stormwater Utility Fee Exemptions

Section 8 states that, because all developed property in the Town contributes to runoff and either uses or benefits from the maintenance of the stormwater system, all developed property in the Town will be subject to the by-law, except for those properties exempt under Section 8 (b) or exempted under state law. Section 8 (b) exempts from the Stormwater Utility fee the following: (1) undeveloped land; (2) railroad right-of-way (tracks); and (3) public streets, highways, rights-of-way and Town owned properties, but provides that "[a]ll other State, Federal and Country properties are subject to the user fee charges on the same basis as private properties."

We approve Section 8 (b)(3), but the Town's authority to regulate state and federal entities is limited. "The doctrine of essential governmental functions prohibits municipalities from regulating entities or agencies created by the Legislature in a manner that interferes with

² A copy of IGR 2022-16 can be found here:
<https://dls.gateway.dor.state.ma.us/gateway/DLSPublic/IgrMaintenance/Index/789>

their legislatively mandated purpose, absent statutory provisions to the contrary.” Greater Lawrence Sanitary Dist. v. Town of North Andover, 439 Mass. 16 (2003). See also Teasdale v. Newell & Snowling Const. Co., 192 Mass. 440 (1906) (holding local board of health could not require state park commissioners to obtain license to maintain stable on park land). Similarly, municipalities may not regulate federal governmental entities in a manner that impedes with their purpose. Cf. First Nat’l Bank v. Missouri, 263 U.S. 640, 656 (1926) (state laws may not regulate federal entities if “such laws interfere with the purposes of their creation [or] tend to impair or destroy their efficiency as federal agencies”); Palfrey v. City of Boston, 101 Mass. 329 (1869) (federal internal revenue stamps not subject to state or local property tax). The Town’s enforcement of the by-law’s user fee provisions cannot impermissibly interfere with the operation of state or federal entities. The Town should discuss any questions regarding the proper application of the by-law with Town Counsel

3. Section 9 – Stormwater Utility Fee Credits

Section 9 authorizes the Director of Public Works (or their designee) to grant a credit to a property owner “based on the technical and procedural criteria set forth in the Stormwater Utility Credit Manual (Credit Manual) to be developed, maintained and, from time to time, amended by the [Select] Board.” Any rules or regulations adopted by the Select Board or the Director of Public Works, including the Credit Manual, must be consistent with state law. See American Lithuanian Naturalization Club v. Board of Health of Athol, 446 Mass. 310, 321 (2006) (“A town may not promulgate a regulation that is inconsistent with State law.”) The Town should discuss with Town Counsel any proposed rules and regulations, including the Credit Manual, adopted under Section 9 to ensure that they comply with state law.

4. Section 10 – Stormwater Utility Fee Billing, Delinquencies, Collections and Abatements

Section 10 (d) authorizes the use of G.L. c. 83, § 16A through 16F, including placing a lien upon real estate, for collection of stormwater utility fees. According to DOR/DLS, if it has not already done so, the Town, at a Town Meeting, must first vote to accept the provisions of G.L. c. 83, §§ 16A – 16F before the Town can use those provisions. The Town should consult with Town Counsel and DOR/DLS with any questions on this matter.

5. Section 13 – Effective Date

Section 13, “Effective Date,” provides that the effective date will be “inserted upon by-law approval of the Attorney General.” Only Town Meeting can amend or change the by-laws in accordance with the provisions of G.L. c. 40, § 32. Therefore, an effective date can only “be inserted” into the by-law by Town Meeting, under the provisions of G.L. c. 40, § 32. The Town should consult with Town Counsel with any questions on this issue.

In addition, under G.L. c. 40, § 32, a by-law must first be approved by the Attorney General, and then must be posted or published, before it goes into effect:

Before a by-law or an amendment thereto takes effect it shall also be published in a town bulletin or pamphlet, copies of which shall be posted in at least five public places in the town; and if the town is divided into precincts, copies shall be posted in one or more public places in each precinct of the town; or instead of such publishing in a town bulletin or pamphlet and such posting, copies thereof may be published at least twice at least one week apart in a newspaper of general circulation in the town.

The by-law amendments adopted under Article 1 will not take effect until all the requirements of G.L. c. 40, § 32 have been satisfied. The Town should consult with Town Counsel with any questions regarding the bylaw's effective date.

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

Very truly yours,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

Nicole B. Caprioli

By: Nicole B. Caprioli
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Worcester, MA 01608
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cc: Town Counsels Paul DeRensis and J. Richard Hucksam, Jr.



