

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

WESTERN MASSACHUSETTS DIVISION
1350 MAIN STREET
SPRINGFIELD, MASSACHUSETTS 01103-1629

MARTHA COAKLEY
ATTORNEY GENERAL

(413) 784-1240
www.mass.gov/ago

March 18, 2009

Patrick J. Ward, Town Clerk
333 Washington Street
Brookline, MA 02445

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
2009 MAR 20 A 9:22

RE: **Brookline Special Town Meeting of November 18, 2008 - Case # 4995**
Warrant Articles # 4, 8 and 9 (General)
Warrant Articles # 14, 15, and 16 (Zoning)

Dear Mr. Ward:

Articles 4, 8, 14, 15, and 16 - We return with the approval of this Office the amendments to the Town by-laws adopted under these Articles on the warrant for the Brookline Special Town Meeting that convened on November 18, 2008.

Article 9 - The Attorney General's deadline for action on Article 9 of the warrant for the Brookline Special Town Meeting that convened on November 18, 2008, has been extended for an additional 59-days under the authority conferred by G.L. c. 40, § 32. Chapter 299 of the Acts of 2000 amended G.L. c. 40, § 32, to allow for the Attorney General and Town Counsel to agree in writing, setting forth the reasons thereof, to extend the 90-day period for the Attorney General's review for a period of not more than an additional 59-days. The reason for our agreement is to allow the Attorney General and Town Counsel the opportunity to further discuss possible inconsistencies between the proposed amendment and state law. These amendments will be acted upon on or before *May 15, 2009*.

Note: Under G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of this section. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

If the Attorney General has disapproved and deleted one or more portions of any by-law or by-law amendment submitted for approval, only those portions approved are to be posted and published pursuant to G.L. c. 40, § 32. We ask that you forward to us a copy of the final text of the by-law or by-law amendments reflecting any such deletion. It will be

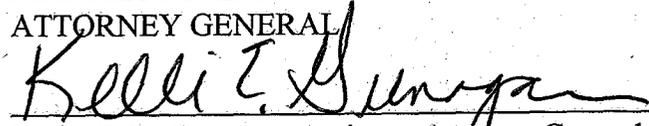


sufficient to send us a copy of the text posted and published by the Town Clerk pursuant to this statute.

Nothing in the Attorney General's approval authorizes an exemption from any applicable state law or regulation governing the subject of the by-law submitted for approval.

Very truly yours,

MARTHA COAKLEY
ATTORNEY GENERAL



by: Kelli E. Gunagan, Assistant Attorney General
By-law Coordinator, Municipal Law Unit
1350 Main Street, 4th Floor
Springfield, MA 01103-1629
(413) 784-1240, x 7717

enc.

cc: Town Counsel

**ARTICLE #4
Form #2
Submission #2**

**TOWN OF BROOKLINE
OFFICE OF THE TOWN CLERK**

December 10, 2008

To Whom It May Concern:

I, Patrick J. Ward, Town Clerk of the Town of Brookline, duly qualified and acting as such and having custody of the records, hereby certify that the following actions were taken under Article #4, at the Special Town Meeting called for Tuesday, November 18, 2008 at 7:00 P.M., adjourned to Wednesday, November 19, 2008, and dissolved on Thursday, November 20, 2008 at 10:41 P.M.

VOTED: To amend the General By-Laws by adding a Section 3.1.8 to Article 3.1 Board of Selectmen, as follows:

SECTION 3.1.8 SELECTMEN HEALTH BENEFITS

a. Eligibility

For purposes of determining the eligibility of a Selectman for health benefits pursuant to M.G.L. c. 32B, (i) all payments received by a Selectman from the Town in connection with his or her serving as a Selectman, including but not limited to receipt of any annual stipend, shall be for the reimbursement of expenses and shall not constitute "compensation," regardless of how such payments may otherwise be designated or treated by either the Town or such Selectman, and (ii) the duties of a Selectman do not require twenty hours or more, regularly, in the service of the Town during the regular work week.

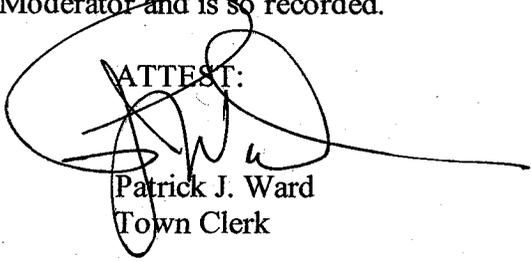
b. Effective Date

This by-law shall take effect on July 1, 2009.

The above vote, taken under Article #4, on Tuesday November 18, 2008, was PASSED BY A MAJORITY VOTE, was so declared by the Moderator and is so recorded.

(Seal)

ATTEST:


Patrick J. Ward
Town Clerk

**ARTICLE #8
Form #2
Submission #2**

**TOWN OF BROOKLINE
OFFICE OF THE TOWN CLERK**

December 10, 2008

To Whom It May Concern:

I, Patrick J. Ward, Town Clerk of the Town of Brookline, duly qualified and acting as such and having custody of the records, hereby certify that the following actions were taken under Article #8, at the Special Town Meeting called for Tuesday, November 18, 2008 at 7:00 P.M., adjourned to Wednesday, November 19, 2008, and dissolved on Thursday, November 20, 2008 at 10:41 P.M.

