

Minutes of the **By-Law Review Committee** meeting held
March 25, 2013
7:30 PM

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Board of Registrars Conference Room, Town Hall, 455 Concord Avenue

Attendees: Charles Hamann, Chair, Mark Thurber, Raymond Miyares, Ellen O'Brien Cushman (ex-officio)

Others attending: Jeffrey Wheeler, Planner and Glenn Clancy Director of Office of Community Development, Police Chief Richard McLaughlin, Franklin Tucker (media)

Agenda:

Annual Town Meeting Articles –

Ellen quickly reviewed the status of all of the proposed amendments to General By-Laws that have been presented to the Committee to date based on past meeting minutes:

- Police Chief, Appointing Authority – approved as to form & placement. Chief McLaughlin attended to request additional language to clarify that the auxiliary and special officers and other personnel will be included. The Committee will take this up again this evening.
- Capital Budget Report - approved as to form & placement
- Historic District, Richardson Farm – approved as to form & placement.
- Electronic Voting - approved as to form & placement
- Stormwater Management –not yet final, to be discussed and remaining question about the Enterprise Fund as separate By-Law is to be resolved
- Demolition Delay - there were two versions of the Demolition Delay being prepared, by Historic District Commission and the Planning Board Once consolidated version will be reviewed tonight and presented later to both boards.

New proposals, not yet discussed at the By-Law Review Committee:

Demolition Delay – still being developed. The Historic District Commission and the Planning Board “are still negotiating”. The remaining points are the opt-out, 35.5 in document provided, particularly paragraph ii. The Committee made some comments, document attached, but cannot yet vote because the text is not complete.

The By-Law Review Committee will report orally on this article at Town Meeting if we don't have a new draft of the document by April 1st.

National fingerprint and CORI check for certain license applicants – the article was drafted by Captain Hoerr, Belmont Police. The Committee reviewed the language and made some edits/suggestions to have the language conform to Belmont's General By-Laws, and included the standard severability clause. Revised document, including these edits, was approved as to form and placement. Unanimous Vote

Residential Snow Removal - the Committee reviewed the text provided and recommended changes, including the renumbering of 20.15 to be 20.16 to reference non-criminal disposition under 21D and recommends to the sponsor or Board of Selectmen that they review the fine amounts. Document attached that includes language - Unanimous vote.

Police Chief, Appointing Authority – The Police Chief, Richard McLaughlin had asked for time on the agenda for the Committee to review the approved language to make sure that the Police Chief would have authority over appointments and removal of special, auxiliary officers and other Police Department Personnel. The committee reviewed the language and determined that an addition clause must be added to clearly include this intention. The new language, with the additional clause, is attached in the document. Unanimous Vote

Stormwater Management and Erosion Control – The Committee reviewed the latest draft provided by Glenn. Ray had previously spoken with Glenn and Town Counsel about the Enterprise Fund; the Committee offered the following additional comments, **document attached**:

- “old section 34.4.2” should be returned to its prior position and then the new 34.4.3 (revolving fund) and 34.4.4 (enterprise fund) should be renumbered as 34.4.4 and 34.4.5 respectively.
- 34.6.1 (a) was supposed to have been deleted.
- 34.6.2 Exempt activities, the word “existing” should be added to become “Lots with three or fewer dwelling units existing as of the effective date....”
- 34.6.3.2 delete the word “prior” at the end of the sentence.
- Reinsert 34.6.3.3
- 34.8 (b) Enforcement add to the end of the paragraph the following “in an amount not exceeding the penalty specified in Section 34.8 (e)”
- 34.8 (e), delete the words “other” and “and non-criminal” in first sentence and remove extra comma after “Section”
- With those changes and reinsertion of the revolving fund and enterprise fund, Unanimous vote as to form and placement.

Recodification with General Code – Ellen has circulated the latest version of the full recodified Bylaws for Committee member review. The Town Meeting articles for the May 29th Special Town Meeting are being prepared

by General Code, to be reviewed by Town Counsel and Committee members. Ellen will work with George to prepare necessary "tracking" documents for Town Meeting Members that show all of the internal references within the articles, chapters and sections and will be made available to Town Meeting Members at end of April. Committee members should review and make comments/edits to Ellen and we'll review at next meeting.

Minutes of March 13, 2013 were approved unanimously

Next meeting April 24th will be the last meeting before Town Meeting – all language must be submitted in final form by April 19th.

Meeting adjourned at 10: 45 PM

Respectfully submitted,
Ellen O'Brien Cushman

ARTICLE 35
Demolition Delay

(Planning Board Draft March 25, 2013 – Including By-Law Committee Review)

35.1 Intent and Purpose.

This Article is enacted for the purpose of preserving and protecting Significant Buildings within the Town of Belmont that constitute or reflect distinctive features of the architectural, cultural, economic, political, or social history of the Town; and to limit the detrimental effect of demolition on the character of the Town. Through this Article, owners of Preferably Preserved Buildings are encouraged to seek out and consider alternative options that will preserve, rehabilitate or restore such Buildings; and residents of the Town are alerted to impending demolitions of Significant Buildings. By preserving and protecting Significant Buildings, this Article promotes the public welfare by making the Town a more attractive and desirable place in which to live and work. To achieve these purposes the Belmont Historic District Commission is authorized to advise the Inspector of Buildings with respect to demolition permit applications. The issuance of demolition permits is regulated as provided by this Article.