TOWN OF HUDSON, MASSACHUSETTS

Office of the Town Clerk

Town Hall, Hudson, Massachusetts 01749

978-568-9615

Joan M. Wordell

Town Clerk

Jeffrey M. Malachowski

Assistant Town Clerk

At the Annual Town Meeting of the legal voters of the Town of Hudson, duly called and warned, and held at Hudson High School Auditorium, **Monday, May 1, 2023** at 7:30PM with a quorum present, under **Article 1** of the Warrant calling said meeting, which was:

Amend General By-Laws - Stormwater Utility By-Laws

To see if the Town will vote to amend the Article VI of the General By-Laws of the Town of Hudson by adding a new Section number 52 "Stormwater Utility" to read as follows:

Amend General By-Laws - Stormwater Utility By-Laws

To see if the Town will vote to amend the Article VI of the General By-Laws of the Town of Hudson by adding a new Section number 52 "Stormwater Utility" to read as follows:

SECTION 1.0 GENERAL PROVISIONS

1.1. Title

This By-Law shall be known as the Stormwater Utility By-Law of the Town of Hudson, Massachusetts, hereinafter referred to as "this by-law."

1.2. Responsibility for Administration

The Select Board (the "Board") shall administer, implement, and enforce this by-law unless otherwise provided in this by-law. Any powers granted to, or duties imposed upon the Board may be delegated in writing by the Board to its employees or agents.

1.3. Purpose

The Select Board shall administer the stormwater management program of the Town. It shall be funded by revenue collected through the Stormwater Utility fee and such other revenue as may, from time to time, be appropriated. The stormwater management program is designed to promote the health and safety of the public, to protect property from flooding and the damage caused by stormwater runoff, to protect and manage water quality by controlling the level of pollutants in stormwater runoff and the flow of water as conveyed by manmade and by natural stormwater management systems and facilities, and to meet state and federal regulatory requirements under the National Pollution Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) General Permit.

SECTION 2.0 AUTHORITY

This by-law is adopted in accordance with the authority granted, inter alia, by Amendment Article 89 to Article II of the Massachusetts Constitution (the Home Rule Amendment), Section 16 of Chapter 83 of the General Laws of the Commonwealth of Massachusetts and such other powers as granted to towns in the said General Laws.

SECTION 3.0 DEFINITIONS

The following words, terms and phrases, when used in this by-law, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Credit* means a reduction in the amount of a Stormwater Utility fee charged to the owner of a particular property where that property owner owns, maintains and operates on-site or off-site stormwater management systems or facilities, or provides services or activities that reduce or mitigate the Town's cost of providing stormwater management services, in accordance with the Town's approved credit policy.
- (2) *Developable* shall mean a parcel of land, as designated by the Board of Assessors or other local jurisdictional authority, that can be altered from its natural state to include impervious surface area.
- (3) *Developed* means property altered from its natural state by construction or installation of greater than or equal to five hundred (500) square feet of impervious surfaces.
- (4) *Drainage system* shall mean natural and manmade channels, swales, ditches, swamps, rivers, streams, creeks, wetlands, branches, reservoirs, ponds, drainage ways, inlets, catch basins, gutters, pipes, culverts, bridges, head walls, storm sewers, lakes, and other physical works, properties, and improvements that transfer, control, convey or otherwise influence the movement of stormwater runoff.
- (5) *General Laws* means the General Laws of the Commonwealth of Massachusetts.
- (6) *Impervious surface* includes any material or structure on below or above the ground that prevents water infiltrating the underlying soil. Impervious surfaces include, without limitation, roads, sidewalks, paved parking lots, driveways, rooftops, buildings or structures, artificial turf, compacted gravel or soil traveled ways, and other surfaces which prevent or impede the natural infiltration of stormwater runoff which existed prior to development.
- (7) *Stormwater* is surface water that results from precipitation and that travels over natural or developed land surfaces to discharge into a drainage system or surface water body. Stormwater includes stormwater runoff, snow melt runoff, and surface water runoff and drainage.
- (8) *Stormwater management services* mean all services provided by the Town which relate to the:
 - (a) Transfer, control, conveyance or movement of stormwater runoff through the Town;
 - (b) Maintenance, repair and replacement of stormwater management systems and facilities owned, controlled, or maintained by the Town;
 - (c) Planning, development, design and construction of additional stormwater management systems and facilities to meet current and anticipated needs;
 - (d) Regulation, oversight, and enforcement of the use of stormwater management services, systems and facilities; and
 - (e) Compliance with applicable State and Federal stormwater management regulations and permit requirements including, but not limited to, public education and outreach. Stormwater management services may address the quality of stormwater runoff as well as the quantity thereof.
- (9) *Stormwater management systems and facilities* mean those natural and manmade channels, swales, ditches, rivers, streams, creeks, branches, reservoirs, ponds, drainage ways, inlets, catch basins, pipes, culverts and bridges, headwalls, storm sewers, outfalls and other physical works, properties and improvements which transfer, control, convey, detain, retain, treat or otherwise influence the movement of stormwater runoff.
- (10) *Stormwater Utility fee* means the periodic user fee imposed pursuant to this by-law by the Town of Hudson which will be dedicated to the provision of public stormwater management services.
- (11) *Undevelopable land* is all land including crops, forest land, pasture, conservation or recreation as designated by the Assessor.