VOTED: That the Town amend Article 6.8, Section 6.8.2(A) of the General By-Laws as follows (language to be deleted is in brackets and language to be added is in bold and underlined):

ARTICLE 6.8 NAMING PUBLIC FACILITIES

Section 6.8.1

Except as hereinafter provided, town buildings, parks, squares and other facilities, may be named only by Town Meeting 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 them, name rooms and associated spaces of library buildings. The School Committee may, in accordance with guidelines adopted and from time to time amended by them name rooms and associated spaces of school buildings.

Section 6.8.2 REVIEW COMMITTEE

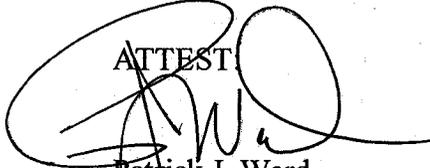
(A) Appointment - The Board of Selectmen shall appoint a Committee of [six] **five** members for staggered three year terms to review all proposals for naming public facilities except rooms and associated spaces under the jurisdiction of the School Committee and Library Trustees as specified above in Section 6.8.1. The Committee shall include one member of each of the Advisory Committee, the Park and Recreation Commission, the Preservation Commission and the School Committee. **In addition, the Board of Selectmen may appoint one alternate member to the Committee. Such alternate shall be appointed for a three year term and shall be designated by the**

Chair of the Committee from time to time to take the place of any member who is absent or unable or unwilling to act for any reason.

(B) General Duties – The Review Committee shall be responsible for reviewing and reporting its recommendations on proposals for naming public facilities. The Committee may also, from time to time initiate its own proposals for naming public facilities. All recommendations of the Committee shall be subject to criteria to be established by the Committee and approved by the Board of Selectmen.

The above vote, taken under Article #8, on Wednesday, November 19, 2008, was PASSED BY A UNANIMOUS VOTE, was so declared by the Moderator and is so recorded.

(Seal)

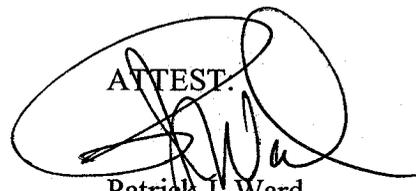
ATTEST

Patrick J. Ward
Town Clerk

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
<p>15B. Large family day care home defined as any private residence, operated by the occupant of that residence, which on a regular basis receives for temporary custody and care during part or all of the day, children under seven years of age or children under sixteen years of age if such children have special needs, and receives for temporary custody and care for a limited number of hours, children of school age in accordance with regulations promulgated by the Commonwealth's Department of Early Education and Care; provided, however, in either case, that the total number of children under sixteen in a large family day care home shall not exceed ten, including participating children living in the residence.**</p> <p>*(Use 15, 15A and 15B) A day care center or a family day care home shall be licensed in accordance with M.G.L. chapter 28A, §10. If such facility has an outdoor play area, that area shall be at such a distance and so screened from any lot line and from any residential structure on an adjoining lot to avoid a noise nuisance.</p> <p>** THIS USE SHALL BE PERMITTED UNTIL JUNE 1, 2010</p>	No*	SP*	SP*	SP*	SP*	Yes*	Yes*	Yes*	Yes*

and further recommended that the Zoning Bylaw Committee shall work with the Planning Board and Advisory Committee on Public Health to develop a more permanent solution to the regulation of large family daycare, for submission to a future Town Meeting prior to June 1, 2010.

The above vote, taken under Article #14, on Thursday, November 20, 2008, was PASSED BY A TWO-THIRDS VOTE, WITH ONE ABSTENTION, was so declared by the Moderator and is so recorded.

(Seal)

ATTEST.

 Patrick J. Ward
 Town Clerk

**ARTICLE #15
Form #2
Submission #2**

**TOWN OF BROOKLINE
OFFICE OF THE TOWN CLERK**

December 10, 2008

To Whom It May Concern:

I, Patrick J. Ward, Town Clerk of the Town of Brookline, duly qualified and acting as such and having custody of the records, hereby certify that the following actions were taken under Article #15, at the Special Town Meeting called for Tuesday, November 18, 2008 at 7:00 P.M., adjourned to Wednesday, November 19, 2008, and dissolved on Thursday, November 20, 2008 at 10:41 P.M.

VOTED: That the Town amend Section 4.08 of the Zoning By-Law by adding the following sentence to the end of Paragraph 6.c.

Section 4.08 - Affordable Housing Requirements

6. Standards

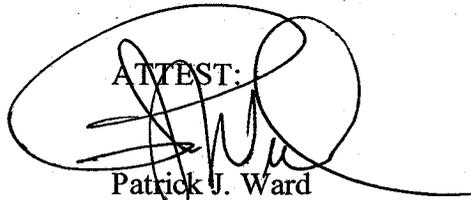
c. The affordable units shall contain square footage which is no less than (1) the average size of market rate units containing the same number of bedrooms, or (2) the following, whichever is the smaller:

- 0 bedrooms: 500 square feet
- 1 bedroom: 700 square feet
- 2 bedrooms: 900 square feet
- 3 bedrooms: 1100 square feet
- 4 bedrooms: 1300 square feet

For purposes of this subparagraph only, square footage shall be calculated within the interior surfaces of the perimeter walls of the unit.

