



Braintree Town Council

ORDER NO: 18 026 (1)

DATE FILED: APRIL 30, 2018

REQUEST OF: THE MAYOR

UPON THE REQUEST OF HIS HONOR, THE MAYOR, THE TOWN OF BRAINTREE, THROUGH THE BRAINTREE TOWN COUNCIL, IT IS SO ORDERED:

That the Town of Braintree raise and appropriate the sum of \$133,883,370 to provide for all of the expenses for the maintenance and operation of the Town's several departments and programs for the fiscal year 2019 and that the several sums herein set forth are hereby approved for the several purposes and are subject to the source of funding for said expenditures as outlined on the attached Exhibit A, specifically, that the sum of \$86,216 be transferred from Golf Course receipts, the sum of \$250,000 be transferred from the Overlay Surplus account, the sum of \$9,700 be transferred from the Waterways Improvement fund, the sum of \$22,000 be transferred from the Sale of Cemetery Lots, the sum of \$615,121 be transferred from Water and Sewer receipts, the sum of \$1,240,000 be transferred from the Town owned land account, the sum of \$6,152.18 be transferred from the Municipal Building Insurance Fund, the sum of \$21,736 from the Handicap parking fine account and the balance to be raised in the tax levy.

YEAS: Bowes, Carey, Hume, Kokoros, O'Brien, Powers, Ringius, Ryan, Whalen

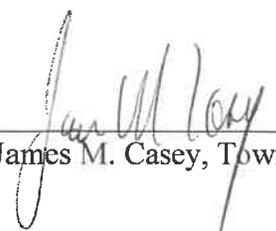
NAYS: NONE

ABSENT: NONE

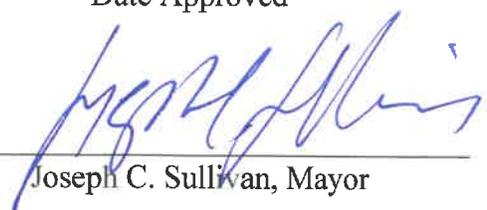
PASSED IN COUNCIL: May 29, 2018

PRESENTED TO MAYOR: May 30, 2018

A True Record, Attest:


James M. Casey, Town Clerk

5/31/18
Date Approved


Joseph C. Sullivan, Mayor



Braintree Town Council

ORDER NO: 18 026 (2)

DATE FILED: APRIL 30, 2018

REQUEST OF: THE MAYOR

UPON THE REQUEST OF HIS HONOR, THE MAYOR, THE TOWN OF BRAINTREE, THROUGH THE BRAINTREE TOWN COUNCIL, IT IS SO ORDERED:

That the Town of Braintree appropriate the sum of \$1,586,992 to provide for all of the expenses for the maintenance and operation of the Town's Golf Course and related programs for the fiscal year 2019 and that the several sums herein set forth are hereby approved for the several purposes as outlined on the attached Exhibit A, specifically, and that the sum of \$1,586,992 be raised in the Golf Course receipts.

YEAS: Bowes, Carey, Hume, Kokoros, O'Brien, Powers, Ringius, Ryan, Whalen

NAYS: NONE

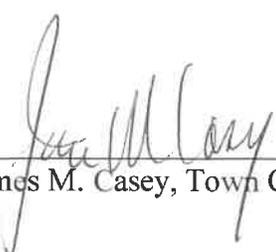
ABSENT: NONE

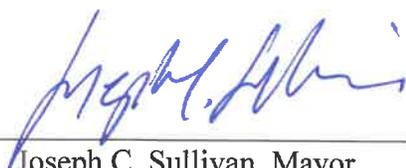
PASSED IN COUNCIL: May 29, 2018

PRESENTED TO MAYOR: May 30, 2018

A True Record, Attest:

5-31-18
Date Approved


James M. Casey, Town Clerk


Joseph C. Sullivan, Mayor



Braintree Town Council

ORDER NO: 18 026 (3)

DATE FILED: APRIL 30, 2018

REQUEST OF: THE MAYOR

UPON THE REQUEST OF HIS HONOR, THE MAYOR, THE TOWN OF BRAINTREE, THROUGH THE BRAINTREE TOWN COUNCIL, IT IS SO ORDERED:

That the Town of Braintree appropriate the sum of ~~\$18,479,155~~ ^{\$18,582,849} to provide for all of the expenses for the maintenance and operation of the Town's Water and Sewer Division and related programs for the fiscal year 2019 and that the several sums herein set forth are hereby approved for the several purposes as outlined on the attached Exhibit A, specifically, that the sum of \$103,694 be transferred from the Water Sewer Rehabilitation Fund and the balance of \$18,479,155 be raised in the Water and Sewer receipts.

YEAS: Bowes, Carey, Hume, Kokoros, O'Brien, Powers, Ringius, Ryan, Whalen

NAYS: NONE

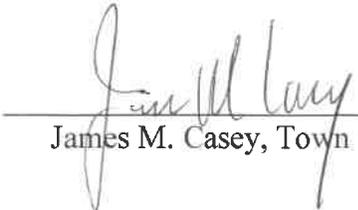
ABSENT: NONE

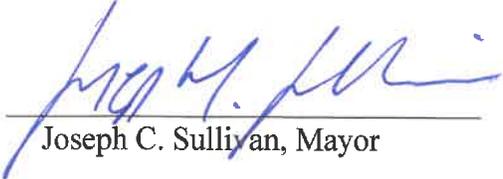
PASSED IN COUNCIL: May 29, 2018

PRESENTED TO MAYOR: May 30, 2018

A True Record, Attest:

5/31/18
Date Approved


James M. Casey, Town Clerk


Joseph C. Sullivan, Mayor



Braintree Town Council

ORDER NO: 18 026 (4)

DATE FILED: APRIL 30, 2018

REQUEST OF: THE MAYOR

UPON THE REQUEST OF HIS HONOR, THE MAYOR, THE TOWN OF BRAINTREE, THROUGH THE BRAINTREE TOWN COUNCIL, IT IS SO ORDERED:

That the Town Council vote to amend Title 3 of the Town's General Ordinances, by adding "Chapter 3.13: Stormwater Enterprise Fee", as filed with the Office of the Town Clerk.