- (12) *Undeveloped land* shall mean all land that is not altered from its natural state to an extent that results in greater than five hundred (500) square feet of impervious surface area.

SECTION 4.0 STORMWATER UTILITY FEE AND ENTERPRISE FUND ESTABLISHED; BILLING; DEPOSIT TO STORMWATER ENTERPRISE FUND

- (a) Pursuant to Section 16 of Chapter 83 of the General Laws, the Town hereby establishes a charge for the use of the stormwater management services of the Town to be known as the Stormwater Utility fee. Stormwater charges shall be established such that they will provide sufficient funds, proportionately calculated and assessed, to construct, operate, maintain, and regulate the stormwater management systems and facilities in the Town of Hudson.
- (b) The Stormwater Utility fee is assessed to each developed parcel, whether occupied or not. The fee shall be calculated on an annual basis and billed to the record title owner of the property.
- (c) The Town shall establish a dedicated Stormwater Enterprise Fund in the Town budget and an accounting system for the purpose of managing all funds collected for the purposes and responsibilities of the stormwater program. All revenues and receipts of the Stormwater Utility shall be placed in the Stormwater Enterprise Fund, which shall be separate from all other funds, and only expenses of the stormwater program shall be paid by the fund as provided in G.L. c.44,s. 53 F1/2.
- (d) Expenditure of funds may consider both stormwater quality and quantity management needs, and can be used as described in Section 7.0.
- (e) The Director of Public Works under the general supervision of the Select Board, shall within forty-five (45) days after the close of each fiscal year, prepare an annual report of the change in cash balances which shall detail the cash receipts and disbursements for the year and which shall be submitted to the Executive Assistant and Select Board.

SECTION 5.0 RATES

- (a) The Select Board shall establish reasonable rates for the cost of administering and implementing the stormwater management program of the Town. The initial rates, and any later modifications, shall be based upon recommendation of staff and shall be set by the adoption of a Stormwater Fee Schedule by vote of the Select Board. The schedule of said rates shall be on file in the office of the Town Clerk of the Town of Hudson.
- (b) The billing rate structure shall consist of the following based on the square feet of impervious area on a developed parcel, which is derived from a Town-wide analysis of impervious area where the median or typical single-family residential property has approximately 3,400 square feet of impervious area:
 - (1) Single-family residential properties with 500 - 5,000 square feet of impervious area = one billing unit
 - (2) Single-family residential properties with 5,001 - 10,000 square feet of impervious area = 1.5 billing units
 - (3) Non-single-family residential properties = one billing unit per 3,400 square feet of impervious area (minimum one billing unit)

Billing units for single-family residential properties with >10,000 square feet of impervious area are calculated as non-single-family residential properties.

- (c) Impervious area per parcel is determined by the Town of Hudson by utilizing available GIS data layers to calculate the area of building footprints, building structures, driveways, pathways, pools, sport courts, and parking areas. Any impervious areas within the town-owned right-of-way will not be attributed to the parcel and will not be considered as part of the total impervious area of the parcel.

SECTION 6.0 SCOPE OF RESPONSIBILITY FOR STORMWATER MANAGEMENT SYSTEMS AND FACILITIES

- (a) The Town owns or otherwise has rights which allow it to operate, maintain, improve and access those stormwater

management systems and facilities which are located:

- (1) Within public road rights-of-way;
 - (2) On private property but within easements granted to, and accepted by, the Town of Hudson, or are otherwise permitted to be located on such private property by written agreements for rights-of-entry, rights-of-access, rights-of-use or such other lawful means to allow for operation, maintenance, improvement and access to the stormwater management system facilities located thereon; and
 - (3) On public land which is owned by the Town and/or land of another governmental entity upon which the Town has agreements providing for the operation, maintenance, improvement and access to the stormwater management systems and facilities located thereon.
- (b) Operation, maintenance and/or improvement of stormwater management systems and facilities which are located on private or public property not owned by the Town, and for which the Town lacks a lawful right of entry, shall be and remain the legal responsibility of the property owner, except as otherwise provided for by state and federal laws and regulations.

