



TOWN OF BROOKLINE

Massachusetts

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TO: Town Meeting Members Association
FROM: Jennifer Dopazo, Town Counsel
DATE: August 23, 2006
RE: Drafting Warrant Articles

GENERAL GUIDELINES TO DRAFTING WARRANT ARTICLES

I. Introduction

These guidelines are provided to the Town Meeting Members Association in order to outline the basic steps in drafting and submitting a warrant article for consideration at Town Meeting. It is recommended that anyone submitting a warrant article consult with Town Counsel and the Moderator prior to submitting the article. In addition, if the article seeks to amend the Town's Zoning By-laws the petitioner should consult with the Director of Planning and Community Development as well as Town Counsel. Please note that this Memorandum does not cover all the different types of warrant articles that a citizen may propose, rather it is intended to cover some of the basic components of an article and the process by which it is filed.

Town Meeting is called pursuant to a Warrant which is issued by the Board of Selectmen. The Warrant notifies all citizens of the time and place of the meeting as

well as the subjects or articles to be considered. Article 2.1.5 of the General By-Laws outlines the notice, posting and distribution requirements for the Warrant.

Massachusetts General Laws Chapter 39, Section 10 sets forth the requirements for the issuance and content of the warrant for Town Meeting (copy attached as Exhibit No. 1). Section 10 requires the Selectmen to insert in the warrant for an annual town meeting all subjects (articles) so requested by ten or more registered voters of the town and in the case of a special town meeting by one hundred registered voters or ten percent of the total number of registered voters, whichever is less. By a special act of the legislature, the Town reduced the number of signatures required for the submission of a warrant article at a Special Town Meeting to ten registered voters. See Chapter 466 of the Acts of 1998 attached as Exhibit No. 2.

II. What should the Article include ?

A. General Information

When submitting an article the following information should be included:

1. Name of the Petitioner
2. Address of the Petitioner
3. If the Petitioner is a Town Meeting Member include the Precinct No.
4. Petitioner's Telephone No.
5. Petitioner's e-mail address (if available)

B. Format of the Article

The following is a suggested form for a warrant article calling for an amendment of the Town by-laws. Sample articles covering other subjects are attached as Exhibit No.

3. Attached as Exhibit No. 4 is an outline of the procedural requirements with respect to

adopting and amending Zoning By-Laws written by the Massachusetts Department of Housing and Community Development.

Article _____

To see if the Town will amend the General by-laws by [general description of the amendment proposed or a marked version of the by-law provision, showing the proposed changes, in each case with specific reference to the article and section numbers to be amended]

or act on anything relative thereto.

The underlined language should be included in all articles. The purpose of the phrase at the end of the article is to provide flexibility for amendments within the scope of the proposed article by motion as needed and as may be allowed by the Moderator.

Explanation

The Petitioner must include a brief explanation of the purpose and intent of the proposed article and any relevant background or history.

Signatures of at least ten registered voters

Name

Address

III. When and where should the Article be filed ?

Article 2.1.3 of the General By-Laws provides the procedure for filing an article as follows:

All Articles for insertion in the Warrant for any Annual or Special Town Meeting shall be filed in the office of the Board of Selectmen prior to

12:00 noon on the 75th day preceding the scheduled date of the opening session of said meeting. On the 75th day preceding the scheduled date of the opening session of said meeting, the Warrant shall be closed, and as soon as practicable thereafter signed, including only those Articles filed by the 75th day preceding said scheduled date.

When the Petitioner files his/her article in the Board of Selectmen's Office he/she will receive a time-stamped copy and the original will be forwarded to the Town Clerk. The Town Clerk will check the signatures in order to certify whether or not those who signed the petition are registered voters.

IV. Appropriations

If the warrant article contains language that requires an appropriation of funds, the article should not limit the appropriation to any specific amount. For example, if the Petitioner wants the Town to provide trash barrels to property owners this would require an appropriation of funds, but the exact cost may not be known. Therefore, the recommended language to include in the article would be: "To see if the Town will appropriate a certain sum of money to be used to provide property owners with one trash barrel per household...." When seeking an appropriation the Petitioner should be prepared to identify the source of the appropriation (from the tax levy, by transfer from an existing appropriation, by borrowing, etc.). A Petitioner whose article seeks an appropriation should consult with both the Deputy Town Administrator and Town Counsel prior to submitting the article, especially to obtain proper language for the source of the appropriation.

V. Issues of Enforcement and Penalties

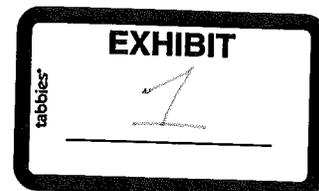
Articles 10.1, 10.2 and 10.3 of the General By-Laws address penalties, prosecution, enforcement and fines related to specific by-laws. (See copies attached at

Exhibit No. 5). If the Petitioner seeks to impose a penalty for failure to comply with the proposed warrant article he or she should refer to these sections to make sure that the particular section of the by-law they are amending is included in these sections. If the petitioner is proposing a new by-law it is recommended that they consult with Town Counsel with respect to any concerns regarding fines and enforcement. It may be necessary in some instances to amend Article 10.3 which deals with fines in order to add a fine for the particular article should it be approved by Town Meeting.

