

## **CHAPTER I GENERAL PROVISIONS**

### **A. Designation**

Section 1. The by-laws contained in this and the succeeding Chapters constitute the Re-codified General By-laws of the Town of Oak Bluffs.

### **B. Penalty**

Whoever violates a provision within a chapter or section for which a penalty is not specified, unless other provision is expressly made, shall be liable for a penalty not exceeding twenty dollars (\$20.00).

## **Chapter II TOWN MEETINGS AND THE RULES FOR THE GOVERNMENT THEREOF**

### **A. Day and Time of Annual Town Meeting**

The Annual Town Meeting shall be held on the second Tuesday in April beginning at 7:00 P.M. and ending at 10:30 P.M. (with the conclusion of the article being discussed); and the Annual Town Election shall be held on the following Thursday of the same week during April.

### **B. Calling Town Meeting**

All Town Meetings, including the Annual Town Meeting, shall be notified by posting notice thereof in two or more public places in Town, at least fourteen days prior to the Town Meeting. The Warrant shall be placed in a newspaper published in the County at least fourteen days before the time of said meeting is to be held. Such notice shall contain the Warrant in full (with the exception of Personnel Schedules and the Actual Budget) which is to be acted upon at said meeting.

### **C. Quorum**

At any meeting of the inhabitants of the Town qualified to vote in Town Affairs the number of voters necessary to constitute a quorum shall consist of a number of not less than fifty (50) registered voters, but a number less than a quorum may from time to time adjourn such meeting. This by-law shall not apply to meetings or parts of meetings as are devoted exclusively to the election of Town Officers.

### **D. Rule of Order**

At each Special or Annual Town Meeting, the moderator shall use a handbook of Parliamentary Law called "Town Meeting Time" to govern the way parliamentary procedure is conducted by the Moderator. The Moderator may take a voice vote and call the result whenever a two-thirds vote is required. (*Amended STM 4/11/06, AG Approval posted 6/12/06*)

### **E. Warrant**

1. At each Annual Town Meeting of the Town of Oak Bluffs, the warrant will carry a Selectmen's Article specifying an amount of money (including zero) which may be taken from Surplus Revenue and used to reduce the total to be raised by taxation in the budget approved for the next fiscal year.
2. The above amount to be taken from Surplus Revenue shall be proposed by the Selectmen at a regular or special Selectmen's meeting at least 30 days before the Annual Town Meeting.

## **Chapter III ANIMAL CONTROL** (*Section replaced Art. 8 STM 11.14.17, AG Approved 2.26.18, Posted 2.27.18*)

### **A. Definitions**

1. *Abandoned*: A canine is considered abandoned within the meaning of this chapter when it has been left alone or unattended by the owner for any period greater than 24 hours without the owner providing for its needs.
2. *Adequate Shelter*: A structure that is large enough for the animal, whether it is livestock or other domestic animal, to stand naturally, turn around and lie down inside of the structure without being exposed to the elements or weather. The roof and walls of the structure must be waterproof and windproof. Bedding must be kept dry and changed regularly to preserve insulating qualities. Insulation and an inner wall must be included in shelter for canines with short fur (example: Pointers, Staffordshire Terriers, Boxers, Labrador Retrievers) to provide adequate protection from cold. During cold weather a moveable flap must be placed over the entrance to a canine shelter to preserve the canine's body heat. Adequate shelter from sun may be provided by a tarp placed in a manner to provide deep shade and allow air to pass through for ventilation

3. *At large*: Any canine that is not under immediate control of owner via lead restraint or first call command.
4. *Complainant*: Any person, including the animal control officer who witnesses any domestic animal in the act of committing a violation under this chapter, or any other applicable law.
5. *Cruelty to Animals*: Any person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or kills an animal, or causes or procures an animal to be overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated or killed; and any person who uses in a cruel or inhuman manner in a race, game, or contest, or in training therefore, as lure or bait a live animal, except an animal if used as lure or bait in fishing; and whoever, having the charge or custody of an animal, either as owner or otherwise, inflicts unnecessary cruelty upon it, or unnecessarily fails to provide it with proper food, drink, adequate shelter, sanitary environment free of animal waste, or protection from the weather, and whoever, as owner, possessor, or person having the charge or custody of an animal, cruelly drives or works it when unfit for labor, or willfully abandons it, or carries it or causes it to be carried in or upon a vehicle, or otherwise, in an unnecessarily cruel or inhuman manner or in a way and manner which might endanger the animal carried thereon, or knowingly and willfully authorizes or permits it to be subjected to unnecessary torture, suffering or cruelty of any kind.
6. *Domestic Animal*: Any canine, feline, farm animal including chickens and other fowl, exotic pet or otherwise domesticated animal with an owner.
7. *Intact*: An un-spayed female canine or feline or an un-neutered male canine or feline.
8. *Owner*: Any person, group of persons or corporation owning, keeping or harboring a domestic animal.
9. *Public Nuisance*:
  - i. The keeping of any Domestic Animal which emits frequent or long continued noise sufficient to disturb the reasonable comfort or repose of any person shall be deemed a public nuisance.
  - ii. Any domestic canine shall be deemed a public nuisance when such canine is witnessed to be engaged in any of the following activities:
    - a) Attacking, threatening, harassing, or menacing toward persons, fowl, livestock or other domestic animals such as felines, canines or other household pets as determined post investigation by the animal control officer.
    - b) Being a canine at large (not under immediate control of owner via lead restraint or first call command) upon any public park, playground, schoolyard, beach or other public recreation area.
    - c) Being a canine at large upon any public way or private way to which the public has access, chasing motor vehicles, bicycles or pedestrians.

- d) Being a canine at large over the age of six months, not wearing a suitable collar, current license and rabies tag.
- e) Being a canine which has been abandoned.
- f) Being a canine that deposits solid waste not removed by the canine's owner upon any public park, playground, schoolyard, beach or other public recreation area, public or private way, sidewalk or any property other than that of the canine's owner.
- g) Being a canine on public beaches between May 15th to September 15th of each year between 0800 hours and 1700 hours and on the Inkwell Beach between 0700 hours and 1700 hours.
- h) Any canine within 100 yards of a posted nesting habitat by federal and state regulation.
- i) Any canine or feline in noncompliance with Massachusetts General Law Chapter 140 Section 145B stating whoever is the owner or keeper of a canine or feline in the Commonwealth six months of age or older shall cause such canine or feline to be vaccinated against rabies by a licensed veterinarian using a licensed vaccine according to the manufacturer's directions, and shall cause such canine or feline to be revaccinated at intervals recommended by the manufacturer. Unvaccinated canines and felines acquired or moved into the Commonwealth shall be vaccinated within 90 (ninety) days after the acquisition or arrival into the Commonwealth or upon reaching the age of six months, whichever last occurs.

10. *Restraint*: The control of a Domestic Animal by physical means, such as a leash, fence or other means of physically confining or restraining a canine.

**B. Public Nuisance Prohibited**

No owner of any Domestic Animal shall, while such Domestic Animal is within the confines of the Town of Oak Bluffs, allow such Domestic Animal to be a public nuisance as defined above.

**C. Proper Shelter**

Any person owning, keeping or otherwise responsible for a companion animal or pet or farm animal or livestock who confines that animal by tethering, fencing or other means of restraint, shall provide for that animal access to adequate shelter as defined in chapter , from the elements of weather such as rain, cold, or heat. Potable water must be available to the animal at all times.

**D. Trapping**

No person shall use, set, place or maintain any type of jawed leg hold trap, padded or not padded, modified or unmodified, including, but not limited to, a soft catch trapping system or any type of conibear trap within the limits of any private property. Any person violating any provision of this by-law shall be punished by a fine of \$300 (three hundred dollars) for each offense.

### **E. Cruelty to Animals Prohibited**

In compliance with Massachusetts General Law Chapter 272, Section 77 no owner of a domestic animal shall, while within the confines of the Town of Oak Bluffs, commit an act of cruelty against animals.

### **F. Enforcement:**

1. In all cases it shall be the duty of the appointed animal control officer to investigate any violation under this chapter either witnessed by officer or reported to officer in a complaint by any citizen.
2. If after the animal control officer's investigation of an alleged violation under this chapter, such officer has reason to believe that the described violation did in fact occur as set forth in said complaint or as witnessed by officer, it shall be the animal control officer's duty to issue the owner, the appropriate order and/or impose the appropriate fine designed to prevent a recurrence or continuation of such violation. The period of time during which the order shall be in effect shall be on the order.
3. In all cases it shall be the duty of the animal control officer, if, in officer's opinion appropriate action is necessary to prevent further or continued violations of this chapter pending a complete investigation, to take the following action.
  - a. Notify the owner, if known and available, of the alleged violation and issue of an alleged violation and issue a preliminary order requiring the owner to restrain the Domestic Animal pending a complete investigation.
  - b. If the owner is not known or is not immediately available:
    - (i) Humanely restrain the domestic animal.
    - (ii) Confine the domestic animal in the Oak Bluffs Town Pound or other approved animal shelter.
    - (iii) Use available means to attempt to identify the animal's owner.
    - (iv) Take such further actions as is allowed by law.
4. It shall be the responsibility of the owner of any domestic animal impounded to reclaim such domestic animal subject to the following criteria.
  - a. The owner shall pay the animal control officer for all costs incurred for the care of the animal for each calendar day the Domestic Animal was in custody.
  - b. If said animal is a canine, the owner shall have in their possession a current town license for said canine as well as a license tag, both of which shall have been issued with respect to that canine. The license tag shall be attached to the canine by suitable collar before the canine is released from the custody of the animal control officer.
5. Pursuant to Chapter 140 Section 173 of the Massachusetts General Laws, all canines shall be licensed by January 1st of each year. Any person who does not register, number, describe and license his or her canine annually by March 1st in the Town of Oak Bluffs, Dukes County, shall pay the fees and charges under rules and regulations pursuant to Chapter 140 Section 139 will be required to pay the Town of Oak Bluffs a penalty after the last day of February

annually in the amount of \$10 on account of such failure for the first offense. Any second and subsequent failures to so register, number, describe and license the canine shall be subject to a penalty of \$15 in addition to the annual registration fee required by Dukes County regulations.

6. Failure to comply with this section shall constitute a violation subjecting the owner of any unlicensed canine to financial penalties as are allowed by this chapter or as provided for in regulations promulgated by the Board of Selectman
7. All monies received by the Town Clerk's office for the issuance of canine licensing or other fees, fines, charges and penalties under Chapter 140 of the Massachusetts General Laws and this chapter shall be paid into the treasury of the town.

### **G. Violations and Penalties**

1. Fines assessed for violation of this bylaw shall be as follows:
  - a. If it is the first offense so committed by such person within a calendar year the animal control officer shall issue a written warning.
  - b. If it is the second offense so committed in the Town in the calendar year, the animal control officer shall issue a fine of (\$25.00) twenty five dollars per public nuisance offense. Payment shall be made to the Town Clerk of Oak Bluffs and serve as a final disposition of the charges.
  - c. If it is the third offense so committed in the Town in the calendar year, the animal control officer shall issue a fine of (\$100.00) one hundred dollars per public nuisance offense. Payment shall be made to the Town Clerk of Oak Bluffs and serve as a final disposition of the charges.
  - d. If it is the fourth or subsequent offense so committed in the Town in the calendar year, the animal control officer shall issue a fine of (\$150.00) one hundred fifty dollars per public nuisance offense. Payment shall be made to the Town Clerk of Oak Bluffs and serve as a final disposition of the charges.
2. If you desire to contest this matter, you may do so by making a written request for a noncriminal hearing, and enclose a copy of the citation within 21 days of the date of the notice to the Dukes County District Court.
3. These proceedings shall be deemed noncriminal and no person notified to appear before the clerk of the District Court shall be required to report to the probation and no record of the case shall be entered in the probation records.
4. Pursuant of Chapter 272 Section 77 any person committing an act of cruelty against animals shall be punished by imprisonment in the state prison for not more the 5 years or imprisonment in the house of correction for not more then 2 ½ years or by a fine of not more the \$2,500 (two thousand five hundred dollars), or both such fine and imprisonment.
5. In addition to any other penalty provided by law, upon conviction for any violation of Town bylaw Chapter III Section E, the defendant shall forfeit to the custody of the animal to the animal control officer for the care and protection of homeless or suffering animals, the animal whose treatment was the basis of such conviction.

6. In accordance with Massachusetts General Law Chapter 140 Section 151A canines at large shall remain in the custody of the animal control officer for ten (10) days. If at the end of the ten (10) day period the canine has not been claimed by the rightful owner, it shall be surrendered to a recognized animal adoption organization.

## **Chapter IV BOARD OF HEALTH**

*(Amended STM 6/18/02 Art. 12)*

### **A. Regulations**

#### **1. Swine How Kept**

No person shall keep any swine within a distance of fifty feet of any public way or place, or within a distance of one hundred fifty feet of any dwelling house not his own without a permit from the Board of Health previously obtained.

**B. Covers for Septic and Cesspools** *(Deleted Art. 12, ATM 4.10.12, AG Approved 7.18.12, Posted 7.24.12)*

**C. Vehicles to be Clean** *(Deleted STM 6/18/02 Art. 12)*

**D. Removal of Swill and Garbage by Contract** *(Deleted STM 6/18/02 Art. 12)*

## **Chapter V BUILDING DEPARTMENT**

### **A. Building Inspector**

The Board of Selectmen shall appoint a Inspector of Buildings/Building Commissioner pursuant to General Laws Chapter 143, Section 3Y for a minimum term of three years and upon an agreed method of compensation. *(Amended STM 6/18/02 Art. 11)*

### **B. Gas Inspector**

The Building Inspector shall appoint an Inspector of Gas Piping and Gas Appliances in buildings

### **C. Plumbing Inspector**

The Building Inspector shall appoint a Plumbing Inspector.

## **Chapter VI COLLECTOR OF TAXES**

### **A. Collections**

The Collector of Taxes shall collect, under the title of Town Collector, all accounts due the Town, which are committed to him.

### **B. Statements of Accounts**

Every department of the Town shall deliver to the Town Accountant at least once in every month a separate statement of each account due the Town arising through any transaction with such department. Upon receipt of such statements of accounts, the Town Accountant shall commit such accounts to the Town Collector for collection. This section shall not apply to taxes and special assessments, licenses and permits issued or granted by the various departments of the Town, nor to costs and fees charged by said department, nor to interest on investments of sinking or trust funds.

### **C. Abatements**

Any account committed to the Town Accountant, which the Town Collector is unable to collect by ordinary efforts, may be referred by the Town Collector to the Town Counsel for instruction as to procedure. So far as permitted by law, any account or portion thereof may be abated by the department in which such account originated. The Town Accountant shall be notified in writing of the abatement of any such committed account or portion thereof.

### **D. Receipts and Bonding**

The Town Collector shall, once in each week or oftener, pay over to the Treasurer all money received by him during the preceding week or lesser period on every such account, including any sums received as interest on monies received by him on such accounts and deposited in any bank. He shall give bond to the Town for the faithful performance of his duties in a form approved by the Commissioner of Corporations and Taxation and in such sum, not less than the amount that may be established by said Commissioner, or shall be fixed by the Selectmen.

## **Chapter VII COUNCIL ON AGING**

### **A. Council Established**

The Board of Selectmen shall appoint a Council on Aging for the purpose of coordinating or carrying out programs designed to meet the problems of the aging in cooperation with programs of the Commission on Aging established under Chapter 6, Section 73 of the General Laws.

### **B. Membership and Term** (*Amended STM 1.18.05 Art 9, AG Approved 2.23.05, Published 3.11.05*)

The Board of Selectmen shall appoint the Council on Aging consisting of seven (7) members and two (2) alternate members. Upon acceptance of this by-law, the Board shall appoint three (3) members for three (3) years, two (2) members for two (2) years and two (2) members for one (1) year terms. One alternate member shall be appointed for a two (2) year term and one alternate member shall be ap-

pointed for a one (1) year term. The members of the council shall serve without pay.

### **C. Vacancy**

Whenever a vacancy shall occur in the membership of the Council, by reason of death, resignation, inability to act or for any reason, the vacancy shall be filled by appointment by the Selectmen for the remainder of the term.

### **D. Officers**

The Council on Aging at its first annual meeting and thereafter, annually in April of each year, shall elect from its membership a President, 1st Vice President and Secretary. Each officer shall hold office until the next annual election. In the event a vacancy occurs in any of the officers above, the Council shall hold a special meeting for the purpose of electing one of its members to fill such vacancy.

### **E. Annual Report**

The Council shall prepare and submit an annual report of its activities to the Town and shall send a copy thereof to the Commission on Aging.

### **F. Appointments**

The Council may appoint such clerks and other employees as it as it may require

## **Chapter VIII FINANCE AND ADVISORY COMMITTEE**

### **A. ORGANIZATION**

#### 1. Service

There shall be a Finance & Advisory Committee consisting of nine registered voters of the Town. Three members shall be elected each year for a full term of three years. In the event of a vacancy in its membership, the Committee shall notify the Moderator in writing, and the Moderator shall thereupon fill, by appointment, said vacancy for an interim period to last until the next legally held election when members may be elected to the balance of any vacated term(s). The Committee shall choose its own officers. A majority of a quorum may act for the committee. Any member who shall cease to reside in the Town shall thereupon cease to be a member.

#### 2. Compensation

The members shall serve without pay. However, the Committee may employ, subject to appropriation, a clerk. The position of clerk may be filled from among its membership or from the community at large. If a member fills the position of clerk, that member shall act simultaneously as both a voting member and a paid clerk.

### **B. DUTIES**

#### Town Meeting

The Finance & Advisory Committee shall duly consider all matters included within the articles of the Warrant for every Town Meeting and levy limit referenda, and shall subsequently report its recommendations on all financial matters and on such other matters as it deems appropriate (under Chapter 39, Section 16 of the General Laws). The Committee may reserve its recommen-

dation on any article or motions there under in any warrant until the session of the Town Meeting at which the article is to be acted upon. Recommendations shall be conveyed either by oration, publication or both.

### **C. POWERS**

#### 1. Investigatory

The Finance & Advisory Committee shall consider any or all municipal questions which it deems appropriate for the purpose of making recommendations to the Town or any Town Officer, board, committee, or commission. It shall have authority at any time to investigate the books, accounts, and management of any department of the Town (Chapter 233, Sections 8,10 of the General Laws; Chapter 40A, Section 18 of the General Laws) to appear before it and to reasonably provide information related to any matter pertaining to the operation of the Town. Within the limits of any appropriations made for the purpose, the Committee may employ such expert and other assistance, as it may deem advisable for the foregoing purpose. The books and accounts of all departments and officers of the Town shall be open to the inspection of the Committee and any persons employed by it for that purpose. The Committee may appoint subcommittees of its members and or assigns and delegate to them such of its powers, as it deems expedient, but all recommendations, suggestions and explanations shall be those of the Committee.

