

TOWN OF AQUINNAH BY-LAWS

CHAPTER 1:

The Annual Town Meeting shall be held upon the second Tuesday in May as such time and place as the Selectmen shall determine. At the Annual Town Meeting, articles of the warrant shall be acted upon. There shall be an election of Town Officers to be held the day following the Annual Town Meeting; the polls to be opened and closed at such times as the Selectmen shall determine consistent with the statute in such case made and provided.

All articles to be acted upon the Annual Town Meeting shall be filed with the Selectmen on or before the fourth Tuesday of March proceeding the second Tuesday of May when the warrant will be closed to all requested articles.

All warrants for the Town Meetings shall be published in a newspaper of current circulation on the Island or posted at the Aquinnah Town Hall and Schoolhouse bulletin board at least seven days before the date of the meeting called. No adjournment of the meeting shall affect the election of officers to be held on the day following the Annual Town Meeting.

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 voters of the Town as of the time of said meeting, but a number less than a quorum may from time to time adjourn such meetings. This shall not apply to meetings or parts of meetings as are devoted to the election of Town Officers.

Special Town Meetings may be called from time to time as provided by statute, and the rules shall be consistent with the rules for Annual Town Meetings.

CHAPTER II:

The Board of Selectmen may annually appoint an attorney at law to act as Town Counsel who shall be paid such salary as the Town may vote as a retainer.

CHAPTER III: JUNK DEALERS

No person shall be a collector of or dealer in junk, old metals, or second-hand articles, or a keeper of a shop for the purchase, sale or barter of junk, old metals and second-hand articles unless licensed thereof.

CHAPTER IV: PEDDLERS

The Selectmen may make rules not contrary to law to regulate peddling or soliciting by licensed persons.

CHAPTER V:

Section 1: Obstruct Streets

No person, except officers of the Town in the lawful performance of their duties and those acting under their orders, shall obstruct any sidewalk or street or any part thereof, or break or dig the ground of the same without first obtaining a written license or permission from the Selectmen.

Section 2: Waste

No person shall throw, place or cause to be thrown or placed on ways open to the public or any property of the Town any noxious or refuse liquid or solid substance.

Section 3: Digging

No person shall take clay or other substance or dig into the lands owned and controlled by the Town for any purpose except by licensed or written permission by the Selectmen given with the provisions and requirements therein.

Section 4: Ways

No person shall erect barriers to impeded traffic on any ways open to the public or in any manner obstruct such ways.

Section 5: Motor Vehicles

Notwithstanding that a higher limit may be posted, no person shall operate a motor vehicle on a public street or way, within the Town of Aquinnah, at a rate of speed in excess of that which is reasonable and proper, having regard to traffic, the use of this reasonable and proper, having regard to traffic, the use of the way and safety of the public. Whoever violates this by-law shall be punished by a fine of not more than \$50.00.

CHAPTER VI: HUNTING

Any person engaged in the act of hunting or the discharge of a firearm within the limits of the Town of Aquinnah shall have in his/her possession or on his/her person,

A. Written, notarized permission from the landowner

B. A certified copy of the plot plan which shows the boundaries of the land with respect to which shows the boundaries of the land with respect to which said permission has been granted. Both said written permission and plot plan must be produced on demand of all officers empowered to enforce Town and State laws and landowners, lessees or their agents. Those found in violation shall be subject to a fine of Fifty dollars (\$50.00), for each offense. This is an arrestable offense under M.G.L. C272 sec. 59 6/91. **(Adopted 2/18/86, A.G. approval 3/14/86)**

CHAPTER VII: PENALTY

Any person violating any of the foregoing by-laws shall be liable to a fine not to exceed \$50.00 for each offense.

CHAPTER VIII: HARBORS

Permanent moorings shall be prohibited in Menemsha Pond and West Basin except by or to resident fisherman.

CHAPTER IX: TRAILERS

No house trailer, mobile home or camper (defined as a unit providing sleeping and living quarters mounted on or towed by a motor vehicle and whether capable of being detached from or built as an integral part of said vehicle, and whether so mounted or detached) shall be kept in the Town of Aquinnah. Provided, however, that the foregoing shall not prohibit the presence of a trailer camp should be established under the provisions of Chapter 40 of the General Laws of Massachusetts and with the consent of the Board of Selectmen, and also provided that the Board of Selectmen are authorized to appoint, in accordance with Section 14 of Chapter 40-A of the General Laws, an Appeal Board consisting of five members.

