

## ***1400. GROWTH MANAGEMENT ORDINANCE***

### ***1401. Purpose***

Based on the Master Plan, which assesses, and balances community development needs and considers regional development needs, the following Ordinance is deemed necessary to manage the rate of growth in the Town of Brookline for the following purposes:

1. To allow the Town the opportunity to evaluate, develop and implement a plan for increases in school facilities and services in an efficient manner to address critical issues, including but limited to:
  - a. Growing enrollment (2017 - 2021 District Enrollment Increased 14.2%)
  - b. Providing adequate class space for Special Needs students within the District
  - c. Addressing the overall lack of space for educational needs
2. To allow the Town the opportunity to evaluate, develop and implement a plan for increases in Town services in an efficient manner; and
3. To ensure that Brookline does not receive more than its fair share of the regional population growth.

### ***1402.00 Authority***

This Ordinance is adopted as a growth management ordinance under RSA 674:22 II which grants the powers to regulate and control the timing of development. Phased development under this ordinance is adopted as an Innovative Zoning Provision as provided for in RSA 674:21 (I)(b).

### ***1403.00 Applicability***

This Ordinance shall apply to all lots within the Town of Brookline, except for those lots used expressly for and in accordance with RSA 354-A:15 and the Town of Brookline Zoning and Land Use Ordinance, Section 2200, Housing for Older Persons.

### ***1404.00 Definitions***

Applicant: The owner of a lot seeking a building permit.

Building Permit: A building permit obtained for the construction of a dwelling unit. This ordinance does not apply to non-residential building permits or permits for expansion or alteration of existing structures that do not result in new dwelling units.

Calendar Year: January 1 to December 31

NRPC Region Average Growth Rate: Nashua Regional Planning Agency population growth rate calculated annually across the following towns: Amherst, Brookline, Hollis, Hudson, Litchfield, Lyndeborough, Mason, Merrimack, Milford, Mont Vernon, Nashua, Pelham, and Wilton

### ***1405.00 Requirements***

1. Any subdivision or site plan involving housing units approved during the effective period of this ordinance shall be a Phased Development.
2. The Planning Board shall consider previously approved subdivisions or site plans involving housing units

prior to the approval of any new application for a subdivision or site plan involving housing units to ensure the Planning Board does not approve more new building lots than there are available permits for any calendar year.

(Example 1) The Planning Board could approve 10 subdivisions of “Less than 10 lots” in one year if the formula supports 10 permits per year, but no further subdivisions or site plans involving housing units could be approved that year because no more Building Permits would be available. Further, in subsequent years, the Board would have to consider previously approved subdivisions or site plans involving housing units as well as the formula before approving any new subdivisions or site plans involving housing units to ensure that the approved new building lots would not exceed the number of available permits for that year.

(Example 2) The Planning Board could approve 1 subdivision of “40+ lots” and 5 subdivisions of “Less than 10 lots” in one year if the formula supports 10 permits per year, but no further subdivisions or site plans involving housing units could be approved that year because no more Building Permits would be available. Further, in subsequent years, the Board would have to consider previously approved subdivisions or site plans involving housing units as well as the formula before approving any new subdivisions or site plans involving housing units to ensure that the approved new building lots would not exceed the number of available permits for that year.

3. Building permits shall be distributed in April and October. Beginning on April 15, 50% of the total available permits may be issued for that calendar year. Beginning on October 15 the remaining building permits for that calendar year may be issued. Every applicant may be issued one (1) building permit until the total available number of permits for that period have been issued. Applications for building permits issued beginning on April 15 shall be received no later than March 15. Applications for building permits issued beginning on October 15 shall be received no later than September 15. If, after the issuance period there are any remaining building permits, the Town may continue to accept building permit applications. The permits may continue to be issued one per applicant until all permits for that period have been issued.
4. The number of Building Permits that may be issued by the Town of Brookline in any calendar year shall be limited to the following formula:

(Current Population \* NRPC Region Average Growth Rate) / 10 (to determine the average annual growth rate from the 10 year average) / (Average Number of People per house) = Number of Building Permits per calendar year. If the formula does not result in a whole number, the number shall be rounded up.

For example, according to the 2020 U.S. Census Bureau Data the average growth rate for the Nashua Regional Planning Commission (NRPC) region from 2010 - 2020 was 5.7% and the average number of people per household in Brookline was 3.08.

The calculation for 2022 is: 2020 Population 5639 \* 0.057 = 321.42/10 = 32.14/3.08 = 10.44, rounded up to 11. The number of Building Permits for 2022 is 10.

The calculation of building permits for subsequent years shall be based on the formula and shall be conducted in accordance with Section 1407.00

Reaching substantial completion shall vest, in the approved subdivision plat, the rights defined in RSA 674:39, II, 5-year Exemption. Lots that are part of an approved subdivision with vested rights, may apply for a building permit at any point in the calendar year. These building permits shall be subtracted from the total available number of permits for that calendar year.

5. A building permit expires and becomes invalid if construction, which is deemed to be installation of footings and foundation, has not started within six (6) months from the date of issuance.
6. Building permits may be transferred between lots owned by the same applicant, prior to the pouring of a footing or foundation with the approval of the Building Inspector.