35.2 Definitions.

For the purposes of this Article, the following terms shall have the following definitions:

- (a) **APPLICANT** – Any person or entity that files an Application for a demolition permit. If the Applicant is not the owner of the premises upon which the Building is situated, the owner must indicate on or with the Application his/her assent to the filing of the Application.
- (b) **APPLICATION** – An Application for a Demolition Permit, including the information required in Section 35.3.2.
- (c) **BUILDING** – Any structure used or intended for supporting or sheltering any use or occupancy.
- (d) **COMMISSION** – The Belmont Historic District Commission.
- (e) **DEMOLITION** – Any act of pulling down, destroying, removing, dismantling, or razing a Building or commencing the work of total or substantial destruction with the intent of completing the same.
- (f) **DEMOLITION PERMIT** – The permit required by the Inspector of Buildings for Demolition or substantial Demolition of a Building, excluding a permit required solely for the Demolition of the interior of a Building.

(g) INSPECTOR OF BUILDINGS – The person authorized by law to issue Demolition Permits within the Town of Belmont.

(h) INVENTORY – The list, entitled *Belmont's Significant Historic Buildings Not Protected By Local Historic District Designation*, shall be kept on file in the Town Clerk's office and may be amended pursuant to Section 35.4.2 of this Article. The Inventory shall be made available to the public.

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(i) PREFERABLY PRESERVED BUILDING – Any Significant Building with respect to which the Commission determines, following a public hearing, that it is in the public interest for such Building to be preserved rather than demolished.

(j) SIGNIFICANT BUILDING – A Building that is listed on the Inventory.

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35.3 Procedure.

35.3.1 No Demolition Permit for a Significant Building shall be issued without following the provisions of this Article 35.

35.3.2 An Applicant proposing to demolish a Significant Building shall file with the Inspector of Buildings an Application containing the following information:

- The address of the Building to be demolished;
- The owner's name, address and telephone number;
- A description of the Building;
- The reason for requesting a Demolition Permit;
- A brief description of the proposed reuse, reconstruction or replacement; and
- A photograph or photographs of the Building and photographs of neighboring Buildings.

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35.3.3 The Inspector of Buildings shall, within seven (7) days of receipt of such Application, forward a copy thereof to the Commission.

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35.3.4 After receipt of the Application, the Commission shall hold a public hearing within thirty-five (35) days to determine if the Significant Building is a Preferably Preserved Building. Public notice of the time, place and purpose of the hearing shall be posted in a conspicuous place in the same manner as meeting notices posted in Belmont under the Open Meeting Law, Chapter 30A, Section 20, of the General Laws, for a period of not less than seven (7) days prior to the date of said

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hearing, and the Inspector of Buildings and the Applicant shall be notified in writing of the meeting time and place no less than fourteen (14) days in advance.

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35.3.5 Within ten (10) days of the first date of such Public Hearing the Commission shall provide written notification to the Inspector of Buildings and the Applicant as to its determination of whether the **Significant** Building is a Preferably Preserved Building. If agreed to in writing by the Applicant, the determination of the Commission may be postponed to a later date. If the Commission does not notify the Inspector of Buildings and the Applicant of its determination in writing within ten (10) days of the first date of such Public Hearing, or such later date as agreed by the Applicant, then the Inspector of Buildings may issue the Demolition Permit.

35.3.6 If the Commission determines that the **Significant** Building is not a Preferably Preserved Building, the Commission shall so notify the Inspector of Buildings and Applicant in writing. The Inspector of Buildings may then issue the Demolition Permit.

35.3.7 If the Commission determines that the **Significant** Building is a Preferably Preserved Building, a Demolition Permit may thereafter be issued no sooner than nine (9) months after the date that the Application was filed with the Inspector of Buildings, unless a shorter time is otherwise authorized by the Commission based on its finding that the intent and purpose of this Article, as provided in Section 1 hereof, will be adequately served.

35.4 Administration.

35.4.1 The Commission may adopt such rules and regulations as are necessary to administer the provisions of this Article.

35.4.2 The Commission may, by vote, add **Buildings** to the Inventory if determined to be historically significant after a public hearing held at least thirty (30) days prior to such vote. Owners of record of **Buildings** proposed for such listing shall receive written notice of the time and place of such public hearing no less than fourteen (14) days in advance thereof. Public notice of the time, place and purpose of the hearing shall be posted in a conspicuous place in the same manner as meeting notices posted in Belmont under the **Open** Meeting Law, Chapter 30A, Section 20, of the General Laws, for a period of not less than seven (7) days prior to the date of said hearing.

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35.5 Opportunity for Removal.

35.5.1 Owners of residential properties shall have a single opportunity to be removed by written reply mailed or delivered to the Commission (an "Opportunity for Removal") from the protective status of this Article 35 as follows:

- i. The Commission shall notify each residential property owner listed on the Inventory by certified mail within six (6) months of the effective date of this Article, and such property owner shall be afforded an Opportunity for Removal within thirty (30) days of receipt of such notice;
- ii. To the extent any residential properties are added to the Inventory, the Commission shall deliver notice thereof to each residential property owner affected thereby by certified mail within six (6) months of said property being added to the Inventory and such property owner shall be afforded an Opportunity for Removal within thirty (30) days of receipt of such notice; and
- iii. Such notification will describe the effect of this Article and permit such property owner the opportunity to notify the Commission that they wish to have their property removed from its status as a Significant Building.