CHAPTER X: PUBLIC SLEEPING

No person shall be allowed to sleep on any beaches within the Town limits between the hours of 9:00 PM and 7:00 AM without written permission of the owners thereof or persons in lawful possession of said beaches.

Between the hours of 8:00 AM no person shall sleep in the open or set up any tent on public property; nor shall any person do those acts on private property within the Town of Aquinnah, without written permission of the owner of the property.

Any person violating any of the foregoing by-laws shall be punished by a fine of not more than \$50.00 for each offense. Each day that such offense continues shall constitute a separate offense.

CHAPTER XI: MOORINGS

No boats, ships, or vessels of any kind shall anchor in the area of Menemsha Pond, lying within the Town of Aquinnah, unless they have their heads sealed.

Any violation of this by-law shall be punished by a fine not to exceed \$200.00 for each offense.

CHAPTER XII: PUBLIC NUDITY

No persons in a nude state shall be within the Town of Aquinnah 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 \$50.00.

CHAPTER XIII: PUBLIC PARKING

The Town of Aquinnah is permitted to charge a parking fee for a certain parcel of land conveyed to the Town of Aquinnah by the County.

CHAPTER XIV: CLIFF CLIMBING

No person shall climb or trespass on the cliffs except trails marked for this purpose. Any person violating this by-law shall be punished by a fine not more than \$50.00 for each offense.

(Arrestable offense under M.G.L. Ch. 272 sec. 59 6/91)

CHAPTER XV: FINANCE COMMITTEE

Section 1: The moderator shall, before the first day of May 1972, appoint a Finance Committee, consisting of three registered voters of the Town and two alternates, one of whom shall be an elected official of the Town, nor an employee of the Town who is responsible for compilation and presentation of the departmental budget. Two members of the original committee shall be appointed for a term of three years, two for a term of two years, and three for a period of one year. All subsequent appointments to this committee to replace members whose terms have elapsed shall be made by the moderator for the term of three years. No committee member shall serve more than three consecutive terms. Each new member must be sworn before the Town Clerk before the first meeting (Chapter 41, Section 107). Any member may resign by giving a letter to the Clerk (Chapter 4, Section 90). member absent from fifty percent of the regular meetings during any twelve month period may be removed by a two-thirds vote of the other members present and voting. **Amended to Three members - February 18, 1986**

Section II: In the event of any vacancy in its membership, the Finance Committee shall notify the moderator in writing, and the Moderator shall thereupon fill such vacancy.

Section III: Any elected or appointed town official must at the request of the Finance Committee make available all books and records of his department.

Section IV: The Finance Committee shall have all the powers and duties set forth in Chapter 39, Section 16 of the General Laws, and shall consider and act upon any and all municipal questions to be included as Articles in Warrants for Annual and Special town Meetings, including the completion of the annual Town budget. All articles to be included in the Warrant for the Annual Town Meeting shall be presented to the Finance Committee by the Selectmen for their consideration not later than 15 days before said meeting. The Finance Committee shall make its report to each Town Meeting, which report and recommendations if so voted by the said Committee, shall be printed by and at the expense of the Town. **Adopted 2/18/86, Approved by A.G. 3/4/86**

CHAPTER XVI: DOGS

Dogs are to be leashed and restrained by their owner or keeper. No person who owns or keeps a dog shall allow the animal under his care to run free

when not restricted to the premises of said owner or keeper. When off said premises, said dog shall be leashed or restricted.

Any person violating any provisions of this by-law shall be punished by a fine of not more than \$5.00 for the first offense, \$10.00 for the second and \$25.00.

CHAPTER XVII: COMMERCIAL SCALLOP LICENSES

A one year residency requirement is necessary for obtaining a Commercial Scallop License.

CHAPTER XVIII: VEHICLES ON BEACHES

No person shall operate any motorized vehicle on the beaches or dunes within the Town of Aquinnah, belonging to the Town without permission of the Board of Selectmen or on any private beach or dunes without the permission of the owner.

Any person violating this by-law shall be punished by a fine not exceed \$50.00 for each offense.

CHAPTER XIX: NOTIFICATION OF PUBLIC HEARING FOR NON-RESIDENT TAXPAYERS

Upon filing with the Town Clerk by a non-resident landowner, annually, prior to January of each year, of a request for notice of any public hearing held pursuant to Chapter 40A of the General Laws, and the payment of a fee of \$5.00, the Town Clerk shall mail notification of such a hearing to such landowner not later than seven days prior to such hearing.