The above vote, taken under Article #15, on Thursday, November 20, 2008, was PASSED BY A UNANIMOUS VOTE, was so declared by the Moderator and is so recorded.

(Seal)

ATTEST:

Patrick J. Ward
Town Clerk

**ARTICLE #16
Form #2
Submission #2**

**TOWN OF BROOKLINE
OFFICE OF THE TOWN CLERK**

December 10, 2008

To Whom It May Concern:

I, Patrick J. Ward, Town Clerk of the Town of Brookline, duly qualified and acting as such and having custody of the records, hereby certify that the following actions were taken under Article #16, at the Special Town Meeting called for Tuesday, November 18, 2008 at 7:00 P.M., adjourned to Wednesday, November 19, 2008, and dissolved on Thursday, November 20, 2008 at 10:41 P.M.

VOTED: That the Town amend Section 5.09.3.d. of the Zoning By-law as follows:

Section 5.09 Design Review

3. Procedures

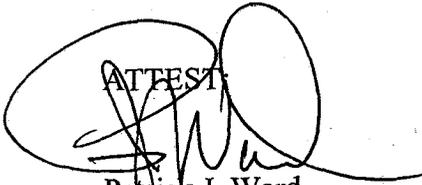
d. Design Advisory Teams

The Planning Board is authorized to appoint a Design Advisory Team (DAT) to assist it in design review of any project that requires a special permit under Section 5.09, Design Review. In the case of a Major Impact Project, or substantial modification as determined by the Building Commissioner or Planning and Community Development Director to a Major Impact Project ~~as determined by the Building Commissioner or Planning and Community Development Director~~, the Planning Board shall appoint a DAT. DAT review of a project shall be coordinated with any other applicable review of the same project by other Town Boards and Commissions. The DAT that shall consist of the following: one or more Planning Board member(s); professional architect(s), landscape architect(s) or other design related professional(s); and one or more neighborhood representatives. The DAT will provide professional design review assistance to the Planning Board and the Planning and Community Development Department in review of certain §5.09 projects which may have a significant impact on the character of the area. The Planning Board may, in its discretion, also appoint representatives from other appropriate Town boards and commissions to serve on a DAT, ~~but only if~~ **when** deemed necessary to insure coordinated project review. The Planning Board shall appoint a DAT at a regularly scheduled meeting where public notice has been provided pursuant to Section 9.08. At the direction of the Planning Board, the applicant may be required to meet with the DAT

to discuss resolution of design concerns. Following a meeting with the DAT, the applicant must include in any further submissions its responses to issues raised by the DAT. The DAT may also submit a report to the Planning Board and the Board of Appeals for consideration.

The above vote, taken under Article #16, on Thursday, November 20, 2008, was PASSED BY A UNANIMOUS VOTE, was so declared by the Moderator and is so recorded.

(Seal)

ATTEST

Patrick J. Ward
Town Clerk

Any claims of invalidity of these by-law amendments by reason of any defect in the procedure of adoption or amendment may be made within ninety (90) days of this posting. Copies of such by-law and amendments may be examined and obtained at the Town Clerk's Office, 11 Pierce Street, Brookline, Massachusetts.

**CONSTABLE'S RETURN
BROOKLINE, MASSACHUSETTS**

Norfolk, ss.

March 24, 2009

I, William Figler, on this date in each of the sixteen precincts, posted at least one copy of the within amendment to the General By-Laws adopted under Articles 4 and 8 and the within amendments to the Zoning By-Laws, adopted under Articles 14, 15 and 16 of the Warrant for the Brookline Special Town Meeting that convened on November 18, 2008, with the approval of Assistant Attorney Kelli E. Gunagan.

These Copies included the following statement:

Any claims of invalidity of these by-law amendments by reason of any defect in the procedure of adoption or amendment be made within ninety (90) days of this posting. Copies of such by-law and amendments may be examined and obtained at the Town Clerk's Office, 11 Pierce Street, Brookline, Massachusetts.



William Figler
Constable
Town of Brookline



MARTHA COAKLEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

WESTERN MASSACHUSETTS DIVISION
1350 MAIN STREET
SPRINGFIELD, MASSACHUSETTS 01103-1629

(413) 784-1240
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RECEIVED
NEW YORK
TOWN CLERK

2009 MAY 15 A 11:34

May 14, 2009

Patrick J. Ward, Town Clerk
333 Washington Street
Brookline, MA 02445

RE: Brookline Special Town Meeting of November 18, 2008 - Case # 4995
Warrant Articles # 4, 8 and 9 (General)
Warrant Articles # 14, 15, and 16 (Zoning)

Dear Mr. Ward:

Article 9 - We return with the approval of this Office the amendments adopted under this Article, except as provided below. [See page 2 for Disapproval # 1 and Disapproval # 2]

On March 18 2009, the Attorney General and Town Counsel elected to proceed under Chapter 299 of the Acts of 2000 (which amends G.L. c. 40, § 32) by agreeing to extend the 90 day period for the Attorney General’s review for Article 35 for an additional 59-day period. Therefore, our review period expires on May 15, 2009.