VI. Resolutions

Unlike a by-law, a resolution is a formal expression of the opinion or the will of Town Meeting. A resolution is filed in the same manner as a warrant article and requires the same amount of signatures; however, the format is quite different.

Attached at Exhibit No. 6 are examples of resolutions that have been considered by Town Meeting.



PART I ADMINISTRATION OF THE GOVERNMENT
(Chapters 1 through 182)

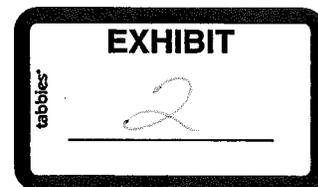
TITLE VII CITIES, TOWNS AND DISTRICTS

CHAPTER 39 MUNICIPAL GOVERNMENT

Section 10 Warrant; issuance; contents

Section 10. Every town meeting or town election, except as hereinafter provided, shall be called in pursuance of a warrant, under the hands of the selectmen, notice of which shall be given at least seven days before the annual meeting or an annual or special election and at least fourteen days before any special town meeting. The warrant shall be directed to the constables or to some other persons, who shall forthwith give notice of such meeting in the manner prescribed by the by-laws, or, if there are no by-laws, by a vote of the town, or in a manner approved by the attorney general. The warrant for all town meetings shall state the time and place of holding the meeting and the subjects to be acted upon thereat. The town meeting may be held in one or more places; provided, that if it is held in more than one place, the places are connected by means of a public address system and loud speakers so that the proceedings in all such places may be heard and participated in by all the voters present therein. Whenever the moderator determines that voters are being excluded from the town meeting because there is no room for them in the places provided or that voters in attendance are being deprived of the opportunity to participate therein for any reason whatsoever, he shall either, on his own motion recess the meeting for any period during the day of the meeting or, after consultation with the members of the board of selectmen then present, adjourn the same to another date, not later than fourteen days following the date of said meeting, when places and facilities sufficient to accommodate all voters attending and to enable them to participate therein shall be available. The selectmen shall insert in the warrant for the annual meeting all subjects the insertion of which shall be requested of them in writing by ten or more registered voters of the town and in the warrant for every special town meeting all subjects the insertion of which shall be requested of them in writing by one hundred registered voters or by ten per cent of the total number of registered voters of the town whichever number is the lesser. The selectmen shall call a special town meeting upon request in writing, of two hundred registered voters or of twenty per cent of the total number of registered voters of the town, whichever number is the lesser; such meeting to be held not later than forty-five days after the receipt of such request, and shall insert in the warrant therefor all subjects the insertion of which shall be requested by said petition. No action shall be valid unless the subject matter thereof is contained in the warrant. Two or more distinct town meetings for distinct purposes may be called by the same warrant.

The written requests of registered voters for the insertion of subjects in town meeting warrants shall not be valid unless the required number of registered voters not only sign their names but also state their residence, with street and number, if any. The selectmen shall submit such written requests to the board of registrars of voters or the board of election commissioners who shall check and forthwith certify the number of signatures so checked which are names of voters in the town, and only names so checked and certified shall be counted. A greater number of names than are required in each case need not be certified.



Acts
1998

CHAPTER 466 AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO ESTABLISH THE NUMBER OF SIGNATURES REQUIRED FOR PETITIONED ARTICLES FOR TOWN MEETING.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding the provisions of any general or special law to the contrary, the town of Brookline may, by by-law, establish the number of signatures that are required for the insertion of a subject in the warrant for a special town meeting; provided, however, that the number shall not exceed the maximum number of signatures required for petitioned articles under the provisions of section 10 of chapter 39 of the General Laws.

SECTION 2. This act shall take effect upon its passage.

Approved January 14, 1999.

November 13, 2012 Special Town

9-1

ARTICLE 9NINTH ARTICLE

Submitted by: Jessica Arconti

To see if the Town will amend the General By-Laws by adding the following Article:

Article 8.XX PLASTIC BAG REDUCTION ACT**Section 1.**

The following words shall, unless the context clearly requires otherwise, have the following meanings:

“Commissioner”, the Commissioner of the Department of Inspectional Services.

“ASTM D6400”, the American Society for Testing and Materials (ASTM) International “Standard Specification for Compostable Plastics”.

“ASTM D7081”, ASTM International “Standard Specification for Biodegradable Plastics in the Marine Environment”

“Compostable plastic bag”, a plastic bag that (1) conforms to the current ASTM D6400 for compostability; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) conforms to any other standards deemed acceptable by this section.

“Checkout bag”, a carryout bag provided by a store to a customer at the point of sale.

“Department”, the Brookline Department of Inspectional Services.

“Home compostable plastic bag”, a plastic bag that conforms to the EU 13432 standard for compostability.