SECTION 7.0 PURPOSES OF THE STORMWATER UTILITY FUND

Receipts from the Stormwater Utility fee, to the extent consistent with G.L. c. 44, s. 53 F1/2, shall be used for the following purposes:

- (a) The acquisition by gift, purchase or condemnation of real and personal property, and interests therein, necessary to construct, operate, and maintain stormwater management systems and facilities;
- (b) All costs of administration and implementation of the stormwater management program, including the cost of labor and equipment attributable to the stormwater management program and the establishment of reasonable operating and capital reserves to meet unanticipated or emergency stormwater management requirements;
- (c) Payment on principal and interest on debt obligations;
- (d) Engineering and design, debt service and related financing expenses, construction costs for new facilities (including costs for contracted services) and enlargement or improvement of existing facilities;
- (e) Operation and maintenance of the stormwater system, including catch basin cleaning, ditch maintenance, street sweeping, pipe repairs, and stormwater facility repairs;
- (f) Capital investments including stormwater best management practices (BMPs) and components (e.g., purchase of plants, soils, and other amenities to support stormwater management alternatives utilizing vegetation);
- (g) Illicit discharge detection and elimination;
- (h) Monitoring, surveillance, and inspection of stormwater control devices;
- (i) Water quality monitoring and water quality programs;
- (j) Retrofitting developed areas for pollution control;
- (k) Inspection and enforcement activities;
- (l) Billing and related administrative costs; and
- (m) Other activities which are reasonably necessary, including costs related to regulatory compliance.

SECTION 8.0 STORMWATER UTILITY FEE EXEMPTIONS

- (a) The Town of Hudson finds that all developed property in the Town contributes to runoff and either uses or benefits from the maintenance of the stormwater system. Therefore, except as provided in this section or otherwise provided by law, no developed public or private property located in the Town of Hudson shall be exempt from the Stormwater Utility fee charges. No exception, credit, offset, or other reduction in stormwater utility fee charges shall be granted based on age, tax status, economic status, race, religion or other condition unrelated to the cost of providing stormwater management services and facilities.
- (b) The Town establishes exemptions to the Stormwater Utility fee as follows:
 - (1) Undevelopable land.
 - (2) Railroad rights-of-way (tracks). However, railroad stations, maintenance buildings, and/or other developed property used for railroad purposes shall not be exempt from Stormwater Utility fee charges.
 - (3) Public streets, highways, rights-of-way, and Town owned properties. All other State, Federal, and County properties are subject to the user fee charges on the same basis as private properties.

SECTION 9.0 STORMWATER UTILITY FEE CREDITS

- (a) The Director of Public Works or his or her designee (the "Director") (or their designee) is hereby authorized to grant credits to property owners to be applied against the Stormwater Utility fee based on the technical and procedural criteria set forth in the Stormwater Utility Credit Manual (Credit Manual) to be developed, maintained and, from time to time, amended by the Board. The Credit Manual shall be implemented during the first year of the Stormwater Utility and shall be available for inspection by the public at the Department of Public Works.
- (b) The percentages for credits shall reflect the extent to which the subject properties reduce the peak rate of runoff from the property, or avoid other costs incurred by the stormwater management program in the delivery of services, and shall be approved by the Board (or their designee). The maximum possible credit for properties shall be detailed in the Credit Manual.
- (c) Any credit allowed against the Stormwater Utility fee is conditioned on continuing compliance with the Town's design and performance standards as stated in the Credit Manual and/or upon continuing provision of the controls, systems, facilities, services, and activities provided, operated, and maintained by the property owner or owners upon which the credit is based. The Board or Director may revoke a credit at any time for noncompliance with applicable standards and criteria as established in the Credit Manual or this by-law.
- (d) In order to obtain a credit, the property owner must make application to the Town on forms provided by the Town for such purpose. The forms are to be fully completed in accordance with the procedures outlined in the Credit Manual.
- (e) When an application for a credit is deemed complete by the Director, the Director may either grant the credit in whole, grant the credit in part, or deny the credit. Credits applied for by the property owner and granted in whole or in part, shall apply to all Stormwater Utility fees in accordance with the terms defined in the Credit Manual.

