

WARRANT

THE COMMONWEALTH OF MASSACHUSETTS  
TOWN OF BROOKLINE  
ANNUAL TOWN MEETING

Norfolk, ss

To Any Constable of the Town of Brookline,

Greetings:

In the name of the Commonwealth of Massachusetts, you are hereby required to NOTIFY and WARN the Inhabitants of the TOWN OF BROOKLINE, qualified to vote at elections to meet at the High School Auditorium in said Brookline on TUESDAY, the TWENTY-SEVENTH day of MAY, 2003, at 7:00 o'clock in the evening for the Annual Town Meeting at which time and place the following articles are to be acted upon and determined by the representative town meeting:

**ARTICLE 1**

To see if the Town will establish that the number of Measurers of Wood and Bark be two, to be appointed by the Selectmen, or act on anything relative thereto.

**ARTICLE 2**

To see if the Town will raise and appropriate, or appropriate from available funds, a sum or sums of money to fund the FY2003 cost items in collective bargaining agreements between the Town and various employee unions; fund wage and salary increases for employees not included in the collective bargaining agreements; and amend the Classification and Pay Plans of the Town; or act on anything relative thereto.

**ARTICLE 3**

To see if the Town will authorize the Town Treasurer, with the approval of the Selectmen, to enter into Compensating Balance Agreement(s) for FY2004 in accordance with General Laws Chapter 44, Section 53F, or act on anything relative thereto.

**ARTICLE 4**

To see if the Town will authorize the Comptroller to close out either all or a portion of the unexpended balances in certain Special Appropriations and return said sums to the Surplus Revenue accounts, and rescind the unused portion of prior borrowing authorizations, or act on anything relative thereto.

- 1) Special Appropriation Closeouts
- 2) Baker School Debt Recission – Bond Authorization, in the amount of \$750,000, for renovations to the Baker School, authorized as Item #82 of Section 11 of Article 5 of the 1998 Annual Town Meeting, to be rescinded.
- 3) Main Library Debt Recission - Bond Authorization, in the amount of \$7,912,000, for renovations to the Main Library, authorized as Item #88 of Section 12 of Article 4 of the 2000 Annual Town Meeting, to be rescinded.

#### **ARTICLE 5**

To see if the Town will, in accordance with General Laws, Chapter 44, Section 64, authorize the payment of one or more of the bills of the previous years, which may be legally unenforceable due to the insufficiency of the appropriations therefore, and appropriate from available funds, a sum or sums of money therefore, or act on anything relative thereto.

#### **ARTICLE 6**

To see if the town will elect to establish an additional property tax exemption for fiscal year 2004 which shall be uniform for all exemptions, in accordance with Section 4 of Chapter 73 of the Acts of 1986, as amended by Chapter 126 of the Acts of 1988, and accept said Section 4, as amended, or act on anything relative thereto.

#### **ARTICLE 7**

To see if the Town will authorize the Commissioner of Public Works to establish, under General Laws, Chapter 44, Section 53E ½, a Revolving Fund,

- A.) for the purchase of town-owned vehicles and equipment;
- B.) to be funded with the receipts received from the auction of town-owned vehicles;
- C.) with expenditures from the Revolving Fund to be authorized by the Commissioner of Public Works, with the written approval of the Board of Selectmen; and
- D.) with the annual total expenditures from the Revolving Fund not to exceed \$250,000 in any fiscal year.,

or act on anything relative thereto.

#### **ARTICLE 8**

To see if the Town will authorize the Director of Planning and Community Development to establish, under General Laws, Chapter 44, Section 53E ½, a Revolving Fund,

- A.) for a Façade Improvement Loan Program;
- B.) to be funded by appropriation and by the funds received from Façade Improvement Loan recipients;

- C.) with expenditures from the Revolving Fund to be authorized by the Director of Planning and Community Development, with the written approval of the Board of Selectmen; and
- D.) with the annual total expenditures from the Revolving Fund not to exceed \$30,000 in any fiscal year,

or act on anything relative thereto.

**ARTICLE 9**

To see if the Town will raise and appropriate or appropriate from available funds additional funds to the various accounts in the fiscal year 2003 budget or transfer funds between said accounts, or act on anything relative thereto.

**ARTICLE 10**

To see if the Town will authorize and approve the filing of a Petition, in substantially the following form, with the General Court:

AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO ALLOW NON-RESIDENT STUDENTS TO ATTEND ITS PUBLIC SCHOOLS

Be it enacted, etc., as follows:

Section 1. Notwithstanding any general or special law to the contrary, the Town of Brookline may allow non-resident students to attend its public schools, upon such terms and conditions as the school committee may determine, and without limiting the generality of the foregoing, including the establishment of fee and tuition expenses and charges and attendance and conduct standards.

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

or act on anything relative thereto.

**ARTICLE 11**

To see if the Town will:

- A.) Fiscal Year 2004 Budget

Appropriate the sums, or any other sum or sums, requested or proposed by the Selectmen or by any other officer, board or committee, for the fiscal year 2004 budget, including without limiting the foregoing, all town expenses and purposes, debt and interest, out of state travel, operating expenses, stabilization fund as provided for in General Laws Chapter 41, Section 108; authorize the continuation of all revolving funds in accordance with G.L. Chapter 44, Section 53E ½, and all Enterprise Funds in accordance with G.L. Chapter 44, Section 53F ½; and provide for a reserve fund.

- B.) Fiscal Year 2004 Special Appropriations

Appropriate sums of money for the following special purposes:

- 1.) Appropriate \$60,000, or any other sum, to be expended under the direction of the Chief Procurement Officer, with the approval of the Board of Selectmen, for furnishings and equipment for Town Buildings.
- 2.) Appropriate \$50,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for removal of asbestos from Town-owned buildings.
- 3.) Appropriate \$50,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for ADA renovations to Town-owned buildings.
- 4.) Appropriate \$45,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for the purpose of improving municipal building security.
- 5.) Appropriate \$130,000, or any other sum, to be expended under the direction of the Chief Information Officer, with the approval of the Board of Selectmen, for the enhancement of town-wide hardware and software.
- 6.) Appropriate \$150,000, or any other sum, to be expended under the direction of the Chief Information Officer, with the approval of the Board of Selectmen and the School Committee, for an Instructional Technology Study.
- 7.) Appropriate \$180,000, or any other sum, to be expended under the direction of the Director of Planning and Community Development, with the approval of the Board of Selectmen, for streetscape and civic space improvements.
- 8.) Appropriate \$325,000, or any other sum, to be expended under the direction of the Fire Chief, with the approval of the Board of Selectmen, for the purchase of a fire engine.
- 9.) Appropriate \$500,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for the construction of an Emergency Operations Center at the Municipal Service Center.
- 10.) Appropriate \$60,000, or any other sum, to be expended under the direction of the Fire Chief, with the approval of the Board of Selectmen, for a training module and associated equipment.

- 11.) Appropriate \$30,000, or any other sum, to be expended under the direction of the Human Resources Director, with the approval of the Board of Selectmen, for physical fitness equipment for the Fire Department.
- 12.) Appropriate \$37,000, or any other sum, to be expended under the direction of the Police Chief, with the approval of the Board of Selectmen, for police radio improvements.
- 13.) Appropriate \$165,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen, for improvements to the Fire Training building.
- 14.) Appropriate \$45,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen and the Board of Library Trustees, for fire alarm improvements at the Coolidge Corner Library.
- 15.) Appropriate \$345,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen and the Board of Library Trustees, for the upgrade of the HVAC system at the Coolidge Corner Library.
- 16.) Appropriate \$120,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for modernization of the traffic signal at the Mountfort Street / Carlton Street intersection.
- 17.) Appropriate \$100,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the modernization of the traffic signal at the Independence Drive / Beverly Road / Russett Road intersection.
- 18.) Appropriate \$135,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the installation of a traffic signal at the Grove Street / Allendale Road intersection.
- 19.) Appropriate \$25,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the design of a traffic signal at the South Street / Grove Street intersection.
- 20.) Appropriate \$25,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for a study and design of traffic improvements at the Newton Street / West Roxbury Parkway intersection and/or neighboring streets.