“Marine degradable plastic bag”, a plastic bag that conforms to the current ASTM D7081 standard specification for marine degradability.

“Person”, an individual, trust, firm, joint stock company, corporation, cooperative, partnership, or association.

“Recyclable paper bag”, a paper bag that is 100 percent recyclable overall and contains at least 70 per cent recycled content, and displays the word “Recyclable” in a highly visible manner on the outside of the bag.

“Reusable bag”, a bag with handles that is specifically designed and manufactured for multiple reuse and is either (1) made of cloth or other fabric; or (2) made of durable plastic that is at least 2.25 mils thick; or (3) made of other durable material.

“Retail establishment”, any retail store that satisfies at least one of the following requirements:

(a) a retail space of 2,500 square feet or larger or at least three (3) locations under the same ownership within the City of Brookline that total 2,500 square feet or more; or

(b) a retail pharmacy with at least two locations under the same ownership within the City of Brookline; or

(c) a full-line, self-service supermarket that had annual gross sales in excess of \$1,000,000 during the previous tax year, and which sells a line of dry grocery, canned

goods or nonfood items and some perishable items;

Section 2.

- (a) If a retail establishment provides plastic checkout bags to customers, the bags shall comply with the requirements of being compostable or home compostable plastic bags, as well as marine degradable plastic bags.
- (b) Nothing in this section shall be read to preclude any establishment from making reusable checkout bags available for sale to customers or utilizing recyclable paper bags as defined in this section at checkout.
- (c) The enforcement and penalty provisions of section two shall apply to this chapter.
- (d) The commissioner shall promulgate rules and regulations to implement this section.

Section 3.

Audits and Violations:

- (a) Each Retail Establishment located in the City of Brookline shall comply with this act.
- (c) Violation of any of the requirements of this act shall subject a retail establishment to the penalties set forth by the Brookline Town Council.
 - (1) If it is determined that a violation has occurred, the City of Brookline shall issue a warning notice to the Retail Establishment for the initial violation.
 - (2) If it is determined that an additional violation of this Chapter has occurred within one year after a warning notice has been issued for an initial violation, the City of Brookline shall issue a notice of infraction and shall impose a penalty against the retail establishment.
 - (3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:
 - A) \$50 for the first offense
 - B) \$100 for the second offense
 - C) For the third and all subsequent offenses there shall be a mandatory Court appearance and such penalty as may be determined by the Court pursuant to _____
 - (4) No more than one (1) penalty shall be imposed upon a Retail Establishment within a seven (7) calendar day period.
 - (5) A Retail Establishment shall have fifteen (15) calendar days after the date that a notice of infraction is issued to pay the penalty.
 - (6) The penalty shall double after fifteen (15) calendars days if the Retail Establishment does not pay the penalty; or fails to respond to a notice of infraction by either denying or objecting in writing to the infraction or penalty.

Section 4.

All of the requirements set forth in this act shall take effect 90 days after its effective date.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

BAN PLASTIC BAGS IN BROOKLINE

“WARNING: TO AVOID DANGER OF SUFFOCATION, KEEP THIS PLASTIC BAG AWAY FROM BABIES AND CHILDREN. DO NOT USE THIS BAG IN CRIBS, BEDS, CARRIAGES, AND PLAYPENS.”

–CVS Pharmacy plastic bag warning

To the Members of the Brookline Town Council:

As citizens of one of the most educated and informed communities in the country, it is a travesty that we have not yet put a ban on the distribution of single-use plastic bags in Brookline.

It is estimated that 300 million tons of plastic are produced each year, quite a terrifying number, considering it is 15 million tons more than the yearly amount of meat consumed worldwide.¹ Furthermore, while meat is consumed and digested, plastic is accumulating at that rate, and has a toxic degradation process that takes thousands of years. Plastic is accumulating in our trees, watersheds, rivers, oceans, ponds, and even our back yards. The only way to stop our plastic suffocation is to stop the accumulation at its source.

If a plastic mass with the square mileage of Texas floating and stretching across the Pacific Ocean is not enough to scare humanity into making changes, what will be our impetus? We cannot continue to allow the plastics industry to hide behind recycling. Recycling is simply an excuse for allowing plastic production to continue and should be considered an evasion, not a solution. It is up to small governments, not the Federal Government, who is subject to lobbying pressures and corruption, to make positive changes for our ill-fated environment.

The prosperity of humanity, society, and our economy depend on the health of our environment. Banning plastic bags in Brookline is the crucial first step in putting our community on the map as a sustainable, economical, and forward thinking township.

SELECTMEN'S RECOMMENDATION

Article 9 is a petitioned article that aims to reduce the use of plastic bags. It was originally filed by a resident who has moved out of Town. Its cause has been taken up by Town Meeting Members Andrew Fischer and Clint Richmond, and we thank them for pushing forward with the discussion. As originally filed, the by-law would go into effect

¹ Moore, Charles, and Cassandra Phillips. *Plastic Ocean: How a Sea Captain's Chance Discovery Launched a Determined Quest to save the Oceans*. New York: Avery, 2011. Print

November 13, 2012 Special Town Meeting

9-4

without any ramp-up time for merchants and restaurants to source and incorporate alternative bags for their customers. Additionally, other language in the original petition was unclear about who would be responsible for enforcement of this ban.