35.6 Responsibility of Owners.

35.6.1 The owner of a Significant Building who has applied for a Demolition Permit shall:

- Provide such information as is reasonably requested by the Commission in connection with its consideration of whether the Significant Building is a Preferably Preserved Building;
- Allow exterior access to the property on which the Significant Building is located, as reasonably requested by the Commission;
- Secure the Significant Building, if vacant, to the satisfaction of the Inspector of Buildings until a Demolition Permit is issued;
- Participate in the investigation of preservation options for a Preferably Preserved Building; and
- Cooperate with the Commission and any interested parties in seeking alternatives to the Demolition of a Preferably Preserved Building.

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35.6.2 If the owner of a Significant Building fails to secure the Building to the satisfaction of the Inspector of Buildings, the subsequent destruction of the Building through any cause, which destruction could have been prevented by the required security measures, shall be considered a Demolition in violation of this Article.

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35.7 Emergency Demolition.

35.7.1 Nothing in this Article shall restrict the Inspector of Buildings from ordering the immediate Demolition in accordance with applicable law of any Building in the event of imminent danger to the safety of the public. In the event that the Inspector of Buildings is informed that a Significant Building is dangerous to life or limb, or otherwise may be subject to a removal order, the Commission shall be notified and, where practicable, the Commission or its designee shall be allowed to accompany the Inspector of Buildings during the inspection of ~~the~~ Building.

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35.7.2 As soon as practicable after the Inspector of Buildings has issued an emergency demolition order for a Significant Building, a copy of such order shall be provided to the Commission, together with copies of all documentation relevant thereto.

35.8 Enforcement and Remedies.

35.8.1 The Commission and/or the Inspector of Buildings are each specifically authorized to institute any and all actions and proceedings, **in law or equity**, as they may deem necessary and appropriate to obtain compliance with the requirements of this Article or to prevent a threatened violation thereof.

35.8.2 Any owner of a Significant Building which is demolished without first obtaining a Demolition Permit in accordance with the provisions of this Article shall be subject to a penalty of Three Hundred Dollars (\$300.00). Each day that such violation exists shall constitute a separate offense until a faithful restoration of the demolished **Significant** Building or other remediation or remediation plan has been approved by the Commission. This subsection may be enforced by the Inspector of Buildings by non-criminal disposition as provided in Ch. 40, Section 21D of the General Laws.

35.8.3 If a Significant Building is demolished without first obtaining a Demolition Permit in accordance with the provisions of this Article, no building permit authorizing construction on the lot on which the Building was located or on any adjoining lot under common ownership therewith shall be issued for a period of two (2) years from the date of the demolition, unless agreed to by the Commission.

35.9 Severability

If any provision of this Article shall be found invalid for any reason by a court of competent jurisdiction, such invalidity shall be construed as narrowly as possible, and the balance of the Article shall be deemed to be amended to the minimum extent necessary, so as to secure the purposes thereof, as set forth in Section 35.1.

ARTICLE 28: Creation of a New General By-Law: Criminal History Checks for Certain Licenses, Permits, and Registrations

To see if the Town will vote, in accordance with Chapter 6, section 172B ½ of the Massachusetts General Laws, to establish a new General By-Law of the Town of Belmont by inserting a new Article #__ to provide criminal history checks for persons seeking to obtain certain licenses; or take any action related thereto.

(Inserted at the request of Police Chief & Board of Selectmen)

Article X

Criminal History Checks for Certain Licenses, Permits, and Registrations

X.1 Purpose

Certain occupations for which the Town has the authority to issue licenses, permits, or registrations carry with them an unusual risk of criminal abuse of members of the public. This Article is adopted pursuant to Chapter 6, section 172B1/2 of the General Laws to provide for a criminal history check for persons seeking to receive from the Town licenses or permits to pursue these occupations.

X.2 Definitions

As used in this by-law, the following words or phrases shall have these meanings:

Criminal history check: The Fingerprint Based Criminal History Check authorized by Massachusetts General Laws Chapter 6, section 17B1/2 for the purpose of conducting a state and national criminal history records check pursuant to sections 168 and 172 of the General Laws and 28 U.S.C. § 534 based upon a full set of fingerprints submitted by the applicant to the Police Department.

License: Any permission granted by a licensing authority to pursue an occupation, including a license, permit, or registration.

Licensing authority: The Town or any of its officers, departments, boards, committees, or other authorities which are authorized to issue licenses, permits, or registrations by the Massachusetts General Laws, the General By-Laws, or a local rule or regulation.

X.3 Occupations subject to a criminal history check

X.3.1 Prior to being issued an original license and prior to being allowed to renew a license, a person who seeks to pursue one of the following occupations within the Town shall be required to submit to a criminal history check:

- (a) Dealer in Second-Hand Articles (Town of Belmont General By-Laws 4.9.5, issued by the Board of Selectmen),
- (b) Door to Door Salesperson (Town of Belmont General By-Laws 30.3, issued by the Chief of Police),
- (c) Hackney Driver (Town of Belmont General By-Laws 4.9.1, issued by the Board of Selectmen or their designee),
- (d) Ice Cream Truck Vendor (General Laws Chapter 270, section 25, issued by the Chief of Police),
- (e) Pawnbroker (General Laws Chapter 140, section 70, issued by the Board of Selectmen).