YEAS: Bowes, Carey, Hume, Kokoros, O'Brien, Powers, Ringius, Ryan, Whalen

NAYS: NONE

ABSENT: NONE

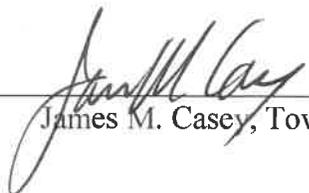
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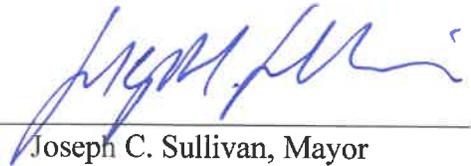
PRESENTED TO MAYOR: May 30, 2018

A True Record, Attest:

5/31/18

Date Approved


James M. Casey, Town Clerk


Joseph C. Sullivan, Mayor

#18-026



Office of the Mayor

One JFK Memorial Drive
Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

781-794-8100

To: Charles B. Ryan, President of the Council
Susan Cimino, Clerk of the Council
James Casey, Town Clerk

From: Joseph C. Sullivan, Mayor

JCS

Cc: Joseph Reynolds, Chief of Staff and Director of Operations
Edward Spellman, Director of Municipal Finance
James Arsenault, Public Works Director
Lisa S. Maki, Town Solicitor
John Goldrosen, Asst. Town Solicitor

Date: May 4, 2018

Re: Stormwater Management & Enterprise Ordinances

As I referenced with my FY2019 budget filing on April 30th, Braintree and all communities in our state and throughout the country are being forced via new federal requirements to reduce the amount of polluted stormwater runoff it discharges to waterways. This will require the Town to increase its investment in stormwater infrastructure without any funding by the federal government.

The National Discharge Elimination System (NPDES) program has been in place since 1990 regulating our Town stormwater discharges without much compliance required. Then in 2003 the Environment Protection Agency (EPA) required Municipalities to obtain a permit for stormwater discharges. Now in 2016 the EPA and MassDEP co-signed a new permit that is effective on July 1, 2018. This new permit process requires a five year permit with a ten year outline for work to be performed. This work will include but not be limited to mapping of all the drainage system in the Town, perform outfall screening/ testing, regular routine cleaning of catch basins and roadways, monitoring through a permit process of developments from design to construction to routine operation, impairment mitigation (we are listed on four waterways), establishment of federally required ordinances, lots of outreach and many other activities as well. This will require quite a bit of additional resources for the Town to comply with these upcoming regulations.

RECEIVED TOWN CLERK
BRAintree, MA
2018 MAY -4 PM 4:16

In order to be in compliance with this environmental mandate, we are proposing that these stormwater costs be paid for through a Stormwater Utility enterprise fund as a way of absorbing this unfunded federal mandate. This would be accounted for as a line item on the property owners existing water and sewer utility bill. The cost per each residential household up to three units would be \$6.25 per quarter or \$25 per year for fiscal year 2019/20.

The cost to all other non-residential properties would be the amount of impervious area of the lot divided by the Equivalent Residential Units (ERU) or average impervious area of all of the residential units in Town which is 2,780 square feet. The impervious area is basically the amount of area on a lot that water cannot flow through like a roof, driveway or parking area. This fee is also capped so larger lots are not unduly overburdened.

I take this opportunity to submit this request for the creation of this stormwater utility and management regulation and to provide related information in support of this request. Your consideration and approval is requested.

Accordingly, your review and approval of the following motions are requested:

Stormwater Ordinance Motions

MOTION: That the Town Council vote to amend Title 3 of the Town's General Ordinances, by adding "Chapter 3.13: Stormwater Enterprise Fee", to read as follows:

CHAPTER 3.13. Stormwater Enterprise Fee

3.13.010. Establishment; purpose.

Pursuant to MGL Chapter 83 Section 16, the Town hereby establishes a charge for the use of the stormwater management and flood control services of the Town to be known as the "Stormwater Enterprise Fee" for the purposes of providing revenue for services provided by the Town which are related to:

1. Transfer, control, conveyance and treatment of stormwater runoff through the Town;
2. Maintenance, repair, and replacement of existing stormwater management and flood control systems and facilities;
3. Planning, development, design and construction of additional stormwater management and flood control systems and facilities to meet current and anticipated needs;
4. Regulation of the use of stormwater management services, systems and facilities; and
5. Compliance with applicable local, state and federal stormwater management and flood control regulations, permit requirements and mandates.

3.130.020. Definitions

IMPERVIOUS SURFACE(S): Areas which prevent or impede the infiltration of Stormwater into the soil in the manner in which it entered the soil, in natural conditions, prior to development. Common impervious surfaces include, but are not limited to, rooftops, buildings or structures, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, swimming pools, hockey rinks, decks, compacted gravel and soil surfaces not specifically engineered and maintained to be permeable, awnings and other fabric or plastic coverings, and other surfaces which prevent or impede the natural infiltration of Stormwater runoff which existed prior to development.

MUNICIPAL STORM DRAIN SYSTEM: The system of conveyances designed or used for collecting or conveying Stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, water quality treatment structure natural or man-made or altered drainage channel, reservoir, waterway or other drainage structure that together comprise the storm drainage system owned or operated by the Town.

STORMWATER: runoff from rain, snowmelt, or surface water runoff and drainage.

STORMWATER MANAGEMENT SERVICES: All services provided by the Town which relate to the:

- (a) Transfer, control, conveyance or movement of Stormwater runoff through the Town;
- (b) Maintenance, repair and replacement of existing Stormwater Management Systems and Facilities;
- (c) Planning, development, design and construction of new, expanded or upgraded Stormwater Management Systems and Facilities to meet current and anticipated needs or to reduce the discharge of Stormwater pollutants to wetlands or waterways, ensure that the rate or volume of runoff discharged to wetlands or waterways approximates pre-development hydrology, or prevent or remediate flood damage;
- (d) Regulation of the use of stormwater management services, systems and facilities on public or private properties in Braintree; or
- (e) Compliance with applicable state and federal stormwater management regulations and permit requirements.