The amended version being proposed, and supported by a majority of the Selectmen, specifically identifies the Health Department as the enforcement body, does not go into effect until December 1, 2013, and gives the Director of Public Health the ability to grant waivers for food service establishments up to 12 months due to unavailability of alternative checkout bags or economic hardship.

As with Article 8, the Board had concerns about how the proposed article would impact local businesses. If merchants or restaurants were to switch from plastic to paper bags, a significant portion of the increase in cost would be the extra freight charge due to the extra bulk and weight of paper bags. This additional cost in freight of paper bags reflects a concern voiced by the Solid Waste Advisory Committee, the Health Department and some of the Selectmen as to whether simply banning plastic bags may have an unintended consequence of having a larger impact to our carbon footprint. One letter of support from a merchant who would be affected by this ban (a retail store over 2,500 square feet) noted they were already encouraging customers to switch to reusable bags. If this article passes, the Selectmen strongly encourage petitioners of this article to assist the business community to educate consumers to switch to reusable bags rather than rely solely on paper bags.

A minority of the Board of Selectmen share not only these concerns, but others, about the practical impact of the proposed article, given the reality in Brookline. The article permits two substitutes for the current plastic checkout bags: paper bags or so-called "compostable" plastic bags. As noted above by the majority of the Board, quite apart from their expense, paper bags actually appear to have a greater carbon footprint than the current plastic bags. So-called "compostable" bags, the other permitted alternative, are not compostable under the actual conditions that exist in Brookline. The test for "compostability" assumes constant high heat that exists in specialized municipal and industrial composting facilities, which are not available to the Town. Moreover, although citizens might logically assume that "compostable" bags could be added to yard waste, the bags would in fact be a contaminant and could force the diversion of yard waste to the solid waste stream. Last but not least, the proposed article targets pharmacies and supermarkets, and (because of the 2,500 square foot threshold) does not affect most of the other businesses that use plastic checkout bags. The irony is that supermarkets are in fact recycling plastic bags, including those in which newspapers are delivered, non-checkout bags, and those from the other merchants who make no effort to recycle but who could continue to distribute plastic bags. Because so-called "compostable" bags cannot be intermingled with recyclable bags, the warrant article would almost certainly mean the end of plastic bag recycling in Brookline and the diversion of both plastic bags and "compostable" bags to the solid waste stream. The minority of the Board agrees with the Solid Waste Advisory Committee and recommends No Action on the article.

Therefore, the Selectmen recommend FAVORABLE ACTION, by a vote of 3-2 taken on October 16, 2012, on the following (a "red-lined" version of the vote follows the "clean" version):

VOTED: That the Town amend the General By-Laws by adding the following Article:

Article 8.XX PLASTIC BAG REDUCTION

Section 1.

The following words shall, unless the context clearly requires otherwise, have the following meanings:

"Director", the Director of Public Health Services or his/her designee.

"ASTM D6400", the American Society for Testing and Materials (ASTM) International "Standard Specification for Compostable Plastics".

"ASTM D7081", ASTM International "Standard Specification for Biodegradable Plastics in the Marine Environment".

"Checkout bag", a carryout bag provided by a store to a customer at the point of sale. Checkout bags shall not include bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or check out area of the store.

"Compostable plastic bag", a plastic bag that (1) conforms to the current ASTM D6400 for compostability; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) conforms to any other standards deemed acceptable by this section.

"Department", the Brookline Department of Public Health.

"Marine degradable plastic bag", a plastic bag that conforms to the current ASTM D7081 standard specification for marine degradability; and conforms to any other standards deemed acceptable by the Director, provided additional, Director-approved standards are as stringent as ASTM D7081.

"Person", an individual, trust, firm, joint stock company, corporation, cooperative, partnership, or association.

"Reusable check-out bag", a bag with handles that is specifically designed for multiple reuse and is either (1) made of cloth or other machine washable fabric; or (2) made of durable plastic that is at least 2.25 mils thick; or (3) made of other durable material.

"Retail establishment", any retail store that satisfies at least one of the following requirements:

- (a) a retail space of 2,500 square feet or larger or at least three (3) locations under the same name within the Town of Brookline that total 2,500 square feet or more; or
- (b) a retail pharmacy with at least two locations under the same ownership within the Town of Brookline; or
- (c) a full-line, self-service supermarket that had annual gross sales in excess of \$1,000,000 during the previous tax year, and which sells a line of dry grocery, canned goods or nonfood items and some perishable items;

Section 2.

(a) If a retail establishment as defined in section 1 provides plastic checkout bags to customers, the plastic bags shall comply with the requirements of being compostable plastic bags, as well as marine degradable plastic bags.