#### 2. Reserve Fund

The Finance & Advisory Committee (under Chapter 40, Section 6 of the General Laws) shall have a reserve fund, subject to appropriation, not to exceed five percent of the tax levy of the current fiscal year. The Committee may vote to make transfers relative to requests made by department heads or their assigns. Transfers shall be made to specific line item accounts within the current fiscal years budget and shall be for extraordinary or unforeseen expenditures.

#### 3. Emergency

After approval from both the Finance & Advisory Committee and the Selectmen, the Town may spend in excess of its appropriation for snow and ice removal if the appropriation for snow and ice removal that year equaled or exceeded such appropriation for the prior year, including transfers to the account. The excess is added to the next tax rate (Chapter 44, Section 31D of the General Laws).

### **D. ADMINISTRATION** *(Section replaced Art. 13 ATM 4.14.09, AG Approved 7/23/09, Published 8.8.09)*

#### 1. Budgeting Procedures

- a. No later than four months prior to the Annual Town Meeting, the Finance & Advisory Committee after conferring with the Personnel Board, the Town Administrator and the Financial Director, will provide to all Town boards, commissions, committees and departments charged with the expenditure of Town monies, the prescribed budgetary forms and formats with the deadlines and conditions for submittal thereof.

- b. The Finance & Advisory Committee shall duly consider the estimates and statements filed by the Town’s boards, commissions, committees and departments, and may confer with said boards, commissions, committees and departments, and hold hearings, if they deem it advisable. The Finance & Advisory Committee shall thereupon recommend such sums in such divisions of items for the ensuing fiscal year, as it considers necessary and convenient (under Chapter 41, Section 60 of the General Laws).
- 2. Annual Warrant Procedures
    - a. The Finance & Advisory Committee shall prepare its recommendations for the annual warrant prior to the publication of the budget.
    - b. The Finance & Advisory Committee shall present the budget at the Annual Town Meeting, which shall first be subject to amendments, if proposed, by the Committee and then by the Board of Selectmen before any other amendments are proposed.
  - 3. General Procedures
    - a. Beginning the Year
 

The Finance & Advisory Committee shall elect a Chairman, Vice Chairman, Clerk, and a member to the Capital Program Committee for a term of one year. The Finance & Advisory Committee shall also appoint for a full term of three years, or for any balance thereof, its appointees to the Personnel Board.
    - b. Meetings
 

Meetings shall be held regularly and shall be scheduled at times convenient to the Finance & Advisory Committee. The Chairman, subject to proper noticing, may call special and emergency meetings.”

**Chapter IX FIRE DEPARTMENT**

**A. Coal-burning or Wood-burning Stove**

*This section has been disapproved by the Office of the Attorney General due to the conflict with the State Building Code*

**B. E-911**

Every Building in the Town of Oak Bluffs including but not limited to dwellings, apartments, condominiums and business establishments shall have a street number, assigned by the Town, representing the address of such building. The street number shall be posted on the building as follows:

- 1. The building number must face the street on which the number is listed.
- 2. Numbers shall be no less than 4" high nor greater than 10" high.
- 3. Numbers must be clearly visible from the street.

If a building is not seen from the street, the number shall be securely erected or marked on a substantial object close to the road in a clearly visible area and seen from the street day and night.

### **C. False Alarm**

1. Whoever has control of a residence or any other building that employs an electronic security or fire alarm system shall limit the number of false or trouble alarms to not more than two per calendar year. Certain false or trouble alarms caused by power disruption, lightning or other valid situations will be exempted at the discretion of the Police Chief or Fire Chief.
2. Whoever violates this by-law shall pay a service charge of twenty-five (\$25.00) dollars for the first offense, fifty (\$50.00) dollars for the second through fifth offenses, and one hundred (\$100.00) dollars for each additional offense. The owner will be notified by mail after each alarm and those accounts remaining unpaid for more than six months will be subjected to an additional penalty. Any building owned by the Town is exempt from this by-law.

### **D. False Detector Calls**

A fee shall be charged for answering false detector calls. The first call is no charge, second call is \$25.00, third call is \$50.00, any call thereafter is \$100.00.

### **E. Underground Fuel Tanks**

Owners of underground fuel storage tanks are hereby required to allow the Town of Oak Bluffs to have access to such tanks for the purpose of leak inspection and testing.

## **Chapter X HARBOR**

### **A. Boats in Lagoon Pond**

Heads of all boats shall be sealed at all times when in Lagoon Pond. There shall be no discharge of septage from boats into the water of the pond at any time. The Lagoon Pond is hereby declared a No Discharge Zone (“NDZ”) for purposes of designation by the U.S. Environmental Protection Agency. The Harbormaster shall use whatever means are available, at his discretion, to monitor vessels and enforce the “NDZ”. Violations of the “NDZ” shall carry a fine of \$200.00 (two hundred dollars) per offense.

Living aboard a boat in Lagoon Pond shall be restricted to 3 (three) consecutive days except in the event of severe storms of more than 3 (three) days duration, as determined by the Harbor Master of the Town.

## **B. Harbor Regulations**

Regulations governing the use of the Oak Bluffs Harbor:

1. Speed – No Wake.
2. Refuse – No dumping refuse of any sort into the Harbor.
3. Moorings – Permits required for all moorings.
4. Anchoring – under jurisdiction of the Harbormaster.
5. Commercial Vessels – dock only north of Bergeron’s wharf. Any boat not in running order for more than one week may be moved from the harbor as per the General Laws.
6. No Bikes, motor vehicles, mopeds, roller skates or skateboards permitted on the Bulkhead.
7. No swimming in the harbor.
8. No leasing of private moorings.
9. Mooring installation by permit and under direction of the harbormaster.
10. No one person shall be allowed more than one mooring.
11. No soliciting of business on Town property.
12. Buses and taxis must leave Bulkhead stands immediately after boat departure and may not arrive more than ½ hour prior to boat arrival.
13. No obstruction or disturbance at the Bulkhead will be permitted.
14. No discharge of any kind into the Harbor.
15. Dogs must be leashed and curbed.

Any violation of the above regulations may result in a fine in the amount of fifty dollars (\$50.00) per offense.

## **C. Jet Skis**

Regulations governing the use of ponds, beaches and the Oak Bluffs Harbor:  
No Jet Skis are permitted.

## **D. Vessels in the Waters of Oak Bluffs**

No boat, ship or vessel of any kind or description shall deposit raw sewerage in the waters of Oak Bluffs. Any violation of this by-law shall be punishable by a fine of two hundred dollars. (\$200.00) for each offense. (*Amended Art. 11 ATM 4.10.12, AG Approved 7.18.12, Posted 7.24.12*)

## **E. NOISE** (*Section added Art. 14 ATM 4.12.05, AG Approved 7.13.05, Published 7.26.05*)

1. Every motorboat operating on the waters of Oak Bluffs shall be equipped at all times with a muffler on the exhaust of its engine as required by Chapter 90B §6 of the General Laws.
2. No person shall operate a motorboat on the waters of Oak Bluffs that is equipped with a muffler cutout, bypass, or similar device which prevents the proper operation of or diminishes the operation capacity of the muffler.
3. No person shall operate a motorboat on the waters of Oak Bluffs in a manner to permit the production of sound from its engine that equals or exceeds

- a. Eighty eight (88) decibels (88dbs) on the “A” scale when subject to a stationary sound level measurement at a distance greater than three (3) feet from the stern for a motorboat docked, moored or anchored with its engine at idle speed or
- b. Seventy five (75) decibels (75dbs) on the “A” scale (dba) when subjected to a stationary sound level measurement from the shoreline or edges of the harbor for a motorboat underway.
- c. If a motorboat is equipped with more than one engine, the said noise levels shall apply when all engines are in operation.

The “A” level is defined as the total measure of all noise as measured with a sound level meter using the “A” weighting network and the unit of measurement is the db (A).

4. The Harbormaster, an Assistant Harbormaster, police officer or harbor staff who has reason to believe that a motorboat is not in compliance with the sound levels established in this section may direct the operator of the motorboat to submit to an on-site test to measure the level of the sound emitted by the motorboat’s engine. The operator shall comply with that direction. The Harbormaster, Assistant Harbormaster or police officer may remain on board the vessel during the test at her/his discretion. If the level of the sound emitted by the motorboat’s engine exceeds the sound levels established in this section, the Harbormaster, an Assistant Harbormaster or police officer may direct the operator to take immediate steps to correct the violation, including returning the vessel to a mooring or dock, stopping the motor and keeping the boat there until the violation is corrected or ceases.

5. This section does not apply to the operation of dredges, motorboats engaged in construction or demolition work or to auxiliary engines on motorboats that do not propel the boat through the water.

6. This provision may be enforced by non-criminal disposition under G.L. Chapter 40§ 21D, in the following manner:

- A. For the first offense within a twelve (12) month period, a \$100.00 fine;
- B. For the second offense within a twelve (12) month period, a \$200.00 fine;
- C. For the third and subsequent offense(s) within a twelve (12) month period, a \$300.00 fine.

## **Chapter XI LIBRARY**

### **A. Custody and Control of the Library**

The custody, management and control of the public Library and reading rooms and all property of the Town relating thereto shall be vested in a Board of Trustees consisting of six\* persons residents of the Town, who shall serve without compensation.\*Amended ATM 4/08 Art. 3, AG Approved 5/14/08, Posted 6/6/08

## **B. Appointment of Trustees**

The Selectmen shall appoint said Board of Trustees; one for the term of one year, one for the term of two years, and one for the term of three years, and annually thereafter one for the term of three years from the first day of April or until successors shall be appointed. Vacancies may be filled at any time by the Selectmen, and until filled the remaining Trustees shall exercise the powers of the Board.

## **C. Regulations**

Said Board of Trustees shall organize immediately after appointment by the choice of a Chairman and Secretary from their own number. They shall from time to time prescribe regulations for the government of the Library.

## **D. Support and Maintenance of Library**

All money appropriated by the Town for the support and maintenance of the Library, and all money or property that the Town may receive by donation, or by devise or bequest, on behalf of the Library, shall be expended under direction of the said Board of Trustees for its support and maintenance, and in accordance with the condition of each donation, devise or bequest accepted by the Town.

## **E. Report**

The said Board of Trustees shall make a written report to the Selectmen annually on or before the tenth day of February and shall include therein a statement of all the property of the Town in their care and custody, together with such recommendations as may be deemed proper.

## **Chapter XII PERSONNEL BOARD**

A Personnel Board is hereby created.

## **Chapter XIII PLANNING BOARD**

The Planning Board shall consist of five members.

## **Chapter XIV POLICE**

### **A. Camping, Tenting and Sleeping on Public or Private Property \***

No person shall between the hours of 8:00 P.M. and 8:00 A.M. set up on any Property, public or private, without the permission of the owner thereof, a camp, a tent or sleep in the open on any property, public or private, within the limits of the Town of Oak Bluffs. Penalty for a breach thereof shall be in an amount not in excess of one hundred dollars (\$100.00) and each day or during any portion thereof which violation is permitted to exist shall constitute a separate offense.

## **B. Circuit Avenue Parking**

A one-hour parking limit shall be in effect on Circuit Avenue in the Business District from 9:00 A.M. to 5:00 P.M. daily, on a year-round basis.

## **C. Control of Horses**

No person shall ride, drive or suffer a horse under his control to go at an immoderate or unreasonable rate in any street or public place within the Town, so as thereby to endanger the life, safety or convenience of any person properly using any street or public place aforesaid.

## **D. Consuming Alcoholic Beverages in Public Places or Town Property \***

It shall be unlawful for any person to consume and/or transport an open container of alcoholic beverages on public highways, in public parks or in public parking places, including vehicles thereon, or any property owned by the Town within the limits of the Town of Oak Bluffs unless first applying for, and obtaining a permit from the Board of Selectmen, in advance of the event to take place in or on a public facility. Penalty for breach shall be in an amount of one hundred dollars (\$100.00). The property known as "Sailing Camp Park" is exempted from the provisions of this by-law and allows the consumption of beer and wine on the premises for special events, subject to the approval of the Board of Selectmen and upon securing a one day beer and wine license.

## **E. Crying Wares Restricted**

No person hawking, peddling or selling or exposing for sale any articles enumerated in Chapter 101, Section 17 of the General Laws and including ice cream and fish, shall cry his wares to the disturbance of the peace and comfort of the inhabitants of the Town.

## **F. Disorderly Conduct \***

No person shall behave himself in a disorderly manner or use any profane or obscene language in any street or public place within the Town of Oak Bluffs. Penalty for a breach hereof shall be in an amount not in excess of one hundred( dollars (\$100.00).

## **G. Firearms \***

No person shall carry in a motor vehicle or shall leave unattended in a motor vehicle any firearm as described under Chapter 140, Section 121 of the General Laws, while within the boundaries of the Town of Oak Bluffs, unless such person is engaged in hunting or in a hunting location during a regular prescribed hunting season, at no time after the close of the hunting season shall any person carry in their vehicle any firearm, unless enroute to or from a sporting event, or licensed under Chapter 140, Section 131 of the General Laws. Penalty for breach hereof shall be in an amount of fifty dollars (\$50.00) dollars for each offense.

## **H. Hawkers and Peddlers**

Requirements:

No person shall hawk or peddle any of the articles enumerated in Chapter 101, Section 17 of the General Laws including ice cream and fish, until he has recorded his name and residence with the Chief of Police, and been assigned a number by him; nor unless any vehicle or receptacle in which he shall carry or convey such articles shall have painted on it in letters or figures at least two inches in height the name of the person selling, and the number given him by the Chief of Police; nor unless he shall report on the first Monday in every month to the Chief of Police.

## **I. Hours for Restaurants \***

All restaurants within the Town of Oak Bluffs will close for business within the hours of 1:00 AM and 5:00 A.M.

## **J. Indecent Exposure \***

No person in a nude state shall swim or bathe in any waters within the Town of Oak Bluffs, so as to be exposed to the view of the general public. Penalty for a breach hereof shall be in an amount not in excess of one hundred dollars (\$100.00).

## **K. Noise \***

1. It shall be unlawful for any person or persons occupying or having charge of any building or premises or any part thereof in the Town, other than that section of any establishment licensed under Chapter 138 of the General Laws, to cause or suffer or allow any unnecessary, loud, excessive or unusual noise in the operation of any radio, phonograph or other mechanical sound making device or instrument, or reproducing device or instrument, or in the playing of any band, orchestra, musician or group of musicians, or in the use of any device to amplify the aforesaid, or the making of loud outcries, exclamations or other loud or boisterous noises or loud and boisterous singing by any person or group of persons or in the use of any device to amplify the aforesaid noise, where the noise is plainly audible at a distance of one hundred and fifty (150) feet from the building, structure, vehicle or premises in which or from which it is produced. The fact that the noise is plainly audible at a distance of one hundred and fifty (150) feet from the vehicle or premises from which it originates shall constitute prima facie evidence of a violation of this by-law. Any person violating this by-law shall be punished by a fine of one hundred and fifty dollars (\$150.00) for each offense. This by-law shall apply from 11:00 P.M. to 8:00 A.M.
2. It shall be unlawful for any person or persons being present in or about any building, dwelling, premises, shelter, boat or conveyance or any part thereof, other than that section of any establishment licensed under Chapter 138 of the General Laws, who shall cause or suffer or countenance any loud, unnecessary, excessive or unusual noises, including any loud, unnecessary, ex-

cessive or unusual noises in the operation of any radio, phonograph or other mechanical sound making device or instrument, or reproduction device or instrument or in the playing of any band, orchestra, musician or group of musicians, or the making of loud outcries, exclamations or other loud or boisterous noises or loud and boisterous singing by any person or group of persons, or in the use of any device to amplify the aforesaid noises, where the aforesaid noise is plainly audible at a distance of one hundred and fifty (150) feet from the premises from which it originates shall constitute prima facie evidence of a violation of this by-law. Any person shall be deemed in violation of this by-law, who shall make, or aid, or cause or suffer, or countenance, or assist in the making of the aforesaid and described improper noises, disturbances, breach of the peace to a diversion tending to a breach of the peace, and the presence of any person or persons in or about the building, dwelling, premises, shelter, boat or conveyance or any part thereof during a violation of this by-law shall constitute prima facie evidence that they are a countenancer to such violation. Any person violating this by-law shall be punished by a fine of not more than one hundred and fifty dollars (\$150.00) for each offense. This by-law shall apply from 11:00 P.M to 8:00 A.M.

#### **L. Obstructing Streets and Sidewalks**

To the extent the requirements of this by-law do not violate the United States Constitution and the Massachusetts Declaration of Rights, no person shall place or cause to be placed in front of any building upon any public street or sidewalk any article or anything whatsoever, and suffer or allow the same to remain in such position without having first obtained written permission from the Selectmen, and no person shall permit or suffer to remain on any public street, place, way or any public sidewalk any stones, gravel, building material, wood, coal, barrels, boxes, merchandise, or other like things belonging to him or under his charge or care for more than one hour without the consent in writing of the Selectmen. Nothing in this section shall be taken as preventing the placing of sawdust, sand, ashes, or other suitable material upon icy sidewalks.

#### **M. Peeping or Spying \***

No person shall enter upon the premises of another with the intention of peeping into the windows or a house or other building and spying upon any manner any person or persons therein. Penalty for a breach hereof shall be in the amount not in excess of one hundred dollars (\$100.00)

#### **N. Posting of Handbills, Etc.**

1. No person shall post or attach or directly or indirectly cause to be posted or attached in any manner, any handbill, poster, advertisement or notice of any kind on public property except by permission of the Board of Selectmen, or on any private property without the consent of the owner or occupant thereof.

2. Any handbill or sign found posted or otherwise affixed on any public property contrary to the provisions of this section may be removed by the Police Department or the Highway Department.
3. The person or persons responsible for causing the unlawful posting of any notice described herein will be liable for the cost of removal and for the penalties described below. Persons liable under this section include but are not limited to, any individual, corporation, partnership or other organization whose advertisement, message or information appears on the unlawfully posted notice.
4. Any person who violates this section shall be subject to a fine of \$100.00 (one hundred dollars) for the first offense and \$300.00 (three hundred dollars) for each subsequent offense.

### **O. Roller Skates, Skateboards & Bicycles \***

No person shall use roller skates or skateboards on the following streets or their adjacent sidewalks within the Town of Oak Bluffs:

1. Circuit Avenue from Oak Bluffs Avenue to Narragansett Avenue;
2. Kennebec Avenue from Narragansett Avenue to Oak Bluffs Avenue;
3. Oak Bluffs Avenue from Circuit Avenue to the Steamship Authority.
4. David Healey Way (“Mini-Mall”) from Kennebec to Circuit Avenue
5. No person shall use a bicycle in the area specified in sections 1 and 4 of this by-law.