STORMWATER MANAGEMENT AND FLOOD SYSTEMS AND FACILITIES: Natural and manmade channels, swales, ditches, rivers, streams, creeks, branches, reservoirs, ponds, drainage ways, inlets, catch basins, pipes, headwalls, storm sewers, lakes and other physical works, properties and improvements which transfer, control, convey, detain, retain, treat or otherwise influence the movement of Stormwater runoff.

STORMWATER ENTERPRISE FEE: a charge for the use of the Stormwater Management Services of the Town of Braintree.

STORMWATER ENTERPRISE FUND: A specific management structure for the Stormwater Management Fee, in which a municipal utility is established to administer the fee and the Stormwater Management Program for the Town of Braintree similar to a water or sewer utility.

3.130.030. Scope of responsibility for Stormwater management services.

A. The Town shall be responsible for all costs to operate, maintain, improve and access those stormwater management and flood systems and facilities which are located:

1. Within the public road rights-of-way;
2. On private property but within easements granted to, and accepted by the Town, or which are otherwise permitted to be located on such private property by written agreements for rights-of-entry, rights-of-access, rights-of-use or such other lawful means to allow for operation, maintenance, improvement and access to the stormwater management system facilities located thereon;
3. On public land which is owned by the Town and/or land of another governmental entity upon which the Town has agreements providing for the operation, maintenance, improvement and access to the stormwater management and flood control systems and facilities located thereon.

B. Operation, maintenance and/or improvement of stormwater management and flood control systems and facilities which are located on private or public property not owned by the Town, and for which the Town lacks a lawful right of entry, shall be and remain the legal responsibility of the property owner, except as otherwise provided for by state and federal laws and regulations.

3.130.040. Stormwater Enterprise Fees

A. The Stormwater Enterprise Fee is imposed on each parcel of property, including undeveloped and tax-exempt parcels. The fee shall be billed in advance on a quarterly basis to the record title owner of the property. The quarterly bill shall be consolidated in the same bill as is sent to said property owner for other services provided by the Town supported by fees, including water service and sanitary sewer use. If the property does not receive a water/sewer bill from the Town, a bill for only the stormwater services will be sent.

B. Receipts from the Stormwater Enterprise Fee shall be deposited in a special revenue account to be known as the Stormwater Enterprise Fund set up in accordance with the authority granted by MGL Chapter 44 Section 53F1/2. The funds deposited in this account shall be used to fund the stormwater services provided by the Town.

C. The Director of Public Works shall recommend an annual budget for stormwater services to the Mayor. The Mayor shall include a proposed annual budget for the stormwater services in the proposed operating budget submitted to the Town Council. The budget submitted by the Mayor and approved by the Town Council shall set the annual budget at an amount that will be sufficient to provide for a balanced operating and capital improvement budget for the stormwater services provided by the Town.

D. The charge shall be based on Equivalent Residential Unit (ERU) billing units. The annual billing rate for each ERU will be determined by the Director of the Department of Public Works annually.

1. During the first four fiscal years the Stormwater Enterprise Fee will be implemented gradually and the ERU billing rate will be calculated by multiplying an implementation factor by the annual stormwater budget and then dividing by the number of ERUs in the Town, where the implementation factor is 0.42 in year one and increases to 0.75 in year three.
2. Starting in the fifth fiscal year after implementing the Stormwater Enterprise Fee, the billing rate for each ERU will be calculated by dividing the annual stormwater budget by the number of ERUs in the Town.
3. The ERU billing rate shall be on file in the office of the Department of Public Works.

E. The annual charge will be as follows: For residential properties with 1-3 family dwellings, the annual charge shall be 1 ERU billing unit. For all other properties, the number of ERU billing units shall be calculated by dividing the parcel's impervious area by 2,780 square feet and rounding the resulting value to the nearest tenth; however, if the calculated value is less than 1, a value of 1 shall be used instead, or for non-residential property if the value is greater than 116.7, a value of 116.7 shall be used instead

F. Any impervious areas within the federal, state, county and Town-owned right-of-way used by the traveling public will not be attributed to the parcel and will not be considered as part of the total impervious area of the parcel.

3.130.050. Fee billing, delinquencies, collections.

A. Failure of the Town to send a bill for the Stormwater Enterprise Fee shall not relieve the property owner of record from the obligation to pay the Stormwater Enterprise Fee. If a property is unbilled, or if no bill is sent for a particular parcel of land, the Town may back bill for the fees as applicable for a period not to exceed one year of charges, but no late fees or delinquency charges of any kind shall be charged or recovered from any property owner so back billed.

B. The provisions of 13.04.010 pertaining to due dates and interest on unpaid charges shall apply to the Stormwater Enterprise Fee.

C. In accordance with MGL Chapter 83, Sections 16A – 16F, the Town may assess liens on properties with unpaid accounts.

D. Pursuant to MGL, Chapter 83, Section 16E, if a property owner believes the Stormwater Enterprise Fee is improperly calculated or is otherwise incorrect, the property owner may, on or before the date when payment is due of the first installment of the annual charge for the Stormwater Enterprise Fee, and after payment of the quarterly charge in full, apply to the Department of Public Works for an abatement. The application for abatement shall be supported by such information as is necessary for a reasonable person to conclude that it is more likely than

not that the billing is in error. The Department of Public Works shall have 90 days to consider the request for abatement and render a written decision, which may deny the abatement, grant the abatement in full or grant the abatement in part. If such application for an abatement is denied in whole or in part, the property owner may appeal to the Appellate Tax Board within 90 days of the date of the Department's decision, upon the same terms and conditions as a person aggrieved by the refusal of the Town assessors to abate a tax.