(b) Nothing in this section shall be read to preclude any establishment from making reusable checkout bags available for sale to customers or utilizing recyclable paper bags as defined in this section at checkout.

(c) The Director may promulgate rules and regulations to implement this section.

Section 3.

Penalties and Enforcement:

(a) Each Retail Establishment as defined in Section 1, above, located in the Town of Brookline shall comply with this by-law.

(1) If it is determined that a violation has occurred the Director shall issue a warning notice to the Retail Establishment for the initial violation.

(2) If an additional violation of this by-law has occurred within one year after a warning notice has been issued for an initial violation, the Director shall issue a notice of violation and shall impose a penalty against the retail establishment.

(3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:

A) \$50 for the first offense

B) \$100 for the second offense and all subsequent offenses. Payment of such fines may be enforced through civil action in the Brookline District Court.

(4) No more than one (1) penalty shall be imposed upon a Retail Establishment within a seven (7) calendar day period.

(5) A Retail Establishment shall have fifteen (15) calendar days after the date that a notice of violation is issued to pay the penalty.

Section 4.

All of the requirements set forth in this by-law shall take effect December 1, 2013. In the event that compliance with the effective date of this by-law is not feasible for a food service establishment because of either unavailability of alternative checkout bags or economic hardship, the Director may grant a waiver of not more than six months upon application of the owner or the owner's representative. The waiver may be extended for one (1) additional six-month period upon showing of continued infeasibility as set forth above.

ROLL CALL VOTE:

Favorable Action

Daly

Marmell

Goldstein

No Action

DeWitt

Benka

“RED-LINED” VERSION OF RECOMMENDED VOTE:

To see if the Town will amend the General By-Laws by adding the following Article:

Article 8.XX PLASTIC BAG REDUCTION ACT

Section 1.

The following words shall, unless the context clearly requires otherwise, have the following meanings:

~~“Commissioner”, the Commissioner of the Department of Inspectional Services.~~

~~“Director”, the Director of Public Health Services or his/her designee.~~

~~“ASTM D6400”, the American Society for Testing and Materials (ASTM) International “Standard Specification for Compostable Plastics”.~~

~~“ASTM D7081”, ASTM International “Standard Specification for Biodegradable Plastics in the Marine Environment”.~~

~~“Checkout bag”, a carryout bag provided by a store to a customer at the point of sale. Checkout bags shall not include bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or check out area of the store.~~

~~“Compostable plastic bag”, a plastic bag that (1) conforms to the current ASTM D6400 for compostability; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) conforms to any other standards deemed acceptable by this section.~~

~~“Checkout bag”, a carryout bag provided by a store to a customer at the point of sale.~~

~~“Department”, the Brookline Department of Inspectional Services. Public Health.~~

~~“Home compostable plastic bag”, a plastic bag that conforms to the EU 13432 standard for compostability.~~

~~“Marine degradable plastic bag”, a plastic bag that conforms to the current ASTM D7081 standard specification for marine degradability.; and conforms to any other standards deemed acceptable by the Director, provided additional, Director-approved standards are as stringent as ASTM D7081.~~

~~“Person”, an individual, trust, firm, joint stock company, corporation, cooperative, partnership, or association.~~

~~“Recyclable paper bag”, a paper bag that is 100 percent recyclable overall and contains at least 70 per cent recycled content, and displays the word “Recyclable” in a highly visible manner on the outside of the bag.~~

~~“Reusable check-out bag”, a bag with handles that is specifically designed and manufactured for multiple reuse and is either (1) made of cloth or other machine washable fabric; or (2) made of durable plastic that is at least 2.25 mils thick; or (3) made of other durable material.~~

~~“Retail establishment”, any retail store that satisfies at least one of the following requirements:~~

- (a) a retail space of 2,500 square feet or larger or at least three (3) locations under the same ownership name within the City/Town of Brookline that total 2,500 square feet or more; or
- (b) a retail pharmacy with at least two locations under the same ownership within the City/Town of Brookline; or
- (c) a full-line, self-service supermarket that had annual gross sales in excess of \$1,000,000 during the previous tax year, and which sells a line of dry grocery, canned goods or nonfood items and some perishable items;

Section 2.

- (a) If a retail establishment as defined in section 1 provides plastic checkout bags to customers, the plastic bags shall comply with the requirements of being compostable or home-compostable plastic bags, as well as marine degradable plastic bags.
- (b) Nothing in this section shall be read to preclude any establishment from making reusable checkout bags available for sale to customers or utilizing recyclable paper bags as defined in this section at checkout.
- (c) ~~The enforcement and penalty provisions of section two shall apply to this chapter.~~
- (d) ~~The commissioner shall~~ Director may promulgate rules and regulations to implement this section.

Section 3.