SECTION 10.0 STORMWATER UTILITY FEE BILLING, DELINQUENCIES, COLLECTIONS AND ABATEMENTS

- (a) Failure to receive a Stormwater Utility bill is not justification for non-payment. The property owner, shall be obligated to pay the appropriate Stormwater Utility fee for that property. If a property is unbilled, or if no bill is sent for a particular parcel of developed land, the Town may back bill for the fees as applicable for a period not to exceed six years of charges, but no late fees or delinquency charges of any kind shall be charged or recovered from any property owner so back billed.
- (b) Stormwater Utility bills shall be committed to the Treasurer/Collector or Director of Public Works (or their designee) for collection. The Treasurer/Collector shall notify the Board (or their designee) of the amounts collected, and shall keep records of all paid and unpaid Stormwater Utility bills.
- (c) In any case of nonpayment of a Stormwater Utility bill for thirty (30) days after the same is due, the Treasurer/Collector

shall send a notice to the delinquent, and shall inform the Board (or their designee) in writing that such notice has been sent.

- (d) In accordance with Sections 16A through 16F of Chapter 83 of the General Laws, charges for the Stormwater Utility fee, together with interest thereon and costs relative thereto, shall be a lien upon the real estate for which the charge was billed. Such lien shall take effect by operation of law on the day immediately following the due date of such charge and, unless dissolved by payment or abatement, shall continue until such charge has been added to or committed as a tax in accordance with the requirements of Section 16C of Chapter 83 of the General Laws, and thereafter, unless so dissolved, shall continue as provided in Section 37 of Chapter 60 of the said General Laws.
- (e) In addition to the method of collection specified in Sections 16A through 16F of the General Laws, the overdue charge may be collected through any other lawful means.
- (f) In the event that a property owner believes the Stormwater Utility fee is improperly calculated or is otherwise incorrect, the property owner may, within thirty (30) days from the date of issuance of the Stormwater Utility bill, and after payment of the bill in full, apply to the Director of Public Works for an abatement. The Director of Public Works shall have sixty (60) days to consider the request for abatement and render a written decision which may deny the abatement, grant the abatement in full or grant the abatement in part.

SECTION 11.0 APPEALS AND HEARINGS

In the event that a property owner is aggrieved by a written decision of the Director denying an application for abatement in whole or in part, or denying an application for a credit, in whole or in part, the property owner shall have thirty (30) days from the date of the written decision to file an appeal to the Board. The appeal shall be in writing and shall specify the grounds thereof. Upon the filing of the notice of appeal, the Board shall make available all documents constituting the record upon which the particular decision was made. The Board shall set a date for hearing which shall be within ninety (90) days of the date of the filing of the appeal and notice thereof setting forth the place, date and time of hearing shall be sent to the property owner no less than ten (10) days prior to the hearing date. The Board shall render a written decision within thirty (30) days of the conclusion of the hearing affirming the action or reversing the action. If reversing the denial of an abatement, the decision shall specify the sum to be abated, which shall not exceed the amounts paid. If reversing the denial of a credit, the decision shall specify the credit to be applied prospectively against future charges unless the property owner has paid the full amount of the Stormwater Utility fee as charged and has also requested an abatement.

SECTION 12.0 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.

SECTION 13.0 EFFECTIVE DATE

*To be inserted upon by-law approval of the Attorney General.
Or take any other action relative thereto.*

THE FOLLOWING ACTION WAS TAKEN:

VOTED BY A MAJORITY the motion to adopt the subject matter of this article with the amendment under Section 5.0 as follows:

(4) Billing units for single-family residential properties with >10,000 square feet of impervious area are calculated as non-single-family residential properties.

5) All other developed properties: one billing unit per 3,400 square feet (minimum one billing unit)

And Section number 52 "Stormwater Utility" to read as follows:

SECTION 1.0 GENERAL PROVISIONS

1.1. Title

This By-Law shall be known as the Stormwater Utility By-Law of the Town of Hudson, Massachusetts, hereinafter referred to as "this by-law."

1.2. Responsibility for Administration

The Select Board (the "Board") shall administer, implement, and enforce this by-law unless otherwise provided in this by-law. Any powers granted to, or duties imposed upon the Board may be delegated in writing by the Board to its employees or agents.