- 21.) Appropriate \$20,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for a study and design of traffic improvements at Horace James Circle, Putterham Circle, and/or nearby streets.
- 22.) Appropriate \$60,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the modernization of the traffic signal at Fire Station #6.
- 23.) Appropriate \$60,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the modernization of the traffic signal at Fire Station #7.
- 24.) Appropriate \$30,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the purchase of parking meters.
- 25.) Appropriate \$1,000,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the rehabilitation of streets.
- 26.) Appropriate \$484,117, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the rehabilitation of streets.
- 27.) Appropriate \$200,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for traffic calming studies and improvements.
- 28.) Appropriate \$150,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for repairs to the Lincoln School Wall.
- 29.) Appropriate \$200,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for sidewalk reconstruction.
- 30.) Appropriate \$1,000,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for assessment and corrective action associated with the Newton Street Landfill.
- 31.) Appropriate \$100,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for streetlight replacement and repairs.

- 32.) Appropriate \$30,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the cost of preliminary plans for and other preliminary costs associated with the reconstruction, relocation, and removal of the Carlton Street Footbridge, inclusive of mitigation, with provision, in the event of either reconstruction or relocation, for full ADA compliance.
- 33.) Appropriate \$90,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the reconstruction, relocation, or removal of the Carlton Street Footbridge.
- 34.) Appropriate \$250,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Parks and Recreation Commission and the Board of Selectmen, for the renovation of playground equipment, fields, and fencing.
- 35.) Appropriate \$150,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the rehabilitation of Town / School grounds.
- 36.) Appropriate \$100,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Parks and Recreation Commission and the Board of Selectmen, for improvements to Longwood Park.
- 37.) Appropriate \$35,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen and the Park and Recreation Commission, for the design of Amory Field improvements.
- 38.) Appropriate \$100,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen and the Park and Recreation Commission, for improvements to Coolidge Park.
- 39.) Appropriate \$100,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen and the Tree Planting Committee, for the removal and replacement of trees.
- 40.) Appropriate \$100,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Park and Recreation Commission and the Board of Selectmen, for the replacement of lockers at the Municipal Swimming Pool.

- 41.) Appropriate \$45,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Park and Recreation Commission and the Board of Selectmen, for the study, design and repair of the roof of the Municipal Swimming Pool.
- 42.) Appropriate \$25,000, or any other sum, to be expended under the direction of the Chief Procurement Officer, with the approval of the School Committee and the Board of Selectmen, for school furniture upgrades.
- 43.) Appropriate \$30,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the School Committee and the Board of Selectmen, for the replacement of a burner and installation of an oil tank at the Lincoln School.
- 44.) Appropriate \$230,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the School Committee and the Board of Selectmen, for gutters and downspouts at the Old Lincoln School.
- 45.) Appropriate \$30,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the School Committee and the Board of Selectmen, for trash compactors at various schools.
- 46.) Appropriate \$50,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for water meter replacement.
- 47.) Appropriate \$7,890,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the capping of the Newton Street Landfill and the development of a park.
- 48.) Appropriate \$2,600,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for the reconstruction of Beacon Street.
- 49.) Appropriate \$1,425,000, or any other sum, to be expended under the direction of the Building Commissioner, with the approval of the Board of Selectmen and the School Committee, for the repair and improvements of the Driscoll School.

C.) Funding

And determine whether such appropriations shall be raised by taxation, transferred from available funds, provided by borrowing or by any combination of the foregoing, and authorize the leasing, leasing with an option to purchase, or the



installment purchase of any equipment or any capital items; and authorize the Board of Selectmen, except in the case of the School Department Budget, and with regard to the School Department, the School Committee, to apply for, accept and expend grants, gifts, reimbursements, and aid from both federal, state, and other sources and agencies for any of the purposes aforesaid, or act on anything relative thereto.

#### **ARTICLE 12**

To see if the Town will appropriate and transfer from available funds \$30,000, or any other sum, to be expended under the direction of the Board of Selectmen, for hiring consultants, determining costs, pursuing a feasible design to provide access for the mobility-impaired, and developing plans and specifications for the reconstruction and restoration of the Carlton Street Footbridge entrance to Riverway Park, and authorize the Selectmen to apply for, receive and expend state, federal or other grants, aid, loans or reimbursements for such project, or act on anything relative thereto.

#### **ARTICLE 13**

To see if the Town will adopt the following resolution:

**WHEREAS**, the future status of the Carlton Street Footbridge entry to the Riverway Park has been under active review by various Town departments, committees, and consultants for four years;

**WHEREAS**, the Town has conducted studies totaling in excess of \$73,000 since FY98 that have found that the bridge is structurally sound and feasible to restore, that the bridge is an integral element of the Riverway Park and therefore enjoys designation on the State and National Registers of Historic Places, and that its restoration would meet the eligibility requirements of state and federal grants that are likely to make the cost to the Town of restoration less than that of demolition;

**WHEREAS**, funding for restoration was first scheduled in the FY2001 Capital Improvement Program for FY2003;

**WHEREAS**, the Dukakis administration implemented a statewide Olmsted Historic Landscape Historic Preservation Program and an Emerald Necklace Master Plan was begun in 1986. The Plan, which includes the Carlton Street Footbridge as a restoration element, was approved unanimously in 1991 by the Board of Selectmen after a process that included public comment, and presentations to the Conservation Commission, Preservation Commission, Park and Recreation Commission, and Planning Board. The Plan, updated in 2001, states

“The Master Plan has been formally adopted by both Brookline and Boston and has been the basis for all permitting and funding of park improvements implemented since 1989”;

**WHEREAS**, in 1986 the Town executed a Grant Agreement between the Commonwealth and Town of Brookline for the Olmsted Historic Preservation Program stating

“The City [Town] will agree to formally accept the Master Plan as the framework for all future park-related construction. Future funding for additional capital improvements by the Commonwealth will be contingent upon the City’s [Town’s] adherence to the Master Plan”;

**WHEREAS**, in 1999 the Environmental Notification Form Certificate for the Muddy River Flood Control, Water Quality and Habitat Enhancement, and Historic Preservation Project states

“The purpose of this project is to ensure the continued restoration of Olmsted’s Emerald Necklace in its entirety”;

**WHEREAS**, in 1999 the Town executed a Memorandum of Understanding with the Executive Office of Environmental Affairs signed by the Chair of the Board of Selectmen agreeing

“to cooperate relative to the Project to ensure the preservation and protection of this unique Olmsted park system”;

**WHEREAS**, in 2002 the Draft Environmental Impact Report (DEIR) Certificate issued by the Secretary of Environmental Affairs regarding the Carlton Street Footbridge states

“In recognition of the historic value of the bridge, MHC [Massachusetts Historical Commission] has determined that the demolition of the bridge would constitute an ‘adverse effect’ on the State and National Register Olmsted Park System”

and further states

“This Certificate assumes that the Town of Brookline will act in good faith to expeditiously implement the elements of the Master Plan within its control, including the rehabilitation and reopening of the Carlton Street Footbridge.”