Audits and Violations:

Penalties and Enforcement:

- (a) Each Retail Establishment as defined in Section 1, above, located in the City Town of Brookline shall comply with this act. by-law.
- ~~(e) Violation of any of~~ (1) If it is determined that a violation has occurred the requirements of this act shall subject a retail establishment to the penalties set forth by the Brookline Town Council.
- (1) ~~If it is determined that a violation has occurred, the City of Brookline~~ Director shall issue a warning notice to the Retail Establishment for the initial violation.
- (2) ~~If it is determined that an additional violation of this Chapter~~ by-law has occurred within one year after a warning notice has been issued for an initial violation, the ~~City of Brookline~~ Director shall issue a notice of ~~infraction~~ violation and shall impose a penalty against the retail establishment.
- (3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:
 - A) \$50 for the first offense
 - B) \$100 for the second offense
 - C) ~~For the third and all subsequent offenses there shall be a mandatory Court. Payment of such fines may be enforced through civil action in the Brookline District Court, appearance and such penalty as may be determined by the Court pursuant to~~ _____
- (4) No more than one (1) penalty shall be imposed upon a Retail Establishment within a seven (7) calendar day period.

(5) A Retail Establishment shall have fifteen (15) calendar days after the date that a notice of infractions violation is issued to pay the penalty.

~~(6) The penalty shall double after fifteen (15) calendar days if the Retail Establishment does not pay the penalty, or fails to respond to a notice of infraction by either denying or objecting in writing to the infraction or penalty.~~

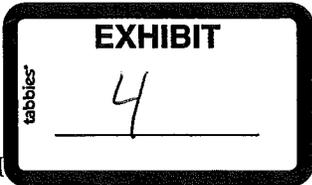
Section 4.

All of the requirements set forth in this ~~aet~~by-law shall take effect ~~90 days after its~~December 1, 2013. In the event that compliance with the effective date of this by-law is not feasible for a food service establishment because of either unavailability of alternative checkout bags or economic hardship, the Director may grant a waiver of not more than six months upon application of the owner or the owner's representative. The waiver may be extended for one (1) additional six-month period upon showing of continued infeasibility as set forth above.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation by the Advisory Committee under Article 9 will be provided in the Supplemental Mailing.

XXX



November 13, 2012 Special T

10-1

ARTICLE 10

TENTH ARTICLE

Submitted by: Department of Planning and Community Development

To see if the Town will amend Sec. 4.07, Table of Use Regulations, in the Zoning By-Law by adding a new Use 32A, Domestic Household Animal Day Care Center.

Principal Uses	Residence					Business			Ind
	S	SC	T	F	M	L	G	O	I
32A. Domestic Household Animal Day Care Center, including grooming, training, walking and other accessory services, and excluding overnight kenneling. No outdoor facilities for the animals shall be permitted. Studies by recognized experts shall be submitted to ensure, to the satisfaction of the Board of Appeals, that the use will be constructed so as to safeguard nearby properties against undue noise, odor and improper waste disposal. A recommendation from the Director of Public Health shall be required to address the size and location of the facility and any potential impacts. Additionally, annual licenses issued by the licensing authority are required, with the recommendation of the Director of Public Health, the Police Department's Animal Control Officer, and the Director of Parks and Open Space.	No	No	No	No	No	SP	SP	No	SP

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The Planning and Community Development Department is submitting this article at the recommendation of the Zoning By-Law Committee. It will create a new use 32A (domestic household animal day care facilities). Since this use did not exist when the Table of Uses was formulated in the 1960s, and there is a growing trend to provide animal day care facilities, it should be added to the Table of Uses now.

A warrant article addressing both a veterinarian office (Use #20A) use and a domestic animal day care use (Use #32A) was submitted to the Spring 2012 Town Meeting. At that time, the change to Use 20A, veterinarian office, to allow it in a local business district by special permit was approved. However, after further discussion by the Planning & Community Development Department, the Public Health Department, the Director of Parks and Recreation, and the Town's Animal Control officer, it was felt that more time was needed to formulate protective rules and regulations to attach to the existing kennel licensing procedures, prior to approving use 32A. As a result of those discussions, a special permit for a domestic household animal day care facility now requires a recommendation from the Director of Public Health addressing possible impacts and requires an annual license from the licensing authority, as well. Further protections, which were in the initial warrant article, have been kept requiring a study by recognized experts to ensure, to the satisfaction of the Board of Appeals, that the use will be constructed so as to safeguard nearby properties against undue noise, odor and improper waste disposal. The annual license will require input, and inspections when necessary, from the Director of Public Health Department, the Town's Animal Control officer, and the Director of Parks and Recreation.

PLANNING BOARD REPORT AND RECOMMENDATION

This article allowing animal daycare is being submitted by the Department of Planning and Community Development at the recommendation of the Selectmen's Zoning By-Law Committee. A two part version of this article was submitted to Spring 2012 Town Meeting. The part which allowed a Veterinarian Hospital Use (Use #20A) in a local business district by special permit was approved. The part related to establishing a new use category for Domestic Household Animal Day Care was referred back to the Planning and Community Development Department and Zoning By-Law Committee for further study. The Health Department had requested more time *to evaluate the process that would be used to ensure* no negative impacts to a neighborhood would result.