Whoever violates the provisions of this by-law shall be subject to a fine of fifty (\$50.00) dollars for each offense. (*Amended STM 6/18/02 Art. 9*)

### **P. Throwing Papers and Rubbish on Streets**

No person shall be allowed to throw papers, handbills, flyers, advertising sheets, waste or rubbish on the public streets, or ways of the Town.

### **Q. Vehicles**

No person shall permit or allow any horse or other animal or any carriage, automobile, motor cycle, cart or other vehicle under his control, to stand or remain on any public sidewalk, or the location of such sidewalk, covered with grass, or drive over such grassed sidewalk, and park lands, other than on roadways therein constructed.

### **R. Vehicles in Town Park \***

No person shall permit or allow any motor vehicle, motorcycle or mini bike to stand or remain, or no person shall operate any motor vehicle or motorcycle or mini bike on any Town park except such vehicle owned by the Town, used in the performance of their duties. Any persons violating this by-law shall be fined in the amount of fifty dollars (\$50.00).

### **S. Obstructing**

No person shall obstruct any street, sidewalk, or other public place, or remain about the doors of places of business, when requested by the owners or occupants of said places to depart there from.

### **T. Loitering \***

Any person who obstructs traffic on a street or sidewalk shall move on when asked to do so by a Police Officer. Penalty for a breach hereof shall be in an amount of one hundred dollars (\$100.00).

### **U. Awnings**

No person shall place or keep over any sidewalk of the Town, in front of any building any awning, shade, sign, or other projection, less than seven and one-half feet at the lowest part of thereof above the sidewalk.

### **V. Standing on Streets**

The standing of public carriages upon the streets and avenues of the Town shall be under the regulation of the Chief of Police, who shall prescribe said location, and time.

### **W. Ball Playing and Missile Throwing in Streets \***

No person shall play any game in which a ball, missile, Frisbee, bean bag or any other object intended for sport is used in the following streets and their adjacent sidewalks within the Town of Oak Bluffs. Penalty for a breach thereof shall be subject to a fine of fifty dollars (\$50.00).

- 1) Circuit Avenue from Oak Bluffs Avenue to Narragansett Avenue
- 2) Kennebec Avenue from Narragansett Avenue to Oak Bluffs Avenue
- 3) Oak Bluffs Avenue from Circuit Avenue to the Steam Ship Authority
- 4) David Healey Way ("Mini Mall") from Kennebec Avenue to Circuit Avenue.

Whoever violates the provisions of this by-law shall be subject to a fine of \$25.00 for each offense. (*Amended STM 6/18/02 Art. 10*)

### **X. Fireworks and Firearms**

No person shall explode any crackers, torpedoes, or other explosive article, or, except in the defense of person or property or in the performance of some duty required by law, discharge any fire arm, cannon or swivel, or any street or other place where the public have a right to pass.

### **Y. Grazing Animals**

No owner, or person having charge of any cow, horse, swine, sheep, goat, or any grazing animal, shall permit the same to pasture in any public park, road or way in

the Town, either with or without a keeper; provided that this by-law or regulation shall not affect the right of any person to the use of land within the limits of such way adjoining his own premises.

### **Z. Propriety**

On February 3, 1920, Article 24, the Town voted to pass an ordinance or by-law restricting all people from walking through the public streets or parks with bathing suits on unless the same be covered to within twelve inches of the ground by a raincoat, bathrobe or other similar garment.

*\*(Amended ATM 4.10.12 Art. 9, Attorney General Approved and posted 11.15.12)*

### **AA. PUBLIC CONSUMPTION OF MARIJUANA OR TETRAHYDROCANNABINOL**

No person shall smoke, ingest, or otherwise use or consume marijuana or tetrahydrocannabinol (as defined in G.L. c. 94C, § 1, as amended) while in or upon any street, sidewalk, public way, footway, passageway, stairs, bridge, park, playground, beach, recreation area, boat landing, public building, schoolhouse, school grounds, cemetery, parking lot, or any area owned by or under the control of the Town; or in or upon any bus or other passenger conveyance operated by a common carrier; or in any place accessible to the public.

This by-law may be enforced through any lawful means in law or in equity including, but not limited to, enforcement by criminal indictment or complaint pursuant to G.L.c.40, §21, or by noncriminal disposition under G.L.c.40, § 21D, by the Board of Selectmen, the Town Administrator, or their duly authorized agents, or any police officer. The fine for violation of this by-law shall be three hundred dollars (\$300.00) for each offence. Any penalty imposed under this by-law shall be in addition to any civil penalty imposed under G.L.c.94C, § 32L.

*(Amended ATM 4.9.13 Art. 20, AG Approved 7.3.13, Posted 7.11.13)*

## **Chapter XV SELECTMEN**

### **A. Custody of Town Property**

The Selectmen shall have the care and custody of the Town Hall, and all other property of the Town not otherwise placed by law in the hands of Special Town Officers.

### **B. Duties of the Selectmen**

The Board of Selectmen (the Board), in furtherance of their powers and duties, shall:

1. Be the primary policy-makers, planners and financial management agency of the Town, and be responsible for the development and annual revision of a capital expense program;
2. Create an annual goal setting/community action statement, with the assis-

tance of the Executive Secretary and with input from the various Town departments, which will outline short and long-term goals for the Town, establishing priorities and objectives, as well as time-frames;

3. Be the only regulation enforcers and appointing and licensing authority of the Town, except where federal laws and/or state or Town regulations dictate otherwise;
4. Have final authority over any administrative decisions including authority over other elected officials or boards as well as appointed department heads, except where federal laws and or state regulations dictate otherwise;
5. Communicate its majority decision to the Executive Secretary only through the chair of the board; and
6. Have no authority as individuals over any Town employee or department except in the event a Selectman holds a position which causes her/him to have supervisory authority. (*Amended STM 12.2.03 Art 10, AG Approved 2.13.04, Published 3.5.04*)

### **C. Duties of the Chair of the Board of Selectmen**

The Chair of the Board of Selectmen (the Chair), in furtherance of her/his powers and duties, shall:

1. Be elected by majority vote of the Board at the beginning of the first meeting following election, for a term of one year. Provision for removal for cause shall be by unanimous vote of the balance of the board;
2. Meet regularly with the Executive Secretary to implement Board decisions administratively;
3. Insure that action minutes of all meetings with the Executive Secretary are kept with a general notation of business discussed;
4. Insure further that complete minutes are kept of all decisions made affecting the ongoing operation of the Town and/or enforcement of Town regulation or policies. These minutes will be made available to all members of the Board in a timely manner.

### **D. Executing Instruments**

Whenever it shall be necessary to execute any deed, or other instrument required to carry into effect any vote of the Town, the same shall be executed by the Selectmen, or a majority of them, in the name and behalf of the Town, unless the Town shall otherwise vote in any special case.

## **E. General Authority of Selectmen**

The Selectmen shall be agents to take the general superintendence of the business of the Town to supervise the doings of subordinate agents and the disbursement of other similar duties. They shall have authority as agents of the Town to appear and defend suits brought against it, and to employ counsel therefore until specific action thereupon shall be taken by the Town. They may annually retain counsel, who may be consulted by the Selectmen and by any other boards or departments of the Town by consent of the Selectmen.

## **F. Mopeds / Motor Scooters** (*Amended STM 4.13.04 Art 11, AG Approved 5.12.04, Published 5.28.04*)

No person, business or corporation shall engage in the business of renting, leasing or keeping for rent or lease any motor scooters or mopeds (motorized bicycles) without first being licensed by the Board of Selectmen in accordance with the following regulations:

1. No such license shall be issued unless a majority of the Board of Selectmen is satisfied after public hearing and investigation of all facts that the applicant has a place of business suitable for such a purpose and has complied with all of the requirements of the regulations as set forth hereafter.
2. Application for a license under this by-law shall be filed with the Board of Selectmen and contain the following information:
  - a. The name of the owner of the business, or if application is made by a corporation, then the full names and addresses of the President, Treasurer, Clerk and Directors;
  - b. a detailed plan including building dimensions and training track location for the proposed business;
  - c. a binder for compulsory coverage insurance;
  - d. proposed individual vehicle information including total numbers, makes, and models for all vehicles.
3. Each application shall be accompanied by a non-refundable application fee as established by the Board of Selectmen. If an application is approved by the Board of Selectmen, the applicant, upon payment of an additional fee as established by the Board of Selectmen, shall be granted a license which shall be renewable on April 1st of each consecutive year. The annual fee for renewal thereof shall be established by the Board of Selectmen. The Board of Selectmen shall issue a license to each approved applicant which shall be posted in a conspicuous manner at the place of business and each vehicle will be issued a numbered Oak Bluffs moped rental registration decal for placement on the rear fender. Upon issuance of the license, the licensee shall be required to provide the Board of Selectmen with a certificate of compulsory coverage insurance and individual vehicle information including: total numbers, colors, makes, models and identification numbers (company serial numbers and Massachusetts decal numbers).
4. The Board of Selectmen shall issue a maximum of five (5) licenses per year. Licenses shall not be transferable, and no legal or beneficial interest in any entity holding any license shall be transferable without the prior approval of

the Board of Selectmen. Licenses not used during one year's time shall be null and void, and any person, business or corporation who was a prior holder of a license and who engaged in the business of renting, leasing or keeping for rent or lease any motor scooters or mopeds without first obtaining a new license shall be deemed to have forfeited its license. The maximum number of licenses that the Board of Selectmen may issue shall be reduced by one for each license that becomes null and void or forfeited under this provision. *(Amended STM 4/13/04 Art. 11)*

5. Each licensee shall maintain a complete register of daily rentals (including renters, accidents and Oak Bluffs Police and EMT involvement) available to the Board of Selectmen at all times-upon Board or Police Department request.
6. Each licensee shall comply with Chapter 90 of the General Laws and any amendments thereto, any other statute, or any Town by-law and shall post a copy of Chapter 90 Section 1B of the General Laws and shall provide each renter with a copy of same. All renters must read, initial and sign the "Caution to moped operators risk notification" checklist, as well as completing all parts of the safety verification and test drive before being allowed to rent the moped.; *(Amended ATM 4.11.17, Art 33, AG Approved 10.30.17, Posted 10.31.17)*
7. Each licensee shall be responsible for instructing every operator in the proper method of operation of the vehicle including providing a supervised test drive on the licensee's on-premises unobstructed training track which shall be at least 50 feet long and 25 feet wide. The Board of Selectmen may waive the training track requirement upon written petition by the licensee setting forth spatial limitations and a proposal for an alternative training program. The alternative training program must include that an employee of the licensee shall accompany all moped operators, their passenger and any bags and/or possessions for the duration of the test drive.; *(Amended ATM 4.11.17, Art 33, AG approved 10.30.17, Posted 10.31.17)*
8. Each licensee shall require that the operator and any passenger have adequate footwear covering the entire foot (thongs, flip-flops, sandals, slippers or other footwear which is unsubstantial do not comply with this requirement).; *(Amended ATM 4.11.17, Art 33, AG approved 10.30.17, Posted 10.31.17)*
9. No licensee may rent two-seater mopeds to an adult accompanied by a child unless said child is at least 4'8" tall. The licensee shall refuse to rent to any individual(s) that exceed the maximum manufactures suggested operating weight. Each licensee shall have posted the maximum operating weight for any model moped available for rent and shall provide a method to verify that all provisions of this section are met.*(Amended STM 6/18/02 Art. 16) and (Amended ATM 4.11.17 Art. 33. AG approved 10.30.17, Posted 10.31.17).*
10. The Board of Selectmen shall issue no more than 308 vehicle registration decals in each year. Total number per licensee shall be determined at application by Board review based on the number of applications, business premises spatial limitations, and previous agency safety record and agency com-

pliance with # 7 above. No vehicle may be rented without a valid registration decal. (*Amended STM 4/13/04 Art. 11*)

11. a. Complaints about violations of these regulations will be received from any person by the office of the Board of Selectmen in writing. Said complaints will be referred for investigation to the Police Department. Should said police Department or the Board of Selectmen determine that a hearing on an alleged violation is necessary, or that any further action might be deemed necessary, notification will be mailed by Certified Mail, return receipt requested, or hand delivered with receipt signature requested, to the most recent address of the licensee as shown by the records of the Board of Selectmen kept pursuant to this by-law. The notice shall provide at least seven days advance notice of the hearing date and time. The notice shall contain a brief description of the nature of the complaint. Mailing notice of hearing or complaints or other notices to the current mailing address on file with the Town using Certified Mail, return receipt requested, such mailing being made 10 days prior to any hearing, meeting or event requiring 7 days notice, shall be prima facie evidence of due notice.
  - b. At said hearing, the Selectmen shall receive any oral statements and information relevant to the complaints. The licensee shall be entitled to present any information in its defense or in mitigation of the events it deems appropriate. The licensee shall have the right to be represented by counsel. The conduct of the hearing shall not be governed by formal rules of evidence or procedure and shall be governed by and the procedures followed shall be determined by the Board of Selectmen as is necessary to afford a full, fair, and complete hearing of the issues.
12. If the Selectmen find, as a matter of fact, that a violation of this by-law has occurred and it is the first violation of the preceding twelve (12) months, the Selectmen may impose a suspension of the license for any period of time up to one (1) week and in addition to or in substitution therefore, may impose a fifty dollar (\$50.00) fine. For any second finding of any violation of the by-law within the preceding twelve (12) months by the licensee, the Selectmen may impose a suspension of the license for any period of time up to two (2) weeks and in addition to or in substitution therefore, may impose a One Hundred Dollar (\$100.00) fine. For any third finding of any violation of the by-law within the preceding twelve (12) months by the licensee, the Selectmen may impose a suspension of the license for any period of time up to four (4) weeks and in addition to or in substitution therefore, may impose a Two Hundred Dollar (\$200.00) fine. For any fourth finding of any violation of the by-law within the preceding twelve (12) months by the licensee, the Selectmen may impose a revocation of the license for the balance of the licensing period. Any suspension of the license shall be for a specific time period, said period to be within twelve (12) months of the date of the violation. The Board of Selectmen may adopt and prescribe additional rules and regulations, which it deems to be in the best interest of public need, safety and good order, in

licensing any business under this by-law, and all such additions shall apply to existing license holders from the date of adoption.

## **G. Motor Vehicles, Motor Cycles**

1. No person business or corporation shall engage in the business of renting, leasing or keeping for rent or lease any motor vehicles, motorcycles, without first being licensed by the Board of Selectmen
2. No such license shall be issued unless a majority of the Board of Selectmen is satisfied after an investigation of all facts that the applicant has a place of business suitable for such a purpose.
3. Application for a license under this by-law shall be filed with the Board of Selectmen and contain any and all such information in their sole discretion require.
4. Each application shall be accompanied by a non-refundable application fee as established by the Board of Selectmen, if an application is approved, by the Board of Selectmen, the applicant upon payment of an additional fee, as established by the Board of Selectmen, shall be granted a license which shall be renewable on April 1st of each consecutive year. The annual fee for renewal thereof shall be established by the Board of Selectmen. The Board of Selectmen shall issue a license to each approved applicant, which shall be posted in a conspicuous manner at the place of business.
5. Licenses shall not be transferable and licenses not used during one year's time shall be null and void.
6. The Board of Selectmen may adopt and prescribe such rules and regulations which it deems to be in the best interest of public need safety and good order, in licensing any business under this by-law.

## **H. Passengers and Baggage**

1. Selectmen Shall License  
The Selectmen shall from time to time at their discretion grant licenses to such persons and upon such terms as they may deem expedient, to set up, employ and use any hackney carriage, wagon, cart, wheelbarrow or other vehicle for the purpose of conveying passengers or baggage for hire from place to place within the Town, and they may revoke such license at their discretion, and a record of all licenses so granted and of the revocation thereof shall be kept by the Selectmen.
2. No Person Shall Transport without License  
No person shall set up, employ or use any hackney carriage, wagon, wheelbarrow, cart or other vehicle for the purpose of conveying passengers or baggage within the limits of the Town, for hire, without a license from the Selectmen.
3. License Shall Contain Rates  
Said license shall contain a list, or schedule of the rates hereinafter established to be charged by said persons so licensed as aforesaid for the conveyance of persons and baggage, and no person so licensed shall charge or re-

ceive a greater sum for the conveyance of persons or baggage than the rates hereinafter established.

4. Rates to be Attached to Vehicles

The Selectmen shall provide cards with rates hereinafter established for transporting persons or baggage plainly printed thereon, and every person licensed to transport persons or baggage shall at all times keep a card so provided by the Selectmen affixed to the vehicle used by him in the transporting of persons or baggage.

5. Standing on Streets

The standing of public carriages upon the streets and avenues of the Town shall be under the regulation of the Chief of Police, who shall prescribe said location and time.

6. Expiration of Licenses

All licenses granted as aforesaid shall expire on the first day of May next after the date of such license.

7. Rates for Passengers

The rates of fare for the conveyance of passengers within the limits of the Town shall, until otherwise ordered, be as follows:

For conveyance from one place to another, each adult person, twenty-five cents; each child between the ages of five and ten years, fifteen cents; each child under the age of five years accompanied by an adult, no charge; except that between the hours of 11P.M. and 4 A. M. double the foregoing rates may be charged. By the hour, single teams, one dollar per hour, and double teams, one dollar and fifty cents per hour; but extra rates may be made by agreement.

## **I. Purchase of Fuel**

The Selectmen shall make all purchases of wood, coal or other fuel for the use of the Town, and it shall be their duty to advertise in a newspaper published in said Town for sealed proposals for furnishing the same previous to making any contract therefore. Said advertisement shall designate the place, day and hour at which said proposals shall be opened and all bids so received shall be opened publicly. Said proposals shall contain the terms for which said particular kind of fuel will be furnished and shall be made on blank forms to be furnished by the Selectmen. All contracts so made shall provide for the delivery of the fuel at such times and places as the Selectmen shall direct and no contract shall be made for a longer period than the date of the next Annual Meeting.

## **J. Repairs and Alterations of Buildings and Town Pier**

The Selectmen shall have charge of all repairs, alterations and additions, which may from time to time be made upon any of the Town buildings and Town pier. The school buildings shall remain the control of the School Committee. Repairs,

alterations and additions shall be done by contract, and where the probable cost will exceed (\$4,000.00) four thousand dollars Selectmen or the School Committee shall procure bids for, and shall furnish blanks for proposals. Said advertisements shall designate the place, day and hour at which said proposals shall be opened, and all bids so received shall be opened publicly.

### **K. Reports to be Printed with the Selectmen's Report**

The reports of the Auditor, of the School Committee, and of all boards, officers and standing committees, a detailed estimate of the Finance Committee of the amount of money which shall be required for the current fiscal year, a warrant for the coming Town meeting, and an abstract of the births, marriages and deaths to be furnished by the Town Clerk, shall be printed with the Selectmen's Report.