X.3.2 The requirement of a criminal history check in this by-law shall be in addition to any other qualification required by state law or the Town's by-laws or regulations.

X.4 Initial processing of criminal history check by Police Department

X.4.1 The Chief of Police shall by rule or regulation establish a criminal history check process and assign an officer or officers to provide this service for applicants.

X.4.2 A person who applies to the Town or one of its officers for a license to pursue one of the occupations listed in X.3.1 shall appear at the police station.

X.4.3 The applicant shall tender a non-refundable fee for the criminal history check, which fee shall be in addition to any other fee required for the application for the license.

X.4.4 The applicant shall submit such personal information as may be required for the criminal history check and a full set of fingerprints.

X.4.5 Upon receipt of the fee established for this check and the set of fingerprints, the officer will transmit the applicant's fingerprints to the Massachusetts State Police Identification Unit through the Department of Criminal Justice Information Services (DCJIS). The State Police will compare the applicant's fingerprints against its criminal files and then transmit the fingerprints to the Federal Bureau of Investigation for comparison against records kept by the FBI. The FBI will transmit its results to the State Police which shall disseminate the Massachusetts and federal results to the Police Department.

X.4.6 The Town authorizes the Massachusetts State Police, DCJIS, and the FBI, and their successors, as may be applicable, to conduct fingerprint-based state and national criminal record background checks, including checking FBI records, consistent with this by-law.

X.4.7 Information received from the Massachusetts State Police, DCJIS, and the FBI pursuant to a criminal history check will not be disseminated to unauthorized persons or entities.

X.5 Recommendation of fitness for issuance of license

X.5.1 Upon receipt of the records, the officer shall make a preliminary determination as to whether the applicant will be recommended to the licensing authority as fit or unfit for issue of the license.

X.5.2 In determining whether to recommend the applicant as fit for the license, the officer shall consider whether any entry in the records constitutes an automatic disqualification from the occupation. The officer will consider how the following convictions or pending criminal cases for (1) any felony, (2) any offense related to unlawful sexual conduct, (3) the distribution or possession with intent to distribute a controlled substance, (4) any misdemeanor involving as an element the use or threatened use of force, (5) any misdemeanor involving the unlawful taking or receipt of property, or attempts to do so, and (6) any crime which bears more specifically upon the applicant's fitness or ability to serve in the occupation for which he or she is seeking a license. In addition, the officer conducting the check shall consider whether the person is registered as a sex offender.

X.5.3 Prior to transmitting the results and the criminal history record to the licensing authority, the officer shall communicate the preliminary recommendation to the applicant.

X.5.4 If the applicant wishes, the officer shall provide the applicant with a copy of the criminal history record.

X.5.5 If the officer's preliminary recommendation is that the applicant is unfit, the officer will:

- (a) indicate to the applicant which record or records appear to make the applicant unfit,
- (b) allow the applicant to challenge the accuracy of records and provide additional information,
- (c) provide the applicant with information regarding procedures for changing, correcting, or updating of a criminal record, which information will include the DCJIS guide and 28 C.F.R. Part 16.34,
- (d) allow the applicant a reasonable time to dispute the accuracy of criminal record with the agencies responsible for creating or keeping the record.

X.5.6 The Police Department will transmit the recommendation as to the applicant's fitness and the result of the criminal history check only if the officer reasonably believes the record to be complete and accurate.

X.6 Licensing authority action

X.6.1 The licensing authority shall use the results of the criminal history check and the Police Department's recommendation solely for the purpose of determining the applicant's fitness for a license.

X.6.2 If requested by the applicant, the licensing authority will afford the applicant with an opportunity to provide information in mitigation of his or her criminal record or to suspend the application process until the applicant has had the opportunity to correct or complete the criminal record.

X.6.3 The licensing authority will consider the information provided pursuant to this by-law and other information relevant to the applicant's fitness to whether to issue the license.

X.6.4 The licensing authority is authorized to act upon information it receives pursuant to this by-law to deny any application for a license, or to revoke or suspend any license, or to deny a renewal or transfers of a license.

X.6.5 Neither the Police Department's recommendation as to fitness nor the information received from the Massachusetts State Police, DCJIS, and the FBI pursuant to a criminal history check will be disseminated to unauthorized persons or entities.

X.7 Collection and disbursement of fee

The fee for the criminal history check is \$100. A portion of the fee collected from the applicant shall be deposited into the Firearms Fingerprint Identity Verification Trust fund as directed in Massachusetts General Laws Chapter 6, Section 172B1/2. The remainder shall be retained by the Police Department for costs associated with the administration of the criminal history checks.

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X. 8 Severability

If any provision of this Article shall be found invalid for any reason by a court of competent jurisdiction, such invalidity shall be construed as narrowly as possible, and the balance of the Article shall be deemed to be amended to the minimum extent necessary, so as to secure the purposes thereof, as set forth in Section X.1

; or take any action related thereto.