I. General Description of the Proposed By-law -

The amendments adopted under Article 9 delete in its entirety the Town’s existing Article 8.15, “Noise Control By-Law” and replace it with a new Article 8.15, “Noise Control By-law.”¹ The proposed by-law includes eleven sections pertaining to definitions, duties and responsibilities of the Town and Town departments, prohibitions and measurement of noise emissions, exemptions from the by-law’s requirements, and enforcement.

II. Analysis of Specific Sections of the Proposed By-law -

A. Section 8.15.9 “Appeals” -

Section 8.15.9 pertains to appeals from decisions under the proposed by-law and provides as follows:

¹ The new Article 8.15 includes many provisions identical to provisions of the previous by-law.



Appeals from a decision of the Board of Selectmen, or designee, shall be to the Superior Court. Judicial review shall be limited to whether the decision was supported by substantial evidence.

We disapprove and delete Section 8.15.9 because the jurisdiction of state courts to hear appeal from local action and what type of judicial review will be given to such action is a matter exclusively the prerogative of state law and cannot be established by local by-law. **[Disapproval # 1 of 2]** For this reason, we disapprove and delete Section 8.15.9.

B. Section 8.15.10 "Penalties" -

Section 8.15.10 pertains to penalties for violating provisions of the by-law and provides in pertinent part as follows:

(c) An object that is the source of a noise violation may be seized by the Police if the violation is not mitigated within an hour and may be held until the fine is paid or for 60 days, whichever is sooner, and if unclaimed it may be sold at auction by the Town. Removal and storage costs of the object shall be paid by the person violating the Noise Control By-law, in addition to any fine imposed according to the schedule listed in Section (a).

We disapprove and delete Section 8.15.10 (c) because it exceeds the authority given to the town under the state law. **[Disapproval # 2 of 2]** The power to seize and dispose of objects that are the source of a violation of the Town's Noise Control By-law, is derived exclusively and directly from state law and is comprehensively addressed by the laws of the Commonwealth. See, e.g. G.L. c. 276, § 1. Absent statutory authority or court authorization, the seizure of property is not available as a means of local by-law enforcement. For this reason, we disapprove and delete the above-underlined text.

Articles 4, 8, 14, 15, and 16 - We remind the Town in a letter dated March 18, 2009, that we returned with the approval of this Office the amendments to the Town by-laws adopted under these Articles.

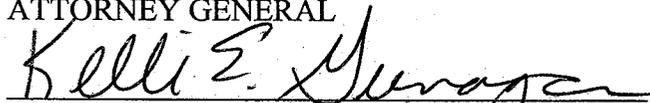
Note: Under G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of this section. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

If the Attorney General has disapproved and deleted one or more portions of any by-law or by-law amendment submitted for approval, only those portions approved are to be posted and published pursuant to G.L. c. 40, § 32. We ask that you forward to us a copy of the final text of the by-law or by-law amendments reflecting any such deletion. It will be sufficient to send us a copy of the text posted and published by the Town Clerk pursuant to this statute.

Nothing in the Attorney General's approval authorizes an exemption from any applicable state law or regulation governing the subject of the by-law submitted for approval.

Very truly yours,

MARTHA COAKLEY
ATTORNEY GENERAL



by: Kelli E. Gunagan, Assistant Attorney General
By-law Coordinator, Municipal Law Unit
1350 Main Street, 4th Floor
Springfield, MA 01103-1629
(413) 784-1240, x 7717

enc.

cc: Town Counsel

**ARTICLE #9
Form #2
Submission #2**

**TOWN OF BROOKLINE
OFFICE OF THE TOWN CLERK**

December 10, 2008

To Whom It May Concern:

I, Patrick J. Ward, Town Clerk of the Town of Brookline, duly qualified and acting as such and having custody of the records, hereby certify that the following actions were taken under Article #9, at the Special Town Meeting called for Tuesday, November 18, 2008 at 7:00 P.M., adjourned to Wednesday, November 19, 2008, and dissolved on Thursday, November 20, 2008 at 10:41 P.M.

VOTED: That the Town amend Article 8.15 of the General By-Laws (The Noise Control By-Law) by deleting the current version in its entirety and replacing it with the following:

**ARTICLE 8.15
NOISE CONTROL**

SECTION 8.15.1 SHORT TITLE

This By-law may be cited as the "Noise Control By-law of The Town of Brookline".

**SECTION 8.15.2 DECLARATION OF FINDINGS,
POLICY AND SCOPE**

- (a) Whereas excessive Noise is a serious hazard to the public health and welfare, safety, and the quality of life; and whereas a substantial body of science and technology exists by which excessive Noise may be substantially abated; and whereas the people have a right to and should be ensured an environment free from excessive Noise that may jeopardize their health or welfare or safety or degrade the quality of life; now, therefore, it is the policy of the Town of Brookline to prevent excessive Noise which may jeopardize the health and welfare or safety of its citizens or degrade the quality of life.

(b) Scope.

This By-law shall apply to the control of all sound originating within the limits of the Town of Brookline.