### **L. Conflict of Interest**

No member of a Town board or committee shall hold a paid position with the Town which is answerable either directly or indirectly to the Board or Committee on which he or she serves. *(This section was added in accordance with the vote of STM 4/13/10 Art. 7, AG approved 8/2/10, Posted August 3, 2010)*

### **M. Sale of Town Owned Land and Municipal Housing Trust**

*(Amended STM 11.17.15 Art. 14, AG approved 12.1.15, Published 12.7.15)*

1. The Town Treasurer is required to advertise for two (2) consecutive weeks in a newspaper of general circulation in Dukes County stating the location of the land and the lot numbers and the date and hour of the public auction on sales of low value tax title land.
2. The Selectmen are authorized to sell other tax title property not of low value held by the Town of Oak Bluffs and which property is deemed by the Selectmen not to be necessary for public use which land would be sold by the Selectmen pursuant to the authority granted in Chapter 40, Section 3 of the General Laws which land would be sold in the following manner:
  - a. The Selectmen would first determine after due inquiry to the necessary Town Departments and the Oak Bluffs Municipal Housing Trust (under G.L. c. 44 sec 55V (The Housing Trust"), which Trust is recorded with the Dukes County Registry of Deeds in Book 1383, at Page 897. Reference to the Oak Bluffs Municipal Housing Trust are in Sections 2(a);2(g);2(i); 2(j)(6); 2(k);(1) & (3) of the present version of the By-law. The Housing Trust that the land in question was no longer needed for municipal or The Housing Trust purposes and then certify to this.
  - b. Any interested person by written demand upon the Selectmen may request the sale of Town owned land. A deposit of fifty dollars (\$50.00) is required with each request for a parcel of Town owned land to be sold. This sum is to be returned to the person depositing it or credited to him

when the property is sold to the highest bidder. If no bids are received equaling or exceeding the minimum bid, the fifty dollars (\$50.00) deposit shall be forfeited to the Town as compensation for the work and expense of arranging the sale.

- c. By virtue of this request or on their own initiative, the Selectmen shall publish a notice of sale of said public land by properly describing the land and location thereof and causing this notice to be published in a newspaper of general circulation in Dukes County for 2 consecutive weeks which advertisement shall state the date, hour and place of the auction.
- d. The Selectmen shall also post a notice on the land or in another convenient place in the Town of said sale.
- e. The Selectmen shall have the right to reject any and all bids and shall have also the right to adjourn the sale to another time and place and shall also have the right, if it is in the best interest of the Town, to terminate the sale.
- f. The property shall be sold to the highest bidder who must pay a specified deposit at the time of the sale and make proper arrangements for the balance in cash in full. The Town counsel shall prepare a proper Deed without covenants to the purchaser and said Deed shall be recorded by the Town within 60 days of the date of the auction sale. The expenses of recording shall be borne by the purchaser who by making a successful bid, authorizes the Town to record the deed.
- g. Should The Housing Trust determine that property or properties are needed for The Housing Trust purposes then the Board of Selectmen shall have the right to authorize Town Counsel to prepare a proper Quitclaim Deed without any covenants on behalf of the Town and said Quitclaim Deed shall run to The Housing Trust and be recorded within 15 (fifteen) days of the date of the Deed. The expenses of the preparation and recording of the Deed shall be borne by The Housing Trust.
- h. All Town owned parcels or real estate sold by the Town at a public auction shall be combined, if necessary, so as to meet the minimum requirements of the Zoning district.  
Where it is not possible to meet the minimum requirements of the zoning district, the Town may sell non-conforming lots with the stipulation that such lots are unbuildable unless such lots can be combined with an adjacent ownership so as to meet the minimum requirements of the zoning district.
- i. Properties Deeded to The Town of Oak Bluffs Municipal Housing Trust by the Board of Selectmen in accordance with (g.) may be conveyed by a deed signed by a majority of both the Board of Selectmen and The Housing Trust as authorized by a vote of the Board of Selectmen and the committee in conformity with the following guidelines and restrictions for the implementation of The Town of Oak Bluffs Municipal Housing Trust to a person or persons who have qualified under the following eligibility requirements and Rules and Regulations:

- j. Eligibility Requirements (*Amended STM 1.18.05 Art 8, AG Approved 2.23.05, Published 3.11.05*)
- 1) The person or family must have lived in the Town of Oak Bluffs for a minimum of five (5) years with one year being current. The person or family must supply a minimum of four of the following documents to establish residency:
    - a) Registered Voter
    - b) Rent Receipts/Sworn Statement from Landlord
    - c) Letter from Employer
    - d) Telephone listing
    - e) Post Office Address
    - f) Utility Bill
  - 2) The person or family must have a combined income not to exceed 140% of the median income of Dukes County.
  - 3) The person or family must agree to begin home construction within one (1) year and complete said construction within two (2) years.
  - 4) The person or family must not own or have previously owned any real estate, or have had a beneficial interest in any real estate.
  - 5) The applicant applying must be eighteen (18) years of age or older.
  - 6) The Housing Trust may use any means it deems necessary to verify information.
  - 7) If the person or family is approved and is awarded a lot in the lottery process they must obtain a mortgage commitment within ninety (90) days. Applicant must submit a completed mortgage application within thirty (30) days.
- k. Rules and Regulations
- 1) The Housing Trust shall duly advertise to residents of the Town the fact that a certain number of Housing Trust Lots will be available for lottery distribution.
  - 2) Eligible applicant and lots will be picked by lottery.
  - 3) If an applicant is approved, his or her name will be included on a lottery to be drawn at a scheduled selectmen's meeting. The applicant will be notified of the drawing. The Housing Trust will supply the Selectmen with the name cards for verification prior to the drawing.

### **N. Sunday Entertainment (both Selectmen and Police)**

In all establishments in the Town of Oak Bluffs where alcoholic beverages are served there shall be no live entertainment, music, patron dancing, unless permitted by the Board of Selectmen, or stage shows performed on Sundays: provided however; that entertainment by a single performer, playing an instrument or singing, acting, dancing, or doing comedy, all of which is not made louder or amplified by electronic device, will be permitted. The Selectmen in their capacity as licensing authority for the Town are empowered to enforce this by law with the assistance of the Police Department.

Violations of this by-law shall be considered by the Selectmen as grounds for suspension or revocation of the establishment's license to sell alcoholic beverages.

### **O. Town Hall Hours**

All of the Offices in the Town Hall, as specified by the Board of Selectmen, are required to be open from 8:30 a.m. until 4:00 p.m. daily except Saturdays, Sundays and Legal holidays. In case of extreme emergencies or illnesses, or at other times approved by the Board of Selectmen, the Board of Selectmen may allow the closing of Town Hall at certain specified times.

*(Amended at STM 11.17.15, Art. 13. AG Approval 12.1.15 posted 12.7.15)*

### **P. Utility Poles Work Permit**

No person or persons shall commence work on any utility pole adjacent to or upon a public way in the Town of Oak Bluffs without first obtaining permission from the Board of Selectmen, or, if an obstruction causes a public hazard or in cases of emergency repairs, from the Chief of Police. In any case the Board of Selectmen may adopt rules and regulations which it deems to be in the best interest of public safety and good order in granting permission for such activity and the handling of compensation for same within the guidelines of Chapter 44, Section 53C of the General Laws. STM 5.9.89

### **Q. Licensing Junk Dealers**

The Selectmen may license suitable persons to be dealers in and keepers of shops for the purchase, sale, or barter of junk, old metals, or second hand articles in the Town. They may also license suitable persons as junk collectors, to collect, by purchase or otherwise, junk, old metals and second hand articles from place to place in the Town; and they may provide that such shops and all articles of merchandise therein, and any place, vehicle, or receptacle used for the collection or keeping of the articles aforesaid, may be examined at all times by the Selectmen or by any person by them authorized thereto.

### **R. Selectmen's Report**

The Selectmen shall annually, but not less than four days before the Annual Meeting, cause to be printed a detailed report of all monies received and paid by the Town Treasurer during the preceding financial year, with such information and recommendation as they deem proper.

### **S. Record of Property**

Every keeper of a shop for the purchase, sale, or barter of junk, old metals or second hand articles, within the limits of the Town, shall keep a book, in which shall be written, at the time of every purchase of any such article, a description thereof, the name, age and residence of the person from whom, and the day and hour when such purchase was made; such book shall at all times be open to inspection of the Selectmen and of any person by them authorized to make such inspection; every

keeper of such shop shall put in a suitable and conspicuous place on his shop a sign having his name and occupation legibly inscribed thereon in large letters; such shop, and all articles of merchandise therein, may at all times be examined by the Selectmen or by any person by them authorized to make such examination and no keeper of such shop and no junk collector shall, directly or indirectly, either purchase or receive by way of barter or exchange any of the articles aforesaid of a minor or apprentice, knowing or having reason to believe him to be such; and no article purchased or received by such shopkeeper shall be sold until at least one week from date of its purchase or receipt has elapsed. Such shops shall be closed between the hours of 6:00 P.M. and 7:00 A.M. and no keeper thereof and no junk collector shall purchase any of the articles aforesaid during such hours.

### **T. Police in Town Hall**

It shall be the duty of the Selectmen to cause at least one Constable or police officer to be present in said hall, at the expense of the persons using the same, for the purpose of enforcing order and obedience to the laws of the Commonwealth, whenever it shall be used for any of the purposes referred to in the preceding section.

### **U. Use of Town Hall**

The Town Hall shall not be used for any of the purposes mentioned in Chapter 102, Section 172 of the Revised Laws, unless the same shall have been duly licensed by the Selectmen according to law.

### **V. Prohibition of Smoking in Certain Places within the Town of Oak Bluffs.** *(Added STM 6/18/02 Art. 13)*

#### 1. Definitions

As used in this article:

Bar: An establishment devoted to serving alcoholic beverages for on-premise consumption

Public Indoor Place: Any indoor area or public transportation waiting area open to the general public.

Private Club: A not for profit establishment with a defined membership.

Public Transportation Vehicle: Any bus, taxi and other means of transportation available to the general public.

Retail Tobacco Store: Any establishment primarily selling tobacco products and paraphernalia in which the sale of other products is incidental, and is not required to hold a retail food permit.

Restaurant: Any establishment, including outdoor area(s) serving food for consumption on the premises which maintains tables for customers either indoors or outdoors, or both.

Smoking: inhaling, exhaling, burning or carrying any lighted tobacco product.

Workplace: Any area of any structure or portion thereof in which two (2) or more employees perform services for an employer.

2. Posting of Notice of Prohibition: Every person having control of premises upon which smoking is prohibited by and under the authority of this regulation shall conspicuously display upon the premises:
  - a. "No Smoking" signs provided by the Massachusetts Department of Public Health and available from the Oak Bluffs Board of Health, or
  - b. The international "No Smoking" symbol consisting or a representation of a burning cigarette enclosed in a red circle, having a red bar across it, comparable in size to item (a) above,
3. Smoking Prohibited: No person shall smoke, nor shall any person, employer, 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 Bar, Public Indoor Place, Public Transportation Vehicle, Restaurant or Workplace.
4. Exceptions: Notwithstanding the provisions of Section 3 of this regulation, smoking may be permitted in the following places, under the circumstances noted:
  - a. In outdoor places, except outdoor areas of restaurants
  - b. In private residences, except portions used as a home business while used as such.
  - c. In private vehicles when used for personal use.
  - d. In retail tobacco stores, unless persons under 18 are allowed
  - e. In hotel and motel rooms, if designated as smoking rooms
  - f. In hotel and motel conference and meeting rooms, and public assembly rooms, while being used for private functions.
  - g. In separately ventilated private or semi-private rooms of nursing homes and long-term care facilities occupied by one (1) or more patients, if each person is a smoker and has requested in writing to be placed in a room where smoking is permitted.
  - h.. In theaters, by performers on stage, if smoking is part of a theatrical production.
  - i. In private clubs.
5. Conflict with Other Laws or Regulations: Notwithstanding the provisions of the foregoing Section 4 of this regulation, nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire, health or other regulations.
6. Violations: Any such person in control of a regulated establishment, who violates this regulation, may be subject to both:
  - a. A fine of one hundred dollars (\$100) for a first offense, two hundred dollars (\$200) for a second offense within one (1) year of the date of the first offense and three hundred dollars (\$300) for a third or subsequent offense within one (1) year of the date of the first offense

- b. Suspension of any license(s) issued by the Board of Health for that place for a period of up to two (2) days for each day of noncompliance. A license may be suspended after notice and opportunity to be heard.

7. Enforcement: As an alternative to initiating criminal proceedings, violations of this regulation may be enforced by the non-criminal method of disposition as provided in Massachusetts General Law, Chapter 40, Section 21D by the Board of Health or its agents. Any fines imposed under the provisions of this regulation shall inure to the Town of Oak Bluffs for such use as the town may direct.

One method may be periodic, unannounced inspections of those establishments subject to this regulation.

Any citizen who desires to register a complaint under this regulation may request that the Board of Health investigate the incident.

Each day on which any violation exists shall be deemed to be a separate offense.

8. Severability: If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provisions.

9. No person shall smoke on any beach controlled by the Town of Oak Bluffs, nor in the areas known as David Healey Way between Kennebec and Circuit Avenues. *(Section added ATM 4.13.10 Art. 21. AG Approval posted 9.14.10)*

## **W. Failure to Pay Local Municipal Charges**

*(Section added ATM 4.11.06 Art. 5, AG approval effective 7.17.06)*

1. The Town of Oak Bluffs may deny any application for or revoke or suspend any local license or permit including renewals and transfer issued by any board, officer, department for any person, corporation or business enterprise who has neglected or refused to pay any local taxes, fees, assessments, betterments or any other municipal charges.
2. The tax collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as 'the collector', shall annually furnish to each department, board, commission or division, hereinafter referred to as 'the licensing authority', that issues licenses or permits including renewals and transfers, a list of any person, corporation or business enterprise hereinafter referred to as 'the party', that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than a twelve (12) month

period, and that such party has not filed in good faith a pending application for abatement of such tax or a pending petition before the appellate tax board.

3. The licensing authority may deny, revoke or suspend any license or permit, including renewals or transfers of any party whose name appears on said list furnished to the licensing authority from the collector or with respect to any activity, event or other matter which is the subject of such license or permit and which activity event or matter which is carried out or exercised or is to be carried out or exercised on or about real estate owned by any party whose name appears on said list furnished to the licensing authority from the collector; provided however, that written notice is given to the party and the collector, as required by applicable provisions of law, can the party is given a hearing, to be held not earlier than fourteen (14) days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party. The collector shall have the right to intervene in any hearing conducted with respect to such license denial, suspension or revocation. Any findings made by the licensing authority with respect to such license denial, suspension or revocation shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license suspension, revocation or denial. Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the licensing authority receives a certificate issued by the collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges, payable to the municipality as of the date of issuance of said certificate.
4. Any party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitations to the license or permit and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided however, that the holder be given notice and a hearing as required by applicable provisions of law.
5. The Board of Selectmen may waive such denial, suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its officers or stockholders if any, members of his or her immediate family, as defined in Section 1 of Chapter 268A in the business or activity conducted in or on said property.
6. This section shall not apply to the following licenses and business permits: open burning; Section 13 of Chapter 48 bicycle permits; Section 11A of Chapter 85 sales of articles for charitable purposes; Section 33 of Chapter 101 children work permits; Section 69 of Chapter 149 clubs, associations dispensing food or beverage licenses; Section 21E of Chapter 140 dog licenses; Section

137 of Chapter 140 fishing, hunting trapping license; Section 12 of Chapter 131 marriage licenses; Section 28 of Chapter 207 theatrical events, public exhibition permits; Section 181 of Chapter 140.

**X Washing Vehicles on Town Property**

*(Section added ATM 4.14.09 Art. 11, AG approved 7.25.09, Published 8.8.09)*

It shall be a violation of the Town Bylaw to wash vehicles upon any town owned road layout within the zoning districts known as the B-1 and B-2 districts. The owner of the vehicle shall be responsible for any fine hereunder. Any person who violates this section shall be subject to a fine of \$50 (fifty dollars) for the first offense and \$100 (one hundred dollars) for each subsequent offense.”

**Y Street Performers Bylaw**

*(Section added ATM 4.13.10 Art. 22, AG approved 11.22.10, Published (12.2.10)*

1. Purpose; Definitions.

A. Purpose. The Board of Selectmen finds that the existence of Town street performers provides a public amenity and enhances the character of the Town and seeks to encourage such performances to the extent that they do not interfere with the reasonable expectations of residents of the enjoyment of peace and quiet in their homes and businesses. This article seeks to balance the interests of the performers with those of the residents of the Town of Oak Bluffs.

B. Definitions. The following words used in this article shall have the following meanings, unless a different meaning is clearly apparent from the language or text:

**BOARD OF SELECTMEN or SELECTMEN**

The duly elected members of the Board of Selectmen for the Town of Oak Bluffs, Massachusetts.

**PERFORMER**

A person who has obtained a permit pursuant to this article.

**PERFORMING**

Includes, but is not limited to, the following activities: acting, singing, playing musical instruments, pantomime, juggling, magic, dancing, reading and reciting.

**PERMIT**

The permit issued by the Town for street performers.

**POLICE OFFICER or OFFICER**

Any officer authorized to make arrests or serve criminal process, provided that he/she is in uniform and displays his/her badge of office.

## PUBLIC AREAS

All public sidewalks, bicycle paths, beaches, parks, playgrounds and all public ways in Oak Bluffs.

## TOWN

The Town of Oak Bluffs, Massachusetts.

### 2. Prohibition.

No person may perform in a public area without a permit pursuant to paragraph 3 of this article.

### 3. Permit Required.

A. A street performer's permit shall be issued by the Town to each applicant in exchange for a completed application and a fee of \$50.

B. A completed application for a permit, and the permit itself, shall contain such information as may be required by the Town and shall include the applicant's name, current address, permanent address, social security number and telephone number. The permit application shall be signed by the applicant and it shall specify the type of performance for which a permit is requested.

C. The permit shall be valid from the date on which it is issued to the end of that calendar year.

D. The permit shall be nontransferable and shall state the applicant's name, type of performance, the permit number of the applicant and the year in which the permit is valid. Each member of a group of performers who play together shall be required to obtain an individual permit.

### 4. Display of Permit.

A performer shall clearly display his/her permit while performing and shall allow inspection of the permit by any officer authorized to enforce this article on request.

### 5. Permitted Performances.

A. Performances may take place in the following locations:

(1) In public areas, except within 200 feet of an elementary school, secondary school, church while in session or a hospital open at any time, further to except within 25 feet of a public entryway of an open business and further to except public areas excluded by the Board of Selectmen or the Chief of Police pursuant to paragraph 6.

(2) (Deleted).

(3) In public areas where the Town has authorized a street fair or public festival to be conducted, with the permission of the sponsor of such fair or festival.

B. Performance may take place at the following times:

(1) Monday through Saturday between 9:00 a.m. and 10:00 p.m.

(2) Sundays between 10:00 a.m. and 10:00 p.m.