Proposed Residential Snow Removal By-Law

20.15 Any owner of residential property bordering on a street where there is a paved sidewalk shall be responsible for the removal of all snow and ice to the extent practicable down to the sidewalk's natural surface and otherwise treat the same to prevent slipping. This responsibility shall be subject to the following terms and conditions:

20.15.1 The removal and treatment of ice and snow shall be accomplished within twelve (12) hours after the snow has ceased to fall. Treatment of ice shall be accomplished within twelve (12) hours after the ice has formed.

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20.15.2 Snow and ice shall be removed from all portions of sidewalks to a width of 48 inches or in the case of sidewalks narrower than 48 inches to their full width.

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20.15.3 RECOMMENDATION (FOR CONTENT) OF THE BY-LAW REVIEW COMMITTEE – GLENN MUST DECIDE:

20.15.3 The Board of Selectmen shall adopt rules, and regulations providing for exemptions from the requirements of Section 20.15 for persons for whom compliance would constitute a hardship.

20.16 In addition to the provisions for enforcement described above, the provisions of Sections 20.1, 20.2, 20.4.1, 20.5.1, 20.7, 20.9, 20.12, 20.13, 20.14 and 20.15 of this Article 20 and any regulations promulgated thereunder may also be enforced by non-criminal disposition as provided in Chapter 40, Section 21D of the General Laws ("Section 21D"). The penalty for such violation shall be \$300 for each offense. Each day or part thereof shall constitute a separate offense.

Deleted: The owner of an owner occupied property who qualifies for relief under the following - Clause 17 D or 41C Elderly Exemption, Clause 37A Blind Exemption, or Community Preservation Act Low/Moderate Income Seniors Exemption - can apply for an exemption from Section 20.15. All requests for an exemption shall be submitted annually and must be received by the office of the Board of Selectmen no later than October 1.st

"Enforcing person" as used in this Section 20.16 shall mean any police officer of the Town, the Director of Public Works and any other Town employee designated by the Board of Selectmen as an enforcing person.

An enforcing person taking cognizance of a violation of this Article or any rule or regulation adopted hereunder shall give the offender a written notice to appear before the clerk of the district court having jurisdiction thereof for the non-criminal disposition thereof in accordance with the provisions of Section 21D. The provisions of Section 21D are incorporated herein by this reference.

Proposed Residential Snow Removal By-Law

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20.15.1 The removal and treatment of ~~ice and snow~~ shall be accomplished within twelve (12) hours after the snow has ceased to fall. Treatment of ice shall be accomplished within twelve (12) hours after the ice has formed. ~~same shall cease to fall or be formed on such sidewalks.~~

20.15.2 Snow and ice shall be removed from all portions of sidewalks to a ~~maximum~~ width of 48 inches or in the case of ~~narrower~~ sidewalks narrower than 48 inches to their full width ~~a minimum width of 36 inches.~~

20.15.3 RECOMMENDATION (FOR CONTENT) OF THE BY-LAW REVIEW COMMITTEE
– GLENN MUST DECIDE:

20.15.3 The Board of Selectmen shall adopt rules, and regulations providing for exemptions from the requirements of Section 20.15 for persons for whom compliance would constitute a hardship.

~~The owner of an owner occupied property who qualifies for relief under the following – Clause 17 D or 41C Elderly Exemption, Clause 37A Blind Exemption, or Community Preservation Act Low/Moderate Income Seniors Exemption – can apply for an exemption from Section 20.15. All requests for an exemption shall be submitted annually and must be received by the office of the Board of Selectmen no later than October 1.~~

20.16 In addition to the provisions for enforcement described above, the provisions of Sections 20.1, 20.2, 20.4.1, 20.5.1, 20.7, 20.9, 20.12, 20.13, 20.14 and 20.15 of this Article 20 and any regulations promulgated thereunder may also be enforced by non-criminal disposition as provided in Chapter 40, Section 21D of the General Laws ("Section 21D"). The penalty for such violation shall be \$300 for each offense. Each day or part thereof shall constitute a separate offense.

"Enforcing person" as used in this Section 20.16 shall mean any police officer of the Town, the Director of Public Works and any other Town employee designated by the Board of Selectmen as an enforcing person.

An enforcing person taking cognizance of a violation of this Article or any rule or regulation adopted hereunder shall give the offender a written notice to appear before the clerk of the district court having jurisdiction thereof for the non-criminal disposition thereof in accordance with the provisions of Section 21D. The provisions of Section 21D are incorporated herein by this reference.

Town Meeting Article _____

Police Chief

Amendment to the General By-Laws, Article 4 regarding Chief of Police

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4.8.2 As provided in Chapter 376 of the Acts of 2010, there shall be a Police Chief appointed by the Board of Selectmen who shall have and exercise all the powers and discharge all the duties conferred by law generally upon police chiefs. The Chief shall appoint such police officers as the Chief deems necessary, and may remove the same at any time for cause after a hearing. The Chief shall have full and absolute authority in the administration of the Police Department, including the appointment and removal of special and auxiliary police officers and other personnel, shall make all rules and regulations for the department's operation, shall report to the Board of Selectmen from time to time as the Board may require, and shall annually report to the Town the condition of the Department with the Chief's recommendations thereon. The Chief shall fix the compensation of all members of the Department, subject to the approval of the Board of Selectmen. The Chief shall be in immediate control of all Town property used by the Department, and of the police officers, whom the Chief shall assign to their respective duties and who shall obey the Chief's orders.