[NOTE: Per Section 2-9(c) of the Town Charter, this Amendment to the General Ordinances will require a published notice at least ten days prior to the meeting at which it is approved]

MOTION: That the Town Council vote to amend Title 13 of the Town's General Ordinances, by adding "Chapter 13.14: Stormwater Management", to read as follows:

CHAPTER 13.14 Stormwater Management

13.14.010. PURPOSE

A. The purpose of this Chapter is to: implement the requirements of the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems issued by the U.S. Environmental Protection Agency, and the Stormwater Management Standards promulgated by the Massachusetts Department of Environmental Protection; protect the public health, safety, and welfare of Braintree residents; protect the natural resources, water bodies, groundwater resources, environment, and municipal facilities of the Town; satisfy the appropriate water quality requirements of the Federal Clean Water Act and State Clean Water Act; eliminate and prohibit illicit connections and discharges to the Municipal Storm Drain System of the Town; eliminate or reduce the adverse effects of soil erosion and sedimentation as a result of land disturbance activities; and manage stormwater runoff to minimize adverse impacts to the Town, its citizens, and the environment.

B. The Department of Public Works is authorized to administer and enforce this Chapter, and may promulgate rules and regulations to effectuate the purpose of this Chapter.

C. The provisions of this Chapter shall apply to all properties in the Town.

13.14.020. DEFINITIONS

Unless otherwise defined in this section, the terms in this Chapter correspond to definitions found in the Clean Water Act (33 U.S.C. section 1251 et seq.) and the General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems issued by the U.S. Environmental Protection Agency.

The following definitions apply to this Chapter:

Clean Water Act - The Federal Water Pollution Control Act (33 U.S.C. section 1251 et seq.) as it is amended from time to time.

General Permit - The National Pollutant Discharge Elimination System General

Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems issued by the U.S. Environmental Protection Agency. #18-026

Illicit Connection - A surface or subsurface drain or conveyance which allows an illicit discharge into a storm drain, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously constructed, permitted, or approved before the effective date of this Chapter.

Illicit Discharge – The dumping or discharging of any pollutant or non-stormwater discharge into the Municipal Storm Drain System, into a watercourse, or into waters of the United States and /or the Commonwealth, except as exempted in Section 13.14.030.

Land Disturbance – Any activity that removes the surface cover from land, changes the grade, or exposes soil to the potential influence of stormwater.

Massachusetts Stormwater Standards – The performance standards issued by the Massachusetts Department of Environmental Protection (DEP), codified in regulations at 310 CMR 10.05(6)(k)-(q), and further defined and specified in the Massachusetts Stormwater Handbook issued by the DEP.

Municipal Storm Drain System - The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town.

Owner – a person who alone or jointly or severally with others has the legal title to any premises or has care, charge or control of any premises as agent, executor, administrator, trust, lessee or guardian of the estate of the holder of legal title.

Person – An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the Federal Government, to the extent permitted by law, and any officer, employee, or agent of such person.

State Clean Water Act – Massachusetts General Laws Chapter 21.

Stormwater – stormwater runoff, snow melt runoff, and drainage of any water resulting from rainfall or other precipitation that runs off surfaces during or after a storm.

13.14.030. APPLICABILITY

A. This Chapter applies to all owners that discharge or propose to discharge stormwater off their property, directly or indirectly, into the Municipal Storm Drain System of the Town of Braintree.

B. Prohibited Activities

1. **Illicit Discharge** – No person shall dump, discharge, cause or allow to be discharged any contaminated water or non-stormwater discharge (except as exempted in Section 13.14.030(C)) into the Municipal Storm Drain System, into a watercourse, or into the waters of the Commonwealth.

2. **Illicit Connection** – No person shall construct, use, allow, maintain or continue any illicit connection to the Municipal Storm Drain System, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

C. Exempt Discharges

The following discharges are exempt from this Chapter:

- (a) DPW ice and snow control operations;
- (b) Flow resulting from firefighting activities;
- (c) Street and pavement wash waters;
- (d) Natural flow from riparian habitats and wetlands;
- (e) Diverted tide, river or streamflows;
- (f) Water main, hydrant flushing and other discharges from potable water sources associated with routine maintenance of the water distribution system;
- (g) Uncontaminated groundwater or infiltration of groundwater;
- (h) Uncontaminated springs;
- (i) Rising groundwater;
- (j) Uncontaminated water from sump pumps and other pumps that remove floodwaters from basements;
- (k) Water discharge from irrigation or watering of lawns, trees, landscaping, and gardens;
- (l) Non-commercial car washing;
- (m) Waters from residential property management activities including washing walkways, patios, house siding, and windows, provided the wash water does not contain detergents; and
- (n) Swimming pool discharges that have been de-chlorinated;

13.14.040. REGULATIONS

A. Regulations adopted by the Department of Public Works pursuant to this Chapter may include but are not limited to the following:

- 1) Implementation of stormwater runoff pollution reduction requirements for new development and redevelopment consistent with the General Permit, including requirements for stormwater management permits to be issued by the DPW;
- 2) Limitations on the types of discharges allowed to the Municipal storm Drain System, including exempt activities;

- 3) Provisions to require the removal of illicit connections;
- 4) A permitting program to regulate connections to the Municipal storm Drain System;
- 5) Requirements for the design, construction, and ongoing maintenance of privately-owned stormwater facilities; and,
- 6) Provisions for inspections, reporting requirements, and enforcement actions necessary to insure compliance with the General Permit, the Massachusetts Stormwater Standards, this Chapter, and the regulations.

B. The regulations may provide for different permitting requirements among projects and facilities, based upon differences in the nature and extent of land disturbance, the effect upon stormwater runoff, and the impacts upon the Municipal Storm Drain System. The regulations may also exempt projects from the requirement for a DPW permit where the projects are otherwise subject to permitting requirements of the Planning Board, the Conservation Commission, or another municipal board, if such requirements are determined by the DPW to ensure compliance with the standards established the DPW permitting requirements.

13.14.050. ENFORCEMENT

A. The DPW shall have authority to enforce this Chapter, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions pursuant to G.L. c. 83, Section 10, or any other applicable statute or regulation, including actions for injunctive relief and the imposition of civil penalties. The Town may seek to recover from each violator any additional cost for any expense, loss, or damage to the Town occasioned by such violation.

B. To the extent permitted by law, or if authorized by the owner or other person in control of the property, the DPW, its officers, agents, and employees may enter upon privately owned property for the purpose of performing their duties, and may make such inspections and sampling as is reasonably necessary.

