

**Town of Brookline  
Advisory Committee Minutes**

Sean Lynn-Jones, Chair

**Date:** September 22, 2016

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**Present:** Clifford M. Brown, Carol Caro, Lea Cohen, John Doggett, Harry Friedman, Janet Gelbart, David-Marc Goldstein, Neil Gordon, Kelly A. Hardebeck, Sytske Humphrey, Alisa G. Jonas, Janice S. Kahn , Bobbie Knable, Robert Liao, Pamela Lodish, Sean Lynn-Jones, Shaari S. Mittel, Mariah Nobrega, Michael Sandman, Lee L. Selwyn, Christine Westphal

**Absent:** Amy Hummell, Fred Levitan, Stanley L. Spiegel, Carla Benka, Charles Swartz, Steve Kanen, Angela Hyatt, David Lescohier, Dennis Doughty

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The meeting was called to order at 7:40PM.

**Also Attending:** Andy Martineau of the Planning Department, Petitioner Brookline High School Senior Makena Binker-Cosen, Commissioner of Public Health Dr. Alan Balsam, Natalie Miller, Tobacco Control Coordinator for the 5 Town Collaborative, Petitioner Ernest Frey, Lloyd Gellineau, Chief Diversity Officer, Department of Diversity, Inclusion and Community Relations and Alex Coleman, Chair Commission for Diversity, Inclusion and Community Relations.

**Announcements:**

Sean introduced former Moderator and AC Chair Justin Wyner, who came to show his grandson “democracy in action.”

Agreement is close between the School and the Teacher’s Union. School lost the State kindergarten grant.

No clear sense of group health budget in light of School Department hiring.

**1. Review WA 4 Amend Article 8.23 of the Town’s By-Laws – Tobacco Control -- enhance tobacco control regulations for reducing youth access to conform to State’s best practices. (Petition of Makena Binker-Cosen)**

David-Marc Goldstein reported on the Human Service Subcommittee hearing. The article is in response to a much needed tweak to our tobacco control laws. In recent years we have adjusted the age to 21, incorporated reference to E cigarettes, etc. but there are new products coming on the market that are appealing especially to children.

The Human Services subcommittee met and had a presentation from the petitioner. Had concerns about some pieces. Definitions in 8.23.2 came from Rhode Island. Needed more wordsmithing and Massachusetts State laws so voted 4-0 to refer WA 4 to the Advisory Council on Public Health to study and report back to the 2017 Annual Town Meeting.

Petitioner Makena Binker-Cosen, Senior at Brookline High School made a statement about her petition. Tobacco products are increasingly cheap, sweet and easy to get. 90% of smokers start before age 18. Health, mental health and quality of life are ruined by tobacco. Want to promote a tobacco free community. Stores should have clear signage that age-to-purchase is 21 years old. Customers should be asked for ID. We want there to be informed and active purchases. Candy bars cost more than a cigar. In 2011 cigar use among teens was 14.3% but went down significantly just two years later because of changes in laws and pricing. We are the only town that lacks the flavor restriction.

Dr. Alan Balsam, Commissioner of Public Health commented. Brookline is part of a 5 community consortium and it turns out that we are behind in this. Brookline was the first in the Commonwealth to ban use of tobacco in public accommodations. Even though the Commissioner could unilaterally make these changes, we want to go to Town Meeting because it builds a constituency for change. We have done that for all of those tobacco regulations except these three and this will catch us up with the rest. Definitions are from Rhode Island but they have been used throughout the municipalities in Massachusetts, going along with what everyone else has done. Advisory Council on Public Health will hear the revised petition and it can come back to BoS and Advisory Committee.

Q: What is this consortium and how long have we been a part of it?

A: We have been part of the Consortium for 6 years. It is comprised of Brookline, Newton, Arlington, Belmont, and Watertown. DPH forms these regions so they can leverage their dollars.

Q: Summarize current law – if I'm 20 years old can I buy a cigar?

A: No. Age is 21 or 22 and you can buy a cigar for 60 cents.

