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Last Revised June 8, 2012

BY-LAWS OF  
THE TOWN OF BROOKFIELD  
JANUARY 2013

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# BY-LAWS OF THE TOWN OF BROOKFIELD

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## CHAPTER I General Provisions

### SECTION 1.

The following provisions shall constitute the General By-Laws of the Town of Brookfield, Massachusetts which shall be in lieu of all By-Laws heretofore in force.

### SECTION 2.

The repeal of a By-Law shall not thereby have the effect of reviving any By-Law heretofore repealed.

### SECTION 3.

Words or phrases specifying or naming any officer, board or committee of the Town shall be construed as including the lawful successor or the person or persons having the powers and performing the duties of such officer, board or committee.

### SECTION 4.

Any or all of these By-Laws may be repealed or amended or other By-Laws may be adopted at any town meeting; an article or articles for that purpose having been inserted in the warrant for such meeting by the Selectmen.

### SECTION 5. *(Amended 9/1996)*

**A. Criminal Complaint** - Whoever violates any provision of these By-Laws may be penalized on complaint brought in the Western Worcester District Court. Except as may be otherwise provided by law and as the District Court may see fit to impose the maximum penalty for each offense, brought in such manner, shall be three hundred dollars.

**B. Non-criminal Disposition** - Whoever violates any provision of these By-Laws, the violation of which is subject to specific penalty, may be penalized by a non-criminal disposition as provided in Mass. General Laws Chapter 40, section 21D. The non-criminal method of disposition may also be used for violations of any rule or regulation of any municipal officer, board or department which is subject to a specific penalty. Without intending to limit the generality of the foregoing, it is the intention of this provision that the following By-Laws and sections of By-Laws are to be included within the scope of this subsection, that the specific penalties as listed below shall apply in such cases and that in addition to police officers, who shall in all cases be considered enforcing persons for the purpose of this provision, the municipal personnel listed for each section, if any, shall also be enforcing persons for such sections; each day on which any violation exists shall be deemed to be a separate offense.

Violation of leash law, first offense	\$25.00
Violation of leash law, second offense	\$35.00
Violation of leash law, third offense	\$50.00
Failure to provide rabies vaccination (M.G.L. C.140, s.145B)	\$50.00

#### ***(Amended 1/2006)***

<i>Violation of snow or ice removal</i>	<i>First Offense</i>	<i>\$25.00</i>
<i>Violation of snow or ice removal</i>	<i>Second Offense</i>	<i>\$50.00</i>
<i>Violation of snow or ice removal</i>	<i>Third and subsequent offenses</i>	<i>\$100.00</i>

#### ***(Added 5/2003)***

#### *Violation of Inoperable or Unregistered Motor Vehicles:*

First offense	\$25.00
Second offense	\$50.00
Third offense	\$100.00

#### ***(Added 1/2006)***

## Section 6. Separability Provision

In the event that any provision of this by-law, or application thereof, shall be held to be invalid by the proper authorities, this shall not be construed to affect the validity of any other provision, or application thereof, of this by-law.

## CHAPTER II Town Meetings

### SECTION 1.

The Annual Town Election shall be held on the first Monday of May of each year. The Annual Town Meeting shall be held on the first Friday following the Annual Town Election in May. **(Amended 7/2000)**

### SECTION 2.

Notice of every Annual Town Meeting shall be given by posting an attested copy of the warrant therefore in at least one (1) public place in the Town, not less than seven (7) days before the day fixed for such meeting. Notice of every Special Town Meeting shall be given by posting an attested copy of the warrant therefore in at least one (1) public place in the Town, not less than fourteen (14) days before the day fixed for such meeting.

### SECTION 3.

At least five (5) days before the day fixed in the warrant for the Annual Town Meeting, the Town Reports shall be available at such place as the Selectmen shall designate.

### SECTION 4.

Notice of every Special Town Meeting shall be given by posting an attested copy of the warrant as specified in **Section 2** and further notice shall be given at least one day prior to said Special Town Meeting by printing on a board in front of the Town Hall the date and time of holding said Special Town Meeting.

### SECTION 5.

Thirty voters shall constitute a quorum for the transaction of business at any Town Meeting except that at the Annual Town Meeting for the election of officers, the polls may be open without a quorum being present.

### SECTION 6.

At all town meetings, the Moderator shall designate a part of the meeting hall which shall be reserved for qualified voters and other persons having official business with the meeting only and no vote, other than by ballot, shall be received by the meeting from any qualified voter in any other part of the meeting hall. **(Amended 5/2000)**

### SECTION 7.

No person, not a voter of the Town, shall address a Town Meeting without consent of the meeting.

SECTION 8.

Articles on the warrant shall be acted upon in the order in which they appear unless otherwise determined by vote of the meeting.

SECTION 9.

Any motion, if requested by the Moderator or Town Clerk, shall be presented in writing.

SECTION 10.

If a motion is susceptible of division, it shall be divided and the question shall be put separately upon each part thereof, if seven voters so request.

SECTION 11.

When a question is before the meeting, the following motions, namely: to adjourn, to lay on the table, for the previous question, to postpone to a time certain, to commit, recommit or refer, to amend, to postpone indefinitely, shall be received and shall have precedence in the foregoing order; and the first three shall be decided without debate.

SECTION 12.

There shall be no more than two amendments to a motion.

SECTION 13.

When a question is put, the sense of the meeting shall be determined by the voices of the voters and the Moderator shall declare the vote as it appears to him. If the Moderator is unable to decide the vote by the sound of the voices, or if his decision is immediately questioned, he shall determine the vote by ordering a standing vote and he may appoint tellers to make and return the count.

SECTION 14.

The meeting may order that the vote on any motion shall be taken by a "Yes" or "No" ballot.

SECTION 15.

When a motion for reconsideration is decided, that decision shall not be reconsidered and no question shall be reconsidered more than once; nor shall any vote be reconsidered on a motion to adjourn, to lay on the table or for the previous question.

**(Amended June 10, 2011 – AG Approval July 28, 2011)**

SECTION 16.

No motion shall be received at an adjourned meeting for the reconsideration of any vote passed at a prior meeting unless notice of such reconsideration shall have been given at the meeting at which the vote was passed; provided, however, that this By-Law be suspended in any particular case by a vote of three-fourths of those present and voting.

## SECTION 17.

All committees shall report as directed by the Town. If no report is made within a year after its appointment, a committee shall be discharged unless, in the meantime, the Town shall have granted an extension of time.

## SECTION 18.

No motion, the effect of which would be to dissolve the meeting, shall be in order until every article in the warrant therefor has been duly considered and acted upon, but this shall not preclude the postponement of consideration of any article to an adjournment of the meeting at a stated time and place.

## SECTION 19.

The Board of Selectmen shall insert on any Annual Town Meeting Warrant any subject requested of them in writing, submitted by 10 or more registered voters. The Selectmen shall insert on any Special Town Meeting warrant any subject requested of them in writing, submitted by 100 registered voters or 10 percent of the town's total number of registered voters, whichever is the lesser. Such written requests shall not be valid unless the required number of signatures of registered voters not only sign their name but also state their residence and the provisions of G.L. c. 39, s. 10 are otherwise satisfied. **(Town adopted June 8, 2012, Attorney General Approved on October 17, 2012)**

# CHAPTER III Town Officers

## SECTION 1.

The Selectmen shall have the general direction and management of the property and affairs of the Town in all matters not otherwise provided by law or these By-Laws.

## SECTION 2.

The Selectmen shall cause each town officer and department head having custody of town property to keep a true inventory thereof on file and each officer and department head shall deliver a copy of said inventory to the Board of Selectmen at least annually.

## SECTION 3.

The Selectmen shall be authorized to appoint a Wiring Inspector for the town and to establish a fee schedule for said services. **(Added 5/1986)**

## SECTION 4. Procedure for the Appointment of Treasurer

A Screening Committee composed of seven persons will establish the qualifications, review the applications and make a recommendation to the Board of Selectmen of, at most, three candidates. The Screening Committee will be composed of one member of the Board of Selectmen, one of the Advisory Committee, one member of the Personnel Board, and four citizens chosen by the Town Moderator. The four citizens chosen, will, in so far as possible, have backgrounds in municipal finance, accounting, data processing, banking, law or other similar fields. The Board of Selectmen will appoint for a term of three years a candidate recommended by the Screening Committee.