Currently, animal daycare is allowed only if it has a veterinary component. A use for a stand-alone animal daycare facility does not currently exist in our Zoning By-Law's Table of Uses, and when a use is not included in the Table, it is prohibited. This warrant article proposes that the new animal day care use be allowed in local business, general business and industrial districts by special permit.

There are two other use categories in the Table of Uses involving animals: a veterinarian office (Use #20A) and the keeping of farm animals (Use 57). Under the veterinarian office (Use #20A), studies by recognized experts addressing noise, odor and waste disposal impacts are required, and this condition has been included for the new domestic animal daycare use as well, since impacts are similar. Additionally, at the request of the Brookline Public Health Director, a condition has been added allowing the Health Director to impose restrictions on the number, size, and location of animal daycare facilities. Annual licenses are also required with recommendations from Public Health, the Police Department's Animal Control Officer and the Director of Parks and Open Space.

The Planning Board supports this amendment. When the Zoning By-Law was formulated in the 1960s, this type of use wasn't contemplated, and more requests for animal daycare facilities are likely in the future because of current demand for this use. With annual licensing and oversight of the relevant departments, adequate controls to regulate and oversee these facilities will be in place.

Therefore, the Planning Board unanimously recommends **FAVORABLE ACTION** on Article 10 as submitted.

SELECTMEN'S RECOMMENDATION

Article 10 was submitted by the Department of Planning and Community Development to address the issue of allowing animal day cares in a business district, which was raised under Article 14 of the May, 2012 Annual Town Meeting. That article addressed both veterinarian office use and domestic animal day care use. While the change to allow veterinarian offices in a local business district by special permit was approved, the change to domestic animal day care use was not. After discussion by the Planning and Community Development Department, the Public Health Department, the Director of Parks and Open Space, and the Town's Animal Control officer, it was determined that more time was needed to formulate protective rules and regulations to attach to the existing kennel licensing procedures, prior to approving changes to domestic animal day care use in a local business district. As a result, both the Selectmen and the Advisory Committee recommended, and Town Meeting approved, the referral of the new use category for Domestic Household Animal Day Care back to the Planning and Community Development Department and Zoning By-Law Committee for further study of possible safeguard regulations

This Article 10 addresses the concerns raised last Spring. It requires a study by recognized experts to ensure, to the satisfaction of the Zoning Board of Appeals (ZBA), that the use will be constructed so as to safeguard nearby properties against undue noise, odor and improper waste disposal. In addition, the annual license will require input and inspections, when necessary, from the Director of Public Health Department, the Town's Animal Control officer, and the Director of Parks and Recreation.

As stated in the Planning Board's Recommendation, this type of use was not contemplated when the Zoning By-Law was formulated in the 1960s, and more requests for animal daycare facilities are likely in the future because of current demand. With annual licensing and oversight of the relevant departments, adequate controls to regulate and oversee these facilities will be in place. The Selectmen agree and recommend FAVORABLE ACTION, by a vote of 5-0 taken on October 9, 2012, on the following:

VOTED: That the Town amend Sec. 4.07, Table of Use Regulations, in the Zoning By-Law by adding a new Use 32A, Domestic Household Animal Day Care Center.

Principal Uses	Residence					Business			Ind
	S	SC	T	F	M	L	G	O	I
32A. Domestic Household Animal Day Care Center, including grooming, training, walking and other accessory services, and excluding overnight kenneling. No outdoor facilities for the animals shall be permitted. Studies by recognized experts shall be submitted to ensure, to the satisfaction of the Board of Appeals, that the use will be constructed so as to safeguard nearby properties against undue noise, odor and improper waste disposal. A recommendation from the Director of Public Health shall be required to address the size and location of the facility and any potential impacts. Additionally, annual licenses issued by the licensing authority are required, with the recommendation of the Director of Public Health, the Police Department's Animal Control Officer, and the Director of Parks and Open Space.	No	No	No	No	No	SP	SP	No	SP

Passed by a Unanimous Vote

EXHIBIT

tabbies

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TOWN OF BROOKLINE



Article 10.1

General Penalty Provision

ARTICLE 10.1
GENERAL PENALTY PROVISION

Any person violating any of the provisions in Parts V, VI, VII and VIII of the by-laws of the Town of Brookline shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not to exceed three hundred (\$300.00) dollars for each offense, unless a different fine is specified and provided for in a particular Article or Section of these by-laws. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as a separate offense.