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Article 34

Stormwater Management and Erosion Control By-Law

34.1 Purposes

The purposes of this By-Law are:

- (a) To prevent pollutants from entering the Town of Belmont's Municipal Separate Storm Sewer System (MS4);
- (b) To prohibit illicit connections and unauthorized discharges to the (MS4) and to require the removal of all such illicit connections
- (c) To comply with state and federal statutes and regulations relating to stormwater discharges;
- (d) To establish the legal authority to ensure compliance with the provisions of this By-Law through permitting, inspection, monitoring, and enforcement;
- (e) To control runoff and prevent soil erosion and sedimentation resulting from construction site stormwater runoff,
- (f) To promote infiltration and the recharge of groundwater;
- (g) To protect, maintain and enhance the public safety, environment, health, and general welfare by establishing minimum requirements and procedures to manage stormwater runoff; and
- (h) To ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process and are implemented and maintained.

34.2 Definitions

For the purposes of this By-Law, the following definitions shall apply:

ALTERATION — Any activity, that will change the ability of a ground surface area to absorb water or will change existing surface drainage patterns. Examples include, but are not limited to, construction of new structures, earthmoving, paving, and modification of existing vegetation.

BEST MANAGEMENT PRACTICES (BMPs) — Structural, non-structural, and managerial techniques that are recognized to be the most effective and practical means to prevent or minimize increases in stormwater volumes and flows, reduce point-source and nonpoint-source pollution, and promote stormwater quality and protection of the environment.

CLEAN WATER ACT — The Federal *Water Pollution Control Act* (33 U.S.C. §§ 1251 *et seq.*) as it may hereafter be amended.

CONSTRUCTION SITE: Any site where activity is proposed or occurs that involves the alteration of more than 2,500 square feet of land.

DEVELOPMENT – The alteration of land to accommodate a new use or an expansion or modification of an existing use.

HAZARDOUS MATERIAL - Any material that, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious material, acid and alkali, and any substance defined as Toxic or Hazardous under *M.G.L. c.21C* and *c. 21E*, or the regulations at 310 CMR 30.000 or 310 CMR 40.0000.

ILLICIT CONNECTION - A surface or subsurface drain or conveyance that allows an illicit discharge into the MS4, including any connection from an indoor drain, sinks, toilet, or laundry facility, regardless of whether the connection was previously allowed, permitted, or approved before the effective date of this By-Law.

✓ ILLICIT DISCHARGE - Any direct or indirect discharge to the MS4 or the Waters of the Commonwealth that is not composed entirely of stormwater, including, without limitation, any discharge of a pollutant, sewage, process wastewater, or wash water, except as exempted in Section 34.5.3. The term does not include a discharge in compliance with an NPDES Stormwater Discharge Permit or a Surface Water Discharge Permit.

✓ IMPERVIOUS SURFACE — Any material or structure on, above or below the ground that prevents water from infiltrating through to the underlying soil. Impervious surfaces may include, without limitation: paved surfaces, parking lots, sidewalks, driveways, roof tops and swimming pools.

MAINTENANCE OF EXISTING LANDSCAPING, GARDENS OR LAWN AREAS – The act of trimming, pruning, mowing or edging existing vegetation.

✓ MS4 (MUNICIPAL SEPARATE STORM SEWER SYSTEM) — The system of conveyances, owned or operated by the Town of Belmont, that is designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, swale, culvert, channel, catch basin, outfall, outlet, reservoir, or other drainage structure.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
STORMWATER DISCHARGE PERMIT — A permit issued by the United States Environmental Protection Agency or jointly with the state that authorizes the discharge of stormwater containing pollutants into waters of the United States.

NONPOINT SOURCE POLLUTION - Any water pollution having a source that is not a "point source."

NON-STORMWATER DISCHARGE — A discharge into the MS4 that is not composed

entirely of stormwater.

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

OCD – Town of Belmont Office of Community Development

PERSON — An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth of Massachusetts or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

POINT SOURCE - Any discernible, confined and discrete conveyance, including, without limitation, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. The term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

POLLUTANT - Any element or characteristic of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into Belmont's MS4 or waters of the Commonwealth. Pollutants shall include, but are not limited to:

- (a) Paints, varnishes, and solvents;
- (b) Oil and other automotive fluids;
- (c) Non-hazardous liquid and solid wastes and yard wastes;
- (d) Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
- (e) Pesticides, herbicides, and fertilizers;
- (f) Hazardous materials and wastes;
- (g) Sewage, fecal coliform and pathogens;
- (h) Dissolved and particulate metals;
- (i) Animal wastes;
- (j) Rock, sand, salt, silt, soils;
- (k) Construction wastes and residues; and
- (l) Noxious or offensive matter of any kind.

RECHARGE — The process by which groundwater is replenished by precipitation.

RUNOFF - The water from rain, snowmelt or irrigation that flows over the land surface and is not absorbed into the ground, instead flowing into the MS4 or streams or other surface waters or land depressions.

SANITARY SEWER SYSTEM - A separate underground conveyance system specifically for transporting waste operated separately and independently to which storm, surface, and ground

waters are not intentionally admitted.

STORMWATER - Stormwater runoff, snowmelt runoff, and surface water runoff and drainage.

STORMWATER MANAGEMENT — The use of structural or non-structural practices that are designed to reduce and control stormwater runoff pollutant loads, discharge volumes or peak flow discharge rates. Stormwater Management includes the use of Low-Impact Development (LID) management practices.