1. Provisions in this By-law shall not apply to the emission of sound for the purpose of alerting persons to the existence of an emergency or to the emission of sound in the performance of emergency work or in training exercises related to emergency activities, and in the performance of public safety activities.
2. Emergency generators used for power outages or testing are exempt from this By-law. However, generator testing must be done during daylight hours.
3. Noncommercial public speaking and public assembly activities as guaranteed by state and federal constitutions shall be exempt from the operation of this By-law.

SECTION 8.15.3 DEFINITIONS

(a) Ambient or Background Noise Level: Is the term used to describe the Noise measured in the absence of the Noise under investigation. It shall be calculated using the average lowest sound pressure level measured over a period of not less than five minutes using a sound pressure level meter set for slow response on the "A" weighting filter in a specific area of the town under investigation.

(b) Construction and Demolition: Any site preparation, assembly erection, substantial repair, alteration, destruction or similar action for public or private rights-of-way, structures, utilities, or similar property.

(c) Day: 7:01 AM - 10:59 PM and Night: 11:00 PM – 7:00 AM

(d) Electronic Devices: Any radio, tape recorder, television, CD, stereo, public address system, loud speaker, amplified musical instrument including a hand held device, and any other electronic noise producing equipment.

Exemption: two-way communication radios used for emergency, safety and public works requirements.

(e) Emergencies: Any occurrence or set of circumstances necessary to restore, preserve, protect or save lives or property from imminent danger of loss or harm.

(f) Decibels (dB): The decibel is used to measure sound pressure level. The dB is a logarithmic unit used to describe a ratio of sound pressure, loudness, power, voltage and several other things.

(g) Decibels "A" weighted scale (dBA): The most widely used sound level filter is the "A" weighted scale. This filter simulates the average human hearing profile. Using the "A" weighted scale, the meter is less sensitive to very low and high frequencies.

(h) Decibels "C" weighted scale (dBC): The "C" filter uses little filtering and has nearly a flat frequency response (equal magnitude of frequencies) throughout the audio range.

(i) Fixed Plant Equipment: Any equipment such as generators, air conditioners, compressors, engines, pumps, refrigeration units, fans, boilers, heat pumps and similar equipment.

(j) Frequency response: Is the measure of any system's response at the output to a signal of varying frequency but constant amplitude at its input. The theoretical frequency range for humans is 20 - 20,000 cycles/second (Hz).

(k) Hertz (Hz): Cycles per Second (cps).

(l) Loudness: A rise of 10dB in sound pressure level corresponds approximately to doubling of subjective loudness. That is, a sound of 65dB is twice as loud as a sound of 55dB.

(m) Leaf blowers: Any portable machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.

(n) Noise: Sound which a listener does not wish to hear and is under investigation that may exceed the Noise requirements located in this Noise By-law.

(o) Noise Injury: Any sound that:

- (1) endangers the safety of, or could cause injury to the health of humans; or
- (2) endangers or injures personal or real property.

(p) Noise Level: The Sound Pressure Level measurements shall be made with a Type I or II sound level meter as specified under American National Standard Institute (ANSI) standards.

(q) Noise Pollution: If a Noise source increases Noise levels 10 dBA or more above the Background Noise Level, it shall be judged that a condition of Noise Pollution exists. However, if the Noise source is judged by ear to have a tonal sound, an increase of 5 dBA above Background Noise Level is sufficient to cause Noise Pollution.

(r) Person: Any individual, company, occupant, real property owner, or agent in control of real property.

(t) Sound: A fluctuation of air pressure which is propagated as a wave through air.

(u) Sound Level Meter: An instrument meeting Type I or Type II American National Standard Institute (ANSI) standards, consisting of a microphone, amplifier, filters, and indicating device, and designed to measure sound pressure levels accurately according to acceptable engineering practices.

(v) Sound Pressure Level: The level of Noise, normally expressed in decibels, as measured by a sound level meter.

(w) Tonal Sound: Any sound that is judged by a listener to have the characteristics of a pure tone, whine, hum or buzz.

SECTION 8.15.3A MOTOR VEHICLE DEFINITIONS

(a) Gross Vehicle Weight Rating (GVWR): The value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating, (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

(b) Motorcycle: Any unenclosed motor vehicle having two or three wheels in contact with the ground, including, but not limited to, motor scooters and minibikes.

(c) Motor Vehicle: Any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck-trailers, semi-trailers, campers, go-carts, snowmobiles, dune buggies, or racing vehicles, but not including motorcycles.

SECTION 8.15.4 SOUND LEVEL EXAMPLES

The following are examples of approximate decibel readings of every day sounds:

0dBA	The faintest sound we can hear
30dBA	A typical library
45dBA	Typical office space
55dBA	Background Noise of a typical urban environment at night
65dBA	Background Noise of a typical urban environment during the day
70dBA	The sound of a car passing on the street
72dBA	The sound of two people speaking 4' apart
80dBA	Loud music played at home
90dBA	The sound of a truck passing on the street
100dBA	The sound of a rock band
115dBA	Limit of sound permitted in industry by OSHA
120dBA	Deafening
130dBA	Threshold of pain
140dBA	Rifle being fired at 3'
150dBA	Jet engine at a distance of 100'

194dBA Theoretical limit for a sound wave at one atmosphere environmental pressure

SECTION 8.15.5 DUTIES AND RESPONSIBILITIES OF TOWN OF TOWN DEPARTMENTS

(a) Departmental Actions

All town departments and agencies shall, to the fullest extent consistent with other laws, carry out their programs in such a manner as to further the policy of this By-law.