**(Added May 2000)(Amended June 10, 2011) (AG Approved July 18, 2011)**

## CHAPTER IV Advisory Committee

### SECTION 1.

There shall be an Advisory Committee for the Town to which shall be referred all articles in any warrant hereafter issued for a Town Meeting. The Selectmen, after drawing a warrant for a Town Meeting, shall immediately forward a copy thereof to each member of said committee, which shall consider all articles in the warrant and make such report, in print or otherwise to the Town Meeting as it deems for the best interest of the Town. The Committee will also make reports and issue recommendations for all articles, questions or other matters referring to Proposition 2 ½ so called. The said committee shall consist of nine legal voters of the Town to be appointed as provided in **Section 2**. Elected or appointed town officers or employees shall be eligible to serve, however, they must abstain from voting on articles affecting their department. If any member is absent from five (5) consecutive meetings of said committee, except in case of illness, his position shall be deemed to be vacant and shall be filled as provided in **Section 3. (Amended 5/2006)**

### SECTION 2.

The Selectmen in office when this By-Law is adopted shall, within thirty days after such By-Law becomes effective, appoint from the citizens of the Town three persons whose term of office shall expire at the adjournment of the first Annual Town Meeting following the time when this By-Law becomes effective; three whose term of office shall expire at the adjournment of the second Annual Town Meeting following the time when this By-Law becomes effective, and three whose term of office shall expire at the adjournment of the third Annual Town Meeting following the time when this By-Law becomes effective. Annually, thereafter, the Selectmen in office at the close of the Annual Town Meeting shall, within thirty days, appoint three members whose term of office shall expire at the close of the third Annual Town Meeting after their appointment. Said committee shall choose its own officers and shall, with the exception of its secretary, serve without pay.

### SECTION 3.

Whenever a vacancy occurs in said Committee, said vacancy shall be filled by said Committee by the appointment of a person to serve until the close of the next Annual Town Meeting, when the Selectmen in office shall appoint, in the same manner as the original appointment, a successor to fill out the unexpired term of the person whose office has been vacated.

### SECTION 4.

In the discharge of its duty, said Committee shall have free access to all books or records and accounts, bills and vouchers on which money has been or may be paid from the Town treasury.

## CHAPTER V Financial Affairs

### SECTION 1.

An audit of the accounts of the Town shall be made at least once every three years in accordance with Federal Revenue Sharing regulations.

## SECTION 2.

Each officer, board or committee authorized to spend money shall, on or before July seventh of each year, transmit to the Town Treasurer all unpaid bills outstanding as of that date.

## SECTION 3.

Except as otherwise provided by law, the Treasurer shall have custody of trust fund bonds and tax possession deeds; the Town Clerk of all contracts, deeds, insurance policies and other similar documents owned by the Town and the Selectmen of the bonds given by the Treasurer, Tax Collector, Deputy Tax Collector and the Town Clerk.

## SECTION 4.

All Town officials either appointed or elected shall pay all fees received by them by virtue of their office into the Town Treasury in accordance with MGL Chapter 40, section 21(13) and shall make a true return thereof to the Town Treasurer stating accounts upon which such amounts were received. **(Amended May 2002) (Amended June 2011) (AG Approval July 28, 2011)**

## SECTION 5.

Any local license or permit including renewals and transfers issued by any board, officer or department for any person, corporation or business enterprise who has neglected or refused to pay any local taxes, fees, assessments, betterments or any other municipal charges shall be denied, revoked or suspended. This by-law shall be administered and enforced according to the provisions of M.G.L. Chapter 40, section 57. **(Added 5/1991)**

- a. The tax collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as the tax collector, shall annually furnish to each department, board, commission or division, hereinafter referred to as the licensing authority, that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than a twelve month period, and that such party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the appellate tax board.
- b. The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers of any party whose name appears on said list furnished to the licensing authority from the tax collector or with respect to any activity, event or other matter which is the subject of such license or permit and which activity, event or matter is carried out or exercised or is to be carried out or exercised on or about real estate owned by any party whose name appears on said list furnished to the licensing authority from the tax collector; provided, however, that written notice is given to the party and the tax collector, as required by applicable provision of law, and the party is given a hearing, to be held not earlier than fourteen days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party. The tax collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the licensing authority with respect to such license denial, revocation or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license denial, revocation or suspension. Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the license authority receives a certificate issued by the tax



collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges, payable to the municipality as the date of issuance of said certificate.

- c. Any party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitations to the license or permit and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.
- d. The Board of Selectmen may waive such denial, suspension or revocation if it finds there is not direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined in section one of chapter two hundred and sixty-eight A of the General Laws in the business or activity conducted in or on said property.

This section shall not apply to the following licenses and permits under the following provisions of the General Laws: open burning; section thirteen of chapter forty-eight; bicycle permits; section eleven A of chapter eighty-five; sales of articles for charitable purposes, section thirty-three of chapter one hundred and one; children work permits, section sixty-nine of chapter one hundred and forty-nine; clubs, associations dispensing food or beverage licenses, section twenty-one E of chapter one hundred and forty; dog licenses, section one hundred and thirty-seven of chapter one hundred and forty; fishing, hunting, trapping license, section twelve of chapter one hundred and thirty-one; marriage licenses, section twenty-eight of chapter two hundred and seven and theatrical events, public exhibition permits, section one hundred and eighty-one of chapter one hundred and forty.

A city or town may exclude any local license or permit from this section by by-law or ordinance.

**(Added 5/2003)**

#### **SECTION 6. - Mileage Reimbursement.**

Reimbursement of authorized mileage for use of a personal vehicle by town officers and employees will be allowed at the then current Internal Service guidelines effective as of July 1 of each year.

**(Added 5/2003)**

#### **SECTION 7.**

In accordance with M.G.L. Chapter 41, section 106B, a Capital Improvement Planning Committee shall be appointed by the Board of Selectmen to be composed of the following: one member of the Advisory Board, one member of the Board of Selectmen, the Treasurer one member of the Brookfield School Committee (or its designee) and three or more members of the community. The Town Accountant shall be an ex-officio member, having no right to vote. The committee shall elect its own officers. The community members shall serve staggered three year terms. For the first fiscal year after the adoption of this by-law as amended, the Board of Selectmen shall appoint one community member for a one-year term, one community member for a two-year term and one community member for a three-year term. The purpose of the committee shall be to study proposed capital outlays involving major non-recurring tangible assets and projects which:

- 1) are purchased or undertaken at intervals of not less than five years
- 2) have a useful life of at least five years

3) cost over \$5,000

The committee shall prepare and submit to the Selectmen in February of each year an annual report recommending a Capital Improvement budget for the next fiscal year and a Capital Improvement Program including recommended capital improvements for the following five fiscal years. The Selectmen shall review and approve the report and submit it to the Annual Town Meeting for acceptance by the town. **(Added 5/1997) (Amended Nov. 18, 2011)(AG Approval Dec. 7, 2011)**

## CHAPTER VI Contracts by Town Officers

### SECTION 1.

No officer of the Town shall in his official capacity make or pass upon or participate in making or passing upon any sale, contract or agreement or the terms or amount of any such payment in which the Town is interested and in which such officer has any personal financial interest, direct or indirect.

### SECTION 2.

No Town officer or non-salaried Town employee shall receive any compensation or commission for work done by him for the Town except his official salary and fees allowed by law without the permission of the Selectmen expressed in a vote which shall appear on their records with the reasons therefor.

## CHAPTER VII Legal Affairs

### SECTION 1.

The Selectmen shall be agents of the Town to institute, prosecute and defend claims, actions and proceedings to which the Town is a party or in which the interests of the Town are or may be involved.

### SECTION 2.

The Selectmen may, at their discretion, compromise or settle any claim or suit to which the Town is a party, which does not require the payment by the Town of an amount in excess of one hundred dollars (\$100). No settlement of a claim or suit obligating the Town in an amount in excess of one hundred dollars shall be made, except as authorized by law, without the consent of the town meeting.