STORMWATER MANAGEMENT AND EROSION CONTROL PERMIT — A permit issued by the Town of Belmont Office of Community Development, approving a system that is designed to protect the environment of the Town from the deleterious effects of uncontrolled and untreated stormwater runoff.

✓ STORMWATER MANAGEMENT STANDARDS — The Stormwater Management Standards and accompanying Stormwater Handbook(s) issued by the Massachusetts Department of Environmental Protection pursuant to authority under the *Wetlands Protection Act*, M.G.L. c. 131, § 40, and the Massachusetts *Clean Waters Act*, M.G.L. c. 21, §§ 26 – 53, as such Standards and Handbooks may be hereafter amended.

STORMWATER UTILITY – A legal entity established for the purpose of funding the operation, construction and maintenance of stormwater management devices that are components of the Town's MS4. A stormwater utility may generate revenue through user fees.

VEGETATION – Trees, shrubs, bushes and ground cover, including grass.

WATERS OF THE COMMONWEALTH — All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

34.3 Administration

✓ 34.3.1 The Board of Selectmen shall adopt, and may periodically amend, rules and regulations relating to the requirements, procedures, administration and enforcement of this By-Law, after conducting a public hearing to receive comments on any proposed rules and regulations.

34.3.2 The OCD shall be responsible for the day-to-day administration of this By-Law and shall be the Stormwater Management and Erosion Control Permit Granting Authority.

34.3.3 The OCD shall have the authority to investigate suspected illicit discharges and to require the elimination of illicit discharges.

34.4 Permit Process

34.4.1 Permit procedures and requirements, including permit submittals, right-of-entry, fee schedule, and public hearing process, shall be defined and included as part of the Regulations

promulgated pursuant to § 34.5 of this By-Law. At a minimum, the applicant shall meet the standards of the Stormwater Management Standards using Best Management Practices;

34.4.2 A completed application for a Stormwater Management and Erosion Control Permit shall be filed with the OCD. A permit shall be obtained prior to the commencement of any work regulated by this By-Law.

insert old 34.4.2
34.4.3 The OCD shall take final action on an application for a Stormwater Management and Erosion Control Permit within thirty (30) days from the receipt of a complete application. The OCD may approve the application; approve the application with conditions; or disapprove the application. Failure by the OCD to take final action on an application within 30 days following the receipt of a complete application shall be deemed to be approval of the application, unless this timeframe is extended by mutual agreement of the OCD and applicant.

34.4.4 The applicant, or an agent thereof, shall obtain the approval of the OCD prior to any change or modification of an activity authorized in a Stormwater Management and Erosion Control Permit. The OCD may approve the request if it determines that the change or modification is consistent with the Regulations promulgated pursuant to § 34.5 of this By-Law, the Stormwater Management Standards and Best Management Practices. The OCD has the right to amend the existing permit and require additional stormwater runoff and erosion control measures prior to approval of the change or modification.

34.5 Illicit Connection Detection & Elimination

34.5.1 Prohibited Activities

34.5.1.1 Illicit Discharges.

No person shall cause or allow an illicit discharge into the MS4 or into the Waters of the Commonwealth. Nothing in the article shall be construed to exempt stormwater discharges from regulation under the National Pollutant Discharge Elimination System (NPDES) stormwater program where applicable.

34.5.1.2 Illicit Connections.

No person shall construct, use, allow, maintain or continue any Illicit Connection, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

34.5.1.3 Obstruction of Municipal Storm Drain System.

No person shall obstruct or interfere with the normal flow of stormwater into or out of the MS4 without prior written approval from the OCD.

34.5.2 Regulated Activities

No person shall connect a pipe or other appurtenance to the Town of Belmont sanitary sewer system or the MS4, or otherwise perform any modification, repair, rehabilitation, or replacement work on either system, without a Stormwater Management and Erosion Control Permit.

34.5.3 Exemptions

The following Non-Stormwater Discharges are exempt from the requirements of Sections 34.4 and 34.5 of this By-Law except if the OCD determines, after notice and an opportunity for hearing, that the source is a significant contributor of a Pollutant to the MS4:

- (a) Water line flushing;
- (b) Landscape irrigation;
- (c) Diverted stream flows;
- (d) Rising ground waters,
- (e) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005[20]);
- (f) Uncontaminated pumped ground water;
- (g) Discharges from potable water sources;
- (h) Foundation drains;
- (i) Air conditioning condensation;
- (j) Irrigation water and springs;
- (k) Water from crawl space pumps;
- (l) Footing drains;
- (m) Lawn watering;
- (n) Car washing undertaken by individual residents at their homes;
- (o) Flows from wetland resource areas;
- (p) De-chlorinated swimming pool discharges;
- (q) Street wash water and residential building wash waters, without detergents;
- (r) Discharges or flows from firefighting activities;
- (s) Dye testing, if written approval is given by the OCD prior to the time of the test;
- (t) Non-Stormwater Discharges permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the U.S. Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations, and
- (u) Discharges necessary to protect public health, safety, welfare or the environment, for which advanced written approval is received from the OCD.