**WHEREAS**, in 2003 the Final Environmental Impact Report (FEIR) for the Muddy River Project prepared and submitted jointly by Boston and Brookline makes the following statements:

“Proponents [Boston and Brookline] will be required to maintain the historic and character defining features of the restored parks.”

*“The historic and character defining features include what the National Park Service guidelines call the character defining features, which under the National Park Service (NPS) guidelines would include:*

- *Spatial relationships;*
- *Views and vistas;*

- *Topography;*
- *Circulation systems and site entries;*
- *Vegetation;*
- *Water features; and*
- *Furnishings and structures.”*

*“The recommendations set forth in the document [The Master Plan for the Emerald Necklace Parks] are intended to provide a framework for decision-making and to lay the groundwork for preserving, rehabilitating and restoring these features.”*

*“The work proposed in the EIR will provide historical restoration, rehabilitation or preservation of the existing character defining features.”*

*“Scheduling of rehabilitation or repair work for each of these historic features should be included in the annual budget as an estimated contingency item.”*

**WHEREAS**, restoring and reopening the footbridge entrance to Riverway Park will implement a significant element of the Master Plan, and in conformity with the Town's 2003 commitment as a co-proponent of the Muddy River restoration, will restore a structure that is an historic and character defining element of the views and vistas, circulation system and site entry of the Emerald Necklace Parks; and

**WHEREAS**, it is in the interest of the Town to fulfill its commitments to the Commonwealth in order to continue Brookline’s credibility and to avoid jeopardizing future funding;

**NOW THEREFORE, BE IT RESOLVED:**

That it is the will of Town Meeting, and the Selectmen are directed to act accordingly, to fulfill the commitments made by the Town between 1986 and 2003 to the Commonwealth by taking the steps necessary to restore expeditiously the Carlton Street Footbridge entry to Riverway Park, including the preparation and submission of applications for outside funds to restore the bridge and providing funding from grants, aid, loans, tax revenue, or any other source, as necessary to restore the Footbridge.,

or act on anything relative thereto.

**ARTICLE 14**

To see if the Town will raise and appropriate, or appropriate from available funds, \$1,000, or any other sum, to be expended under the direction of the Selectmen, for the payment of town meeting related expenses of and support services for the Town Meeting Members Association, or act on anything relative thereto.

**ARTICLE 15**

To see if the Town will establish a tax amnesty program, as authorized by Section

73 in Chapter 4 of the Acts of 2003, in substantially the following terms and conditions:

Section 1. The tax collector for the Town of Brookline is authorized to establish a tax amnesty program during which all penalties that could be assessed by the tax collector for the failure of the taxpayer to timely pay any tax liability to the Town of Brookline, or to pay the proper amount of any required estimated payment toward a tax liability to the Town of Brookline, shall be waived without the need for any showing by the taxpayer of reasonable cause or the absence of willful neglect, if the taxpayer, prior to the expiration of the amnesty period, voluntarily pays the full amount of the unabated tax shown on the taxpayer's assessments, including water rate or annual sewer use charge added to such assessment and interest due thereon, after which payment the tax collector shall waive all penalties associated with that assessment.

Section 2. The amnesty program shall be established for a period of 4 consecutive months within fiscal years 2003/2004 to be determined by the tax collector of the Town of Brookline, such period to expire not later than December 31, 2003.

Section 3. The tax amnesty program is not available to any person who, as of the time the amnesty period commences, is or was the subject of a criminal investigation or prosecution for failure to pay any tax liability to the Town.

Section 4. For purposes of this article, the term "interest due thereon" means the interest described in G.L. c. 59, Section 57 as follows: the rate of fourteen per cent per annum, computed from October first of the fiscal year in which it is payable, or from the date the bill for such tax was mailed if mailed after October first of the fiscal year in which it is payable, calculated on so much of the unpaid amount as is in excess of one-half of such balance.

For purposes of this article, the terms "penalties that could be assessed" and "penalties associated with that assessment" means the interest described in G.L. c. 59, Section 57 as follows: for assessments still due after May first of the fiscal year in which it is payable, the additional rate of fourteen per cent per annum calculated on so much of the balance of such tax not so paid as does not exceed one half of such tax balance as reduced by any abatement and computed from April first of such fiscal year.,

or act on anything relative thereto.

## **ARTICLE 16**

To see if the Town will adopt the following resolution:

**Whereas**, Brookline has high taxes for both commercial and residential properties, and;

**Whereas**, Brookline has been experiencing a shift of its aggregate tax responsibility from commercial to residential properties. The reasons for this shift are multi dimensional and include:

- a. an erosion of the town's commercial base due to the conversion of commercial properties to residential use;
- b. residential property value assessments have been rising at a greater rate of appreciation than commercial property;
- c. the fact that Brookline has hit the maximum tax classification limit of 175%, and;

**Whereas**, The existing small business exemption has never been implemented and is found to be inappropriate for Brookline, and;

**Whereas**, the Comprehensive Plan Committee is examining, in part, how town policies including zoning could be changed to strengthen the town's commercial base, and;

**Whereas**, maximum and minimum tax classification limits are set by the General Court on a statewide basis and are thus a statewide issue. However, each municipality chooses whether or not to classify its tax rate and by how much within the allowed limits, and;

**Whereas**, Brookline should not have a higher tax classification limit than other cities and towns in the Commonwealth, and;

**Whereas**, both the competing and complementary interests of all classes of taxpayers must be carefully considered.

**Therefore**, Town Meeting requests that the Comprehensive Plan Committee consider whether and how tax policies can be used as a tool to achieve the goals of the Comprehensive Plan with respect to enhancing the town's commercial base while balancing the interests of the residential base, and;

Town Meeting requests that the Town's legislative delegation file a bill to have the state's tax classification limit and small business exemption reviewed by the Mass. Department of Revenue Division of Local Services (DLS) and to have DLS recommend change(s) on a statewide basis, if deemed appropriate.,

or act on anything relative thereto.

## **ARTICLE 17**

To see if the Town will adopt the following resolution:

*A society that will trade a little liberty for a little order will lose both and deserve neither.*

– Thomas Jefferson

**WHEREAS:** United States law is founded in the Declaration of Independence, the United States Constitution, and the Bill of Rights; and

**WHEREAS:** Brookline is a politically diverse and democratic community whose residents are committed to preserving the human rights and civil liberties enunciated in these founding documents; and

**WHEREAS:** Acts of terrorism against the United States on September 11, 2001, prompted President George W. Bush to declare a “war on terrorism,” many aspects of which, in its domestic implementation, constitute an assault with few precedents on the following constitutional amendments:

- The First Amendment, which provides that no law shall be made "abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances”;
- The Fourth Amendment, which declares, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized”;
- The Fifth Amendment, which states that no person "shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law”;
- The Sixth Amendment, which guarantees defendants "the right to a speedy and public trial, by an impartial jury... and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence”;
- The Eighth Amendment, which states, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted”;
- The Fourteenth Amendment, which prohibits the government from denying "to any person within its jurisdiction the equal protection of the laws”;

**WHEREAS:** We believe these inalienable rights are now directly threatened by:

- A. The **USA PATRIOT Act**, whose ambiguities and vast scope greatly strengthen the government’s power to invade and control the everyday lives of citizens and non-citizens alike. This Act:
  - Inhibits constitutionally protected speech through vague and overly broad definitions

of "terrorism" and creation of the new crime of "domestic terrorism," the interpretation of which resides exclusively in the hands of the Attorney General and the President (Sections 411, 412, 802, 808);