1.3. Purpose

The Select Board shall administer the stormwater management program of the Town. It shall be funded by revenue collected through the Stormwater Utility fee and such other revenue as may, from time to time, be appropriated. The stormwater management program is designed to promote the health and safety of the public, to protect property from flooding and the damage caused by stormwater runoff, to protect and manage water quality by controlling the level of pollutants in stormwater runoff and the flow of water as conveyed by manmade and by natural stormwater management systems and facilities, and to meet state and federal regulatory requirements under the National Pollution Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) General Permit.

SECTION 2.0 AUTHORITY

This by-law is adopted in accordance with the authority granted, inter alia, by Amendment Article 89 to Article II of the Massachusetts Constitution (the Home Rule Amendment), Section 16 of Chapter 83 of the General Laws of the Commonwealth of Massachusetts and such other powers as granted to towns in the said General Laws.

SECTION 3.0 DEFINITIONS

The following words, terms and phrases, when used in this by-law, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Credit* means a reduction in the amount of a Stormwater Utility fee charged to the owner of a particular property where that property owner owns, maintains and operates on-site or off-site stormwater management systems or facilities, or provides services or activities that reduce or mitigate the Town's cost of providing stormwater management services, in accordance with the Town's approved credit policy.
- (2) *Developable* shall mean a parcel of land, as designated by the Board of Assessors or other local jurisdictional authority, that can be altered from its natural state to include impervious surface area.
- (3) *Developed* means property altered from its natural state by construction or installation of greater than or equal to five hundred (500) square feet of impervious surfaces.
- (4) *Drainage system* shall mean natural and manmade channels, swales, ditches, swamps, rivers, streams, creeks, wetlands, branches, reservoirs, ponds, drainage ways, inlets, catch basins, gutters, pipes, culverts, bridges, head walls, storm sewers, lakes, and other physical works, properties, and improvements that transfer, control, convey or otherwise influence the movement of stormwater runoff.
- (5) *General Laws* means the General Laws of the Commonwealth of Massachusetts.
- (6) *Impervious surface* includes any material or structure on below or above the ground that prevents water infiltrating the underlying soil. Impervious surfaces include, without limitation, roads, sidewalks, paved parking lots, driveways, rooftops, buildings or structures, artificial turf, compacted gravel or soil traveled ways, and other surfaces which prevent or impede the natural infiltration of stormwater runoff which existed prior to development.
- (7) *Stormwater* is surface water that results from precipitation and that travels over natural or developed land surfaces to discharge

into a drainage system or surface water body. Stormwater includes stormwater runoff, snow melt runoff, and surface water runoff and drainage.

- (8) *Stormwater management services* mean all services provided by the Town which relate to the:
- Transfer, control, conveyance or movement of stormwater runoff through the Town;
 - Maintenance, repair and replacement of stormwater management systems and facilities owned, controlled, or maintained by the Town;
 - Planning, development, design and construction of additional stormwater management systems and facilities to meet current and anticipated needs;
 - Regulation, oversight, and enforcement of the use of stormwater management services, systems and facilities; and
 - Compliance with applicable State and Federal stormwater management regulations and permit requirements including, but not limited to, public education and outreach. Stormwater management services may address the quality of stormwater runoff as well as the quantity thereof.
- (9) *Stormwater management systems and facilities* mean those natural and manmade channels, swales, ditches, rivers, streams, creeks, branches, reservoirs, ponds, drainage ways, inlets, catch basins, pipes, culverts and bridges, headwalls, storm sewers, outfalls and other physical works, properties and improvements which transfer, control, convey, detain, retain, treat or otherwise influence the movement of stormwater runoff.
- (10) *Stormwater Utility fee* means the periodic user fee imposed pursuant to this by-law by the Town of Hudson which will be dedicated to the provision of public stormwater management services.
- (11) *Undevelopable land* is all land including crops, forest land, pasture, conservation or recreation as designated by the Assessor.
- (12) *Undeveloped land* shall mean all land that is not altered from its natural state to an extent that results in greater than five hundred (500) square feet of impervious surface area.