**1406.00 Phased Development**

The Planning Board shall require the phasing of pending and future subdivision and open space development proposals as provided in New Hampshire RSA 674:21.

Providing for the phasing of all pending and future subdivision approvals serves the Master Plan directed goal of allowing the Town sufficient time to plan for increases in Town and School services in an efficient manner.

The purpose of phasing developments is to minimize a strain on municipal resources caused by the sudden introduction of a substantial number of new dwelling units and to allow the Town to plan and absorb the growth over a longer period of time so as to avoid severe impact on Town and School services.

The intent of this section is to ensure that each developer will receive a number of permits appropriate to the size of the subdivision. The intent of this section is also to ensure that each subdivision receives a building permit, not for a subdivider to create small subdivisions or to sell off individual lots circumventing the purpose of this Ordinance.

# of new building lots	Year One	Year Two	Year Three	Year Four	Year Five	Year Six	Year Seven	Year Eight	Year Nine	Year Ten	Year Eleven +
Less than 10	1	1	1	1	1	1	1	1	1		
10 - 19	2	2	2	2	2	2	2	2	2	1	
20 - 29	3	3	3	3	3	3	3	3	3	2	
30 - 39	4	4	4	4	4	4	4	4	4	3	
40+	5	5	5	5	5	5	5	5	5	5	5

Notes: This table shows the number of building permits available for various size subdivisions for the years following Brookline Planning Board approval. Year One denotes the year in which the subdivision was approved by the Brookline Planning Board. \* If there is no house on the original pre-existing undeveloped buildable lot (parent parcel), then an additional building permit is available the first year. The example provided for a subdivision of “Less than 10” lots is for a 9-lot subdivision. The other above examples provided are for the maximum size subdivision in each category (19, 29 and 39 lots, respectively) so as to illustrate the full build-out period for subdivisions in each size range. A 55-lot subdivision is illustrated for the “40+” size category. If more than 55 lots are involved, either a maximum of five or the remaining number of permits, whichever is less, are available in subsequent years until the total number of permits available in the subdivision is issued.

- a. Each subdivision may receive their building permit allocation in accordance with Section 1405.3.

- b. A subdivision may bank and carry over a maximum of one year's building permit allocations to the next calendar year. Any allocation that is carried over from the first year and not used by the end of the second year is postponed to the end of the subdivision buildout.

The following examples are meant to help understand the intent of this section. The ability to hold permits and carry them over one (1) year may make capital expenditures, such as road construction, more affordable. It is not intended to allow additional permits to be issued, or more than the maximum of two (2) year's permits to be issued in any calendar year. The carry over may be exercised multiple times, however, Example 3 demonstrates the risk of miscalculating.

(Example 1) A 29-lot subdivision would be eligible for a maximum of three (3) building permits in a calendar year. If the developer chose to hold these permits until the following calendar year, there would then be a maximum of six (6) building permits available. If the entire six (6) available permits were used, the following calendar year there would only be three (3) permits available. The result of a carry-over can never exceed a total of two (2) year's available permits, which in this example is six (6) permits.

(Example 2) On a 29-lot subdivision, the developer has carried the maximum number of permits for the first year, three (3), over to the second year. There are now six (6) permits available. The developer only uses four (4) permits in the second year. There are now five (5) permits available in the third year – two (2) carried over from the previous year and three (3) permits available for the calendar year. Any portion of a previous year's permits may be carried over to the following calendar year up to the maximum permits allowed in a two-year period.

(Example 3) On a 29-lot subdivision, the developer carried over the maximum number of permits for the first year, three (3), over to the second year. There are now six (6) permits available. The developer only uses one (1) permit, leaving five (5) unused permits for the second year. The developer may only carry over three (3) permits to the third year. The maximum number of permits that can be carried over to the following calendar year is three (3). In this example, two (2) permits were deferred to the end of the subdivision buildout period because of a failure to use the permits in earlier years.

#### ***1407.00 Sunset Clause***

This Ordinance expires after one year, unless the following occurs:

1. An annual review by the Planning Board which shall be conducted no later than November 30. The annual review must be conducted at a public hearing and noticed in accordance with RSA 675:6 and 675:7.
2. If, after conducting the annual review and public hearing, the Board makes a finding that this Ordinance is both appropriate and necessary to meet the Purpose, Section 1401.00 above, this Ordinance would be effective for another year, at the end of which another annual review, as described above, shall occur.
3. After conducting the annual review and making a finding that the Ordinance is both appropriate and necessary to meet the Purpose, Section 1401.00 above, the Planning Board shall determine the number of building permits which may be issued for the next calendar year based on the formula in section 1405.00.

#### ***1408.00 Severability***

For Public Hearing December 26, 2021

If any section, provision, portion, clause or phrase of these regulations shall be declared invalid or unconstitutional, it shall not impair or invalidate any other section, clause, provision, portion or phrase of these regulations.

***1409.00 Effective Date***

This Ordinance shall become effective immediately upon an affirmative vote at Town Meeting 2022.