- Virtually eliminates judicial supervision of telephone and Internet surveillance (Sec. 216);
- Greatly expands the government's authority to conduct secret searches (Sections 209, 213, 215, 218-220);
- Grants the FBI broad access to individual medical, mental health, financial, employment, and educational records without having to show evidence of a crime and without a court order; and
- Permits the FBI to track individual book borrowing in libraries and book purchases and video rentals in stores and makes it a crime for librarians and vendors to reveal their knowledge of such tracking (Sec. 215);

B. **Federal Executive Orders and governmental actions** since September 11, 2001, which

- Permit wiretapping of conversations between federal prisoners and their lawyers:
- Eliminate Justice Department regulations against illegal COINTELPRO-type operations by the FBI (covert activities that in the past targeted domestic groups and individuals);
- Establish secret military tribunals for terrorism suspects, including both citizens and non-citizens;
- Permit thousands of men, mostly of Arab and South Asian origin, to have been held for many months in secret custody, most without any charges filed against them, without publication of their identities and location in defiance of repeated congressional requests and court orders; and
- Limit the release of public documents and records in many subject areas under the Freedom of Information Act (FOIA); and

C. The **Homeland Security Act**, which violates fundamental principles of open governance by:

- Exempting the Department of Homeland Security from FOIA disclosure, thereby drastically restricting its responsibility to answer public questions;
- Empowering the Secretary of the Department to waive the safeguards contained in the federal Whistleblower Protection Act; and
- Empowering the Secretary of the Department to require vaccinations of the entire population with no exemptions (Sec 304c); and

**WHEREAS:** The provisions of the Constitution apply in wartime as in peace; and to violate or depart from them, under the plea of necessity or any other plea, is subversive of good government; and

**WHEREAS:** United States laws that pre-existed 9/11 would, if competently and effectively implemented, be sufficient to investigate terrorists and bring them to justice;

**NOW, THEREFORE, BE IT RESOLVED:** That the TOWN OF BROOKLINE, MASSACHUSETTS, in its 2003 Annual Town Meeting assembled:

1. declares and affirms that the USA PATRIOT ACT, the Homeland Security Act, and a number of recent federal Executive Orders contain provisions which, taken together, constitute an assault with few historic precedents upon the civil liberties and human rights established for the citizens of the United States of America;

2. maintains that its officials and employees must hold the United States Constitution, including the Bill of Rights, as the ultimate legal authority whenever its provisions conflict with those of the USA PATRIOT Act, the Homeland Security Act, or federal Executive Orders, thereby upholding all constitutional rights, including due process, equal protection of the laws, and the freedoms of speech, religion, assembly, and privacy of all Brookline residents;

3. urges that the Governor of Massachusetts, all state and federal legislators, jurists, law enforcement officers, and officials, and the citizens of Massachusetts take all legally appropriate action to revoke, rescind and eliminate those provisions of the USA PATRIOT ACT, the Homeland Security Act, and recent federal Executive Orders that diminish our civil liberties and human rights;

4. considers it vitally important that the U.S. Attorney's Office, the Federal Bureau of Investigation, the Massachusetts State Police, and any other Federal, State or local law enforcement officials in possession of any such information report to the Brookline Board of Selectmen regularly and publicly the extent to and manner in which they have acted under the USA PATRIOT Act, the USA PATRIOT Act, and recent Executive Orders, including but not limited to disclosing:

- the names of any detainees held within the Commonwealth of Massachusetts and of any Brookline residents detained within the Town or elsewhere; the circumstances that led to each detention; the charges, if any, lodged against each detainee; and the name of counsel, if any, representing each detainee;



- the number of search warrants that have been executed in the Town of Brookline without notice to the subject of the warrant pursuant to section 213 of the USA PATRIOT Act;
- the extent of electronic surveillance carried out in the Town of Brookline under powers granted in the USA PATRIOT Act;
- the extent to which federal authorities are monitoring political meetings, religious gatherings, or other activities within the Town of Brookline that are protected by the First Amendment;
- the number of times education records have been obtained from public schools and institutions of higher learning in the Town of Brookline under section 507 of the USA PATRIOT Act; and
- the number of times individual borrowing records have been obtained from libraries and purchasing records have been obtained from book and video stores in the Town of Brookline under section 215 of the USA PATRIOT Act; and

5. requests that the Town Clerk send a copy of this resolution to all Town residents and departments and to the Norfolk County District Attorney, the Massachusetts State Police, the Massachusetts Congressional and Statehouse delegations, the Attorney General and the Governor of the Commonwealth of Massachusetts, the local United States Attorney, the United States Attorney General and the President of the United States.

**ARTICLE 18**

To see if the Town will amend the by-laws of the Town of Brookline as follows:

- A. by adding a new ARTICLE 8.25, entitled: “Stormwater Management” in PART VIII, to read as follows:

ARTICLE 8.25  
STORMWATER MANAGEMENT

SECTION 8.25.1 DISCHARGES TO THE MUNICIPAL DRAIN SYSTEM

1. Purpose

The purpose of Section 8.25.1 is to eliminate non-stormwater discharges to the Town of Brookline’s Municipal Storm Drain System (storm drain). Non-stormwater discharges contain contaminants and supply additional flows to the Town of Brookline’s Storm Drain System. Non-stormwater discharges are major causes of:

- a. impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands, and groundwater;
- b. contamination of drinking water supplies;
- c. alteration or destruction of aquatic and wildlife habitat; and
- d. flooding.

Regulation of illicit connections and discharges to the storm drain system is necessary for the protection of the Town of Brookline's, natural resources, municipal facilities, general health, safety, welfare, and the environment.

The objectives of this section are:

- a. to prevent pollutants from entering the storm drain;
- b. to prohibit illicit connections and unauthorized discharges to the storm drain
- c. to remove all such illicit connections;
- d. to comply with state and federal statues and regulations relating to stormwater discharges; and
- e. to establish the legal authority to ensure compliance with the provisions of this section through inspection, monitoring, and enforcement.

## 2. Definitions

Unless a different definition is indicated in sections 8.25.2 and 8.25.3, the following definitions and provisions shall apply throughout Article 8.25, also referred to in Article 8.25, as this by-law.

- a. **AUTHORIZED ENFORCEMENT AGENCY** – The Department of Public Works (hereafter DPW), its employees or agents designated to enforce this by-law.
- b. **BEST MANAGEMENT PRACTICE (BMP)** – An activity, procedure, restraint, or structural improvement that helps reduces the quantity or improve quality or stormwater runoff.
- c. **CLEAN WATER ACT** – The Federal Water Pollution Control Act (33 U.S.C. section 1251 *et seq.*) and as it amended from time to time.
- d. **DISCHARGE OF POLLUTANTS**: The addition from any source of any pollutant or combination of pollutants into the storm drain or into waters of the United States or Commonwealth from any source.
- e. **GROUNDWATER**: Water beneath the surface of the ground.
- f. **ILLICIT CONNECTION**: A surface or subsurface drain or conveyance, which allows an illicit discharge into the storm drain, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets,

- regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this by-law.
- g. **ILLECT DISCHARGE:** Direct or indirect discharge to the storm drain that is not composed entirely of stormwater, except as exempted in Section 6. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or resulting from fire fighting activities exempted pursuant to Section 7, subsection d, part 1, of Section 8.25.1
  - h. **IMPERVIOUS SURFACE:** Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and rooftops.
  - i. **MUNICIPAL STORM DRAIN SYSTEM (storm drain) or Municipal Separate Storm Sewer System (MS4):** The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Brookline.
  - j. **NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT:** A permit issued by the United States Environmental Protection Agency or jointly with the State of Massachusetts that authorizes the discharge of pollutants to waters of the United States or Commonwealth.
  - k. **NON-STORMWATER DISCHARGE:** Discharge to the storm drain not comprised entirely of stormwater.
  - l. **PERSON:** An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.
  - m. **POLLUTANT:** Any element or property of sewage, residential, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or non-point source, that is or may be introduced into any storm drain system, waters of the United States, and/or Commonwealth. Pollutants shall include without limitation:
    - 1) paints, varnishes, solvents;
    - 2) oil, grease, antifreeze, other automotive fluids and/or products;
    - 3) non-hazardous liquid and solid wastes;
    - 4) refuse, garbage, litter, rubbish, yard wastes, or other discarded or abandoned objects, ordnances, accumulations and floatables;
    - 5) pesticides, herbicides, and fertilizers;