SECTION 4.0 STORMWATER UTILITY FEE AND ENTERPRISE FUND ESTABLISHED; BILLING; DEPOSIT TO STORMWATER ENTERPRISE FUND

- Pursuant to Section 16 of Chapter 83 of the General Laws, the Town hereby establishes a charge for the use of the stormwater management services of the Town to be known as the Stormwater Utility fee. Stormwater charges shall be established such that they will provide sufficient funds, proportionately calculated and assessed, to construct, operate, maintain, and regulate the stormwater management systems and facilities in the Town of Hudson.
- The Stormwater Utility fee is assessed to each developed parcel, whether occupied or not. The fee shall be calculated on an annual basis and billed to the record title owner of the property.
- The Town shall establish a dedicated Stormwater Enterprise Fund in the Town budget and an accounting system for the purpose of managing all funds collected for the purposes and responsibilities of the stormwater program. All revenues and receipts of the Stormwater Utility shall be placed in the Stormwater Enterprise Fund, which shall be separate from all other funds, and only expenses of the stormwater program shall be paid by the fund as provided in G.L. c.44, s. 53 F1/2.
- Expenditure of funds may consider both stormwater quality and quantity management needs, and can be used as described in Section 7.0.
- The Director of Public Works under the general supervision of the Select Board, shall within forty-five (45) days after the close of each fiscal year, prepare an annual report of the change in cash balances which shall detail the cash receipts and disbursements for the year and which shall be submitted to the Executive Assistant and Select Board.

SECTION 5.0 RATES

- The Select Board shall establish reasonable rates for the cost of administering and implementing the stormwater

and capital reserves to meet unanticipated or emergency stormwater management requirements;

- (c) Payment on principal and interest on debt obligations;
- (d) Engineering and design, debt service and related financing expenses, construction costs for new facilities (including costs for contracted services) and enlargement or improvement of existing facilities;
- (e) Operation and maintenance of the stormwater system, including catch basin cleaning, ditch maintenance, street sweeping, pipe repairs, and stormwater facility repairs;
- (f) Capital investments including stormwater best management practices (BMPs) and components (e.g., purchase of plants, soils, and other amenities to support stormwater management alternatives utilizing vegetation);
- (g) Illicit discharge detection and elimination;
- (h) Monitoring, surveillance, and inspection of stormwater control devices;
- (i) Water quality monitoring and water quality programs;
- (j) Retrofitting developed areas for pollution control;
- (k) Inspection and enforcement activities;
- (l) Billing and related administrative costs; and
- (m) Other activities which are reasonably necessary, including costs related to regulatory compliance.

SECTION 8.0 STORMWATER UTILITY FEE EXEMPTIONS

- (a) The Town of Hudson finds that all developed property in the Town contributes to runoff and either uses or benefits from the maintenance of the stormwater system. Therefore, except as provided in this section or otherwise provided by law, no developed public or private property located in the Town of Hudson shall be exempt from the Stormwater Utility fee charges. No exception, credit, offset, or other reduction in stormwater utility fee charges shall be granted based on age, tax status, economic status, race, religion or other condition unrelated to the cost of providing stormwater management services and facilities.
- (b) The Town establishes exemptions to the Stormwater Utility fee as follows:
 - (1) Undevelopable land.
 - (2) Railroad rights-of-way (tracks). However, railroad stations, maintenance buildings, and/or other developed property used for railroad purposes shall not be exempt from Stormwater Utility fee charges.
 - (3) Public streets, highways, rights-of-way, and Town owned properties. All other State, Federal, and County properties are subject to the user fee charges on the same basis as private properties.

SECTION 9.0 STORMWATER UTILITY FEE CREDITS

- (a) The Director of Public Works or his or her designee (the "Director") (or their designee) is hereby authorized to grant credits to property owners to be applied against the Stormwater Utility fee based on the technical and procedural criteria set forth in the Stormwater Utility Credit Manual (Credit Manual) to be developed, maintained and, from time to time, amended by the Board. The Credit Manual shall be implemented during the first year of the Stormwater Utility and shall be available for inspection by the public at the Department of Public Works.
- (b) The percentages for credits shall reflect the extent to which the subject properties reduce the peak rate of runoff from

the property, or avoid other costs incurred by the stormwater management program in the delivery of services, and shall be approved by the Board (or their designee). The maximum possible credit for properties shall be detailed in the Credit Manual.

- (c) Any credit allowed against the Stormwater Utility fee is conditioned on continuing compliance with the Town's design and performance standards as stated in the Credit Manual and/or upon continuing provision of the controls, systems, facilities, services, and activities provided, operated, and maintained by the property owner or owners upon which the credit is based. The Board or Director may revoke a credit at any time for noncompliance with applicable standards and criteria as established in the Credit Manual or this by-law.
- (d) In order to obtain a credit, the property owner must make application to the Town on forms provided by the Town for such purpose. The forms are to be fully completed in accordance with the procedures outlined in the Credit Manual.
- (e) When an application for a credit is deemed complete by the Director, the Director may either grant the credit in whole, grant the credit in part, or deny the credit. Credits applied for by the property owner and granted in whole or in part, shall apply to all Stormwater Utility fees in accordance with the terms defined in the Credit Manual.