C. The decisions and orders of the DPW are final. Any appeal shall be to a court of competent jurisdiction.

D. Any person who violates any provision of this Chapter, the regulations, or a permit issued pursuant to this Chapter or the regulations may be punished by a criminal fine, not to exceed \$300, in the manner prescribed by Section 1.08.010 of the Town Ordinances. Each day on which any violation exists shall be deemed a separate violation.

E. As an alternative to criminal prosecution, the DPW may elect to utilize the non-criminal disposition procedure set forth in G.L. c. 40, section 21D and Section 1.08.020 of the Town Ordinances, in which case the Director or the Director's designee, and any Town Police Officer, shall be the enforcing person. The penalty for the first violation shall be \$100. The penalty for the second violation shall be \$200. The penalty for the third and subsequent

violations shall be \$300. Each day on which any violation exists shall be deemed a separate violation.

13.14.060. SEVERABILITY

The provisions of this Chapter are hereby declared to be severable. If any provision, paragraph, sentence, or clause of this Chapter or the application thereof to any owner, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of said Chapter to the extent permitted by law.

[NOTE: Per Section 2-9(c) of the Town Charter, this Amendment to the General Ordinances will require a published notice at least ten days prior to the meeting at which it is approved]



Braintree Town Council

ORDER NO: 18 026 (5)

DATE FILED: APRIL 30, 2018

REQUEST OF: THE MAYOR

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YEAS: Bowes, Carey, Hume, Kokoros, O'Brien, Powers, Ringius, Ryan, Whalen

NAYS: NONE

ABSENT: NONE

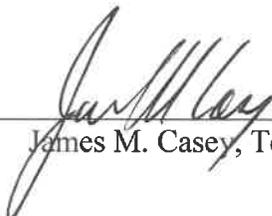
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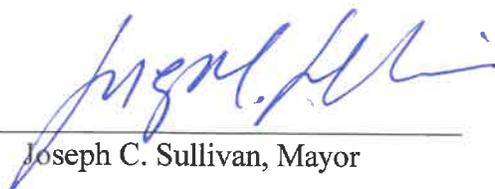
PRESENTED TO MAYOR: May 30, 2018

A True Record, Attest:

5-31-18

Date Approved


James M. Casey, Town Clerk


Joseph C. Sullivan, Mayor

#18-026



Office of the Mayor

One JFK Memorial Drive
Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

781-794-8100

To: Charles B. Ryan, President of the Council
Susan Cimino, Clerk of the Council
James Casey, Town Clerk

From: Joseph C. Sullivan, Mayor

Cc: Joseph Reynolds, Chief of Staff and Director of Operations
Edward Spellman, Director of Municipal Finance
James Arsenault, Public Works Director
Lisa S. Maki, Town Solicitor
John Goldrosen, Asst. Town Solicitor

RECEIVED TOWN CLERK
BRAINTREE, MA
2018 MAY -4 PM 4:16

Date: May 4, 2018

Re: Stormwater Management & Enterprise Ordinances

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The National Discharge Elimination System (NPDES) program has been in place since 1990 regulating our Town stormwater discharges without much compliance required. Then in 2003 the Environment Protection Agency (EPA) required Municipalities to obtain a permit for stormwater discharges. Now in 2016 the EPA and MassDEP co-signed a new permit that is effective on July 1, 2018. This new permit process requires a five year permit with a ten year outline for work to be performed. This work will include but not be limited to mapping of all the drainage system in the Town, perform outfall screening/ testing, regular routine cleaning of catch basins and roadways, monitoring through a permit process of developments from design to construction to routine operation, impairment mitigation (we are listed on four waterways), establishment of federally required ordinances, lots of outreach and many other activities as well. This will require quite a bit of additional resources for the Town to comply with these upcoming regulations.

In order to be in compliance with this environmental mandate, we are proposing that these stormwater costs be paid for through a Stormwater Utility enterprise fund as a way of absorbing this unfunded federal mandate. This would be accounted for as a line item on the property owners existing water and sewer utility bill. The cost per each residential household up to three units would be \$6.25 per quarter or \$25 per year for fiscal year 2019/20.

The cost to all other non-residential properties would be the amount of impervious area of the lot divided by the Equivalent Residential Units (ERU) or average impervious area of all of the residential units in Town which is 2,780 square feet. The impervious area is basically the amount of area on a lot that water cannot flow through like a roof, driveway or parking area. This fee is also capped so larger lots are not unduly overburdened.

I take this opportunity to submit this request for the creation of this stormwater utility and management regulation and to provide related information in support of this request. Your consideration and approval is requested.

Accordingly, your review and approval of the following motions are requested:

Stormwater Ordinance Motions

MOTION: That the Town Council vote to amend Title 3 of the Town's General Ordinances, by adding "Chapter 3.13: Stormwater Enterprise Fee", to read as follows:

CHAPTER 3.13. Stormwater Enterprise Fee

3.13.010. Establishment; purpose.

Pursuant to MGL Chapter 83 Section 16, the Town hereby establishes a charge for the use of the stormwater management and flood control services of the Town to be known as the "Stormwater Enterprise Fee" for the purposes of providing revenue for services provided by the Town which are related to:

1. Transfer, control, conveyance and treatment of stormwater runoff through the Town;
2. Maintenance, repair, and replacement of existing stormwater management and flood control systems and facilities;
3. Planning, development, design and construction of additional stormwater management and flood control systems and facilities to meet current and anticipated needs;
4. Regulation of the use of stormwater management services, systems and facilities; and
5. Compliance with applicable local, state and federal stormwater management and flood control regulations, permit requirements and mandates.

3.130.020. Definitions

IMPERVIOUS SURFACE(S): Areas which prevent or impede the infiltration of Stormwater into the soil in the manner in which it entered the soil, in natural conditions, prior to development. Common impervious surfaces include, but are not limited to, rooftops, buildings or structures, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, swimming pools, hockey rinks, decks, compacted gravel and soil surfaces not specifically engineered and maintained to be permeable, awnings and other fabric or plastic coverings, and other surfaces which prevent or impede the natural infiltration of Stormwater runoff which existed prior to development.

MUNICIPAL STORM DRAIN SYSTEM: The system of conveyances designed or used for collecting or conveying Stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, water quality treatment structure natural or man-made or altered drainage channel, reservoir, waterway or other drainage structure that together comprise the storm drainage system owned or operated by the Town.