- 6) hazardous materials and wastes;
  - 7) sewage;
  - 8) dissolved and particulate metals;
  - 9) metal objects or materials;
  - 10) animal wastes;
  - 11) rock, sand, salt, soils, or other products/materials that mobilize in surface water runoff;
  - 12) and construction wastes and/or residues.
- n. **PROCESS WASTEWATER:** Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.
- o. **RECHARGE:** The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.
- p. **STORMWATER:** Runoff from precipitation or snowmelt.
- q. **TOXIC OR HAZARDOUS MATERIAL or WASTE:** Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare or to the environment. Toxic or hazardous material including without limitation:
- 1. any synthetic organic chemical;
  - 2. petroleum products;
  - 3. heavy metals;
  - 4. radioactive or infectious waste;
  - 5. acid and alkali substances;
  - 6. any substance defined as Toxic or Hazardous under G.L. Ch.21C and Ch. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.000;
  - 7. and any substance listed as hazardous under 40 CFR 261.
- r. **WATERCOURSE:** A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.
- s. **WATERS OF THE COMMONWEALTH:** All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.
- t. **WASTEWATER:** Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

3. Applicability

This section shall apply to flows entering the municipally owned and/or operated storm drainage system.

4. Authority

Article 8.25 is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and the regulations of the federal Clean Water Act found a 40 CFR 122.34.

5. Responsibility for Administration

The DPW shall administer, implement and enforce Article 8.25. Any powers granted to or duties imposed upon the DPW to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

6. Regulations

The DPW may promulgate rules and regulations to effectuate the purpose of Article 8.25. Failure by the DPW to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

7. Prohibited Activities

**ILLCIT DISCHARGES** - No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the storm drain system, into a watercourse, or into waters of the United States and/or Commonwealth.

**ILLCIT CONNECTIONS** – No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

**OBSTRUCTION OF THE MUNICIPAL STORM DRAIN SYSTEM** – No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior approval from the DPW.

**EXEMPTIONS**

Discharge of flow resulting from fire fighting activities and DPW ice and snow control operations:

The following non-stormwater discharges or flows are considered exempt provided that the source is not a significant contributor of pollution to the municipal storm drain system:

- i. waterline flushing;
- ii. flow from potable water sources;
- iii. springs;
- iv. natural flow from riparian habitats and wetlands;
- v. diverted stream flow;
- vi. rising groundwater
- vii. uncontaminated groundwater infiltrating as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
- viii. water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
- ix. discharge from landscape irrigation or lawn watering;
- x. water from individual residential car washing;
- xi. discharge from dechlorinated swimming pool water (less than one ppm chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
- xii. discharge from street sweeping;
- xiii. dye testing, provided verbal notification is given to the DPW prior to the time of the test;
- xiv. non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations;
- xv. and discharge for which advanced written approval is received from the DPW as necessary to protect public health, safety, welfare, and the environment.

#### 8. Emergency Suspension of Storm Drainage System Access

The DPW may suspend municipal storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the Authorized Enforcement Agency may take all reasonable steps to prevent or minimize harm to the public, health, safety, welfare or the environment.

#### 9. Notification of Spills

Notwithstanding other requirements of local, state or federal law, as soon a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at the facility or operation resulting in or which may result in

discharge of pollutants or non-stormwater discharge to the municipal storm drain system, waters of the United States, and/or waters of the Commonwealth, the person shall take all necessary steps to ensure containment, and clean-up of the release. In the event of release of oil or hazardous materials, the person shall immediately notify the municipal fire, police, and health departments. The person shall notify the Authorized Enforcement Agency no later than the next business day. The reporting person shall provide to the Authorized Enforcement Agency written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall take all necessary steps to ensure containment, clean-up of the release, retain on-site a written record of the discharge, and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

#### 10. Enforcement

The DPW or an authorized agent of the DPW shall enforce Article 8.25, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

- a) Civil Relief – If a person violates the provisions of this by-law, regulations, permit, notice, or order issued thereunder, the DPW may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.
- b) Orders – The DPW or an authorized agent or the DPW may issue a written order to enforce the provisions of this by-law or the regulations thereunder, which may include:
  - a) elimination of illicit connections or discharges to the MS4;
  - b) performance of monitoring, analyses, and reporting;
  - c) that unlawful discharges, practices, or operations shall cease and desist;
  - d) and remediation of contamination in connection.

If the enforcing person determines that abatement or remediation of contaminations is required and is the responsibility of the property *owner*, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of Brookline may,

at its option, undertake such work, and expenses thereof shall be charged to the violator.

Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town of Brookline, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with The DPW within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the DPW affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owners property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Ch. 59, section 57 after the thirty-first day at which the costs first become due.

- c) PENALTY – Any person who violates any provision of this by-law, regulation, order or permit issued thereunder, shall be punished by a fine as set forth in Part X “ Penalties and Enforcement “ of the By-laws of the Town of Brookline.
- d) ENTRY TO PERFORM DUTIES UNDER THIS BY-LAW – To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the DPW, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under Article 8.25 and may make or cause to be made such examinations, surveys or sampling as the DPW deems reasonably necessary
- e) APPEALS – The decision or orders of the DPW shall be final. Further relief shall be to a court of competent jurisdiction.
- f) REMEDIES NOT EXCLUSIVE – The remedies listed in Article 8.25 are not exclusive of any other remedies available under any applicable federal, state or local law.

## 11. Severability

The provisions Article 8.25 are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of Article 8.25 or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of Article 8.25.



## SECTION 8.25.2 EROSION AND SEDIMENT CONTROL

### 1. Purpose

The purpose of this section is to eliminate or reduce the adverse effects of soil erosion and sedimentation on the environment, public welfare/health, and municipal facilities. These adverse effects may be the result of managed construction and other activities including but not limited to earth alteration, excavation, removal of vegetation and general construction activities.

### 2. Definitions

**AGRICULTURE** – The normal maintenance or improvement of land in agricultural or aquacultural use as defined by the Massachusetts Wetlands Protection Act and its implementing regulations

**CLEARING**—Any activity that removes the vegetative surface cover

**DRAINAGE WAY**—Any channel that conveys surface runoff throughout the site

**EROSION CONTROL**—A measure that prevents erosion

**EROSION AND SEDIMENT CONTROL PLAN**—A set of plans prepared by or under the direction of a licensed professional engineer, certified professional in erosion and sediment control, or other appropriately licensed and experienced professional, indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction

**GRADING**—Excavation or fill of material, including the resulting conditions thereof

**OWNER** – a person with a legal of equitable interest in property

**PERIMETER CONTROL**—A barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to an on-site sediment trap or basin

**PHASING**—Clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next

**SEDIMENT CONTROL**—Measures that prevent eroded sediment from leaving the site or entering off-site drainage structures

**SITE**—A parcel of land or a contiguous combination thereof, where grading

work is performed as a single unified operation

**STABILIZATION**—The use of practices that prevent exposed soil from eroding

**START OF CONSTRUCTION**—The first land-disturbing activity associated with a development, including but not limited to land preparation such as clearing, grading and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages

**WATERCOURSE**—Any body of water, including, but not limited to, lakes, ponds, rivers, streams, and bodies of water

**WATERWAY**—A channel that directs surface runoff to a watercourse or to the public storm drain

### 3. Jurisdiction

No person shall excavate, cut, grade or perform any land-disturbing activities of significance, without an approved Erosion and Sediment Control Plan. Activities of significance are those which meet or exceed the following thresholds:

- 1) Change of existing grade on more than 2500 sq. ft. or 25% of the lot whichever is smaller.
- 2) Removal of existing vegetation of more than 2500 sq. ft. or 25% of the lot whichever is smaller
- 3) Storage of more than 75 cubic yards of excavate or fill.