CHAPTER XX: VEHICLES AT THE CLIFFS

No person, except deliverymen, shall enter upon the Town owned land at the Cliffs with a motor vehicle without the written permission of the Board of Selectmen. Any person violating this by-law shall be punished by a fine of not more than \$50.00 for each offense.

CHAPTER XXII: SEPTIC SYSTEM COVERS

No person owning land in the Town of Aquinnah shall maintain on said land any cover for a cesspool, septic tank, or leach pit weighing less than 150 lbs. unless such cover is securely fastened. New installations shall use cement covers weighing at least 150 lbs.

Any person that violates this by-law shall be punished by a fine of not more than \$50.00. each day of such violation shall constitute a separately punishable offense.

CHAPTER XXII: PLANNING BOARD

The Planning Board shall consist of five members. Members of the Planning Board shall be elected for a three year term. A member duly holding office on the effective date hereof shall continue office until the expiration of his term of office. A vacancy occurring otherwise than by the expiration of his term shall be filled for the unexpired term in the manner provided in Chapter 41, Section 11 of the Massachusetts General Laws.

Members shall be elected for terms of such length and so arranged that the term of one member will expire each year. In order to ensure that the term of at least one member expires each year, the following procedures shall be adopted:

At the 1986 Annual Elections, two persons shall be elected fro one year, two persons shall be elected for two years and one person shall be elected for three years.

The above by-law adopted 1986

Amended 12/14/89 under Article 10 to approve a sixth voting member.

Amended 08/22/06 under Article 5 to substitute "5 members" for "6 members".

CHAPTER XXIII: LIGHTING

Purpose: To preserve the rural character of the Town, promote the habitat of nocturnal wildlife, prevent light pollution, preserve and enhance the character of nighttime views and to be considerate neighbors.

Outdoor Lighting: All outdoor lighting must be shielded and pointed downward so that no lamp or direct glare is visible from the property line or

from any public or private way except the portion of a driveway used for loading/unloading and parking. All outdoor light fixtures should be placed so that the lamp is no higher than the eave line of the structure for a one story building of the first story on a multiple story buildings.

Outdoor lighting is only allowed for the safe use and enjoyment of outdoor spaces at night not for illuminating homes or landscapes. Outdoor lighting must, therefore, be shielded and focused to maximize the illumination of space (e.g. a stairway, walkway path, deck, grill, or parking area) and minimize the illumination of adjacent structures and vegetation. Exterior lamps should be of the lowest wattage necessary to insure safe use of the exterior space, and "soft white", red, or yellow colored bulbs should be used wherever possible.

All existing outdoor lighting must comply with this by-law within one year of its approval.

Exceptions:

1. Public street lamps are allowed to be visible from the property lines and public and private ways, but must be shielded so that a direct glare will not be observable at an angle greater than 45 degrees from nadir of the vertical axis of the light source.
2. Tennis courts (see section 2.30, item 10 of the Aquinnah Zoning by-laws)
3. Emergency warning devices shall be by permit from the building inspector to insure as much compliance with this by-law as possible.
4. The lighthouse beacon, vehicular lights and temporary emergency lighting are exempt from these provisions.

Adopted 12/10/98

Approved by the A. G. 02/22/99

CHAPTER XXIV: WETLANDS

Section 1: Purpose

The purpose of this by-law is to protect the wetlands, related water resources, and adjoining land areas in Aquinnah by prior review and control of activities deemed by the Conservation Commission likely to have significant adverse impact of significant cumulative adverse effect upon

wetland values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, prevention of water pollution, fisheries, shellfish, wildlife habitat, recreation, agriculture, and aquaculture; or collectively, the “wetlands values protected by this by-law”.

Section II: Jurisdiction

Except as permitted by the Conservation Commission or as provided in this by-law, no person shall remove, fill, degrade, build upon, or alter the following resource areas: any freshwater wetland, coastal wetland, marsh wet meadow, bog, or swamp and land lying within 200 feet thereof; any beach, dune, or flat and land lying within 200 feet thereof; any lake, river, pond, stream, estuary, or the ocean; any land under said waters; or any land subject to flooding or subject to inundation by groundwater, surface water, tidal action, or coastal storm flowage and land lying within 200 feet thereof.