C. No performer or group of performers may generate sound exceeding a sound level of 80 decibels (db) measured at a distance of 50 feet from the performer or group of performers. The use of sound amplification equipment is expressly prohibited.

D. A performer may not create any interference with the traffic flow of the public through a public area.

E. If a performer attracts a crowd sufficient to interfere with traffic flow of the public through a public area or endanger the safety of the public or if said crowd becomes disorderly, the police officer shall first request that the crowd disperse or, if necessary, thereafter request that the performer leave the location.

F. No performer or group of performers may perform less than 75 feet from another performer or group of performers.

G. A performer may request contributions at a performance, provided that no sign requesting contributions shall be posted. Contributions may be received in a receptacle, such as an open musical instrument case, box or hat. The placement of any type of blanket or covering over any sidewalk or street during a performance shall be prohibited.

6. Exclusion of Public Areas.

A. A specific public area may be excluded from performances by decision of the Board of Selectmen after a public hearing, notice of which shall be advertised once in a local newspaper no less than seven days prior to said hearing.

B. A specific public area may be excluded from performances by decision of the Chief of Police to adequately protect the public or to preserve order. Any permit holder who disputes the need for said exclusion may appeal to the Board of Selectmen for review.

7. Town Sponsored Event.

This bylaw shall not apply to performances on town property sponsored or approved by the Board of Selectmen or to performances in any park sponsored or approved by the Parks Commissioners.

8. Violations and Penalties.

A. Noncriminal disposition. Whoever violates any provision of this article may be penalized by a noncriminal disposition as provided in MGL c. 40, § 21D. The penalty for each violation shall be \$50.

B. Suspension of permit. A performer who provides false information on the application may have his/her permit permanently suspended. If a performer is

found to be in violation of any other provision of this article, the Chief of Police may suspend a permit for no more than 30 days. Any permit holder who disputes the suspension may appeal to the Board of Selectmen.

9. Exclusivity.

The provisions of this article shall take precedence over any other Town regulations or bylaws applicable to street performances. To the extent other Town regulations or bylaws are applicable and are inconsistent with this article, this article shall govern.

10. Severability.

The provisions of this article are severable, and if any part of this article should be held invalid by a court of competent jurisdiction, such invalidity shall not affect the remainder of the article, and the remainder of the article shall stay in full force and effect.

**Z. DEPARTMENTAL REVOLVING FUNDS**

Purpose. This by-law establishes and authorizes revolving funds for use by town departments, boards, committees, agencies, or officers in connection with the operation of programs or activities that generate fees, charges or other receipts to support all or some of the expenses of those programs or activities. These revolving funds are established under and governed by General Laws Chapter 44, § 53E½.

Expenditure Limitations. A department or agency head, board, committee or officer may incur liabilities against and spend monies from a revolving fund established and authorized by this by-law without appropriation subject to the following limitations:

Fringe benefits of full-time employees whose salaries or wages are paid from the fund shall also be paid from the fund (except for those employed as school bus drivers).

No liability shall be incurred in excess of the available balance of the fund.

The total amount spent during a fiscal year shall not exceed the amount authorized by town meeting on or before July 1 of that fiscal year, or any increased amount of that authorization that is later approved during that fiscal year by the selectboard and finance committee.

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

Procedures and Reports. Except as provided in General Laws Chapter 44, § 53E½ and this by-law, the laws, charter provisions, rules, regulations, policies or procedures that govern the receipt and custody of town monies and the expenditure and payment of town funds shall apply to the use of a revolving fund established and authorized by the by-law. The town accountant shall include a statement on the collections credited to each fund, the encumbrances and expenditures charged to the fund and the balance available for expenditure in the regular report the town accountant provides the department, board, committee, agency or office on appropriations made for its use.

Authorized Revolving Funds: This table establishes:

Each revolving fund authorized for use by a town department, board, committee, agency, or officer under Massachusetts General Laws Chapter 44, § 53E½;  
The department or agency head, board, committee or officer authorized to spend from each fund;

The fees, charges and other monies charged and received by the department, board, committee, agency, or officer in connection with the program or activity for which the fund is established that shall be credited to each fund by the town accountant or other authorized town employee

The expenses of the program or activity for which each fund may be used;

Any restrictions or conditions on expenditures from each fund;

Any reporting or other requirements that apply to each fund;, and

The fiscal years funds shall operate under this by-law.

Revolving Fund	Agent Authorized to spend from fund	Receipts credited to fund	Expenses payable from fund	Restrictions on expenses payable from fund	Other	Fiscal years
Fire Insp Rev Fund (14220)	Fire Chief	Fees charged for inspections	Fire inspection costs	Salaries or wages of full-time employees shall be paid from the annual budget appropriation or the Ambulance revolving fund as appropriate	Annual limit of expenditures is \$50,000	FY2019 and subsequent years
Marina Repairs Rev Fund (14296)	Harbormaster	Surcharge receipts collected from all transient visitors	Harbor related costs and infrastructure expenses	Services, supplies, and wages shall be related to activities associated with repairs and maintenance of the harbor/marina	Annual limit of expenditures is \$15,000	FY2019 and subsequent years

*(Voted at ATM Article 2, April 10, 2018, AG Approved July 6, 2018, posted July 6, 2018)*

## **Chapter XVI SHELLFISH COMMITTEE**

The Shellfish Committee is allowed to be reduced from a seven member board to a five member board in order to have a quorum.

## **Chapter XVII TOWN ACCOUNTANT**

### **A. Contracts**

No contract executed on behalf of the Town of Oak Bluffs which involves the disbursement of Town funds shall be valid until the Town Accountant has certified thereon that funds have been appropriated for the purpose(s) specified in the contract and that said funds are available for expenditure.

### **B. Line Item Transfers**

Department heads are allowed to transfer monies within various line items within their department budget, excluding salary and wage line items, for purposes of conducting normal business activities.

## **Chapter XVIII TOWN CLERK**

The Town Clerk shall perform the duties, which by the laws of the Commonwealth, Town Clerks are required to exercise and perform; shall keep a book of record for the sole purpose of recording the location of all highways and Town ways within the Town with an index thereto; shall notify immediately in writing all committees that may be selected or appointed at any Town meeting, and the nature of the business upon which they are and committees and officers of the votes of the Town pertaining to their respective departments; and immediately after every Town meeting furnish the Selectmen with a statement of all monies appropriated at such meeting and the purpose for which such monies were respectively appropriated.

### **A Town Clerk Fees**

(Voted STM 11.16.10, Art 2, AG Approved 12.1.10, Posted 12.13.10)

<b>Document</b>	<b>Former Fee</b>	<b>Description</b>	<b>New Fee</b>
Amending a Birth Record	\$10.00		\$25.00
Birth certificate	\$5.00		\$10.00
Entering delayed record of birth	\$10.00		\$25.00
Filing business certificate	\$20.00	Every 4 years	\$40.00
Modification of business certificate	\$10.00		\$10.00
Record of practice of podiatry	\$20.00		\$20.00
Amending a Death Record	\$10.00		\$25.00
Death Certificate	\$5.00		\$10.00
Filing of Marriage Intention	\$15.00		\$25.00
Recording marriage from outside the	\$5.00		\$15.00

Commonwealth

Marriage Certificate	\$5.00		\$10.00
Amending a Marriage Record	\$10.00		\$25.00
Recording Power of Attorney	\$10.00		\$10.00
Record of practice of optometry or certified copy	\$20.00		\$20.00
Recording certificate for physician of osteopath in Commonwealth	\$20.00		\$20.00
Recording order granting location, alteration, or transfer of poles, piers, abutments, or conduits	\$40.00 flat rate, \$10.00 additional streets	Includes provisions of Section 22, Chapter 166	\$40.00 flat rate, \$10.00 additional streets
Examining records relating to birth, marriage, or death	Actual expense but not less than \$5.00		Actual expense but not less than \$5.00
Copying any record pertaining to a birth, marriage, or death.(Not certified)	\$5.00		\$5.00
Receiving and filing of inventory of items to be included in closing out sale	\$10.00 first page, \$2.00 each additional page		\$10.00 first page, \$2.00 each additional page
Filing copy of trust by trustees of trust or association or any amendment thereof	\$20.00 first page, \$2.00 each additional page.	Section 2, Chapter 182	\$20.00 first page, \$2.00 each additional page.
Recording deed of plot in cemetery	\$10.00 \$10.00 first page, \$2.00 each additional page		\$10.00 \$10.00 first page, \$2.00 each additional page
Recording any other documents			
Voter's Card	\$5.00		\$5.00
Storage Fuel License	\$75.00		\$75.00
Auctioneer License	\$15.00	Per day	\$15.00
Raffles / Bazaar License	\$20.00	Per year	\$20.00
Pool, Sippio, Billiard Table or Bowling Alley	\$50.00	each	\$100.00
Spayed or Neutered Dog License	\$6.00		\$6.00
Non-Spayed or Non-Neutered Dog License	\$10.00		\$10.00
Kennel 1-4 Dogs	\$25.00		\$25.00
Kennel 4-10 Dogs	\$50.00		\$50.00

## Chapter XIX TOWN TREASURER

### A. Custody and Disposal of Trust Funds

All trust funds if not otherwise provided in the conditions of the trust and the income of all trust funds, shall be held in the custody of the Town Treasurer, and shall be paid out by him for the purpose named in the trust only upon orders duly drawn upon him by the Selectmen. He shall keep a separate account of such

funds and the income thereof and submit the same to the Selectmen at the close of the fiscal year for the publication in their report.

## **Chapter XX BOARDS AND COMMITTEES**

### **A. Attendance at Meetings**

If an appointed board or committee member is absent from three (3) consecutive meetings, the appointing authority may consider the seat vacant and proceed to fill the position with another candidate in the manner provided by statute or by-law.

### **B. Capital Program Committee** *(Amended STM 6/18/02 Art.8)*

A Committee, known as the Capital Program Committee, shall be established, composed of one member appointed by the Finance Committee, one member appointed by the Planning Board, one member by the Moderator, and three members to be appointed by the Selectmen. The members from the Finance Committee and the Planning Board and the Moderator shall be appointed for one-year terms. The other members shall be appointed for three-year terms such that one will expire each year. The Town Accountant shall be an ex-officio member without right of vote. A member who ceases to reside in the Town shall resign. A vacancy shall be filled for the unexpired term in the manner of the original appointment. The Committee shall choose its own officers.

#### 1. Preparation

The Capital Program Committee shall, in conjunction with the Board of Selectmen through its Town Administrator, annually prepare a capital improvement program at least thirty days prior to the date for submission of the operating budget; unless some other time is provided by by-law.

#### 2. Contents

The capital improvement plan shall include:

- a. A clear summary of its contents;
- b. An itemization of all capital improvements, including those of the school department, proposed to be undertaken during the next five fiscal years with supporting data;
- c. Cost estimates, method of financing, and recommended time schedules; and,
- d. The estimated annual cost of operating and maintaining the facilities included.

#### 3. Public Hearing

The Capital Program Committee shall publish in a newspaper of general circulation in the town a summary of the capital improvement plan and a notice stating:

- a. The times and places where entire copies of the capital improvement plan are available for inspection by the public; and,
- b. The date, time and place not less than fourteen days after such publication, when a public hearing on said plan will be held by the Committee.

4. Adoption

At any time after the public hearing but before the first day of the Town Meeting, the Capital Program Committee shall by resolution adopt the capital improvement plan with or without amendment, provided that each amendment must be voted separately and that any increase in the capital improvement plan as submitted must clearly identify the method of financing proposed to accomplish this increase.

5. Authority to Promulgate a Capital Improvement Fund Policy and Debt Policy

The Capital Program Committee shall consult with the Board of Selectmen, Town Administrator, Finance and Advisory Committee, Town Accountant, and Town Treasurer in the establishment of a Capital Improvement Fund Policy and Debt Policy.

**C. Clerks to Boards and Committees**

Each board or committee of the Town of Oak Bluffs shall elect its own clerk or secretary and not necessarily from its own membership.

**D. Residency Requirement**

On any Committee, Board or Commission that the members are appointed to serve, the member who is appointed shall be a resident of the Town; such appointment will become null and void and the office post will become vacant if the residency requirement is not met per the terms of this by-law. This by-law shall not apply to employees who work for the Town in regular, paid positions.

**E. Terms of Committee Members**

Unless otherwise provided by law, all appointed Boards/Committees shall have a term commencing July 1 with all appointments to these Boards/Committees being made within two (2) weeks prior to the commencement date of July 1.

**F. Auditors**

At the Annual Town Meeting next following the adoption of these by-laws there shall be chosen by ballot a Board of Auditors consisting of three persons.

**Chapter XXI MISCELLANEOUS**

**A. Plywood on Windows and Doors**

No building in the central business district shall use unfinished or unpainted plywood or any other material to cover window or door areas except in case of emergency, and in an emergency, the covering shall be removed within 14 days. Permanent off-season window or door covering shall not extend beyond the existing windows or door areas.

### **B. Sidewalk, Curb-lines, Alleys**

All owners of commercial property, or their tenants shall be responsible for the cleaning of sidewalks, curb lines, and alleys, which form the boundary lines of their property. All sidewalks and curb lines shall be kept clear of sand, litter, garbage, trash and hazardous materials. In addition, all sidewalks and curb lines shall be cleared of snow and ice within twenty-four (24) hours of the end of a snowfall. Alleyways between buildings shall be kept clear of all litter, trash, garbage, and/or hazardous materials except that which is properly contained in a metal trash container and awaiting pick-up by a municipal or commercial refuse disposal service. Commercial property owners shall assign a responsible agent to comply with this by-law when they are absent from their property. Any and all violations of this by-law shall be subject to a Twenty-five Dollar (\$25.) fine for each day of violation.

### **C. Fees**

Fees payable to the Town of Oak Bluffs are to be in accordance with Chapter 262, Section 34 of the General Laws, Clauses 1-79.

## **Chapter XXII WETLANDS**

### **A. Application**

1. The purpose of this by-law is to protect the wetlands of the Town of Oak Bluffs by controlling activities deemed to have a significant effect upon wetland and water quality values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion control, storm damage prevention, fisheries, shellfish, wildlife, recreation and aesthetics (collectively the “interests protected by this by-law”).
2. No person shall remove, fill, dredge, alter, or build upon or within one hundred feet of any bank, freshwater wetland, beach, dune, flat, marsh, meadow, bog, swamp, or upon or within one hundred feet of any estuary, creek, river, stream, pond or lake, or within one hundred feet of any land subject to any tidal action, coastal storm flowage, flooding or inundation, or within one hundred feet of the 100 year storm line, without filing written application for a permit to so remove, fill, dredge, alter, or build upon, including such plans as may be necessary to describe such proposed activity and its effect upon the environment, and receiving and complying with a permit issued pursuant to this by-law.
3. Such application may be identical in form to a Notice of Intent filed pursuant to Chapter 131, Section 40 of the General Laws; shall be sent by certified mail to the Oak Bluffs Conservation Commission (“Commission”), and

must be filed concurrently with or after application for all other variances and approvals required by the Zoning by-law, the Subdivision Control Law or any other by-law or regulation have been obtained. The Commission shall set a filing fee by regulation, but no filing fee is required when the Town of Oak Bluffs files an application for a permit.

## **B. Entry upon Private Property**

The Commission, its agents, officers and employees, may enter upon privately owned land for the purpose of performing their duties under this by-law.

## **C. Request to Determine If By-law Applies**

Upon written request of any person, the Commission shall, within twenty-one days, make a written determination as to whether this by-law is applicable to any land or work thereon.

### **1. Hearing**

The Commission shall hold a public hearing on the application within twenty-one days of its receipt from the applicant or his agent.

### **2. Burden of Proof**

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

### **3. Permit and conditions**

If, after the public hearing, the Commission determines that the area which is the subject of the application is significant to the interests protected by this by-law, the Commission shall, within twenty-one days of such hearing, issue or deny a permit for the work requested. If it issues a permit after making such a determination, the Commission shall impose such conditions as it determines are necessary or desirable for the protection of those interests, and all work shall be done in accordance with those conditions. Permits shall expire one year from the date of issuance, unless renewed prior to expiration, and all work shall be completed prior to the expiration.

### **4. Appeals**

Any aggrieved person may appeal the Order of Conditions issued by the Commission within 60 days to the Superior Court.

### **5. Relationship to Chapter 131, Section 40 of the General Laws**

Since the Wetlands Protection Act Chapter 131, Section 40 of the General Laws, establishes minimum standards, the Commission shall not impose additional or more stringent conditions in any order pursuant to Chapter 131, Section 40 of the General Laws than it imposes pursuant to this by-law.

## **D. Emergency Projects**

The notice provision of this by-law shall not apply to emergency projects necessary for the immediate protection of the health or safety of the citizens of Oak Bluffs as certified in writing by the Commission.

## **E. Pre-Acquisition Violation**

Any person who purchases, inherits, or otherwise acquires real estate upon which work has been done in violation of the provision of this by-law or in violation of any permit issued pursuant to this by-law, shall forthwith comply with any such order to restore such land to its condition prior to any such violations. No action, civil or criminal, shall be brought against such persons unless commenced within three years of the violation of this by-law.

## **F. Regulations** *(Amended STM 11.8.05 Art 15, AG Approved 2.14.06, Published 2.22.06)*

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

*(Section 1 through 3j deleted STM 10.17.06 Art 10, AG Approved 11.2.06 and notice published 11.16.06)*

## **G. Security**

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

1. By a bond or deposit of money negotiable securities in an amount determined by the Commission to be sufficient and payable to the Town of Oak Bluffs.
2. By a conservation restriction, easement or other covenant running with the land, executed and properly recorded (or registered, in the case of registered land).

## **H. Enforcement**

Any person who violates any provision of this by-law or of any condition of a permit issued pursuant to it shall be punished by a fine of not more than \$300.00. Each day or portion thereof during which a violation continues shall constitute a separate offense. This by-law may be enforced pursuant to Chapter 40, Section 21D of the General Laws by a Town Police Officer or other officer having police powers.

Upon request of the Commission, the Board of Selectmen and Town Counsel shall take legal action as may be necessary to enforce this by-law and permits issued to it.

## **Chapter XXIII COTTAGE CITY HISTORIC DISTRICT BY-LAW**

*(Section added ATM 4/03 ART 18, AG Approved 8.21.03, Published 9.15.03)(Amended STM 12.2.03 Art 11, AG Approved 4.13.04, Published 5.7.04)*

### **A. Purpose**

The purpose of this by-law is to promote the educational, cultural, economic and general welfare of the inhabitants and property owners of the Town of Oak Bluffs through the preservation and protection of the distinctive characteristics of buildings and places of historical significance to the Town or the architecture of such buildings and places, and through the maintenance and improvement of settings for such buildings and places and the encouragement of design compatible therewith.