Activities which are exempt from the requirement of an approved Erosion and Sediment Control Plan are as follows:

- a. Emergency activities for the protection of life, property, or natural resources
- b. Existing permitted nursery and agricultural operations
- c. Construction and maintenance of public/private streets and utilities within the Town approved roadway layout and easements.

### 4. Erosion and Sediment Control Plan

- a. Activities which require the change of existing grade or removal of exiting vegetation on any parcel of between 2500 and 20,000 sq. ft. or storage of excavate or fill between 75 and 1300 cubic yards shall be deemed a project of minor significance and will require that the following information to be included on the Erosion and Sediment Control Plan:

- 1) Name, address and telephone number of owner, civil engineer and person responsible for implementation of the plan

- 2) Property lines.
  - 3) Location of all existing and proposed building and impervious surfaces.
  - 4) Location of all existing and proposed stormwater utilities, including structures, pipes, swales and detention basins.
  - 5) Erosion and sediment control provisions to minimize on-site erosion and prevent off-site sediment transport, including provisions to preserve topsoil and limit disturbance.
  - 6) Design details for both temporary and permanent erosion control structures.
  - 7) The Department of Public Works may require any additional information or data deemed appropriate and/or may impose such conditions thereto as may be deemed necessary to ensure compliance with the provisions of Chapter 52, the Manual of Standards, or the preservation of public health and safety.
- b. Activities which require the change of existing grade or removal of exiting vegetation on more than 20,000 sq. ft. shall be deemed a project of significant impact and will require that the Erosion and Sediment Control Plan include all of the information required of projects of minor significance plus the following additional information:
- 1) An attached vicinity map showing the location of the site in relationship to the surrounding area's watercourses, water bodies and other significant geographic features, and roads and other significant structures.
  - 2) Suitable contours for the existing and proposed topography.
  - 3) A clear and definite delineation of any areas of vegetation or trees. Note all vegetation that is to be removed and all vegetation that is to be saved.
  - 4) A clear and definite delineation of any wetlands, natural or artificial water storage detention areas, and drainage ditches on the site.
  - 5) A sequence of construction of the development site, including stripping and clearing; rough grading; construction of utilities; infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, and establishment of permanent vegetation.

## 5. Performance Standards

A construction project shall be considered in conformance with this section if soils or other eroded matter has been prevented from being deposited onto adjacent properties, rights-of-ways, public storm drainage system, or wetland or watercourse. The design, testing, installation, and maintenance of erosion and sediment control operations and facilities shall adhere to the standards and specifications contained in the Massachusetts Erosion and Sediment Control Guidelines for Urban and Suburban Areas dated March 1997 or the latest edition thereof.

## 6. Review and Approval

An Erosion and Sediment Control review is triggered by a building permit application or other activity that falls within the jurisdiction described in paragraphs 3 and 4 above. Applicants are referred by the permit issuing agency to the Engineering Division of the Department of Public Works to conduct the Erosion and Sediment Control review. Activities that fall within the jurisdiction described in paragraphs 3 and 4 above that do not require a permit from any Town department are not exempt from this provision. In this situation, the applicant must seek Erosion and Sediment Control review directly from the Department of Public Works.

The Department of Public Works will review each Erosion and Sediment Control Plan to determine its conformance with the provisions of this section. Within 30 calendar days after receiving an application, the Department of Public Works shall, in writing:

- a. Approve the plan as submitted.
- b. Approve the plan subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or
- c. Disapprove the plan, indicating the reason(s) and procedure for submitting a revised application and/or submission.

Failure of the Department of Public Works to act on an original or revised plan within 30 calendar days of receipt shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by agreement between the applicant and the Department of Public Works. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the Department of Public Works.

## 7. Inspections

The Commissioner of Public Works, or designated agent shall make inspections as hereinafter required and either shall approve that portion of the work completed or shall notify the owner or person responsible for the implementation of the plan wherein the work fails to comply with the Erosion and Sediment Control Plan as approved. Plans for grading, stripping, excavating, and filling work bearing the stamp of approval of the Department of Public Works shall be maintained at the site during the progress of the work. To obtain inspections, the permittee shall notify the Department of Public Works at least two working days before the following:

- a. Installation of sediment and erosion control measures<sup>1</sup>
- b. Start of construction
- c. Completion of site clearing
- d. Completion of rough grading
- e. Close of the construction season
- f. Completion of final landscaping

The person responsible for implementation of the plan shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved Erosion and Sediment Control Plan(s). The purpose of such inspections will be to determine the overall effectiveness of the control plan and the need for additional control measures. All inspections shall be documented in written form and submitted to the Department of Public Works at the time interval specified in the approved permit.

The Commissioner of Public Works or its designated agent shall enter the property of the applicant as deemed necessary to make regular inspections to ensure the validity of the reports filed as noted above.

## 8. Enforcement

- a. Suspension of Construction or Site Alteration Activity—In the event that the activity at a site violates the conditions as stated or shown on the approved Erosion and Sediment Control Plan in such a manner as to adversely affect the environment, public welfare/health and municipal facilities, then the Commissioner of Public Works may suspend work until the violation are corrected.

### SECTION 8.25.3 POST CONSTRUCTION STORMWATER MANAGEMENT

#### 1. Purpose

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<sup>1</sup>Only Notification required on minor projects.

The purpose of this section is to establish minimum requirements and controls to protect and safeguard the environment, natural resources, general health, safety, and welfare of the public residing in watersheds within the Town's jurisdiction from the adverse impacts of stormwater runoff. Stormwater management controls are typically permanent features of a complete project, and as such require maintenance and management. This section seeks to meet that purpose through the following objectives:

- a. to minimize stormwater runoff from any development;
- b. to minimize nonpoint source pollution caused by stormwater runoff from development;
- c. to provide for groundwater recharge where appropriate; and
- d. to ensure controls are in place to respond to objectives a and b and are properly operated and maintained.

## 2. Definitions

**ACCELERATED EROSION**—Erosion caused by development activities that exceeds the natural processes by which the surface of the land is worn away by the action of water, wind, or chemical action.

**APPLICANT**—For the purpose of this Section, APPLICANT shall refer to a property owner or agent of a property owner who has filed a stormwater management plan.

**BUILDING**—For the purpose of this Section, BUILDING shall refer to any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property and occupying more than 100 square feet of area.

**CHANNEL**—A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

**DEDICATION**—The deliberate appropriation of property by its owner for general public use.

**DETENTION**—The temporary storage of storm runoff in a stormwater management facility with the goals of controlling peak discharge rates and providing gravity settling of pollutants.

**DETENTION FACILITY**—A detention basin or alternative structure designed for the purpose of temporary storage of stream flow or surface runoff and gradual release of stored water at controlled rates.

**DEVELOPER**—A person who undertakes land disturbance activities.

**DRAINAGE EASEMENT**—A legal right granted by a landowner to a grantee allowing the use of private land for stormwater management purposes.