Section III: Exceptions

The permit and application required by this by-law shall not be required for maintaining Aquinnah’s salt ponds for the culture of fish and shellfish, or for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunications services, or replacing pilings or repairing but not changing or expanding existing and lawfully located docks and moorings, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards in regulations adopted by the Commission.

The permit and application required by this by-law shall not apply to emergency projects necessary for the protection of the health or safety of the public provided that the work is to be performed by an agency of the Commonwealth or a political subdivision thereof provided that the advance notice, oral or written, has been given to the Commission prior to the commencement of work or within 23 hours after commencement, provided that the work is performed only for the time and place certified by the Conservation Commission for the limited purposes necessary to abate the emergency project a permit application shall be filed with the Commission for review as provided in this by-law. Upon failure to meet these and other requirements of the Commission the Commission may after notice and a

public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

The permit and application required by this by-law shall not apply to maintenance of drainage and flooding systems of cranberry bogs, to work performed for normal maintenance or improvement of land in agricultural use or in aquacultural use.

Other than stated in this section the exceptions provided in the Wetlands Protection Act shall not apply.

Section IV: Applications for Permits and Requests for Determination

Written applications shall be filed with the Commission to perform activities regulated this by-law affecting resource areas protected by this by-law. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the environment. No activities shall commence without receiving and complying with a permit issued pursuant to this by-law.

The Commission may accept as the application and plans under this by-law the Notice of Intent and plans filed under the Wetlands Protections Act G.L., c131, sec. 40.

Any person desiring to know whether or not proposed activity or an area is subject to this may request in writing a Determination of Applicability (Request for Determination). Such a request for determination shall contain data and plans specified by the regulations of the Commission. the Commission may waive the filing fee and costs and expenses for an application or request filed by a person having no financial connection with the property which is the subject of the request.

In addition to the filing fee, the Commission is authorized to require any applicant to pay the reasonable costs and expenses borne by the Commission for the specific expert engineering and consultant services deemed necessary by the commission to review a Notice of Intent and/or Request for Determination up to a maximum of two thousand and five hundred dollars (\$2,500.00). Said payment can be required at any point in the deliberation prior to a final decision rendered. Said services may include but are not necessarily limited to wetlands survey and delineation, wetland resource

area reports, hydrogeologic and drainage analysis, wildlife evaluation, shellfish surveys and environmental/land use law. The Commission is hereby authorized to charge for said fee when a Notice of Intent and/or Request for Determination proposes any of the following: 250 square feet or greater of alteration of fresh water or coastal wetland; 25 linear feet or greater of alteration of a bank or waterway; 250 square feet of alteration of the 100 foot buffer zone of the resource are; alteration of greater than 250 square feet of land under a water body; discharge of any pollutants into or contributing to surface or groundwater resource areas; or the construction of a detention basin. Any unused portion of said fee shall be returned by the Commission to the applicant within forty-five calendar days of written request for same by the applicant unless the Commission decides in a public meeting that other action is necessary. Any applicant aggrieved by the imposition of, or size of the fee, or any act related thereto, may appeal according to the provisions of Massachusetts General Laws.

Section V: Notice of Hearings

Any person filing an application or a request for determination with the Commission at the same time shall give written notice thereof to all abutters according to the most recent records of the assessors, including those across a traveled way and those within 300 feet across a body of water. The notice to abutters shall enclose a copy of the application or request, the notice of hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any application and a public meeting on the determination of applicability, with notice given at the expense of the applicant, five working days prior to the hearing, in a newspaper of general circulation in Aquinnah.

The Commission shall have authority to continue the hearing to date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information and plans required of the applicant deemed necessary by the Commission in its discretion. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

The Commission shall issue its permit or determination in writing within 32 days of the close of the public hearing thereon.

Section VI: Permits, Determinations and Conditions

Determinations: If in a response to a request for Determination, the Commission determines that the activities which are the subject of the application are within the area described in Section II and that such activities will alter the resources area, the applicant must then apply for a permit for such activities.

If the Commission after a public hearing determines that the activities which are the subject of the application are likely to have a significant adverse impact or significant cumulative effect upon the wetland values protected by this by-law, the Commission within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

The commission is empowered to deny a permit for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specification, performance standards and other requirements of the Commission's regulations; for failure to avoid or prevent unacceptable significant or cumulative effects upon the wetlands values protected by the by-law; and where no conditions are adequate to protect those values.

