

the town and receive another badge. Badges issued hereunder shall conspicuously state that the Town of Tyngsborough does not endorse the goods or services being solicited.

- E. Permits and identification badges shall be used only by the person to whom they were issued and may not be transferred or extended to include any other person.

**Section 3. Hours of operation.**

There shall be no door-to-door solicitation or selling before 9:00 a.m. or after 6:00 p.m. for any person subject to registration as defined in Section 1. Registration required., paragraph A.

**Section 4. No solicitation list; posted premises**

Any residence or business that does not wish to be visited by solicitors may request inclusion by the Chief of Police on a “no solicitation” list. A copy of such “no solicitation” list shall be provided to each registrant hereunder; the list shall be updated by the Chief of Police or his or her designee regularly and no less frequently than once per month; and registrants shall be obligated to request a copy of the list monthly. In addition or as an alternative to the foregoing, a residence or business may opt to clearly and legibly display an unobstructed “no soliciting,” “no solicitation” or comparable sign on its premises; and no registrant shall enter onto or solicit at any property so posted.

**Section 5. Suspension or revocation of permit.**

Any permit issued under this article may be suspended or revoked by the Chief of Police for any of the following reasons:

- A. Fraud or misrepresentation in the application for the permit.
- B. Fraud or misrepresentation in the course of soliciting.
- C. Conducting the business of soliciting contrary to the conditions specified in this article.
- D. Conducting the business of soliciting in such manner as to violate any of the laws or regulations of the Commonwealth of Massachusetts or the Town of Tyngsborough.
- E. Transfer or extension of a permit as is prohibited hereunder.
- F. Conducting the business of soliciting at any property that displays a “no soliciting”, “no solicitation”, or comparable sign, or at a property that has been added to a “no solicitation” list administered by the Town.

**Section 6. Enforcement.**

This Bylaw may be enforced by the Chief of Police or his or her designee, through any lawful means in law or in equity, including but not limited to noncriminal disposition in accordance with the provisions of G.L. c. 40, § 21D. Violations shall be punished by a fine of \$200 per offense. Each violation and each day that such violation occurs or continues shall constitute a separate offense.

**ARTICLE LIV AERATOR USE REGULATIONS**

**Article LIV AERATORS**

**SECTION 1: PURPOSE**

The frozen surfaces of Tyngsborough’s lakes and ponds are regularly utilized by snowmobiles, UTV/ATV operators, cross-country skiers, snowshoers, fishermen, and other nature enthusiasts, and are immediately adjacent to many of the homes and public spaces in Tyngsborough. The existence of aeration equipment which dissipates or impedes ice formation on the lakes and ponds present a threat to public safety, and the health and welfare for all persons using ice-covered lake surfaces in Tyngsborough. Accordingly, it is the purpose of the Town of Tyngsborough to adopt this bylaw concerning the removal of ice by use of aerators/circulation pumps on the town’s lakes and ponds, which include the following: Flint Pond, Lake Althea, Lake Mascuppic, Long Pond and Lake Massapoag.

**SECTION 2: DEFINITIONS**

For the purposes of this Article, the following words and phrases have the following meanings:

**Aerator/aerator system (AAS):** Any device or equipment used which affects the water's surface by supplying or inducing air into water so as to prevent or inhibit the natural formation of ice on the water's surface.

**Bubble aerator:** An aerator/aerator system that principally or primarily operates by means of the generation of air bubbles to agitate surrounding water.

**Fan aerator:** An aerator/aerator system that principally or primarily operates by means of a fan that rotates to create movement of surrounding water.

**Cease and desist:** An order issued which requires that all aeration/circulating activity be stopped.

**Circulating pump:** A pump or other mechanized apparatus designed to pump and circulate water, or which functions by circulating water, the effect of which is to prevent or impede the normal formation of ice on the water's surface.

**Person:** Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town Bylaws and regulations, administrative agency, public or quasi-public corporation or body, the Town of Tyngsborough, and any other legal entity, its legal representatives, agents, or assignees.

### **SECTION 3: AUTHORITY**

This bylaw is adopted by the Town of Tyngsborough under the powers conferred by General Laws Chapter 40, Section 21 and the powers conferred by Article 89 of the Massachusetts Constitution, the Home Rule Amendment, in the interest of the health, safety and welfare of its citizens and visitors to the Town of Tyngsborough. The terms and provisions of this bylaw shall be interpreted and applied as minimum standards and requirements for the promotion and protection of the public health, safety and welfare, and for the peace and preservation of natural resources and public and private property within the Town of Tyngsborough.

### **SECTION 4: ADMINISTRATION**

#### **ADMINISTERING AUTHORITY**

The Conservation Commission is designated as the Authority and shall administer, implement and enforce these regulations. Any powers granted to or duties imposed upon by the Commission may be delegated to town officials, employees, and agents of the Conservation Commission.

#### **WAIVERS**

The Conservation Commission may waive strict compliance with any requirement of the regulations promulgated hereunder, where the waiver:

- 1) Is allowed by federal, state and local statutes and/or regulations;
- 2) Is found by the Commission to be in the public interest, and;
- 3) Is found by the Commission to be consistent with the purpose and intent of the Tyngsborough Aerator Regulations.