### SECTION 3.

The Selectmen, in their Annual Report, shall state what actions have been brought against and on behalf of the Town, what cases have been compromised or settled and the current standing of all suits at law involving the Town or any of its interests.

### SECTION 4.

The Selectmen shall annually in May, after final adjournment of the Annual Town Meeting, appoint a person who is a member of the bar in good standing, to serve as Town Counsel for a term of one year from the first day of June following and until his successor is appointed and enters upon the performance of his duties. They shall likewise fill any vacancy in said office for

the unexpired term and may employ a special counsel to assist the said Counsel whenever, in their judgment, necessity arises.

#### SECTION 5.

It shall be the duty of the Town Counsel to conduct the prosecution, defense or compromise of claims, actions and proceedings to which the Town is a party and the prosecution of actions or proceedings by or on behalf of any town officer, board or committee as such; to conduct the defense of any action or proceedings brought against any town officer, board or committee as such when the Selectmen, having determined that any right or interest of the Town are or may be involved herein, shall so request; to conduct proceedings brought by or against the Assessors before the Board of Tax Appeals; to assist in the prosecution of complaints for violation of any By-Law of the Town when requested to do so by the board or officers enforcing the same; to examine and report upon titles to all lands to be acquired by the Town; to prepare or approve contracts, bonds, deeds and other legal instruments in which the Town is a party or in which any right or interest of the Town is involved; to appear at any and all hearings on behalf of the Town whenever his services may be required; and generally, to advise and act for the town officers, boards and committees upon and in legal matters touching the duties of their respective offices.

### CHAPTER VIII        Records and Reports

#### SECTION 1.

All officers, boards and committees of the Town shall cause records of their doings and accounts to be kept in suitable books. All officers, boards and committees shall be responsible for the safekeeping of said books. Said books shall, unless otherwise provided by law, be open to public inspection at any reasonable time but shall remain, during such inspection, under supervision of the officer, board or committee having custody thereof.

#### SECTION 2.

All officers, boards, standing committees and special committees of the Town having charge of the expenditure of town money shall annually report thereon in writing in such manner as to give the citizens a fair and full understanding of the objects and methods of such expenditures, referring, however, to the report of the Town Treasurer for statements in detail of receipts and payments and may make therein such recommendation as they deem proper. Such reports shall be submitted to the Selectmen for inclusion in the Annual Report on or before the fifteenth day of January of each year.

#### SECTION 3.

The Annual Town Report shall contain, in addition to their reports of the officers, boards and committees as herein before provided, a detailed report of all monies received into and paid out of the Town Treasury in the financial year next preceding, showing separately payments made from the proceeds of loans as capital outlays for permanent improvements; the report of the Collector of Taxes, of receipts, payments and abatements; statements for all funds belonging to the Town or held for the benefit of its inhabitants; a statement of the liabilities of the Town on bonds, notes, certificates of indebtedness, or otherwise, and of indebtedness authorized but not incurred and the purposes thereof, a statement of transfers made to or from any appropriation; and such other matters as the said report is required by law to contain or as may be inserted by the Selectmen under the direction granted them by law.

#### SECTION 4.

The Selectmen, or the Town, may direct that the By-Laws and standing votes of the Town and the rules and regulations adopted by any officer, board or committee be printed either separately or as part of the Annual Town Report.

#### SECTION 5.

The Selectmen shall cause a copy of the Assessors' valuation list to be placed in the Public Library at least once every three years.

### CHAPTER IX Traffic Regulations

#### SECTION 1.

The Board of Selectmen shall, from time to time, establish and publish, by publication in a newspaper, rules and regulations for the control of traffic, speed and parking of vehicles and shall see to their enforcement by the police department.

### CHAPTER X Use of Public Ways and Places

#### SECTION 1.

The Selectmen may order numbers to be affixed to, or painted on, the buildings on any street and any owner refusing to comply with such an order shall be liable to a fine of not less than one or over twenty dollars.

#### SECTION 2.

No Street, laid out after the acceptance of this By-Law shall be accepted by the Town unless it is at least fifty (50) feet in width.

#### SECTION 3.

No person who is not in the employ of the Town or of some office or department thereof, having authority so to do, shall dig up or excavate or assist in breaking or digging up or excavating any part of a public street, highway or town-way or remove any gravel or other material from a public street, highway or town-way unless he has obtained from the Board of Selectmen a written permit therefor. Whoever, by virtue of such a permit, breaks, digs up or excavates or causes to be dug or broken up or excavated any part of a public street, highway or town-way shall cause a rail or other sufficient barriers to be placed so as to enclose the part of the street so dug or broken up or excavated; and he or they shall cause a sufficient number of lighted lanterns for public protection to be attached to some part of such barrier and so kept from the beginning of twilight through the whole of every night during all of the time such street, highway or town-way remains dug or broken up or such excavation exists.

##### SECTION 3.1.

No person who is not an officer or employee of the Town shall dig up, excavate, assist in digging up or excavating any part of a town property unless he has obtained a written permit from the Board of Selectmen.

SECTION 4.

Said person or persons shall restore said street, highway or town-way and the expense of repairs on said ways rendered necessary by digging up and accruing within one year thereafter shall be paid by such person or persons.

SECTION 5.

In all cases where the agents, servants or employees of the Water Department shall dig up or excavate any part of a public street, highway or town-way for the purpose of laying, repairing or removing water pipes therein, it shall restore said street, highway or town-way; and all expenses of repairs upon such street, highway or town-way; and all expenses of repairs upon such street, highway or town-way caused by such digging up and accruing within one year thereafter shall be chargeable to the Water Department.

SECTION 6.

The Fire Department will be notified by Selectmen when any street or public highway is closed.

SECTION 7.

No person shall lead, drive or ride any horse upon any sidewalk in town.

SECTION 8.

No person shall form or conduct any parade in any street, sidewalk or public way within the Town without a written permit signed by the Board of Selectmen.

SECTION 9.

No person shall operate a public address system on any street, public square or public park within the Town without a written permit from the Board of Selectmen.

SECTION 10.

No person shall sell, except in accordance with a permit from the Selectmen, any goods, articles or merchandise from any stationary vehicle or temporary stand in any street.

SECTION 11.

No person shall place or maintain over any sidewalk any awning, shade, shade frame, canopy, sign or signboard without a permit from the Board of Selectmen but no such awning, shade, shade frame, canopy, sign or signboard shall be less than seven feet from the ground in the lowest part or extend beyond the line of the sidewalk.

SECTION 12.

Snow or ice removed from driveways, sidewalks or private property shall not be plowed, shoveled or blown across any public way, street or roadway.

The enforcing authority for this section shall be the Police Department.

First Offense	\$25.00
Second Offense	\$50.00

Third and all subsequent Offenses \$100.00  
(Added 5/2003)

#### SECTION 13.

No person shall dispose of household trash in town trash barrels or trash barrels placed throughout the Town.

#### SECTION 14.

The dumping, incineration or recycling or any solid or liquid hazardous or radioactive wastes is prohibited within the limits of the Town.

#### SECTION 15.

No person shall operate any boat or vehicle in such manner as to create a wake during periods of high water on Lakes Quaboag and Quacumquasit and associate floodplains. High water is defined as that water that is at or above 601 feet above sea level.

#### SECTION 16.

Any person desiring to construct a driveway or access way onto a public way shall make written application to the Highway Superintendent. The applicant also shall pay an application to the town for the curb cut or driveway in the amount of \$25.00. **(Amended May 11, 2007)**

### CHAPTER XI Police Regulations

#### SECTION 1.

No person shall play any game in which a ball is used; or shoot with a bow and arrow, air gun or slingshot; or throw stones, snowballs or any other missiles in any street or public way.

#### SECTION 2.

No person shall bathe in any lakes, ponds or rivers within the Town between the hours of 11 p.m. and 6 a.m. nor at any time unless properly clothed.

#### SECTION 3.

No person shall throw, drop or place in any lake, pond or river or along any highway or public streets any waste paper, rubbish, refuse or debris.