A permit shall expire three years from this date of issuance. Notwithstanding the above the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that the annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one year period, provided that a request for renewal is received in writing by the Commission prior to expiration or is renewed by the Commission prior to its expiration.

For good cause the Commission may revoke or modify a permit issued under this by-law after public notice and public hearing, and notice to the holder of the permit.

The Commission may combine the permit or other action on an application issued under this by-law with the Order of Conditions issued under the Wetlands Protection Act.

If the applicant is denied a permit for the activity he proposes, he may appeal to a special meeting of a joint committee of the majority of each of the following permitting Boards: Board of Selectmen, Board of Health, and Planning Board. The meeting shall be called by the chairman of the Board of Selectmen and written notice shall be made to the applicant and to all members of the Boards concerned. After hearing all the evidence provided by the applicant and the Conservation Commission, said committee shall, by majority vote, decide if the proposed activity is likely to have a significant or cumulative effect upon the value of Aquinnah resources protected by this by-law.

Section VII: Regulations

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

Section VIII: Definitions

The following definitions shall apply in the interpretation and implementation of this by-law. Otherwise the definitions adopted in the Regulations governing the Massachusetts Wetland Protection Act (Chapter 131, Section 40) compiled and in full force and effect on 06/30/83, shall apply.

The term "person" shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the United States government, the Commonwealth and all political subdivisions therefore to the extent subject to town by-laws, administrative agency, public or quasi-public or quasi-public corporation or body, Aquinnah, and any other legal entity, its legal representatives, agents or assigns.

The term “alter” shall include without limitation, the following activities when undertaken to upon, within, or affecting resource areas protected by this by-law:

- a) Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- b) Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- c) Drainage or other disturbance of water level or water table;
- d) Dumping, discharging, or filling with any material which may degrade water quality;
- e) Placing of fill, or removal of material which would alter elevation;
- f) Driving of piles in new locations;
- g) Destruction of wetland vegetation. Mowing of lawns and normal maintenance of trees and shrubs and the non-commercial cutting of firewood for personal use shall not be considered construction;
- h) Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
- i) Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

Section IX: Security

As part of a permit issued by this by-law, in addition to any security required by any other municipal or state board, agency or official, the commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission.

Section X: Enforcement

The Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purposes of performing their duties under this by-law and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary.

The Commission shall have authority to enforce this by-law, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions.

Upon request of the Commission, Board of Selectmen, Town Counsel shall take legal action for enforcement under criminal law.

Municipal boards and officers, including any police officer or other officer having police powers, shall have the authority to assist the Commission in enforcement.

Any person who violates any provision of this by-law, regulations thereunder, or permits issued thereunder, 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.

In the alternative to criminal prosecution, the Commission may elect to utilize the non-criminal disposition procedure set forth in G.L. c.40, Section 21D.

Section XI: Burden of Proof

The applicant for a permit shall have the burden of proving by preponderance of the credible evidence that the work proposed in the application will not have unacceptable significant or cumulative effect upon the wetland values protected by this by-law. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

Section XII: Relation to the Wetlands Protection Act

This by-law is adopted under the Home Rules Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, G.L. c131, Section 40, and regulations thereunder and independent of the Zoning Act, Massachusetts General Laws, Chapter 40A.

Section XIII: Severability

The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.

CHAPTER XXV: ALARMS

Whoever owns a residence or building and has a burglar alarm shall not have more than two false/trouble alarms per calendar year. False/trouble alarms caused by thunderstorms, hurricanes, certain power outages and other valid situations, as determined by the Police Chief, shall be exempt from this by-law. Whoever violates this by-law shall be punished by a fine of \$25.00 for the first offense, \$50.00 for the second through fifth offenses, and \$100.00 for the sixth and subsequent offenses. Municipality owned buildings shall be exempt from this by-law.

Adopted 05/10/1988, Approved by AG 06/06/1988

CHAPTER XXVI: FINANCE COMMITTEE

The Moderator shall before the first day of May, 1972, appoint a Finance Committee consisting of three registered voters of the Town and two alternates, and except as otherwise provided below no one of whom shall be an elected official of the Town, nor an employee of the Town who is responsible for the compilation and presentation of the departmental budget, and by adding in Section 2 the following sentence: Whenever the Moderator cannot fill such vacancy the Selectmen may act as the Finance Committee until other members can be appointed.

Amended 01/25/1988, Approved by AG 02/03/1988