STORMWATER: runoff from rain, snowmelt, or surface water runoff and drainage.

STORMWATER MANAGEMENT SERVICES: All services provided by the Town which relate to the:

- (a) Transfer, control, conveyance or movement of Stormwater runoff through the Town;
- (b) Maintenance, repair and replacement of existing Stormwater Management Systems and Facilities;
- (c) Planning, development, design and construction of new, expanded or upgraded Stormwater Management Systems and Facilities to meet current and anticipated needs or to reduce the discharge of Stormwater pollutants to wetlands or waterways, ensure that the rate or volume of runoff discharged to wetlands or waterways approximates pre-development hydrology, or prevent or remediate flood damage;
- (d) Regulation of the use of stormwater management services, systems and facilities on public or private properties in Braintree; or
- (e) Compliance with applicable state and federal stormwater management regulations and permit requirements.

STORMWATER MANAGEMENT AND FLOOD SYSTEMS AND FACILITIES: Natural and manmade channels, swales, ditches, rivers, streams, creeks, branches, reservoirs, ponds, drainage ways, inlets, catch basins, pipes, headwalls, storm sewers, lakes and other physical works, properties and improvements which transfer, control, convey, detain, retain, treat or otherwise influence the movement of Stormwater runoff.

STORMWATER ENTERPRISE FEE: a charge for the use of the Stormwater Management Services of the Town of Braintree.

STORMWATER ENTERPRISE FUND: A specific management structure for the Stormwater Management Fee, in which a municipal utility is established to administer the fee and the Stormwater Management Program for the Town of Braintree similar to a water or sewer utility.

3.130.030. Scope of responsibility for Stormwater management services.

A. The Town shall be responsible for all costs to operate, maintain, improve and access those stormwater management and flood systems and facilities which are located:

1. Within the public road rights-of-way;
2. On private property but within easements granted to, and accepted by the Town, or which are otherwise permitted to be located on such private property by written agreements for rights-of-entry, rights-of-access, rights-of-use or such other lawful means to allow for operation, maintenance, improvement and access to the stormwater management system facilities located thereon;
3. On public land which is owned by the Town and/or land of another governmental entity upon which the Town has agreements providing for the operation, maintenance, improvement and access to the stormwater management and flood control systems and facilities located thereon.

B. Operation, maintenance and/or improvement of stormwater management and flood control systems and facilities which are located on private or public property not owned by the Town, and for which the Town lacks a lawful right of entry, shall be and remain the legal responsibility of the property owner, except as otherwise provided for by state and federal laws and regulations.

3.130.040. Stormwater Enterprise Fees

A. The Stormwater Enterprise Fee is imposed on each parcel of property, including undeveloped and tax-exempt parcels. The fee shall be billed in advance on a quarterly basis to the record title owner of the property. The quarterly bill shall be consolidated in the same bill as is sent to said property owner for other services provided by the Town supported by fees, including water service and sanitary sewer use. If the property does not receive a water/sewer bill from the Town, a bill for only the stormwater services will be sent.

B. Receipts from the Stormwater Enterprise Fee shall be deposited in a special revenue account to be known as the Stormwater Enterprise Fund set up in accordance with the authority granted by MGL Chapter 44 Section 53F1/2. The funds deposited in this account shall be used to fund the stormwater services provided by the Town.

C. The Director of Public Works shall recommend an annual budget for stormwater services to the Mayor. The Mayor shall include a proposed annual budget for the stormwater services in the proposed operating budget submitted to the Town Council. The budget submitted by the Mayor and approved by the Town Council shall set the annual budget at an amount that will be sufficient to provide for a balanced operating and capital improvement budget for the stormwater services provided by the Town.

D. The charge shall be based on Equivalent Residential Unit (ERU) billing units. The annual billing rate for each ERU will be determined by the Director of the Department of Public Works annually.

1. During the first four fiscal years the Stormwater Enterprise Fee will be implemented gradually and the ERU billing rate will be calculated by multiplying an implementation factor by the annual stormwater budget and then dividing by the number of ERUs in the Town, where the implementation factor is 0.42 in year one and increases to 0.75 in year three.
2. Starting in the fifth fiscal year after implementing the Stormwater Enterprise Fee, the billing rate for each ERU will be calculated by dividing the annual stormwater budget by the number of ERUs in the Town.
3. The ERU billing rate shall be on file in the office of the Department of Public Works.

E. The annual charge will be as follows. For residential properties with 1-3 family dwellings, the annual charge shall be 1 ERU billing unit. For all other properties, the number of ERU billing units shall be calculated by dividing the parcel's impervious area by 2,780 square feet and rounding the resulting value to the nearest tenth; however, if the calculated value is less than 1, a value of 1 shall be used instead, or for non-residential property if the value is greater than 116.7, a value of 116.7 shall be used instead

F. Any impervious areas within the federal, state, county and Town-owned right-of-way used by the traveling public will not be attributed to the parcel and will not be considered as part of the total impervious area of the parcel.

3.130.050. Fee billing, delinquencies, collections.

A. Failure of the Town to send a bill for the Stormwater Enterprise Fee shall not relieve the property owner of record from the obligation to pay the Stormwater Enterprise Fee. If a property is unbilled, or if no bill is sent for a particular parcel of land, the Town may back bill for the fees as applicable for a period not to exceed one year of charges, but no late fees or delinquency charges of any kind shall be charged or recovered from any property owner so back billed.

B. The provisions of 13.04.010 pertaining to due dates and interest on unpaid charges shall apply to the Stormwater Enterprise Fee.

C. In accordance with MGL Chapter 83, Sections 16A – 16F, the Town may assess liens on properties with unpaid accounts.

D. Pursuant to MGL, Chapter 83, Section 16E, if a property owner believes the Stormwater Enterprise Fee is improperly calculated or is otherwise incorrect, the property owner may, on or before the date when payment is due of the first installment of the annual charge for the Stormwater Enterprise Fee, and after payment of the quarterly charge in full, apply to the Department of Public Works for an abatement. The application for abatement shall be supported by such information as is necessary for a reasonable person to conclude that it is more likely than

not that the billing is in error. The Department of Public Works shall have 90 days to consider the request for abatement and render a written decision, which may deny the abatement, grant the abatement in full or grant the abatement in part. If such application for an abatement is denied in whole or in part, the property owner may appeal to the Appellate Tax Board within 90 days of the date of the Department's decision, upon the same terms and conditions as a person aggrieved by the refusal of the Town assessors to abate a tax.