#### SECTION 4.

No person shall enter upon the premises of another with the intention of peeping into the windows of a house or other building or spying upon, in any manner, any person or persons therein. Whosoever violates the provisions of this By-Law shall be fined in an amount not exceeding twenty dollars for each offense. No person shall saunter or loiter in a street or other public place in such a manner as to obstruct travelers, but nothing in this section shall be construed to curtail, abridge or limit the right of opportunity of any person to exercise the right of peaceful persuasion guaranteed by the General Laws or to curtail, abridge or limit the intendment of any statute of the Commonwealth of Massachusetts. Any person violating any portion of this By-Law shall be punished by a fine of not more than fifty dollars (\$50) for each offense.

## SECTION 5.

No person shall, in any street or public place, accost or address another person with profane or obscene language and/or with an obscene gesture. Any person violating this By-Law or portion thereof shall be punished by a fine of not more than fifty dollars (\$50) for each offense.

# CHAPTER XII Miscellaneous By-Law

## SECTION 1. INOPERABLE OR UNREGISTERED MOTOR VEHICLES

No person shall park, store or otherwise place or leave in or upon land within the Town of Brookfield more than one inoperable motor vehicle for a period of more than thirty (30) days, nor more than one unregistered motor vehicle for more than sixty (60) days following the expiration date of the registration of said vehicle, except as hereinafter provided. Exceptions to the above shall include:

1. motor vehicles associated with commercial vehicle repair or service establishments, whether or not operable or registered, provided they are kept on property that is licensed and/or permitted under the zoning by-law of the town for such use;
2. farm and construction equipment;
3. motor vehicles within an enclosed building or shielded from public view.

Definitions:

1. **Inoperable or junk vehicle:** a motor vehicle not capable of being used as such in its existing condition by reason of its having been damaged or dismantled or failing to contain functioning parts necessary for its operation.
2. **Unregistered vehicle:** a motor vehicle not bearing a valid, unexpired vehicle registration sticker issued by the Massachusetts Registry of Motor Vehicles, or equivalent agency of another state or province.
3. **Fines and violations:** This by-law will be enforced by the Police Department. Any violation of this by-law shall be punishable by a fine of not less than twenty five dollars (\$25.00) nor more than one hundred dollars (\$100.00), as provided for in Chapter I, General Provisions, and Section 5. **(By-Law Committee)**

## SECTION 2.

Every private in-ground swimming pool shall be enclosed by a fence not less than four (4) feet in height and firmly secured at ground level. Such enclosures, including gates therein, shall not be less than four (4) feet in height and any gate shall be self-latching or otherwise made secure from the outside. Any above ground pools must be likewise secured. Public and semi-public outdoor in-ground swimming pools must conform to the Commonwealth of Massachusetts State Building Code.

## SECTION 3.

The Town of Brookfield may, subject to appropriation, make temporary repairs on private ways, provided that the private way has been open to public use for a period of six years or more and that there shall be at least three dwellings located along the way. Such repairs shall

consist of the filling in of holes or depressions in the surface of such ways with sand, gravel, cinders or suitable materials and shall not include the resurfacing or permanent construction of said ways, grading or scraping not more than twice per year and shall not include reconstruction or repair of drainage facilities. No repairs shall be done unless all abutters sign an agreement that the town will be held harmless from any and all damages or claims resulting from such repairs. The Selectmen shall have declared such repairs to be a required public necessity. The Selectmen shall schedule repairs based upon the annual appropriation thereof. No betterment charges shall be assessed and no cash deposit shall be required for such repairs. **(Added 9/1994)**

#### SECTION 4.

Pursuant to the provisions of the General Laws, Chapter 40, section 8B, there is hereby established a Council on Aging, consisting of seven (7) members appointed by the Selectmen annually as provided herein, initial terms to be as follows: Three (3) to be appointed for three (3) years, three (3) to be appointed for two (2) years and one (1) to be appointed for one (1) year and thereafter, their successors for terms of three years each. The Council shall annually elect its Chairman and other offices as it deems appropriate. The duties of said Council on Aging shall be to:

1. Identify the total needs of the community's elder population.
2. Educate the community and enlist support and participation of all citizens concerning these needs.
3. Design, promote or implement services to fill these needs or coordinate present existing services in the community.
4. Promote and support any other programs in the community.

Said Council on Aging shall give an annual report to the Board of Selectmen with a copy of that report directed to the Commonwealth of Massachusetts, Department of Elder Affairs.

#### SECTION 5.

The Town of Brookfield hereby establishes a citizen's committee to be called the Agricultural Commission. The Agricultural Commission shall be appointed by the Selectmen, and shall consist of 5 members. The Selectmen shall also appoint 5 alternates, who shall vote, if designated by the Agricultural Commission Chairman, in the event a regular member (or members) is absent or has a conflict of interest. Both regular members and alternates shall be appointed for 3-year terms each, with initial terms, however, to be one member for one year, two members for two years, and two members for three years. The Agricultural Commission shall facilitate and encourage the pursuit of agriculture in Brookfield, and promote agricultural-based economic opportunities in the Town. Its mission is to preserve, revitalize, and sustain the Brookfield agricultural industry and its lands and to encourage the pursuit of agriculture, promote agricultural-based opportunities and protect farmland.

**(Adopted June 18, 2010)**

**(Approved by Attorney General October 18, 2010)**

## CHAPTER XIII Zoning By-Law

**Approved in May of 1988 – Zoning & Town By-Laws can be found on town website [www.brookfieldma.us](http://www.brookfieldma.us) or for sale at the Town Clerk's office.**



## CHAPTER XIV Mobile Home Rent Control Board

*Rescinded at November 1988 Special Town Meeting*

## CHAPTER XV Personnel By-Law

### Section 1. Application of this By-Law

It shall be the policy of the Town of Brookfield to guarantee equal opportunity to all qualified applicants and to all employees with respect to initial appointment, upward mobility, compensation and general working conditions without regard to age, race, color, creed, sex, national origin or physical condition.

This By-Law shall apply to all town employees, excluding school personnel and positions which are filled by popular election, and those which are covered by separate agreements between any association of employees and the town, developed through collective bargaining. All provisions of this by-law shall be applicable insofar as any collective bargaining agreement may refer to this by-law and to the extent applicable by statute or in the absence of any other provisions.

### Section 2. Mandatory Classification

No person shall be appointed, employed or paid as a town employee in any position other than those listed below:

#### GRADES FOR POSITIONS

GRADE	POINTS	POSITION
Grade 1	90	Clerk
Grade 1	90	Special Police Officer
Grade 2	115	Election Clerk
		Election Warden(Town Treasurer)
Grade 2	105	Election Officers
Grade 2	110	Library Custodian
Grade 2	115	Election Warden
Grade 2	115	Library Page
Grade 3	145	Board of Health Secretary
Grade 3	145	Custodian
Grade 3	145	Truck Driver
Grade 4	185	Municipal Clerk II
Grade 5	210	Matron

Grade 5	195	Landfill Operator
Grade 5	195	Secretary
Grade 5	200	Recycling & Landfill Monitor
Grade 5	205	Billing Clerk-Emergency Squad
Grade 5	205	Recycling Monitor
Grade 6	205	Board of Health Agent
Grade 6	230	Assistant Town Clerk
Grade 6	230	Administrative Clerk – Tax Collector and Treasurer
Grade 6	225	Administrative Clerk, Board of Health
Grade 6	240	Highway Operator, Level 2
Grade 6	230	Administrative Clerk Water Dept.
Grade 6	230	Administrative Secretary Planning Board
Grade 7	265	Board of Health Agent  Administrative Secretary, Police Dept.
Grade 8	300	Patrol Officer
Grade 8	300	Reserve Officer
Grade 8	285	Cemetery Superintendent
Grade 8	285	Town Accountant
Grade 9	315	Library Assistant
Grade 9	325	Sergeant
Grade 9	325	Administrative Sergeant
Grade 9	340	Certified Secondary Water Operator
Grade 9	340	EMT/Firefighter
Grade 10	240	Highway Operator Level 1
Grade 10	355	Administrative Assistant
Grade 11	375	Tax Collector
Grade 11	380	Board of Health Title V Administrator

Grade 12	420	Transfer Station Administrator
Grade 12	420	Deputy Police Chief
Grade 12	430	Highway Superintendent
Grade 12	430	Water Superintendent
Grade 15	495	Library Director
Grade 15	520	Police Sergeant
Grade 16	545	Police Chief (Full-time)
Grade 16	535	Fire Chief
Casual, Temporary or Seasonal Positions		Highway Department, Emergency Operator/Laborer

*(Amended 6/2008)*

*(Amended 5/2009)*

### Section 3. Employee Categories

All positions subject to the provisions of this by-law shall fall into one of the following categories:

- (A) **Full Time**: An employee whose regular and continuous work schedule consists of at least thirty-five (35) hours per week.
- (B) **Part Time with Benefits (20-35hours)**: An employee whose regular and continuous work schedule averages more than twenty (20) but less than thirty-five (35) hours per week for a fiscal year.  
  