SECTION 10.0 STORMWATER UTILITY FEE BILLING, DELINQUENCIES, COLLECTIONS AND ABATEMENTS

- (a) Failure to receive a Stormwater Utility bill is not justification for non-payment. The property owner, shall be obligated to pay the appropriate Stormwater Utility fee for that property. If a property is unbilled, or if no bill is sent for a particular parcel of developed land, the Town may back bill for the fees as applicable for a period not to exceed six years of charges, but no late fees or delinquency charges of any kind shall be charged or recovered from any property owner so back billed.
- (b) Stormwater Utility bills shall be committed to the Treasurer/Collector or Director of Public Works (or their designee) for collection. The Treasurer/Collector shall notify the Board (or their designee) of the amounts collected, and shall keep records of all paid and unpaid Stormwater Utility bills.
- (c) In any case of nonpayment of a Stormwater Utility bill for thirty (30) days after the same is due, the Treasurer/Collector shall send a notice to the delinquent, and shall inform the Board (or their designee) in writing that such notice has been sent.
- (d) In accordance with Sections 16A through 16F of Chapter 83 of the General Laws, charges for the Stormwater Utility fee, together with interest thereon and costs relative thereto, shall be a lien upon the real estate for which the charge was billed. Such lien shall take effect by operation of law on the day immediately following the due date of such charge and, unless dissolved by payment or abatement, shall continue until such charge has been added to or committed as a tax in accordance with the requirements of Section 16C of Chapter 83 of the General Laws, and thereafter, unless so dissolved, shall continue as provided in Section 37 of Chapter 60 of the said General Laws.
- (e) In addition to the method of collection specified in Sections 16A through 16F of the General Laws, the overdue charge may be collected through any other lawful means.
- (f) In the event that a property owner believes the Stormwater Utility fee is improperly calculated or is otherwise incorrect, the property owner may, within thirty (30) days from the date of issuance of the Stormwater Utility bill, and after payment of the bill in full, apply to the Director of Public Works for an abatement. The Director of Public Works shall have sixty (60) days to consider the request for abatement and render a written decision which may deny the abatement, grant the abatement in full or grant the abatement in part.

SECTION 11.0 APPEALS AND HEARINGS

In the event that a property owner is aggrieved by a written decision of the Director denying an application for abatement in whole or in part, or denying an application for a credit, in whole or in part, the property owner shall have thirty (30) days from the date of the written decision to file an appeal to the Board. The appeal shall be in writing and shall specify the grounds thereof. Upon the filing of the notice of appeal, the Board shall make available all documents constituting the record upon which the particular decision was made. The Board shall set a date for hearing which shall be within ninety (90) days of the date of the filing of the appeal and notice thereof setting forth the place, date and time

of hearing shall be sent to the property owner no less than ten (10) days prior to the hearing date. The Board shall render a written decision within thirty (30) days of the conclusion of the hearing affirming the action or reversing the action. If reversing the denial of an abatement, the decision shall specify the sum to be abated, which shall not exceed the amounts paid. If reversing the denial of a credit, the decision shall specify the credit to be applied prospectively against future charges unless the property owner has paid the full amount of the Stormwater Utility fee as charged and has also requested an abatement.

SECTION 12.0 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.

SECTION 13.0 EFFECTIVE DATE

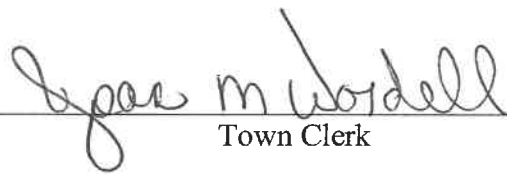
To be inserted upon by-law approval of the Attorney General.

Or take any other action relative thereto.

A True Copy

ATTEST:

MAY 12, 2023


Town Clerk



TOWN OF HUDSON, MASSACHUSETTS

Office of the Town Clerk

Town Hall, Hudson, Massachusetts 01749

978-568-9615

Joan M. Wordell

Town Clerk

Jeff M. Malachowski

Assistant Town Clerk

NOTICE

Claims of invalidity of the foregoing amendments to the Zoning By-Law, by reason of any defects in the procedure of adoption, may only be made within ninety (90) days of this posting.

Copies of amendments to the By-Laws may be examined and obtained at the office of the Town Clerk, 78 Main Street, Hudson, MA, 01749.