**EROSION AND SEDIMENT CONTROL PLAN**—A plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.

**FEE IN LIEU**—A payment of money in place of meeting all or part of the storm water performance standards required by this section.

**HOTSPOT**—An area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater.

**HYDROLOGIC SOIL GROUP (HSG)**—A Natural Resource Conservation Service classification system in which soils are categorized into four runoff potential groups. The groups range from A soils, with high permeability and little runoff production, to D soils, which have low permeability rates and produce much more runoff.

**IMPERVIOUS COVER**—Those surfaces that cannot effectively infiltrate rainfall (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

**INDUSTRIAL STORMWATER PERMIT**—A National Pollutant Discharge Elimination System (NPDES) issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

**INFILTRATION**—The process of percolating stormwater into the subsoil.

**INFILTRATION FACILITY**—Any structure or device designed to infiltrate retained water to the subsurface. These facilities may be above grade or below grade.

**JURISDICTIONAL WETLAND**—An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophilic vegetation.

**LAND DISTURBANCE ACTIVITY**—Any activity which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural man-made watercourse.

**LANDOWNER**—The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

**OPERATION AND MAINTENANCE PLAN** – A plan setting up the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to insure that it continues to function as designed.

**NONPOINT SOURCE POLLUTION**—Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, mining, construction, subsurface disposal and urban runoff sources.

**ON-SITE FACILITY**—A stormwater management measure located within the subject property boundary described in the permit application for land development activity.

**PERSON**—For the purpose of this Section, PERSON shall refer to any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth of Massachusetts or other political subdivision thereof to the extent subject to Town by-laws, administrative agency, public or quasi-public corporation or body, the Town of Brookline and any other legal entity, its legal representatives, agents or assigns.

**RESOURCE AREA**—Any area protected under the Massachusetts Wetlands Protection Act or Massachusetts Rivers Act

**RECHARGE**—The replenishment of underground water reserves.

**REDEVELOPMENT**—Any construction, alteration, or improvement exceeding one acre in area where existing land use is high density commercial, industrial, institutional or multi-family residential.

**STOP WORK ORDER**—An order issued which requires that all construction activity on a site be stopped.

**STORMWATER MANAGEMENT**—The use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates, and detrimental changes in stream temperature that affect water quality and habitat.

**STORMWATER RETROFIT**—A stormwater management practice designed for the existing development site that previously had either no stormwater



management practice in a place or a practice inadequate to meet the stormwater management requirements of the site.

**STORMWATER RUNOFF**—Flow on the surface of the ground, resulting from precipitation.

**STORMWATER TREATMENT PRACTICES (STPs)**—Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

**WATER QUALITY VOLUME (WQ)**—The storage needed to capture and treat 90% of the average annual stormwater runoff volume. Numerically (WQ) will vary as a function of long term rainfall statistical data.

**WATERCOURSE**—A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

### 3. Jurisdiction

No person shall conduct land disturbance activities which would exceed the following thresholds without an approved Stormwater Management Plan:

- a. Any land disturbance activity greater than 2500 sq. ft. which would result in an increased amount of stormwater runoff from the property to public/private property or resource areas.
- b. Any activity which would increase the flow to the municipal storm or sanitary sewer systems.
- c. Any activity which would alter or modify an existing drainage system.

Activities which are exempt from the requirements of an approved Stormwater Management Plan are:

- a. Emergency repairs to any stormwater structure.
- b. Maintenance of existing gardens or lawns.
- c. Construction of utilities, other than drainage, which would not alter the terrain, ground cover or drainage patterns.

### 4. Stormwater Management Plan

A Stormwater Management Plan, which meets the design requirements of this By-Law, shall be prepared by a licensed professional engineer and submitted to the Department of Public Works. The plan shall include, but not be limited to, the

items listed below and, at a minimum, be designed to provide sufficient information to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures proposed for managing stormwater runoff. The applicant shall certify on the drawings that all clearing, grading, drainage, construction, and development shall be conducted in strict accordance with the plan. The minimum information, in addition to the Name, address and telephone number of the owner, civil engineer and person responsible for implementation of the plan, submitted for support of a stormwater management plan shall be as follows:

- a. Locus map.
- b. Drainage area map showing drainage area and stormwater flow paths.
- c. Location of existing and proposed utilities.
- d. Location of all existing and proposed stormwater utilities, including structures, pipes, swales and detention basins.
- e. Topographic survey showing existing and proposed contours.
- f. Soils investigation, including borings or test pits, for areas where construction of infiltration practices will occur.
- g. Description of all watercourses, impoundments, and wetlands on or adjacent to the site or into which stormwater flows.
- h. Delineation of 100-year floodplains, if applicable.
- i. Groundwater levels at the time of probable high groundwater elevation (November to April) in areas to be used for stormwater retention, detention, or infiltration.
- j. Existing and proposed locations, cross sections, and profiles of all brooks, streams, drainage swells and the method of stabilization.
- k. Location of existing and proposed easements.
- l. Proposed improvements including location of buildings or other structures, impervious surfaces and storm drainage facilities, if applicable.
- m. Structural details for all components of the proposed drainage systems and stormwater management facilities.
- n. Timing schedules and sequences of development including clearing, stripping, rough grading, construction, final grading, and vegetative stabilization.

- o. Operation and maintenance schedule.
- p. Notes on drawings specifying materials to be used, construction specifications, and typicals.
- q. Location of areas to be cleared of more than 50 percent of the vegetation.

The applicant should review the scope of work of the proposed project with a representative of the Department of Public Works to determine the requirements of the Stormwater Management Plan.

## 5. Design Requirements and Performance Standards

- a. Performance Standards—Control of stormwater runoff shall meet the performance standards for both flood control (volume and peak discharge) and nonpoint source pollution reduction as defined in the Massachusetts Stormwater Management Policy dated March 1997 as amended. All assumptions, methodologies and procedures used to design BMP's and stormwater management practices shall accompany the design. All activities, project design, BMP's, and stormwater management practices should aim to minimize stormwater runoff, maximize infiltration and recharge where appropriate, and minimize pollutants in stormwater runoff.
- b. Major and Minor Projects—Activities will be classified as major and minor projects. Major projects are defined as projects which have activities result in the land disturbance of one (1) acre or more. All other activities will be considered minor projects. Requirements for major and minor projects are as follows:
  - 1) Major projects must either meet the requirements of the stormwater management standards or demonstrate that an equivalent level of environmental protection is provided in the event that one or more of the standards are not met.
  - 2) Minor projects must meet, to the maximum extent feasible, the stormwater management standards. In general, projects which fall into this category will not require the submission of an operation and maintenance plan.

## 6. Review and Approval

The Department of Public Works will review the Stormwater Management Plan to determine its conformance with the provisions of this section. For major projects, the Conservation Commission shall also review the Stormwater Management Plan. Within 30 days after receiving the plan, the Department of Public Works shall, in writing:

- a. Approve the plan as submitted.
- b. Approve the plan subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation and approve the plan subject to these conditions.
- c. Disapprove the plan indicating the reason(s) and procedure for submitting a revised plan and/or submission.

Failure of the Department of Public Works to act on an original or revised application within calendar 30 days of receipt shall authorize the applicant to proceed in accordance with the plan as filed unless such time is extended by agreement between the applicant and the Department of Public Works. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the Department of Public Works.