A part time employee with benefits (20-30) will receive sick, vacation, holiday, bereavement and personal time pro-rated based on regularly scheduled number of hours worked per week.
- (C) **Part Time (less than 20)**: An employee whose regular and continuous work schedule averages less than twenty (20) hours per week for a fiscal year.
- (D) **Casual**: An employee hired for irregular or occasional employment.
- (E) **Temporary or Seasonal**: An employee hired for a specific period of time (not to exceed 6 months)

**NOTE:** All employees are paid at an hourly rate unless specified as **salaried**. Salaried employees are compensated at a fixed weekly rate and are not compensated for overtime. These categories will determine an employee's eligibility for benefits as specified by this by-law. Employees may be changed from one category to another category only after review and approval by the department head, the Personnel Board and the Board of Selectmen.

#### Section 4. Allocation and New Positions

The Personnel Board, with the agreement of the department head, shall allocate each position to its appropriate grade. Whenever a new position is established or the duties of an existing position are so changed that, in effect, a new position is created, the Personnel Board, with the approval of the department head, shall allocate the position to the appropriate grade.

The Personnel Board shall give any employee or any department head affected by the new position or change in grade a reasonable opportunity to be heard.

In no case may a new position or change in grade be considered until the town meeting approves the new position and provides funds for that position.

#### Section 5. Reclassification and Hiring

In hiring employees, the following procedure shall be used for all full-time and part-time (20-35) positions covered by this by-law.

1. A job description agreed to by both the hiring department head or board chairman and the Personnel Board must be completed prior to the announcement of the job opening.
2. The hiring rate range, per the Grade & Wage Schedule, for the position must be determined by the department head and the Personnel Board prior to the announcement of the job opening.
3.
  - a. The position must be advertised in a locally circulated newspaper one or more times, at least two (2) weeks prior to the application deadline. The advertisement will include the job title and category, full or part-time status, where the applications are available and the deadline for filing applications.
  - b. The job opening must also be posted at the Town Hall and Post Office.
4. Applicants will not be discriminated against on basis of age, race, religious or sexual preference, gender, national origin, veteran status or physical condition.
5. Records of all interviews must be retained by the hiring department head or board chairman for a period of at least five (5) years after filling the position.
6. Notification of any payroll change must be submitted to the Town Accountant and Town Treasurer prior to issuance of a voucher.
7. All paperwork regarding a new employee must be completed with the Treasurer before any payroll check is issued.

#### Section 6. Job Descriptions and Interpretations

The Personnel Board shall maintain written job descriptions which shall define job responsibilities and distinguishing features. The Personnel Board may amend such job descriptions from time to time at its discretion. Job descriptions shall be construed solely as a means of identification and not as limiting the duties and responsibilities of any position or as modifying or in any way affecting the power of any administrative authority to assign duties to, or to direct the work of, any employee under its jurisdiction.

## Section 7. Grade & Wage Schedule

The **Grade & Wage Schedule** shall consist of the minimum and maximum to be applied to steps and grades for the positions listed in this by-law.

Any employee working full time (as defined in Section 3) shall move one step every year within his/her respective grade.

Any employee working part-time (as defined in Section 3, subsections B&C) shall move one step every two (2) years within his/her respective grade.

Rates for casual, temporary or seasonal positions (as defined in Section 3, subsections D&E) shall be set by the Personnel Board on an annual basis. **Rates for these positions shall not be subject to the Grade & Wage Schedule.**

All employees covered under this by-law must submit requests for pay on time sheets available from the Town Treasurer before their pay can be processed. In addition, other forms may be required.

## Section 8. "Personal Rate" Above Maximum

Any rate which is above the maximum rate for a job as established by this by-law shall be deemed to be a **Personal Rate** and shall apply only to the incumbent. The annual increase in a Personal Rate shall not exceed fifty cents (\$.50) per hour until such time as that wage and step coincide with the **Grade & Wage Schedule**. When the incumbent leaves the employ of the town or is transferred to another job, the Personal Rate shall disappear.

## Section 9. Step Rate Increases

The Personnel Board shall have the authority to upgrade the **Grade & Wage Schedule** and to make recommendations to town meeting for wages under the jurisdiction of this by-law.

## Section 10. Transfers and Promotions of Employees

An employee receiving a promotion to a vacant position or new position shall receive a rate appropriate to a new step and grade upon reassignment.

## Section 11. Pay Rate for New Personnel

For all new employees, the first three months of employment shall be a probationary period. At the end of this period, the employee shall receive a performance evaluation.

The hiring rate shall be the minimum of the rate range for the job for the step and grade at which the new employee is hired, unless otherwise authorized by the Personnel Board. Department heads shall notify the Personnel Board of the hiring of all new personnel and their hiring rates. The Personnel Board may authorize an entrance rate higher than the minimum rate upon recommendation of a department head and proof of adequate funding, supported by evidence in writing of special reasons and exceptional circumstances satisfactory to the Personnel Board.

## Section 12. Annual Budget Preparation

Department heads shall anticipate in their annual budgets those wage increases which might occur during the ensuing year, expenditures to be made therefrom only in accordance with this by-law. No increases shall be effective or paid unless sufficient funds are available in the department's budget.

### Section 13. Health & Life Insurance

In accordance with Chapter 32B of Mass. General Laws, all employees working a minimum of twenty (20) hours per week and all employees elected by popular vote are eligible for health and life insurance. New employees must meet with the Treasurer to discuss their options during the first week of employment.

### Section 14. Holidays with Pay

All full-time employees and part-time employees with benefits who are not required to work the holiday shall receive holiday pay at the employee's regular daily rate for the employee's regularly schedule hours for the following twelve (12) holidays:

New Years Day	Martin Luther King Day	Washington's Birthday
Patriots Day	Memorial Day	Fourth of July
Labor Day	Columbus Day	Veterans Day
Thanksgiving	Day after Thanksgiving	Christmas

Whenever one of these holidays falls on a Saturday, the holiday will be observed on the preceding Friday. If a holiday falls on a Sunday, the holiday will be observed on the following Monday. In cases where a qualifying employee is required to work on a holiday that falls within his/her normal work week, that employee will be granted, with the approval of the department head, a compensatory day off equal to 1.5 times the hours worked. In accordance with the Fair Labor Standards Act, compensatory time must be taken in the same pay period. If it is not possible for the compensatory day to be taken during that time period, time-and-a-half will be paid for the hours worked in addition to the holiday pay.

### Section 15. Personal Days with Pay

All full-time employees and part-time employees with benefits shall receive two (2) personal days per year. A personal day is equal to the number of hours an employee would be regularly scheduled to work on the day requested. The employee must request the personal day from his/her supervisor at least 48 hours in advance. Personal days must be used in the year they are granted and pay will not be granted in lieu of unused personal days.