### **B. Boundaries**

The CCHD shall be located and bounded as shown on the map entitled, "Cottage City Historic District, Town of Oak Bluffs, Dukes County, Massachusetts," dated April 8, 2003 and further described as follows:

Beginning at the intersection of the centerlines of Oak Bluffs Avenue and Lake Avenue and running along the centerline of Lake Avenue to the B-1 zoning district boundary as of August 8, 1991; then along said zoning district boundary to the intersection of the centerline of Samoset Avenue and said zoning district boundary; then along the centerline of Samoset Avenue to the intersection of the centerlines of Circuit Avenue and Samoset Avenue; then along the centerline of Circuit Avenue to the intersection of the centerlines of Circuit Avenue and South Circuit Avenue; then along the centerline of South Circuit Avenue to a point adjacent to the northwesterly boundary of Lot 23, Map 18 as shown in the *FY 2002 Oak Bluffs Map and Ownership Volume*; then southerly and then easterly along Farm Pond's shoreline to a point at the southwesterly boundary of Lot 31, said Map 11; then along the southeasterly boundary of said Lot 31 to the centerline of Sea View Avenue; then along the centerline of Sea View Avenue to the intersection of the centerlines of Sea View Avenue and Oak Bluffs Avenue; and then to the point of origin.

*(Boundaries extended Art. 12, ATM 4/12/05, AG Approved 7.13.05, Published 7.26.05)*

And, beginning at the intersection of the centerlines of Oak Bluffs Avenue and Seaview Avenue Extension, thence northwesterly along the centerline of Seaview Avenue Extension to its intersection with Circuit Avenue Extension and thence southwesterly, southerly and southeasterly along the centerline of Circuit Avenue Extension to its intersection with Oak Bluffs Avenue and thence northeasterly along the centerline of Oak Bluffs Avenue to the point of origin.

### **C. Make –Up of the Commission**

**Members** There is hereby established the CCHD Commission, consisting of seven (7) members appointed by the Board of Selectmen. Prior to making any appointments to the original membership of the CCHD Commission, the Board of Selectmen shall submit a written request for two nominees from each of the following organizations: the Oak Bluffs Historical Commission, the Park Commission and the Planning Board. The Board of Selectmen shall appoint one of the two nominees submitted by each organization. The additional members as advertised in the local newspaper, covering the town of Oak Bluffs, shall include, one member who is a real estate broker or salesman licensed in the state of Massachusetts, one member who is an architect and two (2) members who are residents or owners of property in the District to be administered by the commission. If within 30 days after submission of a written request as required by MGL Chapter 40C, for nominations by an organization entitled to submit nominations for membership on the Commission or in addition to the written request to the nominating organizations, the appearance of an ad in the local newspapers requesting membership interest, no such nominations or letters of interest have been made, the appointing body may proceed to make the appointment to the commission without nomination by such organizations or letters of interest by residents or property owners in the District. Thereafter, the Board of Selectmen, to the extent possible, shall appoint successors to the commission in the same manner as was used for the original appointment of the position that the new appointee will fill.

**Alternate Members** Alternate members, who need not be from nominees of organizations entitled to nominate members or respondents to newspaper advertisements, may be appointed, by virtue of their training, occupation or experience to further the intent and purposes of this bylaw, not to exceed in number the principal or regular members. Their term shall be 3 years. In the case of absence, inability to act, or unwillingness to act because of self-interest on the part of a member of the Commission, that member's place shall be taken by an alternate member designated by the Chairman of the Commission. Each member and alternate member shall continue in office after the expiration of his or her term until his or her successor is duly appointed and qualified. All members shall serve without compensation. The Commission shall elect annually a Chairman and a Vice-Chairman from its own number and a Secretary from within or without its own number. All members of the commission shall be residents of the Town of Oak Bluffs. Vote by the Commission shall be by majority vote. Five members shall constitute a quorum.

**Terms** Each member of the CCHD Commission shall be appointed for a term of three (3) years, except that when the Commission is first established, two of its members shall be appointed for a term of one year, two of its members shall be appointed for a term of two years and three of its members shall be appointed for a term of three years.

#### **D. Definitions**

As used in this chapter the word "altered" includes the words "rebuilt," "reconstructed," "restored," "removed," and "demolished"; the word "building" means a combination of materials forming a shelter for persons, animals or property; the word "commission" means the commission acting as the historic district commission; the word "constructed" includes the words "built," "erected," "installed," "enlarged," and "moved"; the words "exterior architectural feature" mean such portion of the exterior of a building or structure as is open to view from a public street, public way, public park or public body of water, including but not limited to the architectural style and general arrangement and setting thereof, the kind, and texture of exterior building materials applied to exterior surfaces and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures; the words "person aggrieved" mean the applicant, an owner of adjoining property, an owner of property within the same historic district as property within one hundred feet of said property lines and any charitable corporation in which one of its purposes is the preservation of historic structures or districts; and the word "structure" means a combination of materials other than a building, including a sign, fence, wall, terrace, walk or driveway.

#### **E. Certificates of Appropriateness, Non-Applicability or Hardship**

Except as this by-law may otherwise provide in accordance with Section G (exclusions) or Section H (ordinary maintenance), no building or structure within the CCHD shall be constructed or altered in any way that affects exterior architectural features unless the Commission shall first have issued a Certificate of Appropriateness, a Certificate of Non-applicability, or a Certificate of Hardship with respect to such construction or alteration.

Any person who desires to obtain a certificate from the Commission shall file with the Commission an application for a Certificate of Appropriateness, a Certificate of Non-applicability or a Certificate of Hardship, as the case may be, in such form as the Commission may reasonably determine together with such plans, elevations, specifications, material and other information, including in the case of demolition or removal, a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the commission to enable it to make a determination on the application.

No building permit for construction of a building or structure or for alteration of an exterior architectural feature within the CCHD and no demolition permit for demolition or removal of a building or structure with the CCHD shall be issued by the Town or any department or official thereof until the certificate required by this Section has been issued by the Commission.

#### **F. Standards of Review**

In passing upon matters before it, the Commission shall strive to advance the purpose of this by-law, and shall consider, among other things, the historical

and architectural value and significance of the site, building or structure, the general design, arrangement, proportions, texture and materials involved, the relation of such features to similar features of buildings and structures in the surrounding area, and the position of such buildings or structures in relation to the public streets, public ways, public parks or public bodies of water in the surrounding area. The physical character of the landscape shall enhance rather than detract from the prevalent Victorian architecture and shall enhance the inviting and open vistas of the parks. The Commission shall not consider interior arrangements or architectural features not subject to public view. Variety is to be maintained as a key element in the fabric of the overall district presentation.

The authority of the Commission shall extend to, but not be limited to, the review of the following categories:

1. Terraces, walks, driveways, sidewalks, and similar structures above grade level
2. Decks, porches and other accessory structures
3. Walls and fences
4. Outdoor lighting fixtures, such as post and driveway/walkway lights visible from the street
5. Signs (consisting of letters painted on wood without symbol or trademark and if illuminated, illuminated only indirectly) if permitted by a certificate of appropriateness shall conform to the following:
  - a. Non-residential buildings or structures in the District may include one sign of not more than 10 square feet in total area, plans for which must be presented to and approved by the Commission.
  - b. Residential use of any building or structure within the District may include one sign advertising ownership, occupancy, or services offered, of not more than one square foot in total area, plans for which must be presented to and approved by the Commission.
  - c. Notwithstanding sub-sections a. and b. above, signs containing brief historical information, and of a design approved by the Commission, may be attached to any building or structure within the District upon the approval of the Commission.

The commission shall not make any recommendation or requirements except for the purpose of preventing developments incongruous to the historic aspects or the architectural characteristics of the surroundings and of the CCHD.

## **G. Exclusions**

1. The authority of the commission shall not extend to the review of any of the following categories of buildings or structures or exterior architectural features in the CCHD, and the buildings or structures or exterior architectural features so excluded may be constructed or altered within the CCHD without review by the commission:

- a. Temporary structures or signs, subject, however, to such conditions as to duration of use, location, lighting, removal and similar matters as the commission may reasonably specify.
  - b. Terraces, walks, driveways and sidewalks, provided that any such structure is substantially at grade level.
  - c. Storm doors and storm windows, screens, lighting fixtures, and antenna (except satellite dishes over 18 inches in diameter).
  - d. The reconstruction, substantially similar in exterior design and materials, of a building, structure or exterior architectural feature damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within one year thereafter unless otherwise agreed to by the Commission and is carried forward with due diligence.
2. The Commission may determine from time to time after public hearing, that certain categories of exterior architectural features, structures or signs, may be constructed or altered without review by the Commission without causing substantial derogation from the intent and purposes of this by-law and of the Historic Districts Act, Massachusetts General Laws Chapter 40C, as amended.
  3. The Commission may further determine from time to time after public hearing that the authority of the Commission shall be limited only to those exterior architectural features within the CCHD subject to view from one or more specifically designated public streets, public ways, public parks or public bodies of water, as opposed to all exterior architectural features within the CCHD subject to view from a public street, public way, public park or public body of water, without substantial derogation from the intent and purposes of this by-law and of the Historic Districts Act, Massachusetts General Laws Chapter 40C, as amended.
  4. Upon request, the Commission shall issue a Certificate of Non-applicability with respect to construction or alteration in any category then not subject to review by the Commission.

## **H. Ordinary Maintenance**

Nothing in this by-law shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior architectural feature within the CCHD which does not involve a change in design, material or the outward appearance thereof, nor to prevent landscaping with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, nor construed to prevent any construction or alteration under a permit duly issued prior to the effective date of this by-law.

## **I. Commission Powers, Functions and Duties**

The Commission shall have the following additional powers, functions and duties:

1. If the Commission determines that the construction or alteration for which an application for a Certificate of Appropriateness has been filed will be appropriate for and compatible with the preservation or protection of the CCHD, the Commission shall cause a Certificate of Appropriateness to be issued to the applicant. In the case of a disapproval of an application for a Certificate of Appropriateness, the Commission shall place upon its records the reasons for such determination, and shall forthwith cause a notice of its determination, accompanied by a copy of the reasons therefor as set forth in its records, to be issued to the applicant, and the Commission may make recommendations to the applicant with respect to appropriateness of design, arrangement, texture, material and similar features. Prior to the issuance of any disapproval, the Commission may notify the applicant of its proposed action accompanied by recommendations of changes in the applicant's proposal, which, if made, would make the application acceptable to the Commission. If within fourteen (14) days of the receipt of such notice, the applicant files a written modification of the application in conformity with the recommended changes of the Commission, the Commission shall cause a Certificate of Appropriateness to be issued to the applicant.
2. In the case of a determination by the Commission that an application for a Certificate of Appropriateness or for a Certificate of Non-applicability does not involve any exterior architectural feature which is not then subject to review by the Commission in accordance with the provisions of Section K, the Commission shall cause a Certificate of Non-applicability to be issued to the applicant.
3. If the construction or alteration for which an application for a Certificate of Appropriateness has been filed shall be determined to be inappropriate, or in the event of an application for a Certificate of Hardship, the Commission shall determine whether, owing to conditions especially affecting the building or structure involved, but not affecting the CCHD generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant, and whether such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this by-law and of the Historic Districts Act, Massachusetts General Laws Chapter 40C, as amended. If the Commission determines that owing to such conditions failure to approve an application will involve substantial hardship to the applicant and approval thereof may be made with such determination on an application within the time specified in Section 12 hereof, the Commission shall cause a Certificate of Hardship to be issued to the applicant.
4. Each certificate issued by the Commission shall be dated and signed by its Chairman, Vice-chairman, Secretary, or such other person designated by the Commission to sign such certificates on its behalf.
5. The Commission shall keep a permanent record of its resolutions, transactions and determinations and of the vote of each member participating therein, and shall adopt and amend such rules and regulations not incon-

sistent with the provisions of this by-law and the provisions of the Historic Districts Act, Massachusetts General Laws Chapter 40C, as amended, and prescribe such forms as it shall deem desirable and necessary for the regulation of its affairs and the conduct of its business. The Commission shall file such rules and regulation with the Town Clerk.

6. The Commission shall file with the Town Clerk, and with any department or official of the Town having authority to issue building permits, a copy or notice of all certificates and determinations of disapproval issued by it.
7. The Commission may, after public hearing, set forth in such manner as it may offer for consideration the various designs of certain appurtenances and materials which will meet the requirements of the CCHD, but no such determination shall limit the right of an applicant to present other designs or materials to the Commission for its approval.
8. The Commission may, subject to appropriation employ clerical and technical assistance or consultants and incur other expenses appropriate to the carrying on of its work, and may accept money gifts and expend the same for such purposes.
9. The Commission shall have, in addition to the powers, authority and duties granted to it by this by-law, such powers, authority and duties as may be delegated or assigned to it from time to time by vote of the Town Meeting.

## **J. Commission Meetings and Rules**

Meetings of the Commission shall be held monthly or shall be called at the request of two members of the Commission and in such other manner as the Commission shall determine in its rules. A majority of the members of the Commission shall constitute a quorum. The concurring vote of the majority of the members of the Commission shall be necessary to issue a Certificate of Appropriateness, a Certificate of Non-applicability or a Certificate of Hardship.

## **K. Procedure in Decision Making**

The Commission shall determine promptly, and in all events within fourteen (14) days after the filing of an application for a Certificate of Appropriateness, a Certificate of Non-applicability or a Certificate of Hardship, as the case may be, whether the application involves any exterior architectural features which are subject to approval by the Commission. If the Commission determines that such application involves any such features which are subject to approval by the Commission, the Commission shall hold a public hearing on such application unless such hearing is dispensed with as hereinafter provided.

The Commission shall fix a reasonable time for the hearing on any application subject to approval and shall give public notice of the time, place and purposes thereof at least fourteen (14) days before said hearing in the local newspaper, and by mailing, postage prepaid, a copy of said notice to the applicant; to the Planning Board; to any person filing a written request for notice of hearing

( such request to be renewed yearly in December); to other property deemed by the Commission to be materially affected thereby as they appear on the most recent real estate tax list of the Board of Assessors; to such other persons as the Commission shall deem entitled to notice; and, at the applicant's expense, to the owners of all adjoining property.

As soon as convenient after such public hearing, but in any event, within thirty (30) days after the filing of the application, or within such further time as the applicant may allow in writing, the Commission shall make a determination on the application. If the commission shall fail to make a determination within such period of time, the Commission shall thereupon issue a Certificate of Hardship.

A public hearing on an application need not be held if such hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application may be waived by the Commission if the Commission determines that the exterior architectural feature involved or its category, as the case may be, is so insubstantial in its effect on the CCHD that it may be reviewed by the Commission without public hearing on the application, provided, however, that if the Commission dispenses with a public hearing on an application, notice of the application shall be given to the owners of all adjoining property and other property deemed by the Commission to be materially affected thereby, as provided above, and ten (10) days shall elapse after the mailing of such notice before the Commission may act upon such application.

#### **L. Appeal Procedure**

Any applicant aggrieved by a determination of the Commission may, within twenty (20) days after the filing of the notice of such determination with the Town Clerk, file an appeal in the Superior Court sitting in equity for the County of Dukes County pursuant to the provisions of Massachusetts General Laws Chapter 40C, Section 12A, as amended.

#### **M. Enforcement**

The superior court sitting in equity for the County of Dukes County shall have jurisdiction to enforce the provisions of this by-law and the determinations, rulings, and regulations issued pursuant thereto and may, upon the petition of the Board of Selectmen or of the Commission, restrain by injunction violations thereof; and, without limitation, such court may order the removal of any building, structure or exterior architectural feature constructed in violation thereof, and may issue such other orders for relief as may be equitable.

Whoever violates any of the provisions of this by-law shall be punished by a fine of not less than ten (10) dollars nor more than five hundred (500) dollars. Each day during any portion of which a violation continues to exist shall constitute a separate offense.

## **N. Authority for Enlargement, Reduction or Addition**

An historic district may be enlarged or reduced or an additional historic district in the Town may be created in accordance with the provisions of Massachusetts General Laws Chapter 40C, Section 3.

## **O. Amendment Procedure**

This by-law may, from time to time, be amended in any manner not inconsistent with the provisions of Massachusetts General Laws Chapter 40C, by a two-thirds vote of a Town meeting, provided that the substance of such amendment has first been submitted to the historic district commission having jurisdiction over such district for its recommendation and its recommendation has been received or sixty (60) days have elapsed without such recommendation.

## **P. Severability Provisions**

In the event that any provision of this by-law shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

# **Chapter XXIV The Preservation of Historically Significant Buildings**

*(Section Added STM 12.2.03 Art 12, AG Approved 2.13.04, Published 3.5.04)*

### Intent and Purpose

This by-law is enacted for the purpose of preserving and protecting significant buildings within the Town which constitute or reflect distinctive features of the architectural, cultural, economic, political or social history of the town and to limit the detrimental effect of demolition on the character of the town. Through this by-law, owners of preferably preserved buildings are encouraged to seek out alternative options that will preserve, rehabilitate or restore such buildings and residents of the town are alerted to impending demolitions of significant buildings. By preserving and protecting significant buildings, streetscapes and neighborhoods, this by-law promotes the public welfare by making the town a more attractive and desirable place in which to live and work. To achieve these purposes the Historical Commission is authorized to advise the Building Inspector with respect to demolition permit applications. The issuance of demolition permits is regulated as provided by this by-law.

### Definitions

**APPLICANT** – Any person or entity who files an application for a demolition permit. If the applicant is not the owner of the premises upon which the building is situated, the owner must indicate on or with the application his/her assent to the filing of the application.

APPLICATION – An application for the demolition of a building.  
BUILDING – Any combination of materials forming a shelter for persons, animals, or property.  
BUILDING COMMISSIONER – The person occupying the office of Building Commissioner or otherwise authorized to issue demolition permits.  
COMMISSION – The **Oak Bluffs** Historical Commission or its designee.  
DEMOLITION – Any act of pulling down, destroying, removing, dismantling or razing a building or commencing the work of total or substantial destruction with the intent of completing the same.  
DEMOLITION PERMIT – The building permit issued by the Building Inspector for a demolition of a building, excluding a building permit issued solely for the demolition of the interior of a building.  
PREFERABLY PRESERVED – Any significant building which the Commission, following a public hearing, that it is in the public interest to be preserved rather than demolished. A preferably preserved building is subject to the **six** month demolition delay period of this by-law.  
SIGNIFICANT BUILDING – Any building within the town (city) which is in whole or in part **one hundred** years or more old and which has been determined by the Commission or its designee to be significant based on any of the following criteria:

- The Building is listed on, or is within an area listed on, the National Register of Historic Places; or
- The Building has been found eligible for the National Register of Historic Places; or
- The Building is importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic or social history of the Town or the Commonwealth; or
- The Building is historically or architecturally important (in terms of period, style, method of building construction or association with a recognized architect or builder) either by itself or in the context of a group of buildings.