Section 8.23.5 Item 6 about amending the By Law – we recognized that this is redundant and unnecessary and it has been deleted.

Q: What is the penalty when you find a vendor doesn't check ID and sells to minors?

A: First offense they are fined; the second offense they are fined and permit is pulled for some length of time.

Q: Concern about specifying the need for identification being valid government issued photograph. What would be a valid alternative?

Q: Do we have any other basis for raising the price of a product?

A: It has been done in other communities and held up. Strategy is to raise the price and you will have less consumption.

Q: Can we do something not just from the supply side of things – but from the demand side as well? Penalize the people who are purchasing and who are underage. Penalize the students who are smoking outside of school.

A: There are sanctions for kids who are found smoking on school grounds. The ACPH will look at this also.

The Selectman's Committee on Tobacco chaired by Nancy Daly will review this matter and also make a recommendation, however, we want to revise the petition and bring it back for a decision.

Comment: Very touched to have a 17 year old presenting this petition and have a guest here tonight who is 13.

Q: Are cigars and cigarettes taxed differently? No one knows the answer.

Boston has all of these restrictions. We need to catch up. Face to Face requirement is for stores that Brookline permits. If you order over the phone it would prohibit the purchase of tobacco.

Q: Are we effectively encouraging increased use of marijuana by banning cigars and cigarettes? There is no evidence of this just yet.

A **MOTION** was made and seconded for table action on Warrant Article 4.

By a **VOTE** of 19 in favor, none opposed and 1 abstention, the Advisory Committee tabled Article 4.

2. **Review WA 13 Amend Article 5.8 of the Town’s By-Laws – Sign By-Law -- to improve its content neutrality in light of U.S. Supreme Court decision in Reed v. Town of Gilbert. (Planning & Community Development)**
3. **Review WA 14 Amend Article VII of the Town’s Zoning By-Law – Signs, Illumination, & Regulated Façade Alterations -- to improve its content neutrality in light of the U.S. Supreme Court decision in Reed v. Town of Gilbert. (Planning & Community Development)**

Michael Sandman for the Schools Subcommittee gave background and overview of WA 13 and WA 14. Articles 13 and 14 come to us in the spirit of the Zenger case, and as a result a 2015 US Supreme Court decision - Reed vs. the Town of Gilbert (Arizona), which held that a municipality cannot regulate the content of signs. It can only regulate their physical aspects — design, size, location, illumination, etc. Our current by-laws regulating signs include content-based restrictions, so they are not in conformance with the limits established by the Court. Articles 13 and 14 would bring the general and zoning by-law in to compliance.

Article 13 will modify the Town’s general bylaw. It regulates signs on Town property or when they are visible within a certain distance of Town property such as a park or public way. Note that the Town exempts itself from regulation, and the general bylaw only regulates signs on town property. Article 14 regulates signs on private property in all zoning districts. Since the regulations for signs on private property are part of the zoning bylaw, Article 14 will require a two-thirds vote at Town Meeting.

Article 13 defines what a sign is more specifically than the current bylaw and removes restriction on content.

Article 14 applies the definition of signs to the Zoning bylaw - specifically to Article 7. Section 7.01 covers requirements for all signs in all zoning districts. Section 7.02 through 7.04 cover regulations specific to a zoning district or districts. Section 7.05 covers temporary signs which are restricted to 120 days per year up from the current 60-day limit. Section 7.06 covers illuminated signs; Section 7.07 provides for limited exceptions to the requirements for maximum size; and Section 7.08 specifies design review procedures.

The Subcommittee identified a small number of typos and recommended changing one sentence in Article 14 (p. 74 to p.79 make it item e.) On both Articles the Subcommittee recommended favorable action 4-0.

### **Questions and Comments**

Andy Martineau of the Planning Department answered questions.

Which department do you complain to about sign issues? Either Police or Building Department.

Prohibition on sandwich boards is an ADA issue.

Article 13 p. 66 item v. change “war veteran markers installed within the public right of way.”

Article 14 p. 72 item v. change “war veteran markers installed within the public right of way.”