### Section 16. Vacations with Pay

Annual vacation with pay will be granted to all full-time employees and part-time employees with benefits. Paid vacation time is equal to the number of hours an employee would be regularly scheduled to work during the week or day requested. Following the completion of one year of service, vacations will be calculated on July 1 of each year in the following manner:

More than one year of service	1 week
Two to four years of service	2 weeks
Five to nine years of service	3 weeks

Ten to nineteen years of service	4 weeks
Twenty or more years of service	5 weeks

Vacation days must be used in the year they are granted or they will be forfeited unless otherwise voted by the Board of Selectmen. Pay will not be given in lieu of vacation days. When a holiday falls within an employee's vacation week, the holiday is charged as a holiday and not as a vacation day. ***Requests for vacation leave of 5 or more work days must be approved at least a week in advance by the department head. In cases where more than one employee from a department requests vacation leave, seniority will prevail.*** All requests for vacation time are subject to approval in advance by the department head. ***(Amended 11/1998)(Amended 6/2009)***

## Section 17. Leave of Absence

A **leave of absence** may be granted by the department head and shall be without compensation but without loss of benefits. A **leave of absence** lasting more than three months shall be considered a break in employment and upon return to work, the employee shall have the status of a new employee unless an extension of leave beyond three months has been authorized in advance. **Maternity Leave** and **Family Leave** will be granted in accordance with Mass. General Laws Chapter 149, section 105D and appropriate federal laws.

## Section 18. Sick Leave with Pay

All full-time employees, following a three month probationary period, shall be granted three sick days. Thereafter, they shall receive one day per month accumulative to sixty (60) days. Department heads are responsible for maintaining records of sick leave days accumulated and used for all eligible employees in the department.

All part-time **(20-35)** employees shall be granted ten **(10)** sick days per year. **These sick days cannot be accumulated.**

All paid sick leave must be approved by the employee's department head or the Board of Selectmen. Unused sick leave can be accrued from year to year, except that the maximum accrual shall not exceed 60 days. In order for an eligible employee to receive a paid sick day, the employee must notify his/her immediate supervisor as soon as is practical of the illness and of the approximate length of absence required. Whenever possible, the employee should notify his/her immediate supervisor at least one hour before the time set for beginning daily duties. An employee using three or more consecutive days of sick time will be required to submit a physician's statement certifying illness. If an employee needs an extended sick leave for medical reasons, (s) he must present a doctor's statement stating the amount of sick days that will be taken. Any employee claiming illness under false pretenses shall be subject to corrective discipline, including termination. Upon retirement from ten years minimum accumulated employment or death, the employee shall be paid for unused sick time at the rate of \$25.00 per day. ***(Amended 5/2002)***

## Section 19. Military Leave

Full-time employees who are in the National Guard or Armed Services Reserve and are called to duty not exceeding two weeks shall receive the difference in pay between their regular town pay and their military pay. Such employees may use their normal vacation time for their duty if so desired.

## Section 20. Bereavement with Pay

All full-time employees shall be granted the following:

- a. Up to 5 days of leave may be given for the death of an employee's spouse or child
- b. Up to 3 days of leave may be given for the death of an employee's mother, father, mother-in-law, father-in-law, brother, sister or other member of the immediate family living under the same roof.
- c. 1 day of leave will be granted for the death of an employee's grandparent, not living in the same household.

## Section 21. Jury Duty with Pay

All full-time and part-time (20-35) employees called for **Jury Duty** shall be paid by the town an amount equal to the difference between the compensation paid the employee for a normal working period and the amount paid by the court excluding any allowance for travel and lodging.

## Section 22. Overtime Pay

**Overtime Pay** shall be based on one and a half times normal pay for time worked beyond forty hours during any week. However, any time off granted by any other section of this by-law shall count towards the forty-hour requirement. **This section does not apply to salaried employees.**

## Section 23. Reimbursement for Education & Training Expenses

An employee should be reimbursed for tuition, fees and required materials for education and training only if all of the following conditions are satisfied:

- a. The training or course must be directly related to the knowledge and skills required for the employee's current position except where by vote of the Selectmen, cross training is in the best interest of the town. **(Amended 5/8/2009)**
- b. Adequate funds for reimbursement must have been included and be currently available in the approved departmental budget of the employee.
- c. The employee must provide documentation from the training institution showing satisfactory completion of the course (i.e., passing grade).
- d. Approval must be obtained from the appropriate department head and the Board of Selectmen before course registration.

When possible, these courses should be taken during the employee's normal working hours. When courses must be taken outside of normal working hours, travel and class time will be added to the work week and paid in accordance with Section 22. If a non-town vehicle is used for transportation to and from the training institution, the employee will be reimbursed for normal travel expenses.

## Section 24. Medical Examination

Medical examinations will be required of all new employees and anyone being transferred or promoted. These examinations will be performed by a town-approved physician and the cost will be paid by the hiring department.



## Section 25. Grievance Procedure

If any employee feels that he/she has not been fairly treated in accordance with this Personnel By-Law, that employee may enter a grievance in writing to his/her immediate supervisor, with copies being provided to the department head, Personnel Board and Board of Selectmen.

If the supervisor has not given the employee an acceptable reply within three (3) working days from the receipt of the grievance, the employee may enter a written appeal directly to the Personnel Board and Board of Selectmen with copies being provided to the supervisor and the department head.

The Personnel Board and Board of Selectmen must hold a hearing with the employee and provide a written response to the employee within fifteen (15) days from the receipt of the appeal. The response of the Personnel Board/Board of Selectmen shall be final. This constitutes the final stage of the **Grievance Procedure** available within the town.

## Section 26. Personnel Board

The Personnel Board shall consist of five persons, appointed by the Board of Selectmen for a three year term on a staggered basis: one person for one year term; two persons for two year term; two persons for a three year term with appointments to be made for three year terms thereafter. Records of all employees are to be kept by the Town Treasurer, under the direction of the Personnel Board. Department heads shall furnish such information when requested by the Board. The Town Treasurer shall also check on matters covered by this by-law and shall bring any deviations to the attention of the Board.

The Personnel Board shall have the authority to review the work of all positions subject to the provisions of this by-law and shall recommend changes in said positions as well as review any recommended adjustments in salaries only to assure that they fall into the appropriate Step of said position. In addition, the Personnel Board shall make an annual report to the town, including recommendations on any matters related to this by-law. **(Amended 1/2000)(Amended 5/2009)**

## Section 27. Employees and the Personnel Board

All employees shall have the right to request an appointment to confer with the Board on any matter which is of interest or concern to them and which is covered by this by-law.

## Section 28. Elected Officials' Salaries

The Personnel Board, though not responsible for elected officials' salaries, will be available in an advisory capacity, if so requested.

# CHAPTER XVI Water Use Restrictions

## **Water Use Restriction By-Law**

### **Section 1 Authority**

This By-law is adopted by the Town under its police powers to protect public health and welfare and its powers under MGL Chapter 41, §21 et seq. and implements the Town's authority to regulate water use pursuant to MGL c. 41, § This by-law also implements the Town's authority under MGL c. 40, §41A, conditioned upon a declaration of water supply emergency issued by the Department of Environmental Protection (DEP) or when the Massachusetts Drought Management Task Force

declares drought level of advisory or higher. Watch warning or emergency for the Chicopee Water Shed Basin.

## **Section 2: Purpose**

The purpose of this by-law is to protect, preserve and maintain the public health, safety and welfare whenever there is in force a State of Water Supply Conservation or State of Water Supply Emergency by providing for enforcement of any duly imposed restrictions, requirements, provisions or conditions imposed by the Town of by the Department of Environmental Protection.

## **Section 3: Definitions**

Person shall mean any individual, corporation trust, partnership or association, or other entity. State of Water Supply Emergency shall mean a State of Water Supply Emergency declared by the Department of Environmental Protection under MGL, c21G, § State of Water Supply conservation shall mean a State of Water Supply Conservation declared by the Town pursuant to section4 of this by-law.

Water Users or Water Consumers shall mean all public and private users of the Town's public water system, irrespective of any person's responsibility for billing purposes for water used at any particular facility.

## **Section 4: Declaration of State of Water Supply Conservation**

The Town, through its Board of Water Commissioners, may declare a State of Water Supply Conservation upon a determination by a majority vote of the Board that a shortage of water exists and conservation measures are appropriate to ensure an adequate supply of water to all water consumers. Public notice of a State of Water Conservation shall be given under section 6 of this by-law before it may be enforced.

## **Section 5: Restricted Water Uses**

A declaration of a State of Water Supply Conservation shall include one or more of the following restrictions, conditions, or requirements limiting the use of water as necessary to protect the water supply. The applicable restrictions, conditions or requirements shall be included in the public notice required under section 6.