#### Procedure

No demolition permit for a building which is in whole or in part **one hundred** years or more old shall be issued without following the provisions of this by-law. If a building is of unknown age, it shall be assumed that the building is over **one hundred** years old for the purposes of this by-law.

An applicant proposing to demolish a building subject to this by-law shall file with the Building Commissioner an application containing the following information:

- The address of the building to be demolished.
- The owner's name, address and telephone number.
- A description of the building.
- The reason for requesting a demolition permit.

- A brief description of the proposed reuse, reconstruction or replacement.
- A photograph or photograph(s) of the building.

The Building Commissioner shall within seven days forward a copy of the application to the Commission. The Commission shall within fifteen days after receipt of the application, make a written determination of whether the building is significant.

Upon determination by the Commission that the building is not significant, the Commission shall so notify the Building Commissioner and applicant in writing. The Building Commissioner may then issue the demolition permit.

Upon determination by the Commission that the building is significant, the Commission shall so notify the Building Commissioner and the applicant in writing. No demolition permit may be issued at this time. If the Commission does not notify the Building Commissioner within fifteen days of receipt of the application, the Building Commissioner may proceed to issue the demolition permit.

If the Commission finds that the building is significant, it shall hold a public hearing within thirty days of the written notification to the Building Commissioner. Public notice of the time, place and purpose of the hearing shall be posted in a conspicuous place in town hall for a period of not less than seven days prior to the date of said hearing and the applicant and the building inspector shall be notified in writing of the meeting time and place.

The Commission shall decide at the public hearing or within fourteen days after the public hearing whether the building should be preferably preserved. If agreed to in writing by the applicant, the determination of the Commission may be postponed.

If the Commission determines that the building is **not** preferably preserved, the Commission shall so notify the Building Commissioner and applicant in writing. The Building Commissioner may then issue the demolition permit.

If the Commission determines that the building is preferably preserved, the Commission shall notify the Building Commissioner and applicant in writing. No demolition permit may then be issued for a period of **six** months from the date of the determination unless otherwise agreed to by the Commission. If the Commission does not so notify the Building Commissioner in writing within twenty-one days of the public hearing, the Building Commissioner may issue the demolition permit.

Upon a determination by the Commission that any building which is the subject of an application is a preferably preserved building, no building permit for new construction or alterations on the premises shall be issued for a period of

six months from the date of the determination unless otherwise agreed to by the Commission.

No permit for demolition of a building determined to be a preferably preserved building shall be granted until all plans for future use and development of the site have been filed with the Building Commissioner and have been found to comply with all laws pertaining to the issuance of a building permit or if for a parking lot, a certificate of occupancy for that site. All approvals necessary for the issuance of such building permit or certificate of occupancy, including without limitation any necessary zoning variances or special permits, must be granted and all appeals from the granting of such approvals must be concluded, prior to the issuance of a demolition permit under this section.

The Building Commissioner may issue a demolition permit or a building permit for a preferably preserved building within the six months if the Commission notifies the Building Commissioner in writing that the Commission finds that the intent and purpose of this by-law is served even with the issuance of the demolition permit or building permit.

Following the six month delay period, the Building Commissioner may issue the demolition permit.

#### Administration

The Commission may adopt such rules and regulations as are necessary to administer the terms of this by-law.

The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this by-law.

The Commission may delegate authority to make initial determinations of significance to one or more members of the Commission or to a municipal employee.

The Commission may pro-actively develop a list of significant buildings that will subject to this by-law.

Buildings proposed for the significant building list shall be added following a public hearing.

#### Emergency Demolition

If after an inspection, the Building Commissioner finds that a building subject to this by-law is found to pose an immediate threat to public health or safety due to its deteriorated condition and that there is no reasonable alternative to the immediate demolition of the building or structure, then the Building Commissioner may issue an emergency demolition permit to the owner of the building or structure. The Building Commissioner shall then prepare a report explaining the condition of the building and the basis for his decision which shall be forwarded to the Commission.

### Enforcement and Remedies

The Commission and/or the Building Commissioner are each specifically authorized to institute any and all actions and proceedings, in law or equity, as they may deem necessary and appropriate to obtain compliance with the requirements of this by-law or to prevent a threatened violation thereof.

Any owner of a building subject to this by-law that demolished the building without first obtaining a demolition permit in accordance with the provisions of this by-law shall be subject to a fine of not more than Three Hundred Dollars. Each day the violation exists shall constitute a separate offense until a faithful restoration of the demolished building is completed or unless otherwise agreed to by the Commission.

If a building subject to this by-law is demolished without first obtaining a demolition permit, no building permit shall be issued for a period of two years from the date of the demolition on the subject parcel of land or any adjoining parcels of land under common ownership and control unless the building permit is for the faithful restoration referred to above or unless otherwise agreed to by the Commission.

### Historic District Act

Following a determination that the building is significant and preferably preserved, the Commission may recommend to town meeting that the building be protected through the provisions of Massachusetts General Law, Chapter 40C, and the Historic Districts Act. The steps required under M.G.L. Chapter 40C shall be followed prior to the establishment of a local historic district. Nothing in this by-law shall be deemed to conflict with the provisions of the Historic District Act, Massachusetts General Laws Chapter 40C. If any of the provisions of this by-law do so conflict, that act shall prevail.

### Severability

In case any section, paragraph or part of this by-law be for any reason declared invalid or unconstitutional by any court, every other section, paragraph, and part shall continue in full force and effect.

## **Chapter XXV COMMUNITY PRESERVATION COMMITTEE**

*(Section added STM 6.28.05 – Approved by AG 9.16.05 – Posted 9.22.05)*

### **A. Establishment**

There is hereby established a Community Preservation Committee, consisting of nine (9) voting members pursuant to MGL Chapter 44B. The composition of the committee, the appointing authority and terms of office for the committee members shall be as follows:

One member of the Conservation Commission as designated by said Commission for a term of three (3) years;

One member of the Historical Commission as designated by said Commission for a term of three (3) years;

One member of the Affordable Housing Committee as designated by said Committee for a term of three (3) years;

One member of the Parks and Recreation Commission as designated by said Commission for an initial term of two (2) years and thereafter for a term of term of three (3) years;

One member of the Planning Board as designated by said Board for an initial term of one (1) year and thereafter for a term of three (3) years;

Four (4) members from the voters at large to be appointed by the Board of Selectmen, two (2) members to be appointed for terms of one (1) year and thereafter for terms of three (3) years, and two (2) members to be appointed for terms of two (2) years and thereafter for terms of three (3) years.

Should any of the Commissions, Boards, Committees or individuals having appointing authority under this by-law no longer exist for whatever reason, the appointing authority for that Commission, Board, Committee or individual shall become the responsibility of the Board of Selectmen.

## **B. Duties**

1. The Community Preservation Committee shall study the needs, possibilities and resources of the town regarding community preservation. The Committee shall consult with existing municipal boards, including the Conservation Commission, the Historical Commission, the Planning Board, the Parks and Recreation Commission and the Affordable Housing Committee or persons acting in those capacities or performing like duties in conducting such studies. As part of its study, the Committee shall hold one or more public informational hearings on the needs, possibilities and resources of the town regarding community preservation possibilities and resources, notices of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the Town.
2. The Community Preservation Committee shall make recommendations to the Town Meeting to acquire, create, preserve, rehabilitate or restore:
  - Community Housing;
  - Open Space;
  - Land for Recreational Use; or
  - Historic Resources
3. The Community Preservation Committee may include in its proposal to Town Meeting, a recommendation to set aside for later spending, funds for purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund. The Community Preservation Committee may recommend the issuance of general obligation bonds or notes in anticipation of revenues to be raised pursuant to MGL Chapter 44B, Section 3, the proceeds of which shall be deposited in the Community Preservation Fund.
4. As provided in the Massachusetts Community Preservation Act, no expenditures shall be made from the Community Preservation Fund without the approval of Town Meeting.

5. The Community Preservation Committee will submit an annual administrative and operating budget for the Community Preservation Committee which cannot exceed five percent (5%) of the annual revenues in the Community Preservation Fund, to Town Meeting for approval.

**C. Requirement for a Quorum**

The Community Preservation Committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the Committee shall constitute a quorum. The Community Preservation Committee shall approve its actions by a majority vote.

**D. Requirement for Cost Estimates**

Proposals to Town Meeting shall include their anticipated costs.

**E. Exemptions**

Taxpayers qualifying for the low-income exemption or the low and moderate-income senior exemption as provided for in MGL Chapter 44B shall submit an application for the exemption on a form provided by the Board of Assessors within three (3) months after the tax bill or notice is sent.

**F. Severability**

In event any section, paragraph or part of this chapter be for any reason declared invalid or unconstitutional by any court of last resort, every other section, paragraph or part shall continue in full force and effect.

**G. Effective Date**

This by-law shall take effect upon approval of the Attorney General of the Commonwealth, and after all requirements of MGL Chapter 40 Section 32 have been met. Each appointing authority shall have thirty (30) days after approval by the Attorney General to make their initial appointments.

**Chapter XXVI 'SEWER ASSESSMENT' BY-LAW**

*(Section added STM 4.11.06, AG Approval posted 6/12/06)*

1. Introduction and Authority

The cost of laying out, constructing and operating a system for the collection, treatment and disposal of sewage for all or any part of the Town shall be borne by the land benefited by such system, in accordance with the following provisions, except that fifty percent (50%) of the costs incurred in connection with the planning and construction of the Oak Bluffs Wastewater Treatment Plant, the installation of the sewer lines identified on the Phase III Wastewater Facilities Plan dated January 20, 1998, and all related costs incidental thereto, amounting to \$17,396,270.90, shall be borne by the owners of land benefiting therefrom. The town Meeting may, subsequent to the April 2006 Annual Town Meeting, allocate

any portion of the cost of laying out and constructing new sewage collection facilities to the taxpayers at large.

2. Assessment by Uniform Unit Method

- a. The Town, acting through its Wastewater Commissioners, shall assess the owners of all land abutting any way in which there is a public sewer line constructed by the Town according to the uniform unit method, as authorized by G.L. c. 83, § 15 and the Special Town Meeting held on April 10, 2001.
- b. The Wastewater Commissioners shall make the assessments by establishing sewer assessment units as follows:

- (i) The owner of land used for a single family residence shall be assessed on the basis of one (1) sewer unit. The owner of undeveloped land zoned for single family residential use shall be assessed on the basis of the maximum number of single family residences which may be constructed on such land as of right under the zoning then in effect.

- (ii) The owner of land used for multi-family residential use shall be assessed on the basis of .67 times the number of dwelling units presently existing on such land, provided each unit has fewer than three (3) bedrooms as defined by Title V of the State Environmental Code (“Title V”). Vacant land zoned for multi-family use shall be assessed on the basis of .67 times the maximum number of units which can be constructed as of right under the zoning then in effect. Multi-family units with three (3) or more bedrooms shall be assessed on the basis of one sewer unit per dwelling unit. Each owner of a condominium or cooperative dwelling unit in a multi-family residential building shall be assessed only for his or her dwelling unit.

- (iii) The owner of land used or zoned for commercial, business, industrial, institutional, or non-profit use (“non-residential property”) that is metered for Town water use shall be assessed a number of equivalent residential sewer units based upon the water consumption for the calendar year preceding the order of assessment, according to the following formula:

$$\frac{\text{Water Usage (expressed in average gallons per day)}}{210 \text{ (based on } 3 \times 70 \text{ gpd per bedroom)}} = \text{Equivalent Number of Sewer Units}$$

(all decimals shall be rounded to the next whole number)

- (iv) The owner of non-residential property that is not metered for water use shall be assigned a water consumption volume by the Wastewater Commissioners based on Title V, and than assessed for the number of equivalent sewer units based on the formula established in Section 2 (b) (iii).

- (v) Municipal property is exempt from assessment. The owner of land used or zoned for any other purpose not specified in the foregoing sections shall be assigned a water consumption volume by the Wastewater Commissioners based on Title V, and then assessed for the number of equivalent sewer units based on the formula established in Section 2 (b) (iii).

### 3. User Fees for Land Not Subject to Assessment

The Wastewater Commissioners shall establish just and reasonable fees for the use of the public sewer system by the owner of land not liable to assessment, which fee shall be based on the avoided cost of construction of sewage disposal facilities to serve such land.

### 4. Assessment Rates

The Wastewater Commissioners shall establish the assessment rate for land being assessed by dividing total costs to be assessed by the total number of existing and potential sewer units within the assessed area.

### 5. Sewer Privilege Fees

The Wastewater Commissioners may establish reasonable fees pursuant to G.L. c. 83, § 17, to cover costs of construction of common sewers and other facilities required to serve land not previously served by the sewer system and not previously assessed to the owner of such land. Any such fee shall be reduced to the extent the landowner pays such expenses, in accordance with G.L. c. 83, § 22.

### 6. Annual User Fee

The Wastewater Commissioners may from time to time establish just and equitable annual user charges to cover the costs of maintenance, repairs and operations of the sewer system.

### 7. Rules and Regulations Concerning Sewer Assessments

The Wastewater Commissioners may adopt such reasonable rules and regulations with respect to the calculation of sewer assessments or fees as may be necessary or appropriate to implement the provisions of this By-law.

### 8. Applicability of General Laws

Except as provided herein or in any special legislation applicable to the Town, the provisions of the General Laws relative to the assessment, apportionment, division, re-assessment, abatement and collection of sewer assessments and to liens therefore and interest thereon shall apply to assessments made hereunder.

### 9. Rules and Regulations Concerning Use of Sewer System

The Wastewater Commissioners may establish rules and regulations concerning the use of the public sewer system, including but not limited to rules and regulations prohibiting the deposit of any harmful or deleterious substance into the sys-

tem, for regulating connections to the system and for establishing penalties for the violation of such rules.

## **Chapter XXVII OAK BLUFFS AFFORDABLE HOUSING TRUST**

*(Section added ATM 4.13.10, Art 19, AG Approval posted 9/14/10)*

**THIS DECLARATION OF TRUST** is executed as of the \_\_\_\_day of \_\_\_\_\_, 2010 by the members of the Oak Bluffs Board of Selectmen and the members of the Oak Bluffs Affordable Housing Committee, hereinafter called the Trustees, who shall serve in such capacity pursuant to the provisions of M.G.L. Chapter 44, s 55C.

WHEREAS, The Town Meeting of Oak Bluffs has authorized the establishment of a Housing Trust pursuant to the provisions of M.G.L. Chapter 44, s 55C; and

WHEREAS, It is the intention of the Trustees, to establish a comprehensive trust in accordance with the provisions of M.G.L. Chapter 44, s 55C authorizing the establishment of thereof; and

WHEREAS, All monies received by this Trust for all purposes relevant to the Trust shall be considered available for the purposes of accomplishing the mission of providing for the preservation and creation of affordable housing in the Town of Oak Bluffs for the benefit of low and moderate income households.

**THEREFORE**, in consideration of the agreements contained in this Trust, and the requirements of M.G.L. Chapter 44, s 55C, the Trustees hereby acknowledge and agree for themselves and their successors in trust to hold the same, together with such other property and funds as may be added thereto, for the purposes hereof in trust for the benefit of all of the Inhabitants of the Town of Oak Bluffs, in the manner and under the terms and conditions set forth herein.

### ARTICLE I TRUSTEES

The Trustees shall be appointed in accordance with Article IV hereof.

### ARTICLE II PURPOSE OF TRUST

The purpose of the Trust shall be to provide for the preservation and creation of affordable housing in the Town of Oak Bluffs for the benefit of low and moderate income households.

### ARTICLE III POWERS OF TRUSTEES

The Trustees shall have the following powers which shall be carried out in accordance with and in furtherance of the provisions of M.G.L. Chapter 44, s 55C (Municipal Affordable Housing Trust Fund) as outlined below except that it shall have no ability to borrow money, or mortgage or pledge Trust assets, purchase, sell, lease, exchange, transfer or convey any interest in real property without prior approval of the Oak Bluffs Board of Selectmen:

- 1) to accept and receive real property, personal property or money, by gift, grant, contributions, devise, or transfer from any person, firm, corporation or other public entity or organization or tendered to the Trust in connection with provisions of any ordinance or by-law or any General Law or Special Act of the Commonwealth or any other source including money from M.G.L Chapter 44B (Community Preservation);
- 2) with Town Meeting approval from Trustee recommendation, to sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to Trust property as the Trustees deem advisable notwithstanding the length of any such lease or contract;
- 3) to execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases and other instruments sealed or unsealed,

- necessary, proper or incident to any transaction in which the Trustees engage for the accomplishment of the purposes of the Trust;
- 4) with Town Meeting approval from Trustee recommendation, to borrow money on such terms and conditions and from such sources as the Trustees deem advisable, to mortgage and pledge Trust assets as collateral; to the extent of the Trust's assets, and subject to 2/3 vote at any Annual or Special Town Meeting for greater than the extent of the Trust's assets.
  - 5) to construct, manage or improve real property; and to abandon any property which the Trustees determine not to be worth retaining;
  - 6) with Board of Selectmen approval from Trustee recommendation, to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;
  - 7) to hold all or part of the Trust property uninvested for such purposes and for such time as the Trustees may deem appropriate; and
  - 8) to become the lottery and monitoring agent for affordable housing and accept compensation for those services into the Fund,
  - 9) to monitor the expiring use of any affordable housing in Oak Bluffs,
  - 10) to compensate Town employees for services provided as authorized by the Town Administrator, including but not limited to dedicated staff to Trustees, engineering support for project specific activities, and other Town services, as requested by the Trustees to the Town Administrator;
  - 11) to employ advisors and agents, including but not limited to accountants, appraisers and lawyers as the Trustees deem necessary;
  - 12) to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the Trustees deem advisable;
  - 13) to participate or join or form a partnership, corporation or any other legally organized entity to accomplish the purposes of this Trust and to participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation, and any other corporation, person or entity,
  - 14) to apportion receipts and charges between incomes and principal as the Trustees deem advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;
  - 15) to deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the Trustees may deem proper and to pay, out of Trust property, such portion of expenses and compensation of such committee as the Trustees may deem necessary and appropriate;
  - 16) to carry property for accounting purposes other than acquisition date values;
  - 17) to make distributions or divisions of principal in kind;
  - 18) to extend the time for payment of any obligation to the Trust,
  - 19) to establish criteria and/or qualifications for recipients and expenditures in accordance with Trust's stated purposes;
  - 20) to compromise, defend, enforce, release, settle or otherwise adjust claims in favor or against the Trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of this act, to continue to hold the same for such period of time as the Trustees may deem appropriate;

Notwithstanding anything to the contrary herein, Board of Selectmen approval shall be required for any of the following actions:

- a) to purchase real or personal property;
- a) to sell, lease, exchange, transfer or convey any personal, mixed, or real property; and
- b) to borrow money, or to mortgage or pledge Trust assets as collateral to the extent of the Trust's assets.