(b) Departmental Compliance with Other Laws

All town departments and agencies shall comply with federal and state laws and regulations and the provisions and intent of this By-law respecting the control and abatement of Noise to the same extent that any person is subject to such laws and regulations.

(c) The Department of Public Works is exempt for Day and Night time operations for routine maintenance including but not limited to snow removal, street cleaning, litter control, and graffiti removal, etc. However, the DPW shall make every effort to reduce Noise in residential areas, particularly at night.

(d) Prior to purchasing new equipment, the Department of Public Works must consider equipment with the lowest Decibel rating for the performance standard required.

(e) Any proposed new or proposed upgrade for a park or recreation facility must incorporate appropriate and feasible Noise abatement measures during the design review process.

SECTION 8.15.6 PROHIBITIONS AND MEASUREMENT OF NOISE EMISSIONS

(a) Use Restrictions

1. The following devices shall not be operated except between the hours of 8 (eight) A.M. to 8(eight) P.M. Monday through Friday, and from 9 (nine) A.M. to 8(eight) P.M. on Saturdays, Sundays and holidays:

All electric motor and internal combustion engine devices employed in yard and garden maintenance and repair.

Turf maintenance equipment employed in the maintenance of golf courses, snow blowers and snow removal equipment are exempt from this section.

2. The following devices shall not be operated except between the hours of 7(seven) A.M. to 7(seven) P.M. Monday through Friday, and from 8:30(eight-thirty) A.M. to 6(six) P.M. on Saturdays, Sundays and holidays:

All devices employed in construction or demolition, subject to the maximum Noise Levels specified in Section 8.15.6b and 8.15.6c.

- (b) Vehicular Sources: Maximum Noise Levels Measurements shall be made at a distance of 50 (fifty) feet from the closest point of pass-by of a Noise source or 50(fifty) feet from a stationary vehicle.

MAXIMUM NOISE LEVEL dBA

Vehicle Class	Stationary Run-up or Speed Limit 35 mph or less	Speed Limit 35-45 mph
All vehicles over 10,000 lbs. GVWR or GCWR	83	87
All motorcycles	79	79
Automobiles and light <u>trucks</u>	<u>75</u>	<u>75</u>

- (c) Construction and Maintenance Equipment:
Maximum Noise Levels
Noise measurements shall be made at 50 (fifty) feet from the source. The following Noise Levels shall not be exceeded:

<u>Construction Item</u>	<u>Maximum Noise Level dBA</u>	<u>Maintenance Item</u>	<u>Maximum Noise Level dBA</u>
Backhoe, bulldozer concrete mixer dumptruck, loader, roller, scraper, pneumatic tools,paver	90	Wood Chipper running concrete mixer,leaf vacuum	90
Air compressor	85	Chainsaw, solid waste compactor, tractor (full-size)	85
Generator	80	Home tractor, snow blower Lawn mower, trimmer,	80 75

(d) Fixed Plant Equipment

Any person shall operate such equipment in a manner not to exceed 10 dBA over the Background Noise and not greater than 5 dBA of Tonal sound over the Background Noise. However, if the fixed equipment is operated during night time hours, the night time Sound Pressure Level of the Fixed Plant Equipment must not exceed the average daytime Background Noise to compensate for night time operations, which is assumed to be 10dBA below daytime Background Noise. See Definitions Section 8.15.3(c).

Noise measurements shall be made at the boundary of the property in which the offending source is located, or at the boundary line of the complainant if the complainant is not a direct abutter.

(e) Electronic Devices and Musical Instruments

No person owning, leasing or controlling the operation of any electronic device shall willfully or negligently permit the establishment or condition of Noise Injury or Noise Pollution.

In public spaces, the existence of Noise Injury or Noise Pollution is to be judged to occur at any location a passerby might reasonably occupy. When the offending Noise source is located on private property, Noise Injury or Noise Pollution judgments shall be made at the property line within which the offending source is located.

Any and all Decibel Levels of sound caused by playing non-electrified musical instruments between 9 A.M. and 9 P.M. shall be exempt with exception of drums.

(f) Leaf Blowers

No person shall operate any portable Leaf Blower(s) which does not bear an affixed manufacturer's label or a label from the town indicating the model number of the Leaf Blower(s) and designating a Noise Level not in excess of sixty-seven(67)dBA when measured from a distance of fifty feet utilizing American National Standard Institute (ANSI) methodology. Any Leaf Blower(s) which bears such a manufacturer's label or town's label shall be presumed to comply with the approved ANSI Noise Level limit under this By-law. However, any Leaf Blowers must be operated as per the operating instructions provided by the manufacturer. Any modifications to the equipment or label are prohibited. However, any portable Leaf Blower(s) that have been modified or damaged, determined visually by anyone who has enforcement authority for this By-law, may be required to have the unit tested by the town as provided for in this section, even if the unit has an affixed manufacturer's ANSI or town label. Any portable Leaf Blower(s)

must comply with the labeling provisions of this By-law by January 1, 2010. However, the owner's of any Leaf Blower(s) operating after January 1, 2010 without a manufacturer's ANSI label on the equipment, may obtain a label from the town by bringing the equipment to the town's municipal vehicle service center or such other facility designated by the Town for testing. The testing will be provided by the town's designated person for a nominal fee and by appointment only. Testing will be provided only between the months of May and October. If the equipment passes, a town label will be affixed to the equipment indicating Decibel Level.