[NOTE: Per Section 2-9(c) of the Town Charter, this Amendment to the General Ordinances will require a published notice at least ten days prior to the meeting at which it is approved]

MOTION: That the Town Council vote to amend Title 13 of the Town's General Ordinances, by adding "Chapter 13.14: Stormwater Management", to read as follows:

CHAPTER 13.14 Stormwater Management

13.14.010. PURPOSE

A. The purpose of this Chapter is to: implement the requirements of the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems issued by the U.S. Environmental Protection Agency, and the Stormwater Management Standards promulgated by the Massachusetts Department of Environmental Protection; protect the public health, safety, and welfare of Braintree residents; protect the natural resources, water bodies, groundwater resources, environment, and municipal facilities of the Town; satisfy the appropriate water quality requirements of the Federal Clean Water Act and State Clean Water Act; eliminate and prohibit illicit connections and discharges to the Municipal Storm Drain System of the Town; eliminate or reduce the adverse effects of soil erosion and sedimentation as a result of land disturbance activities; and manage stormwater runoff to minimize adverse impacts to the Town, its citizens, and the environment.

B. The Department of Public Works is authorized to administer and enforce this Chapter, and may promulgate rules and regulations to effectuate the purpose of this Chapter.

C. The provisions of this Chapter shall apply to all properties in the Town.

13.14.020. DEFINITIONS

Unless otherwise defined in this section, the terms in this Chapter correspond to definitions found in the Clean Water Act (33 U.S.C. section 1251 et seq.) and the General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems issued by the U.S. Environmental Protection Agency.

The following definitions apply to this Chapter:

Clean Water Act - The Federal Water Pollution Control Act (33 U.S.C. section 1251 et seq.) as it is amended from time to time.

General Permit – The National Pollutant Discharge Elimination System General

Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems issued by the U.S. Environmental Protection Agency. #18-026

Illicit Connection - A surface or subsurface drain or conveyance which allows an illicit discharge into a storm drain, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously constructed, permitted, or approved before the effective date of this Chapter.

Illicit Discharge - The dumping or discharging of any pollutant or non-stormwater discharge into the Municipal Storm Drain System, into a watercourse, or into waters of the United States and /or the Commonwealth, except as exempted in Section 13.14.030.

Land Disturbance - Any activity that removes the surface cover from land, changes the grade, or exposes soil to the potential influence of stormwater.

Massachusetts Stormwater Standards - The performance standards issued by the Massachusetts Department of Environmental Protection (DEP), codified in regulations at 310 CMR 10.05(6)(k)-(q), and further defined and specified in the Massachusetts Stormwater Handbook issued by the DEP.

Municipal Storm Drain System - The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town.

Owner - a person who alone or jointly or severally with others has the legal title to any premises or has care, charge or control of any premises as agent, executor, administrator, trust, lessee or guardian of the estate of the holder of legal title.

Person - An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the Federal Government, to the extent permitted by law, and any officer, employee, or agent of such person.

State Clean Water Act - Massachusetts General Laws Chapter 21.

Stormwater - stormwater runoff, snow melt runoff, and drainage of any water resulting from rainfall or other precipitation that runs off surfaces during or after a storm.

13.14.030. APPLICABILITY

A. This Chapter applies to all owners that discharge or propose to discharge stormwater off their property, directly or indirectly, into the Municipal Storm Drain System of the Town of Braintree.

B. Prohibited Activities

1. **Illicit Discharge** – No person shall dump, discharge, cause or allow to be discharged any contaminated water or non-stormwater discharge (except as exempted in Section 13.14.030(C)) into the Municipal Storm Drain System, into a watercourse, or into the waters of the Commonwealth.

2. **Illicit Connection** – No person shall construct, use, allow, maintain or continue any illicit connection to the Municipal Storm Drain System, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

C. Exempt Discharges

The following discharges are exempt from this Chapter:

- (a) DPW ice and snow control operations;
- (b) Flow resulting from firefighting activities;
- (c) Street and pavement wash waters;
- (d) Natural flow from riparian habitats and wetlands;
- (e) Diverted tide, river or streamflows;
- (f) Water main, hydrant flushing and other discharges from potable water sources associated with routine maintenance of the water distribution system;
- (g) Uncontaminated groundwater or infiltration of groundwater;
- (h) Uncontaminated springs;
- (i) Rising groundwater;
- (j) Uncontaminated water from sump pumps and other pumps that remove floodwaters from basements;
- (k) Water discharge from irrigation or watering of lawns, trees, landscaping, and gardens;
- (l) Non-commercial car washing;
- (m) Waters from residential property management activities including washing walkways, patios, house siding, and windows, provided the wash water does not contain detergents; and
- (n) Swimming pool discharges that have been de-chlorinated;

13.14.040. REGULATIONS

A. Regulations adopted by the Department of Public Works pursuant to this Chapter may include but are not limited to the following:

- 1) Implementation of stormwater runoff pollution reduction requirements for new development and redevelopment consistent with the General Permit, including requirements for stormwater management permits to be issued by the DPW;
- 2) Limitations on the types of discharges allowed to the Municipal storm Drain System, including exempt activities;

- 3) Provisions to require the removal of illicit connections;
- 4) A permitting program to regulate connections to the Municipal storm Drain System;
- 5) Requirements for the design, construction, and ongoing maintenance of privately-owned stormwater facilities; and,
- 6) Provisions for inspections, reporting requirements, and enforcement actions necessary to insure compliance with the General Permit, the Massachusetts Stormwater Standards, this Chapter, and the regulations.