- a) Odd/Even Day Outdoor Watering: Outdoor watering by water users with odd numbered addresses is restricted to odd numbered days. Outdoor watering by water users with even numbered addresses is restricted to even numbered days.
- b) Outdoor Watering Ban: Outdoor watering is prohibited.
- c) Outdoor Watering Hours: Outdoor watering is permitted only during daily periods of low demand, to be specified in the declaration of a State of Water Supply Conservation and public notice thereof.
- d) Filling Swimming Pools: Filling of swimming pools is prohibited.
- e) Automatic Sprinkler Use: The use of automatic sprinkler systems is prohibited.

## **Section 6: Public Notification of a State of Water Supply Conservation; Notification of DEP**

Notification of any provision, restriction, requirement or condition imposed by the Town as part of a State of Water Supply Conservation shall be published in a newspaper of general circulation within the Town, or by such other means reasonably calculated to reach and inform all users of the water of the State of Water Supply Conservation. Any restriction imposed under section 5 shall not be effective until such notification is provided. Notification of the State of Water Supply Conservation shall also be simultaneously provided to the Massachusetts Department of Environmental Protection.

## **Section 7: Termination of a State of Water Supply Conservation; Notice**

A State of Water Supply Conservation may be terminated by a majority vote of the Board of Water Commissioners, upon a determination that the water supply shortage no longer exists. Public notification of the termination of a State of Water Supply Conservation shall be given in the same manner required by section 6.

### **Section 8: State of Water Supply Emergency; Compliance with DEP Orders**

Upon notification to the public that a declaration of a State of Water Supply Emergency has been issued by the Department of Environmental Protection, no person shall violate any provision, restriction, requirement, condition of any order approved or issued by the Department intended to bring about an end to the State of Emergency.

### **Section 9: Penalties**

Any person violating this by-law shall be liable to the Town in the amount of \$50.00 for the first violation and \$100 for each subsequent violation which shall inure to the Town. Fines shall be recovered by indictment, or on complaint before the District Court, or by non-criminal disposition in accordance with section 21D of chapter 40 of the general laws and the Town's By-laws, Chapter 1, Section 5. Each day of violation shall constitute a separate offense.

### **Section 10: Severability**

The invalidity of any portion or provision of this by-law shall not invalidate any other portion or provision thereof

## **CHAPTER XVII Non-Wetlands Protection By-Law**

### **I. Purpose**

The purpose of this bylaw is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas in the Town of Brookfield by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect on resource area values, including but not limited to the following: public or private water supply, groundwater supply, flood control, erosion and sedimentation control, storm damage prevention including water quality, prevention and control of pollution, fisheries, shellfisheries, wildlife habitat, rare species habitat including rare plant and animal species, agriculture, aquaculture, and recreation values, deemed important to the community (collectively, the "resource area values protected by this bylaw").

This bylaw is intended to utilize the Home Rule authority of this municipality so as to protect the resource areas under the Wetlands Protection Act (G.L. Ch.131 §40; the Act) to a greater degree, to protect additional resource areas beyond the Act recognized by the Town as significant, to protect all resource areas for their additional values beyond those recognized in the Act, and to impose in local regulations and permits additional standards and procedures stricter than those of the Act and regulations there under (310 CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth and other relevant bylaws of the Town of Brookfield.

### **II. Jurisdiction**

Except as permitted by the Conservation Commission no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater marshes, wet meadows, bogs, swamps, vernal pools, springs, banks, reservoirs, lakes, ponds of any size, and lands under water bodies; intermittent streams, brooks and creeks; lands adjoining these resource areas out to a distance of 100 feet, known

as the buffer zone; perennial rivers, streams, brooks and creek; lands adjoining these resource areas out to a distance of 200 feet, known as the riverfront area; lands subject to flooding or inundation by groundwater or surface water; and lands subject to flooding (collectively the "resource areas protected by this bylaw"). Said resource areas shall be protected whether or not they border surface waters.

The jurisdiction of this bylaw shall not extend to uses and structures of agriculture that enjoy the rights and privileges of laws and regulations of the Commonwealth governing agriculture, including work performed for normal maintenance or improvement of land in agricultural or aqua cultural uses as defined by the Wetlands Protection Act regulations, found at 310 CMR 10.04 .

### III. Exemptions and Exceptions

The applications and permits required by this bylaw shall not be required for work performed for normal maintenance or improvement of land in agricultural and aqua cultural use as defined by the Wetlands Protection Act regulations at 310 CMR 10.04.

The applications and permits required by this bylaw shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Conservation Commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.

The applications and permits required by this bylaw shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

Other than stated in this bylaw, the exceptions provided in the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00) shall not apply under this bylaw.

### IV. Applications and Fees

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

The Commission in an appropriate case may accept as the application and plans under this bylaw any application and plans filed under the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00), but the Commission is not obliged to do so.

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may in writing request a determination from the Commission. Such a Request for Determination of Applicability (RDA) or Abbreviated Notice of Resource Area Delineation

(ANRAD) filed under the Act shall include information and plans as are deemed necessary by the Commission.

At the time of an application, the applicant shall pay a filing fee specified in regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act and regulations.

Pursuant to G.L. Ch. 44 §53G and regulations promulgated by the Commission, the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists or other experts in order to aid in the review of proposed projects. Such funds shall be deposited with the town treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.

Only costs relating to consultant work done in connection with a project for which a consultant fee has been collected shall be paid from this account, and expenditures may be made at the sole discretion of the Commission. Any consultant hired under this provision shall be selected by, and report exclusively to, the Commission. The Commission shall provide applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. Notice shall be deemed to have been given on the date it is mailed or delivered. The applicant may withdraw the application or request within five (5) business days of the date notice is given without incurring any costs or expenses.

The entire fee must be received before the initiation of consulting services. Failure by the applicant to pay the requested consultant fee within ten (10) business days of the request for payment shall be cause for the Commission to declare the application administratively incomplete and deny the permit without prejudice, except in the case of an appeal. The Commission shall inform the applicant and Department of Environmental Protection (DEP) of such a decision in writing.

The applicant may appeal the selection of an outside consultant to the Selectboard, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue, or a related field. The applicant shall make such an appeal in writing, and must be received within ten (10) business days of the date that request for consultant fees was made by the Commission. Such appeal shall extend the applicable time limits for action upon the application.

## V. Notice and Hearings

Any person filing a permit or other application or RDA or ANRAD or other request with the Conservation Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice shall state a brief description of the project or other proposal and the date of any Commission hearing or meeting date if known. The notice to abutters also shall include a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any permit application, RDA, or ANRAD with written notice given at the expense of the applicant, at least five business days prior to

the hearing, in a newspaper of general circulation in the municipality. The Commission shall commence the public hearing within 21 days from receipt of a completed permit application, RDA, or ANRAD unless an extension is authorized in writing by the applicant. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others as deemed necessary by the Commission in its discretion, based on comments and recommendations of the boards and officials listed in §VI.

The Commission shall issue its permit, other order or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant. The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act (G.L. Ch.131 §40) and regulations (310 CMR 10.00).

## VI. Coordination with Other Boards

Any person filing a permit application, RDA, or ANRAD with the Conservation Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested) or hand delivery, to the select board, planning board, zoning board of appeals, board of health, and building inspector. A copy shall be provided in the same manner to the Commission of the adjoining municipality, if the application or RDA pertains to property within 300 feet of that municipality. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The Commission shall not take final action until the above boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

## VII. Permits and Conditions

If the Conservation Commission, after a public hearing, determines that the activities which are subject to the permit application, or the land and water uses which will result there from, are likely to have a significant individual or cumulative effect on the resource area values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. The Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any such effect. The Commission also shall take into account any loss, degradation, isolation, and replacement or replication of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities.

The Commission shall presume that all areas meeting the definition of "vernal pools" under §IX of this bylaw perform essential habitat functions including any adjacent area that the Commission reasonably deems necessary to maintain the function and values of the vernal pool. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression does not provide essential habitat functions. Any formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Wetlands Protection Act regulations.