Whether the equipment passes or not, the testing fee is non-refundable. Leaf blowers may be operated only during the hours specified in Section 8.15.6(a)(1). In the event that the label has been destroyed, the Town may replace the label after verifying the specifications listed in the owner's manual that it meets the requirements of this By-law.

(g) Animals

No person owning, keeping or controlling any animal shall willfully, negligently or through failure to provide necessary equipment or facilities or to take necessary precautions, permit the existence of Noise Pollution or Noise Injury.

(h) Additional Noise Sources

No person shall emit noise so as to cause a condition of Noise Pollution or Noise Injury.

(i) Alternative Measurement Procedures

If it is not possible to make a good Sound Pressure Level measurement at the distance as defined for specific equipment throughout Article 8.15, measurement may be made at an alternate distance and the level at the specified distance subsequently calculated. Calculations shall be made in accordance with established engineering procedures.

(j) Noise Level Exclusions

Any equipment that is used to satisfy local, state, federal health, welfare, environmental or safety codes shall be exempt from limitations for hours of operation (See Section 8.15.6(a)), except to the extent otherwise determined by the Board of Selectman. The following equipment shall also be exempt from Section 8.15.6(a) if necessary for emergency work performed by the Department of Public Works:

- jack hammers
- pavement breakers
- pile drivers
- rock drills
- or such other equipment as the DPW deems necessary,

providing that effective Noise barriers are used to shield nearby areas from excessive Noise.

(k) Motor Vehicle Alarms

The sounding of any horn or signaling device as a part of a burglar, fire or alarm system (alarm) for any motor vehicle, unless such alarm is automatically terminated within ten minutes of activation and is not sounded again at all within the next sixty minutes, is prohibited. Any motor vehicle located on a public or private way or on public or private property whose alarm has been or continues to sound in excess of ten minutes in any sixty minute cycle is hereby deemed to be a public nuisance subject to immediate abatement. Any police officer who observes that the alarm has or is sounding in excess of ten minutes in any sixty minute cycle, who, after making a reasonable effort, is unable to contact the owner of such motor vehicle or, after contact, such owner fails or refuses to shut-off or silence the alarm or authorize the police officer to have the alarm shut-off or silenced, may abate the nuisance caused by the alarm by entering the vehicle to shut off or disconnect the power source of the alarm, by authorizing a member of the fire department or a tow company employee to enter such vehicle to shut off or disconnect the power source of the alarm and, if such efforts are unsuccessful, such officer is authorized to abate the nuisance by arranging for a tow company to tow the motor vehicle to an approved storage area or other place of safety. If a motor vehicle's alarm is shut off or disconnected from its power source and a police officer determines that the motor vehicle is not safe in its then location and condition, the police officer may arrange for a tow company to tow the motor vehicle to an approved storage area or other place of safety. The registered owner of the motor vehicle shall be responsible for all reasonable costs, charges and expenses incurred for the shutting-off or silencing of the alarm and all costs of the removal and storage of the motor vehicle. The provisions of Article 10.1 or Section 8.15.10 shall not apply to this paragraph (k).

(l) Tonal Sound Corrections

When a Tonal Sound is emitted by a Noise source, the limit on maximum Noise levels shall be 5 dB lower than specified.

SECTION 8.15.7 PERMITS FOR EXEMPTIONS FROM THIS BY-LAW

- (a) The Board of Selectmen, or designee, may give a special permit
 - (i) for any activity otherwise forbidden by the provisions of this By-law,
 - (ii) for an extension of time to comply with the provisions of this By-law and any abatement orders issued pursuant to it, and
 - (iii) when it can be demonstrated that bringing a source of Noise into compliance with the provisions of this By-law would create an undue hardship on a person or the community. A person seeking such a permit should make a written application to the Board of Selectmen, or designee.

The Town will make all reasonable efforts to notify all direct abutters prior to the date of the Selectmen's meeting at which the issuance of a permit will be heard.

(b) The applications required by (a) shall be on appropriate forms available at the office of the Selectman. The Board of Selectmen, or designee, may issue guidelines defining the procedures to be followed in applying for a special permit. The following criteria and conditions shall be considered:

(1) the cost of compliance will not cause the applicant excessive financial hardship;

(2) additional Noise will not have an excessive impact on neighboring citizens.

(3) the permit may require portable acoustic barriers during Night.

(4) the guidelines shall include reasonable deadlines for compliance or extension of non-compliance.

(5) the number of days a person seeking a special permit shall have to make written application after receiving notification from the Town that (s)he is in violation of the provisions of this By-law.

(b) If the Board of Selectmen, or designee, finds that sufficient controversy exists regarding the application, a public hearing may be held. A person who claims that any special permit granted under (a) would have adverse effects may file a statement with the Board of Selectmen, or designee, to support this claim.