34.5.4 Emergency Suspension of Storm Drain System Access

The OCD may suspend MS4 access to any person or property without prior written notice when such suspension is determined to be necessary to prevent or terminate a threatened or actual discharge of Pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event that any person fails to comply with an emergency suspension order issued pursuant to this section, the OCD may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

34.6 Stormwater Management and Erosion Control

34.6.1 Regulated Activities

A Stormwater Management and Erosion Control Permit shall be required prior to undertaking any land disturbance that involves:

- was supposed to be deleted*
- (a) An alteration that will result in land disturbances of 2,500 square feet of total area or more, or that is part of a common plan for development that will disturb 2,500 square feet or more;
 - (b) An alteration that will increase the amount of a lot's impervious surface area to more than 25% of the lot's total area; or
 - (c) Storage or permanent placement of more than 100 cubic yards of excavate, fill, snow or ice.

34.6.2 Exempt Activities

EXISTING
Lots with three or fewer dwelling units ~~as~~ of the effective date of this article shall be exempt from Section 34.6. In addition, the following activities shall be exempt from Section 34.6:

- BURC OK 3/15 leave in Ray had deleted 3/15/13 OK*
- (a) Any work or projects for which all necessary approvals and permits have been issued before the effective date of this By-Law;
 - (b) Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture, or the use, expansion, or reconstruction of existing structures for the primary purpose of agriculture, horticulture, floriculture, or viticulture, to the extent protected under the *Zoning Act, M.G.L. c. 40A, § 3*;
 - (c) Customary cemetery management;
 - (d) Stormwater discharges that are authorized by an Order of Conditions issued by the Conservation Commission;
 - (e) Maintenance of existing landscaping, gardens or lawn areas;
 - (f) Normal maintenance of Town-owned public land, ways, utilities and appurtenances;
 - (g) Emergency activities necessary to protect public health or safety;

34.6.3 General Requirements

34.6.3.1 An Operation and Maintenance Plan shall be submitted to the OCD for approval prior to the issuance of a Stormwater Management and Erosion Control Permit. The Operation and Maintenance Plan shall be designed to ensure compliance with the Stormwater Management and Erosion Control Permit, this By-Law, and the Massachusetts Surface Water Quality Standards, 314 CMR. 4.00, in all seasons and throughout the life of the system.

34.6.3.2 As-built drawings showing all stormwater management systems shall be submitted to the OCD at the completion of a project ~~prior~~.

Insert 34.6.3.3 → **34.6.4 Design Criteria**

34.6.4.1 All Development shall satisfy the following design criteria:

- (a) Compliance with all applicable provisions of the Stormwater Management Standards, regardless of the proximity of the development to resource areas or their buffer zones, as defined by the *Wetlands Protection Act, M.G.L. c. 131, § 40* and its implementing regulations;
- (b) Erosion and sediment controls must be implemented to prevent adverse impacts during disturbance and construction activities.
- (c) There shall be no change to the existing conditions of abutting properties from any increase in volume of stormwater runoff or from erosion, silting, flooding, sedimentation or impacts to wetlands, ground water levels or wells.
- (d) When any proposed discharge may have an impact upon streams, wetlands and/or storm sewers, the OCD may require minimization or elimination of this impact based on site conditions and existing stormwater system capacity.

34.7 Severability

If any provision of this Article shall be found invalid for any reason in a court of competent jurisdiction, such invalidity shall be construed as narrowly as possible, and the balance of the Article shall be deemed to be amended to the minimum extent necessary, so as to secure the purposes thereof, as set forth in Section 34.1.

34.8 Enforcement

The OCD shall enforce this By-Law, and any regulations, orders, violation notices, and enforcement orders made pursuant to this By-Law, and may pursue all civil and criminal remedies for such violations.

- (a) The OCD may issue a written order to enforce the provisions of this By-Law or the regulations thereunder, which may include an order to:
 - (i) eliminate illicit connections or discharges to the MS4;
 - (ii) perform monitoring, analyses, and reporting;
 - (iii) cease and desist unlawful discharges, practices, or operations; and
 - (iv) remediate contamination in connection therewith.
- (b) If the OCD determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the OCD may, at its option, authorize such work, and the expenses thereof shall be charged to the violator. *in an amount not exceeding the penalty specified in Section 34.8(e)*
- (c) Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the OCD, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Town Administrator within thirty (30) days of receipt of the notification of the costs incurred.

- (d) If a person violates the provisions of this By-Law, or any regulation, permit, notice, or order issued thereunder, the OCD, with the approval of the Board of Selectmen, may seek injunctive relief in a court of competent jurisdiction to restrain such person from activities that would create further violations or to compelling the person to perform abatement or remediation of the violation.
- (e) As an alternative to ~~other criminal and non-criminal~~ remedies set forth in this Section, the OCD may elect to utilize noncriminal disposition procedures set forth in *M.G.L. c.40, § 21D*. The penalty for the first violation shall be \$100.00. The penalty for the second violation shall be \$200.00. The penalty for the third and subsequent violations shall be \$300.00. Each day or part thereof that such violation occurs or continues, shall constitute a separate offense.
- (f) To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the OCD, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this section and regulation, and may make or cause to be made such examinations, surveys or sampling as the OCD deems reasonably necessary.
- (g) The remedies set forth in this Section are not intended to be exclusive of any other remedies available under applicable federal, state, or local law.

ADD BACK IN
34.4.3
34.6.3.3

← revolving fund
enterprise fund