TOWN OF BROOKLINE



Article 10.2

Prosecutions and Enforcement

ARTICLE 10.2
PROSECUTIONS AND ENFORCEMENT

The provisions in Parts V, VI, VII and VIII of the by-laws of the Town of Brookline shall be enforced and violations prosecuted by any police officer of the town. In addition, enforcement and prosecution of the following by-laws and articles shall be by the following department head or his or her designees:

<u>DEPARTMENT HEAD</u>	<u>ARTICLE</u>
BUILDING COMMISSIONER	
Part V-Private Property	Articles 5.2, 5.3, 5.4, 5.6, 5.7, 5.8
Part VI-Public Property	Articles 6.1, 6.5, 6.9, 6.10
Part VII-Streets & Ways	Articles 7.3, 7.5, 7.7, 7.8, 7.9
Part VIII-Public Health & Safety	Articles 8.3, 8.6, 8.7, 8.8, 8.9, 8.11, 8.13, 8.14, 8.15, 8.16,
COMMISSIONER OF PUBLIC WORKS	
Part VI-Public Property	Articles 5.7, 6.1, 6.2, 6.3, 6.4, 6.5, 6.9
Part VII-Streets & Ways	Articles 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.10, 7.11
Part VIII-Public Health & Safety	Articles 8.2, 8.8, 8.14, 8.15, 8.16, 8.18, 8.24, 8.25, 8.26

TOWN OF BROOKLINE



Article 10.3

Non-Criminal Disposition

ARTICLE 10.3
NON-CRIMINAL DISPOSITION

A violation of any provision of these by-laws, the violation of which is subject to a specific penalty under Section 10.1 or in the specific provision which has been violated, except when otherwise provided by law, or any rule or regulation of any municipal officer, board or department may be dealt with as a non-criminal offense in accordance with the provisions of General Laws, Chapter 40, section 21d. If not subject to a specific penalty in the following table, each violation shall be subject to a specific penalty of fifty (\$50.00) dollars for each offense, unless a different penalty is provided in the specific by-law, rule or regulation provision being enforced. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as a separate offense hereunder. Violations of this Article 10.3 may be enforced by any police officer of the town, by the department head or his or her designee as set forth with particular reference to specific articles in Article 10.2, above, and, when a violation involves a rule or regulation of any municipal officer, board or department, by that municipal officer or by that board or the head of that department, by his or her designee, and in all instances, in accordance with the requirements set forth in General Laws, Chapter 40, section 21d.

TABLE OF SPECIFIC PENALTIES UNDER ARTICLE 10.3

Article 5.1	<u>Alarm Systems</u>		
	Section 5.1.9	False Alarms	\$100.00
	Section 5.1.10	Penalties	\$100.00
Article 5.8	<u>Sign By-Law</u>		
	Section 5.8.9	Penalty For Violation	\$100.00

Article 6.2	<u>Alcoholic Beverages On Public Property</u>	
	Section 6.2.2 Penalty	\$100.00
Article 6.3	<u>Grass Borders</u>	\$ 75.00
Article 6.4	<u>Damage To Trees</u>	\$100.00
Article 6.5	<u>Defacing Public Grounds</u>	\$ 75.00
Article 6.6	<u>Discharging Firearms</u>	\$100.00
Article 7.1	<u>Alcoholic Beverages</u>	\$100.00
Article 7.3	<u>Construction In Streets</u>	
	Section 7.3.3 Penalty	\$100.00
Article 7.6	<u>Newsrack Regulation</u>	
	Section 7.6.5 Penalty	\$ 25.00
Article 7.7	<u>Removal Of Snow And Ice From Sidewalks</u>	
	Section 7.7.5 Penalties For Sections 7.7.1 & 7.7.2	\$100.00
	For Section 7.7.3 First Violation	Warning
	Second & Subsequent Violations	\$ 25.00
Article 7.8	<u>Removal Of Vehicles From Streets</u>	\$ 25.00
Article 7.9	<u>Snow Parking Ban</u>	\$100.00
Article 8.3	<u>Dwelling Houses Used In Common</u>	\$100.00

Article 8.6 Dog Control

Section 8.6.9 Penalty

First Violation \$ 15.00

Second & Third
Violations \$ 25.00

Fourth & Subsequent
Violations \$ 50.00

Article 8.7 Food Stores - Hours Of Operation \$ 50.00

Article 8.8 Food Establishments Handling Of
Refuse \$100.00

Article 8.9 Toilet Facilities - Restaurants \$ 50.00

Article 8.23 Tobacco Control

Section 8.23.5
Violations & Penalties

For each violation under Article 8.23 -Three Hundred
Dollars (\$300.00.

Article 8.24 Water Supply Emergencies

Section 8.24.6
Penalties

First Violation \$ 50.00

Second & Subsequent
Violations \$100.00

Article 8.25 Water System Backflow And Cross Connections

Section 8.25.6 Enforcement \$100.00

Article 8.26 Stormwater Management

First Violation	\$100.00
Second Violation	\$200.00
Third and Subsequent Violations	\$300.00

HEALTH DEPARTMENT REGULATIONS

Regulations Governing the Handling, Storage,
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1. Violations and Penalties for Owners of Commercial
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First Violation	\$100.00
Second Violation	\$200.00
Third & Subsequent Violations	\$300.00

2. Violations and Penalties for Owners of Single,
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First Violation	\$20.00
Second Violation	\$35.00
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