SECTION 8.15.8 HEARINGS ON APPLICATION FOR PERMITS FOR EXEMPTIONS

Resolution of controversy shall be based upon the information supplied by both sides in support of their individual claims and shall be in accordance with the procedures defined in the appropriate guidelines issued by the Board of Selectmen, or designee.

SECTION 8.15.9 APPEALS

Appeals from a decision of the Board of Selectmen, or designee, shall be to the Superior Court. Judicial review shall be limited to whether the decision was supported by substantial evidence.

SECTION 8.15.10 PENALTIES

(a) Any person who violates any provision of this By-law shall be subject to a fine pursuant to Article 10.3 (Non-Criminal Disposition) in accordance with GL c.40. Section 21d or they may be guilty of a misdemeanor in accordance with Article 10.1 of the Town By-law and each violation shall be subject to fines according to the following schedule:

- (1) \$50.00 for first offense;
 - (2) \$100.00 for the second offense;
 - (3) \$200.00 for the third offense;
 - (4) \$200.00 for successive violations;
- plus (5) court costs for any enforcement action.

Each day of a continuing violation shall be considered a separate violation. Fines that remain unpaid after 30 days shall accrue interest at the statutory rate of interest.

(b) If a person in violation of the Noise Control By-law at a real property is an occupant but not the record owner of the real property, the Police, Health, or Building Departments may notify the owner of record of the real property of the violation. If a fine is issued in connection with excessive Noise at real property to someone other than the record owner of the property then the record owner of that property shall be notified. If there are any successive violations at least 14 days after the notification of the record owner but within a one-year period, then the record owner of the property shall also be subject to the fine schedule delineated in Section (a).

(c) An object that is the source of a noise violation may be seized by the Police if the violation is not mitigated within an hour and may be held until the fine is paid or for 60 days, whichever is sooner, and if unclaimed it may be sold at auction by the Town. Removal and storage costs of the object shall be paid by the person violating the Noise Control By-law, in addition to any fine imposed according to the schedule listed in Section (a).

(d) The Health, Building, Police and Public Works Departments shall have enforcement authority for the By-law. To report a violation, contact the appropriate department.

SECTION 8.15.11 SEVERABILITY

If any provisions of this article or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of this article and the applicability of such provision to other persons or circumstances shall not be affected thereby.

The following will not be included as part of the By-law.

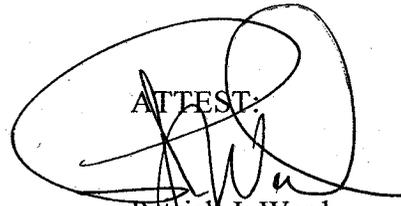
Footnotes:

ADDITIONAL DEFINITIONS NOT USED IN THE CURRENT BY-LAW

- (a) Impulse Noise: Noise having a high peak of short duration of a sequence of such peaks. A sequence of impulses in rapid succession is termed repetitive impulsive noise.
- (b) Intermittent Noise: The level suddenly drops to that of the background noise several times during the period of observation. The time during which the intermittent noise remains at levels different from that of the ambient is one second or more.
- (c) Low-frequency noise: containing major components within the low frequency range (20Hz-250Hz) of the frequency spectrum.
- (d) Reflection: Sound wave changed in direction of propagation due to a solid object obscuring its path.
- (e) Sound absorption: The ability of a material to absorb sound energy through its conversion into thermal energy.
- (f) Sound Transmission Class (STC): This is a measure of the extent of the sound reduction of noise going through a building element. It denotes the sound attenuation properties of walls, floors and ceilings used to construct building spaces. The higher the STC rating, the better the sound reduction performance of the construction.
- (g) Structure Borne Noise: This refers to noise which is generated by vibrations induced in the ground and/or structure. These vibrations excite walls and slabs in buildings and cause them to radiate noise. This type of noise can not be attenuated by barriers or walls but requires the interposition of a resilient (acoustic isolators, springs, floating floors, etc.) break between the source and the receiver.

The above vote, taken under Article #9, on Wednesday, November 19, 2008, was PASSED BY A MAJORITY VOTE, was so declared by the Moderator and is so recorded.

(Seal)

ATTEST:

Patrick J. Ward
Town Clerk

Any claims of invalidity of these by-law amendments by reason of any defect in the procedure of adoption or amendment may be made within ninety (90) days of this posting. Copies of such by-law and amendments may be examined and obtained at the Town Clerk's Office, 333 Washington Street, Brookline, Massachusetts.

CONSTABLE'S RETURN RECEIVED
TOWN OF BROOKLINE
BROOKLINE, MASSACHUSETTS
TOWN CLERK

2009 MAY 26 A 9:12

Norfolk, ss.

May 22, 2009

I, Robert Allen, on this date in each of the sixteen precincts, posted at least one copy of the within amendments to the General By-Laws adopted under Article 9 for the Brookline Special Town Meeting that convened on November 18, 2008, with the approval and two disapprovals of Assistant Attorney General Kelli E. Gunagan.

These Copies included the following statement:

Any claims of invalidity of these by-law amendments by reason of any defect in the procedure of adoption or amendment be made within ninety (90) days of this posting. Copies of such by-law and amendments may be examined and obtained at the Town Clerk's Office, Town Hall, 333 Washington Street, Brookline, Massachusetts.

Robert S. Allen
Robert Allen
Constable
Town of Brookline