A permit, Determination of Applicability (DOA), or Order of Resource Area Delineation (ORAD) shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one-year period, provided that a request for a renewal is received in writing by the

Commission prior to expiration. Notwithstanding the above, a permit may identify requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all present and future owners of the land.

For good cause the Commission may revoke any permit, DOA, or ORAD or any other order, determination or other decision issued under this bylaw after notice to the holder, the public, abutters, and town boards, pursuant to §V and §VI, and after a public hearing.

Amendments to permits, DOAs, or ORADs shall be handled in the manner set out in the Wetlands Protection Act regulations and policies there under.

The Commission in an appropriate case may combine the decision issued under this bylaw with the permit, DOA, ORAD, or Certificate of Compliance (COC) issued under the Wetlands Protection Act and regulations.

No work proposed in any application shall be undertaken until the permit, or ORAD issued by the Commission with respect to such work has been recorded in the registry of deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the document has been recorded. If the applicant fails to perform such recording, the Commission may record the documents itself and require the Applicant to furnish the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of a COC.

## VIII. Regulations

After public notice and public hearing, the Conservation Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw, effective when voted and filed with the town clerk. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw. At a minimum these regulations shall reiterate the terms defined in this bylaw, define additional terms not inconsistent with the bylaw, and impose filing and consultant fees.

## IX. Definitions

The following definitions shall apply in the interpretation and implementation of this bylaw.

The term "agriculture" shall refer to the definition as provided by G.L. Ch. 128 §1A.

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

- A. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind
- B. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics
- C. Drainage or other disturbance of water level or water table
- D. Dumping, discharging, or filling with any material which may degrade water quality
- E. Placing of fill, or removal of material, which would alter elevation
- F. Driving of piles, erection, expansion or repair of buildings, or structures of any kind
- G. Placing of obstructions or objects in water
- H. Destruction of plant life including cutting or trimming of trees and shrubs
- I. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters
- J. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater
- K. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.

The term “bank” shall include the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

The term “person” shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

The term “pond” shall follow the definition of 310 CMR 10.04 except that the size threshold of 10,000 square feet shall not apply.

The term “rare species” shall include, without limitation, all vertebrate and invertebrate animals and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless whether the site in which they occur has been previously identified by the Division.

The term “vernal pool” shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be the mean annual high-water line defining the depression.

Except as otherwise provided in this bylaw or in associated regulations of the Conservation Commission, the definitions of terms and the procedures in this bylaw shall be as set forth in the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00).

## X. Security

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Conservation Commission may require that the performance and observance of the conditions imposed there under (including conditions requiring mitigation work) be secured wholly or in part by one or both of the methods described below:

- A. By a proper bond, deposit of money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a COC for work performed pursuant to the permit.
- B. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

## XI. Enforcement

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized



fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.

The Conservation Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.

The Commission shall have authority to enforce this bylaw, its regulations, and permits issued there under by letters, phone calls, electronic communication and other informal methods, violation notices, and civil and criminal court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

Upon request of the Commission, the Selectmen and town counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the chief of police shall take legal action for enforcement under criminal law.

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

Any person who violates any provision of this bylaw, or regulations, permits, or administrative orders issued there under, shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

## XII. Burden of Proof

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

## XIII. Appeals

A decision of the Conservation Commission shall be reviewable in the superior court in accordance with G.L. Ch. 249 §4.

## XIV. Relation to the Wetlands Protection Act

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00) there under. It is the intention of this bylaw that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the Wetlands Protection Act and regulations.

## XV. Severability

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

## CHAPTER XVIII Dogs

### SECTION 1.0 DEFINITION OF TERMS

As used in this By-Law, unless the context otherwise indicates:

- (A) "Dogs" shall mean all animals of the canine species, both male and female.
- (B) "Owner" shall mean any person or persons, firm, association or corporation owning, keeping or harboring a dog as herein defined.
- (C) "Public Nuisance"- Any dog shall be deemed a public nuisance if such dog is found to be not on the premises of the owner of such dog or upon the premises of another person without the knowledge and expressed permission of such other person except:
  - 1. If such dog is attached to a restraining device and under the care and control of a person competent to restrain said dog so that it shall not be a threat to public safety and the mere muzzling of such a dog shall not satisfy the requirements of this By-Law;
  - 2. If such dog is being used as a so called "hunting dog" and is being supervised as such by a person competent to restrain such dog so that it shall not be a threat to public safety.

### SECTION 2

#### a. Removal of Dog Litter

If any dog shall defecate upon any public property or area, then the owner, keeper and person then walking or otherwise in charge of said dog shall immediately remove or cause to be removed from said property or area, all feces so deposited by said dog. Such owner, keeper or person must have in his or her immediate possession an appropriate device for scooping excrement and an appropriate depository for the transmission of excrement to a receptacle located upon property owned or possessed by such owner, keeper or person. This provision shall not apply to a person who is visually or physically disabled. Unless said feces are removed, the owner, keeper and the person then walking or otherwise in charge of said dog (or if said owner, keeper or person shall be a minor, then the parent or guardian) shall each be deemed to have committed a punishable offense.

#### b. Special Provision

This by-law shall not apply to a guide dog, hearing dog or service dog accompanying any person with a disability.

#### c. Violation and fines

This by-law will be enforced by the Dog Officer, Board of Health and Police Department. The commission of any violation of this by-law shall be punishable by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00). *(Added 5/1998)*

#### d. Dog Fund Account

Monies placed in the Dog Fund shall be available for special projects proposed by the Animal Control Officer and approved by the Board of Selectman. Funds in the Dog Fund Account

exceeding \$2,000 on December 31<sup>st</sup> of each year shall be returned to the General Fund. The \$2,000 bar may be raised or suspended indefinitely or for a fixed time by a vote of the Board of Selectmen.

### SECTION 3.1 PERMITTING A DOG TO BECOME A PUBLIC NUISANCE PROHIBITED

No owner or keeper of any dog shall permit such dog, whether licensed or unlicensed, to become a public nuisance within the Town of Brookfield at any time.

### SECTION 3.2 IMPOUNDING

It shall be the duty of the Dog Officer to investigate complaints concerning any dogs which are alleged to be in violation of the By-Law and to apprehend such dog found by him to be a public nuisance and to impound such dog in a suitable place or to order the owner thereof to restrain said dog.

### SECTION 3.3 NOTICE TO OWNER AND REDEMPTION

If such dog, so impounded, has upon it the name and address of the owner thereof or if the name of said owner is otherwise known, then the Dog Officer shall immediately notify the owner and if the owner is not known, then no notice shall be necessary. The owner of any dog so impounded may reclaim such dog upon the reimbursement to the Dog Officer of his expenses for maintaining said dog while impounded. In any event, the Dog Officer shall not charge more than three dollars (\$3) for a reimbursement of said expenses for each twenty-four (24) hour period or any part thereof that the dog is held by him plus twenty dollars (\$20) as a fee for the initial handling of such dog. Provided, however, if the dog is not licensed, a license as required by the Town of Brookfield must be obtained before the Dog Officer releases said dog to any person. **(Amended 6/1993)**

### SECTION 3.4 DISPOSITION OF UNCLAIMED DOGS

Any dog which has been impounded and has not been redeemed by the owner within ten days (10) days shall be disposed of as provided by Section 151A, Chapter 140 of the Massachusetts General Laws and any amendment thereto.

### SECTION 3.5 PENALTY

Any owner found in violation of any of the provisions of this By-Law shall be punished by a fine of not more than \$50.00 in accordance with the provisions of Chapter 140, Section 173A of the Massachusetts General Laws. (See Chapter I, Section 5)

### SECTION 3.6 DISPOSITION OF FUNDS

Any funds collected pursuant to the provisions of this By-Law by the Dog Officer shall be accounted for and paid to the Town Treasurer at such time and in such manner as may be designated by the Town Treasurer.

### SECTION 3.7

A late fee of twenty-five dollars (\$25.00) per dog owner and per kennel owner shall be charged to each dog owner or kennel owner who fails to license said dog or dogs on or before April 1<sup>st</sup> of each year. These late fees will begin on April 6th and must be paid before obtaining any license for said dog or dogs. **(Amended 1/2006)**