B. The regulations may provide for different permitting requirements among projects and facilities, based upon differences in the nature and extent of land disturbance, the effect upon stormwater runoff, and the impacts upon the Municipal Storm Drain System. The regulations may also exempt projects from the requirement for a DPW permit where the projects are otherwise subject to permitting requirements of the Planning Board, the Conservation Commission, or another municipal board, if such requirements are determined by the DPW to ensure compliance with the standards established the DPW permitting requirements.

13.14.050. ENFORCEMENT

A. The DPW shall have authority to enforce this Chapter, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions pursuant to G.L. c. 83, Section 10, or any other applicable statute or regulation, including actions for injunctive relief and the imposition of civil penalties. The Town may seek to recover from each violator any additional cost for any expense, loss, or damage to the Town occasioned by such violation.

B. To the extent permitted by law, or if authorized by the owner or other person in control of the property, the DPW, its officers, agents, and employees may enter upon privately owned property for the purpose of performing their duties, and may make such inspections and sampling as is reasonably necessary.

C. The decisions and orders of the DPW are final. Any appeal shall be to a court of competent jurisdiction.

D. Any person who violates any provision of this Chapter, the regulations, or a permit issued pursuant to this Chapter or the regulations may be punished by a criminal fine, not to exceed \$300, in the manner prescribed by Section 1.08.010 of the Town Ordinances. Each day on which any violation exists shall be deemed a separate violation.

E. As an alternative to criminal prosecution, the DPW may elect to utilize the non-criminal disposition procedure set forth in G.L. c. 40, section 21D and Section 1.08.020 of the Town Ordinances, in which case the Director or the Director's designee, and any Town Police Officer, shall be the enforcing person. The penalty for the first violation shall be \$100. The penalty for the second violation shall be \$200. The penalty for the third and subsequent

violations shall be \$300. Each day on which any violation exists shall be deemed a separate violation.

13.14.060. SEVERABILITY

The provisions of this Chapter are hereby declared to be severable. If any provision, paragraph, sentence, or clause of this Chapter or the application thereof to any owner, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of said Chapter to the extent permitted by law.

[NOTE: Per Section 2-9(c) of the Town Charter, this Amendment to the General Ordinances will require a published notice at least ten days prior to the meeting at which it is approved]



Braintree Town Council

ORDER NO: 18 026 (6)

DATE FILED: APRIL 30, 2018

REQUEST OF: THE MAYOR

UPON THE REQUEST OF HIS HONOR, THE MAYOR, THE TOWN OF BRAINTREE, THROUGH THE BRAINTREE TOWN COUNCIL, IT IS SO ORDERED:

To see if the Town of Braintree will accept the provisions of Chapter 44, § 53F½ of the Massachusetts General Laws establishing a Storm Water fund as an enterprise fund effective fiscal year 2019.

YEAS: Bowes, Carey, Hume, Kokoros, O'Brien, Powers, Ringius, Ryan, Whalen

NAYS: NONE

ABSENT: NONE

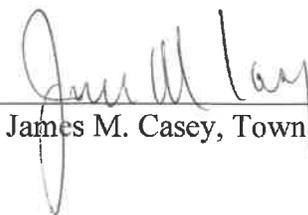
PASSED IN COUNCIL: May 29, 2018

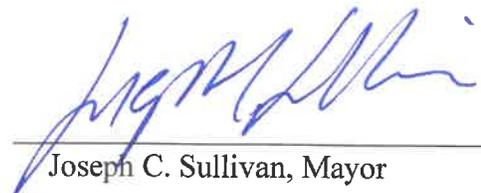
PRESENTED TO MAYOR: May 30, 2018

A True Record, Attest:

5/31/18

Date Approved


James M. Casey, Town Clerk


Joseph C. Sullivan, Mayor



Braintree Town Council

ORDER NO: 18 026 (7)

DATE FILED: APRIL 30, 2018

REQUEST OF: THE MAYOR

UPON THE REQUEST OF HIS HONOR, THE MAYOR, THE TOWN OF BRAINTREE, THROUGH THE BRAINTREE TOWN COUNCIL, IT IS SO ORDERED:

That the Town of Braintree appropriate the sum of \$620,525 to provide for all of the expenses for the maintenance and operation of the Town's Storm Water and related programs for the fiscal year 2019 and that the several sums herein set forth are hereby approved for the several purposes as outlined on the attached Exhibit A, specifically, and that the sum of \$620,525 be raised in the Storm Water receipts.

YEAS: Bowes, Carey, Hume, Kokoros, O'Brien, Powers, Ringius, Ryan, Whalen

NAYS: NONE

ABSENT: NONE

PASSED IN COUNCIL: May 29, 2018

PRESENTED TO MAYOR: May 30, 2018

A True Record, Attest:

5/31/18
Date Approved

James M. Casey
James M. Casey, Town Clerk

Joseph C. Sullivan
Joseph C. Sullivan, Mayor



Braintree Town Council

ORDER NO: 18 026 (8)

DATE FILED: APRIL 30, 2018

REQUEST OF: THE MAYOR

UPON THE REQUEST OF HIS HONOR, THE MAYOR, THE TOWN OF BRAINTREE, THROUGH THE BRAINTREE TOWN COUNCIL, IT IS SO ORDERED:

Pursuant to General Law Chapter 44, Section 31D, the Town is authorized to incur a liability in excess of the amount appropriated for snow and ice for fiscal year 2019.

YEAS: Bowes, Carey, Hume, Kokoros, O'Brien, Powers, Ringius, Ryan, Whalen

NAYS: NONE

ABSENT: NONE

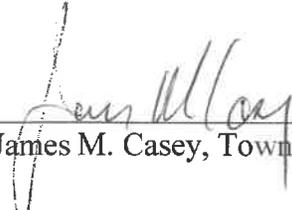
PASSED IN COUNCIL: May 29, 2018

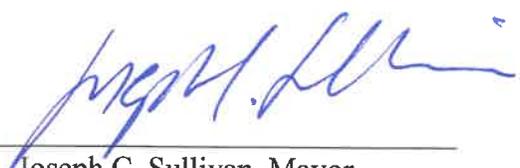
PRESENTED TO MAYOR: May 30, 2018

A True Record, Attest:

5/31/18

Date Approved


James M. Casey, Town Clerk


Joseph C. Sullivan, Mayor