Notwithstanding anything to the contrary herein, the Trustees may not borrow, mortgage or pledge greater than the current Trust assets unless approved by the Board of Selectmen and by a 2/3 vote at any Annual or Special Town Meeting.

The Trustees shall have full power and authority, at any time and from time to time and without the necessity of applying to any court for leave to do so, to expend the 100% of the Trust funds, both principal and interest, to the extent that all funds hereunder may be expended if the Trustees deem such expenditure appropriate. All expenditures shall be made in conformance with the terms of this Trust and M.G.L. Chapter 44, s 55C.

#### ARTICLE IV APPOINTMENT AND TENURE OF TRUSTEES

There shall be a Board of Trustees consisting of all the members of the Board of Selectmen and all the members of the Affordable Housing Committee.

The Trustees shall be appointed for a terms corresponding to their terms as Selectmen or Affordable Housing Committee members.

#### ARTICLE V MEETINGS OF THE TRUSTEES

The Trust shall meet at least quarterly at such time and such place as the Trustees shall determine. Special meetings may be called by the Chairperson or by any two (2) Trustees. Notice of any meeting of the Trust shall be filed with the Town Clerk and posted in accordance with the Open Meeting Law, M.G.L. Chapter 39, s 23A, 23B and 23C.

A quorum of the Board of Trustees shall be the majority of the number of authorized Trustees. The Trustees shall annually elect one (1) Trustee who shall serve as Chairperson. The Chairperson may establish sub-committees and/or ad hoc task related committees to carry out the purposes of the Trust. Chairpersons of the sub-committees may be selected by the members of the sub-committees.

#### ARTICLE VI ACTS OF TRUSTEES

A majority of Trustees may exercise any or all of the powers of the Trustees hereunder and may execute on behalf of the Trustees any and all instruments with the same effect as though executed by all the Trustees. No Trustee shall be required to give bond. No license of court shall be required to confirm the validity of any transaction entered into by the Trustees with respect to the Trust Estate.

#### ARTICLE VII TREASURER AS CUSTODIAN

The Town of Oak Bluffs Treasurer shall be the custodian of the Trust's funds and shall maintain separate accounts and records for said funds.

He or she shall invest the funds in the manner authorized by M.G.L Chapter 44, s 55 (Public Funds on Deposit; Limitations; Investments,) s 55A, (Liability of Depositor for Losses Due to Bankruptcy), s 55B (Investment of Public Funds).

Any income or proceeds received from the investment of funds shall be credited to and become part of the Trust.

Expenditures by the Trust shall be processed through the warrant but shall be controlled by the provisions of M.G.L. Chapter 44, s.55C. The yearly approved budget, and any approved budget revisions will be recorded by the Town Treasurer.

As custodian, the Treasurer shall issue checks as directed by the Trustees.

In accordance with M.G.L. Chapter 44, s.55C (Municipal Affordable Housing Trust Fund), the books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices. The Trust shall be audited as part of the Town audit.

#### ARTICLE VIII DURATION OF THE TRUST

This Trust shall continue so long as authorized under the Laws of the Commonwealth of Massachusetts. Notwithstanding the foregoing, The trust may be terminated by a majority vote of the Town Meeting in accordance with M.G.L. Chapter 4, s 4B, provided that an instrument of termination together with a certified copy of the Town Meeting vote are duly recorded with the Dukes County Dis-

tract Registry of Deeds and the Land Court. Upon termination of the Trust, subject to the payment of or making provisions for the payment of all obligations and liabilities of the Trust and the Trustees, the net assets of the Trust shall be transferred to the Town and held by the Board of Selectmen for affordable housing purposes. In making any such distribution, the Trustees may, subject to the approval of the Board of Selectmen, sell all or any portion of the Trust property and distribute the net proceeds thereof or they may distribute any of the assets in kind. The powers of the Trustees shall continue until the affairs of the Trust are concluded.

**ARTICLE IX CONSTRUCTION OF TERMS**

In the construction hereof, whether or not so expressed, words used in the singular or in the plural respectively include both the plural and singular, words denoting males include females and words denoting persons include individuals, firms, associations, companies, trusts and corporations unless a contrary intention is to be inferred from or required by the subject matter or context. All the powers and provisions of the Trust herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts.

Reference to the Trustee shall mean the Trustee or Trustees for the time being hereunder.

**ARTICLE X RECORDING**

This Declaration of Trust shall be recorded with the Dukes County District Registry of Deeds and the Land Court.

**ARTICLE XI AMENDMENTS**

The Declaration of Trust may be amended from time to time except as to those provisions specifically required under M.G.L. Chapter 44, s 5C, by a vote of town meeting or by an instrument in writing signed by all of the Trustees and approved at a meeting called for that purpose, and approved by the Board of Selectmen provided that in each case, a certificate of amendment has been recorded with the Dukes County District Registry of Deeds and the Land Court.

**ARTICLE XII RECORD TO BE CONCLUSIVE, CERTIFICATE AS TO FACTS**

Every contract, deed, mortgage, lease and other instrument executed by a majority of the Trustees as appears from instruments or certificates recorded with the Registry of Deeds and Land Registration Office to be Trustees hereunder shall be conclusive evidence in favor of any person relying thereon or claiming thereunder, that at the time of the delivery thereof this Trust was in full force and effect and that the execution and delivery of such instrument was duly authorized by the Trustees except that instruments of amendment pursuant to Article XI and an instrument of termination pursuant to Article VIII hereof shall be conclusive only if it appears that the delegations, amendments or termination have been executed by all of the Trustees. Any person dealing with the Trust property or the Trustees may always rely on a certificate signed by any person appearing from instruments or certificates so recorded to be Trustee hereunder as to the identity of the then current Trustees or as to the existence or non-existence of any fact or facts which constitute conditions precedent to acts by the Trustees or in any other manner germane to the affairs of the Trust.

**ARTICLE XIII TITLES**

The titles to the various Articles herein are for convenience only and are not to be considered part of said Articles nor shall they affect the meaning or the language of any such article.

**Chapter XXVIII PARKS AND RECREATION DEPARTMENT**

**A. Use of the Town Parklands and Beaches -**

1. Government and Use of Town Parks and Beaches is under the care and control of

The Oak Bluffs Parks Commissioners, who also have independent powers under G.

L. c. 45.

2. Enforcement of Rules and Regulations by Town Police or Parks Commissioners – Sections C and D.
3. Issuance of Special Use Permits – Generally – Section E.
4. Special Use Permits - Special Events – Section F.
5. Enforcement/Revocation of Special Use Permits – Section G.

## **B. Definitions/Commissioners Rules and Regulations**

1. Parks and Beaches. Parks and Beaches shall include all sidewalks, buildings, structures, land, beaches, ponds, and other waters under the custody, care and control of the Oak Bluffs Parks Commissioners.

2. Rules and Regulations Governing the use of Parks & Beaches. In addition to the rules and regulations governing Parks and Beaches contained in this By-law, the Commissioners have also promulgated, and from time to time may amend, additional rules and regulations under the authority granted to them by G. L. c. 45, § 5. The Commissioners have also created application forms, checklists, and informational materials related to the uses and permits provided for herein, which can be obtained at the Parks Department.

## **C. Use of Parks/Prohibited Uses - Conduct**

1. No littering, cigarette butts, or glass bottles.
2. No graffiti, defacing, or disfiguring park structures or vegetation.
3. No lewd behavior or threatening acts are allowed.
4. No animals in playgrounds or ball fields. Animals must be under the control of their owner at all times, and all waste must be properly removed.
5. No parking of motor vehicles on park greenspace is allowed unless authorized by the Park Commissioners.
6. No open containers of alcohol or fires are allowed.
7. No commercial activity including, without limitation, signs, notices, advertisement, concessions, or soliciting/selling of goods, services, or articles.

8. No overnight sleeping.
9. Bikes, skateboards, and similar vehicles must yield to pedestrians. No motorized vehicles (except assistive devices) on pedestrian paths.
10. No amplified music.
11. Special Use Permits for events may permit or condition certain prohibited uses identified in subsections 6, 7, or 10.

**D. Use of Beaches/Prohibited Uses-Conduct**

1. Beach use is at individual's own risk. No Lifeguards on duty unless otherwise posted.
2. No dogs allowed on public beaches from May 15<sup>th</sup> — September 15<sup>th</sup> between 8:00 a.m. and 5:00 p.m., and on Inkwell Beach between 7:00 a.m. and 5:00 p.m. (during the same months).
3. Animals must be under the control of their owner at all times, and all waste must be properly removed.
4. No walking on jetties beyond signage or dunes, as posted.
5. No graffiti, defacing, or disfiguring beach structures or vegetation.
6. No boats, sailboards, or fishing in swimming areas between 7 a.m. and 6 p.m. from May 15<sup>th</sup> — September 15<sup>th</sup>.
7. No smoking.
8. No commercial activity including, without limitation, signs, notices, advertisement, concessions, or soliciting/selling of goods, services, or articles.
9. No littering, no glass bottles. Carry in - Carry out all trash and waste.
10. No disruptive behavior, including loud conversation, fighting, or similar conduct

reasonably likely to interfere with the public's enjoyment of the Parks and Beaches.

11. No amplified music.

12. No fires or open containers of alcoholic beverages are allowed.

13. Special Use Permits for events may permit or condition certain prohibited uses identified in subsections or 8, 11, or 12.

#### **E. Special Use Permits**

1. The Commissioners may issue a Special Use Permit upon receipt of a complete application for an otherwise prohibited activity identified in Sections C(6), (7), or (10), or in D(8), (11), or (12), or for a Special Event as outlined in Section F. The Commissioners shall decide each application on its merits, considering, in their discretion whether issuance of a permit:

- a.) increases or promotes public recreational opportunities;
- b.) preserves, or may be adequately conditioned to preserve, the environmental integrity of the particular park or beach; and
- c.) is consistent with the rights of the public to use the park or beach simultaneously with the event or use requested.

2. As noted in Section B(2), the Commissioners have promulgated, additional rules and regulations under their authority granted to them by G. L. c. 45, § 5 governing, and providing other limitations on, Special uses/Special Events, which the Commissioners may amend from time to time as they determine is necessary to govern Town Parks and Beaches.

3. The Commission has created application forms for Special Use Permit requests. An applicant must follow the rules set out on the application. All applications must be filed at a minimum of ten (10) days before the Commissioners meet in order to give adequate time for posting and comment.

4. The Commissioners may grant the application, deny the application, or approve the application with conditions. The Commissioners have broad discretion in acting on Special Use Permit applications.

5. An applicant must comply with any terms and conditions contained within a Special Use Permit. Any act authorized pursuant to a Special Use Permit may be performed only by the person(s) named therein, and any such authorizations may not be assigned or delegated, except as provided by the Special Use permit.

6. All person(s) receiving a Special Use Permit must agree, as a condition, to indemnify and hold the Town, the Commission, its employees and agents harmless

against all claims relating to or arising out of the use of Parks or beaches. The Commissioners may require the applicant to obtain liability insurance to support the Permittee's obligation to indemnify and hold the Town harmless.

#### **F. Special Use Permits – Special Events**

1. Special Events are defined as supervised or organized activities involving one or more participants or spectators, which might reasonably be expected to affect the public use or enjoyment, or the general environmental quality, of any Park or Beach.
2. No person shall conduct any Special Event upon the lands or waters of a Park or Beach without first obtaining a "Special Use Permit" from the Commissioners.
3. The "Special Event Permit Application" must be submitted ten (10) business days before a scheduled Park Commissioners meeting.
4. There shall be no advertising, posting, or digital notification (for e.g. via email or social medial distribution) of a proposed special event before the event has been approved by the Park Commissioners and any other necessary town entities.
5. The contact person and/or group are responsible for fulfilling the requirements imposed by the Special Event P-Use Permit.
6. Approved groups using park or beach areas shall respect the rights and privacy of neighbors.

#### **G. Enforcement**

1. All Special Use Permits are in the nature of a license, and are revocable at-will, in the discretion of the Commissioners.
2. Any violation of a Special Use Permit by its holder, its agents, employees or guests of any term or condition therein shall constitute grounds for its revocation by the Commissioners, whose action therein shall be final.
3. In case of revocation of any Special Use Permit, all monies paid for or on account thereof shall, at the option of the Commissioners, be retained by the Commission, and the holder of such permit, together with his or her agents, employees, and guests who violated said terms or conditions shall be jointly and severally liable to the commission for all damages and/or loss suffered by the Commission in excess of such monies retained. Neither such retention by the Commission of the whole nor any part of such monies nor the recovery or collection thereby of such damages, or both, shall in any manner relieve such person(s) from criminal liability for violation of any other state or local law, ordinance, rule or order, or from responsibility under governing law for the violation.

4. This By-law may be enforced by non-criminal disposition under G.L. Chapter 40, § 21D, in the following manner:
  - a. For the first offense within a twelve (12) month period, a \$100.00 fine;
  - b. For the second offense within a twelve (12) month period, a \$200.00 fine;
  - c. For the third and subsequent offense(s) within a twelve (12) month period, a \$300.00 fine.
5. Each day, or portion thereof during which a violation continues, shall constitute a separate offense.
6. This by-law may be enforced, including but not limited to the provisions of G. L. c. 40, § 21D, by Town Police Officers or other officers having police powers.
7. Upon request of the Commission, with Board of Selectmen approval, Town Counsel shall take legal action as may be necessary to enforce this by-law and the conditions of Special Use Permits issued under its provisions.
8. The Commissioners may from time promulgate and amend a separate fine schedule under the independent authority granted to them by Massachusetts law.

#### “Plastic Checkout Bag Bylaw

##### Findings and Purpose

Single-use plastic bags are an environmental nuisance; adversely affect public health; are a detriment to tourism; and impair the overall quality of life of the Town’s residents and visitors.

Because plastic bags are lightweight, they easily become airborne even when properly disposed of, littering beaches, roadsides and sidewalks. They clog storm drainage systems, contribute to marine and terrestrial pollution, and detract from the natural beauty of the Town for visitors and residents alike.

Plastic bags photo-degrade, disintegrating into minute particles which adsorb toxins and pose a threat to riparian and marine environments, contaminating the food chain, water and soil. They are also a menace to marine life, killing birds, marine mammals, sea turtles and fish each year through ingestion and entanglement.

The vast majority of plastic bags are not recycled, and recycling of plastic bags is not available on Martha’s Vineyard. Their disposal adds to the Town’s waste management expense, both through the cost of transporting waste to off-island landfills and due to their contamination of the single-stream recycling system.

Single-use plastic bag ordinances have proven to be effective in reducing plastic bag consumption and litter and are part of a growing global movement towards sustainability.

The Town is committed to protecting the environment and the public health, safety, and welfare of its citizens. The goal of this bylaw is to reduce the common use of plastic checkout bags and to encourage the use of reusable bags by consumers, thereby reducing local land and marine pollution, advancing solid waste reduction, protecting the Town's unique natural beauty and irreplaceable natural resources, and improving the quality of life for the citizens of the Town.

### Definitions

“Checkout Bag” means a bag with or without handles provided by a Store to a customer at the point of sale that is intended for the purpose of transporting food or merchandise out of the Store.

“Plastic Checkout Bag” means a plastic Checkout Bag that is less than 4 mils thick (and, for the avoidance of doubt, includes such plastic bags that are marketed as ‘bio-degradable’ or ‘compostable’).

“Recyclable Paper Bag” means a paper bag with or without handles that is 100 percent recyclable and contains at least 40% post-consumer recycled content (except that an eight pound or smaller paper bag shall contain a minimum of 20% post-consumer recycled content) and visibly displays both the word "recyclable" and the percentage of post-consumer recycled content.

“Reusable Bag” means a bag with handles that is specifically designed and manufactured for multiple reuse and is made of polyester, polypropylene, washable fabric, or other durable material and, in the case of plastic bags, is at least 4.0 mils in thickness.

“Store” means any commercial enterprise selling goods, food or services directly to the public, whether for or not for profit, including, but not limited to, convenience and grocery stores, markets, restaurants, pharmacies, liquor stores, take-out food purveyors, and merchandise retailers.

### Use Regulations

No Store in the Town shall provide to any customer a Plastic Checkout Bag.

If a Store provides Checkout Bags, they may only provide Recyclable Paper Bags or Reusable Bags.

This bylaw does not apply to the clear or opaque plastic bags without handles provided to a customer:

- a. to transport loose produce, prepared food, bulk food, or small unpackaged products (e.g. beads and nails or other small hardware items) to the point of sale; or

b. to contain or wrap foods to retain moisture or to segregate foods (like meat or ice cream) or other items to prevent contamination or damage when the items are placed together in a Recyclable Paper Bag or Reusable Bag.

Stores may charge and retain a fee for any Recyclable Paper Bag or Reusable Bag that they provide. The fee could be used to recover the costs of the bag and/or as an incentive to customers to bring their own Reusable Bags. Customers are encouraged to bring their own Reusable Bags when they shop, and Stores may offer a credit to customers who bring their own bags.

#### Administration and Enforcement

4.1 This bylaw may be enforced by an agent of the Board of Health.

4.2 A person, individually or by his servant or agent, who violates any provision of this bylaw may be penalized by a non-criminal disposition pursuant to G.L. Chapter 40, Section 21D and the Town's non-criminal disposition bylaw. The following penalties apply:

first violation: a written warning.

second violation: \$50 fine.

third and subsequent violations: \$100 fine.

Each day the violation continues constitutes a separate violation.

#### Effective Date

5.1 This bylaw takes effect on January 1, 2018, or take any other action relating thereto.

#### Section 6. Waiver

6.1 The Board of Health may waive the effective date for a Store for up to one year if that store's inventory of non-compliant bags will not be able to be used prior to January 1, 2018.

6.2 The Board of Health may, upon written application by a Store, waive the effective date for that Store for up to one year upon a showing of undue hardship. The cost of compliant bags shall not constitute undue hardship. The Board of Health shall determine what constitutes hardship having regard to store design, checkout facilities, among other concerns. The waiver may be extended for further one year periods for up to two additional years upon a showing of continued hardship, provided the Board is satisfied that the Store has taken reasonable steps to achieve compliance.

*(Voted ATM April 11, 2017 Article 44. AG APPROVED July 12, 2017 POSTED July 18, 2017*

“2018 Petition to ban the release of lighter-than-air balloons in Oak Bluffs.

Release of Balloons

(1) No person, nonprofit organization, association, firm or corporation ,shall knowingly release, organize the release of or intentionally cause to be released into the atmosphere any helium or other lighter-than-air gas balloons in the Town of Oak Bluffs. Any violation of this bylaw shall result in a fine of \$100.

(2) The provisions of section (1) shall not apply to balloons which are used for the purpose of carrying scientific instrumentation during the performance of an experiment or testing procedure or by a person on behalf of a governmental agency or pursuant to a governmental contract for scientific or meteorological purposes.”

*(Petition Article 28 ATM April 10, 2018 AG approved July 6, 2017, Posted July 6, 2017)*