Any applicant may submit a written request for a waiver, accompanied by supporting information explaining how the waiver will comply with the purpose of the bylaw. All waiver requests shall be acted on within 60 days by the Conservation Commission, which shall provide a written decision. If additional information is required, the Conservation Commission may extend the review period. If the applicant objects to an extension, or fails to provide requested information, the waiver request may be denied without prejudice to further application for waiver by the Conservation Commission.

#### **USES OF AERATORS**

Aerators and aerations systems may be used in the following manner within the Town of Tyngsborough:

1. The use of bubble aerators that bubble the water are permitted as long as they create minimal melting that is centralized to the dock area. Fan aerators, as well as any aerator that creates wide areas of melted ice are prohibited.
2. Any person who installs an AAS device must notify the Tyngsborough Conservation Commission, Fire Dept., and Police Department of the presence of the device on the property.
3. Aeration/aerator system devices shall be placed under dock allowing 6” to 1 ft. of open water from the edge of the dock. Aerators shall not encroach on any abutting property.
4. Any person operating an aerator or aerator system pump device must perform one of the following:
  - a. Erect and maintain a barricade around the area of open water created by the AAS pump consisting of uprights that are spaced at adequate intervals to maintain the barricade, and are connected by continuous rope, cord, or similar material at an elevation of at least 2.5 feet, and not more than 4.5 feet, above the surface of the water level and/or ice surface. The connecting rope, cord, or similar material shall have reflectorized fluorescent, or lighted ribbon, tape, or another type of reflectorized device attached to it, so as to be highly visible. This material or device shall be of sufficient strength to permit retrieval of the entire barricade following the melting of the ice. Any person erecting a barricade shall remove the barricade all parts of the barricade immediately after the ice has melted. Any instance of a barricade or its parts that are allowed to float free or sink shall constitute a violation of the ordinance.
  - b. Erect and maintain a visual warning sign that says “OPEN WATER” on the barricade structure. The letters must be at least 6 inches in height and are reflectorized.
  - c. The barricades and visual warning signs required by this section must be erected between November 15 and March 15 of each calendar year.
5. No persons may, by use of an AAS pump device interfere or alter ice in the riparian zone of other property owners’ properties.
6. No person shall operate an AAS pump which results in the creation of open water more than 1 foot lakeward from the structure that the AAS pump is attached to. This prohibition will be terminated during the time period beginning April 1 st each year until the lake ice has melted in the spring.
7. No person shall attach an aerator or aerator system to anything other than a legal structure (dock, retaining wall, boardwalk, etc.).
8. No person shall operate an aerator or aerator system in a fashion that causes mixing action or disturbance to a lake, pond, or body of water’s bottom.
9. No person shall operate an aerator or aerator system in a manner that limits the open water in the dock vicinity by orienting the aerator or bubbler to create an up-flow of water.
10. No person shall operate an aerator or aerator system in a manner that creates an unsafe condition.

## **BEST PRACTICES**

The Town of Tyngsborough encourages, but does not require, the following practices:

1. Aerators and aerator systems of all types should be operated on a timer that runs only the duration necessary to keep the dock ice free.
2. Subject to the requirements of this bylaw, aerators and aerator systems should be installed in a manner that avoids impacting the ice on any neighboring property
3. Aerators and aerator systems of all types should be operated in a manner that seeks to avoid the creation of any unsafe ice conditions in recreational areas used by skaters, fishermen, snowmobilers, etc.

## **SECTION 5: VIOLATION AND PENALTIES**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this bylaw. Any person or landowner who violates, or allows others to violate, these regulations may be subject to enforcement actions outlined below.

### **NOTICE OF VIOLATION**

The Conservation Commission, or its authorized agent may issue a written notice of violation to enforce the provisions of the bylaw thereunder, which may include requirements to: cease and desist from operation of an AAS pump device that has created an unreasonable risk of exposure to injury for persons

on the ice. The Conservation Commission shall have the authority to order cessation of operation of said equipment even if operated in accordance with the foregoing bylaw until such unreasonable risk of injury has ceased.

#### PENALTY

Violation of this bylaw may be enforced by The Conservation Director, the Police Department, and the Building Inspector of the Town of Tyngsborough under the Non-Criminal Disposition as provided for by General Laws Chapter 40, Section 21D. The penalty for the 1<sup>st</sup> violation shall be a verbal/written warning. The penalty for the 2<sup>nd</sup> violation shall be \$100. The penalty for the 3<sup>rd</sup> violation shall be \$300. The penalty for the 4<sup>th</sup> violation will result in the permanent removal of the aerator/circulating device.

#### CONTINUING VIOLATIONS

Each day or part thereof that such violation occurs or continues shall constitute a separate offense and may be fined as such.

#### **SECTION 6: APPEALS**

Any person aggrieved by a violation issued by the Conservation Director under this bylaw may appeal the violation to the Conservation Commission. Appeals shall be made by submitting to the Conservation Commission, within 30 days of the date of the violation, a letter explaining why the violation was not justified. Relevant documentation, including the violation being appealed and supporting documents, shall be attached to the letter. The decision of the Conservation Commission shall be final.

#### **SECTION 7: SEVERABILITY**

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