#### 7. Inspections

The Commissioner of Public Works, or designated agent shall make inspections as hereinafter required. To obtain inspections, the applicant shall notify the Department of Public Works at least two working days before the following:

- a. Start of construction
- b. Installation of Stormwater controls
- c. Close of construction season
- d. Completion of final grading and landscaping

The applicant shall submit an “as-built” plan for the stormwater controls after the final construction is completed. The plan must show the final design specifications of all stormwater management controls and must be prepared by a professional engineer.

#### 8. Enforcement

When the Department of Public Works determines that an activity is not being carried out in accordance with the requirements of this by-law, a written notice of non compliance to the applicant shall be issued which , at a minimum, will contain the following:

- a. The name and address of the applicant

- b. The street address or description of the building, structure or land upon which the non compliance is occurring
- c. A statement specifying the nature of the non compliance
- d. A description of the remedial measures necessary to bring the activity into compliance with this by-law and a time schedule for the completion

Applicants receiving a notice of non compliance will be required to halt all construction activities. This “stop work order” will be in effect until the Department of Public Works confirms that the activity involved in the non compliance has been satisfactorily addressed. Occupancy permits, if applicable, will not be granted until the requirements of this by-law are complied with.

In the event that damages occur to the environment, natural resources, municipal facilities, and/or general health, safety and welfare of the public due to improper installation, operation or maintenance of stormwater controls, a fine may be imposed by the Town in accordance with the appropriate sections of Part X “Penalties and Enforcement” in the By-Laws of the Town of Brookline.

- B. by amending the second reference of “Part VII” under “COMMISSION OF PUBLIC WORKS” in Article 10.2 to “Part VIII – Public Health Safety” and by adding at the end thereof after “8.24”, 8.25.
- C. by adding to the Table of Specific Penalties under ARTICLE 10.3, after “SECTION 8.24.6 ENFORCEMENT \$100.00”, the following:

ARTICLE 8.25      STORMWATER MANAGEMENT

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

or act on anything relative thereto.

**ARTICLE 19**

To see if the Town will amend ARTICLE 6.8, NAMING PUBLIC FACILITIES, in the By-Laws of the Town, to read as follows:

ARTICLE 6.8  
NAMING PUBLIC FACILITIES

Town Buildings, parks, squares and other facilities, EXCEPT AS HEREINAFTER PROVIDED, may be named only by Town Meeting, in appropriate circumstances, when such action is proposed in a Warrant Article.

THE LIBRARY TRUSTEES MAY, IN ACCORDANCE WITH GUIDELINES ADOPTED AND FROM TIME TO TIME AMENDED BY THE LIBRARY TRUSTEES, NAME ROOMS IN LIBRARY BUILDINGS IN APPROPRIATE CIRCUMSTANCES. THE SCHOOL COMMITTEE MAY, IN ACCORDANCE WITH GUIDELINES ADOPTED AND FROM TIME TO TIME AMENDED BY THE SCHOOL COMMITTEE, NAME ROOMS IN SCHOOL BUILDINGS AND OTHER SCHOOL DEPARTMENT FACILITIES IN APPROPRIATE CIRCUMSTANCES.

or act on anything relative thereto.

**ARTICLE 20**

To see if the Town will amend Article 5.6.8 of the Town By-Laws concerning the Preservation Commission and Historic Districts By-Law. “The Preservation Commission shall propose changes in Brookline Historic boundaries as it deems appropriate. However, A BROOKLINE HISTORIC BOUNDARY MUST BE APPROVED IN WRITING BY 90 PERCENT OF THE RESIDENTIAL OR COMMERCIAL PROPERTY OWNERS WITHIN THE PROPOSED HISTORIC DISTRICT. Massachusetts General Laws, Chapter 40C, will guide the procedures for these activities.”

or act on anything relative thereto.

**ARTICLE 21**

To see if the Town will amend Article 8.15 – Noise Control of the By-Laws of the Town of Brookline in the following manner:

By amending Section 8.15.4 (a) (1) by striking the words “every day of the year” and in substitution thereof, adding the following words:  
“Monday through Friday, and from 7 (seven) P.M. to 8:30 (eight-thirty) A.M. on Saturdays, Sundays and holidays.”

and

By amending Section 8.15.4 (a) (2) by striking the words “every day of the year” and in substitution thereof, adding the following words:  
“Monday through Friday, and from 6 (six) P.M. to 8:30 (eight-thirty) A.M. on Saturdays, Sundays and holidays.”

or act on anything relative thereto.

**ARTICLE 22**

To see if the Town will amend the General By-Laws by deleting Section 2.1.7 and replacing it with the following section:

SECTION 2.1.7 THE ANNUAL TOWN ELECTION

Annually, not later than the third Monday in January, the Selectmen shall determine a date for the Annual Town Election. Said election shall be called on either the first or second Tuesday in May. The Selectmen may alter the date of the Annual Town Election to conform to the date of any Special State Primary or Special State Election without regard to the limitations of this by-law.,

or act on anything relative thereto.

**ARTICLE 23**

To see if the Town will amend Article 2.2 of the by-laws of the Town of Brookline by deleting the fourth sentence of Section 2.2.5 of said Article and by replacing it with the following:

“The Superintendent of Schools (in the case of school appropriations) and the Town Administrator (in the case of all other appropriations) shall submit their requests for appropriations to the Committee **PRIOR TO THE THIRD TUESDAY IN FEBRUARY OR SEVEN DAYS AFTER THE GOVERNOR SUBMITS THE ANNUAL BUDGET TO THE GENERAL COURT, WHICHEVER IS LATER.**”

or act on anything relative thereto.

**ARTICLE 24**

To see if the Town will authorize and empower the Board of Selectmen to execute, acknowledge, deliver and record a **PRESERVATION RESTRICTION AGREEMENT** that runs from the Town to the Commonwealth of Massachusetts, by and through the Massachusetts Historical Commission, for the former Larz and Isabel Anderson Carriage House, now known as the Larz Anderson Auto Museum, located in Larz Anderson Park.

The Preservation Restriction Agreement to be upon such terms and conditions as the Board of Selectmen determines to be in the best interests of the Town, and authorize the Board of Selectmen to take whatever action is necessary to perfect and establish said Preservation Restriction Agreement, or act on anything relative thereto.

**ARTICLE 25**

To see if the Town will accept the provisions of General Laws, Chapter 40, Section 8G, which provides, in essence, authorization for the Town to enter into mutual police aid programs, or act on anything relative thereto.

**ARTICLE 26**

To see if the Town will ask the Moderator to select a Committee to study how to simplify the tax collection of the present two parts of the present DPW budget – “Sanitation” and “Refuse Fee”.

**ARTICLE 27**

To see if the Town will amend Article 8.6 of the by-laws of the Town of Brookline by deleting the words “fenced-in” in the second paragraph of Section 8.6.7 of said Article and by changing the words “dog run” to “designated off leash area” throughout the entire article,

or act on anything relative thereto.

**ARTICLE 28**

To see if the Town will name the playground at Emerson Park the Daniel F. Ford Playground at Emerson Park, or act on anything relative thereto.

**ARTICLE 29**

Reports of Town Officers and Committees



AND YOU ARE DIRECTED TO SERVE THIS WARRANT IN ACCORDANCE WITH THE BY-LAWS OF THE TOWN OF BROOKLINE.

HEREOF FAIL NOT, and make due return of this WARRANT, with your doings thereon, to the Selectmen FOURTEEN DAYS at least before the day of said meeting.

Given under our hands and the seal of the Town of Brookline at Brookline, Massachusetts, this 25<sup>th</sup> day of March, 2003.

Board of Selectmen

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Deborah B. Goldberg, Chair

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Donna R. Kalikow

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Joseph T. Geller

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Gilbert R. Hoy, Jr.

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Robert L. Allen

[Town Seal]