Add back in introductory language in sections 7.01, 7.02, etc.

Cannot exempt specific types of temporary signs; this law treats all signs equally because we cannot regulate based on content. Would there be any chance of suspending the law 2-3 weeks during an election?

Worry about selective enforcement?

Potentially allowing yards full of many signs limited within a certain area. Can we allow an exemption of a specific period of time, allowing any number of temporary signs on any topic for within that period of time?

If you are ok with having 6 political signs on your lawn, it should be fine to have 6 commercial signs on your lawn.

Many condo associations say you cannot post signs on our property. Is that legal? So yes a condo association can regulate anything.

We shouldn't be regulating things just because they are an eye sore but rather only if they are a hazard to public safety.

There was a concern raised that we are prohibiting freedom of speech and discouraging political involvement because we are wrongly equating all types of signage.

Perhaps create temporary sign regulations for residential districts and another set of regulations for commercial districts?

What happens if we don't pass this? We will be out of compliance with the Supreme Court ruling. Some issue and risk to having By Laws on the books that are out of compliance.

Have an issue with the one sign rule and with Building Commissioner approval.

Suggest we send this to the Zoning By Law Committee.

If we as a group are in a situation that we know there is a law on the books that is unconstitutional what sort risks are there? This is attempting to put us in compliance before someone drags us into court.

Pass this and then revisit the Zoning rules.

Concern about giving discretion to public officials (Building Commissioner), so wonder if other planning departments have encountered this and how they resolved it? Milford has guidelines. Everyone is trying to figure this out. Text cleanup is a housekeeping matter.

The regulations only pertain to time, place, manner, number and size but not content.

Things get enforced when someone calls and complains. The Town requires citizens to help.

Don't see the urgency of this. Wait to see how it plays out in other communities.

I think Town Counsel may disagree. To go back to a question that was asked in the subcommittee, "Can you tell me what type of sign is allowed now that will not be allowed once this is By Law passes?" The answer is none. This is just cleaning up language that needs to be cleaned up because there previously had been language about content, which is no longer permitted. Really wouldn't see much change in your day-to-day life.

The only difference is the removing unnecessary risk.

A **MOTION** was made and seconded to recommend favorable action on WA 13 with the following language change on p. 66, Section 5.8.2, definition of "Sign", item (v) "war veteran markers installed within the public right of way." ("at locations designated by the town's naming committee," deleted.)

By a **VOTE** of 16 in favor, 2 opposed with 1 abstention, the Advisory Committee recommends favorable action on WA 13 as **AMENDED**.

A **MOTION** was made and seconded to recommend favorable action on WA 14 with the following language change on p. 72, Section 5.8.2, definition of "Sign", item (v) "war veteran markers installed within the public right of way." ("at locations designated by the town's naming committee," deleted.)

A **MOTION** was made and seconded to **AMEND** (p. 79, c.) remove "one" and replace "sign" with "signs not exceeding 10 feet each."

By a **VOTE** of 4 in favor, 15 opposed with 1 abstention, the **AMENDMENT** fails.

By a **VOTE** of 14 in favor, 5 opposed and 1 abstention, the Advisory Committee recommends favorable action on WA 14 as **AMENDED**.

Vote on the Warrant Article and make a strong recommendation that it be picked up by the Zoning Board to make ourselves both in compliance and also address issues that no one has paid any attention to for years.

**4. Review WA 28 Miscellaneous Amendments to Article 3.14, 3.15, 5.5 and 10.2 of the Town's ByLaws -- Diversity, Inclusion and Community Relations, Human Resources Program, Board and Office, Fair Housing and 10.2 Prosecutions and Enforcement. (Commission for Diversity Inclusion & Community Relations)**

Robert Liao gave an overview of the Human Services subcommittee.

Petitioners Ernest Frey, Lloyd Gellineau, Director ODICR and Alex Coleman, Chair CDICR

Conducting legal proceedings, hearings, administering oaths, etc. this is inconsistent with the power of the Commission to hold hearings on other matters and it wasn't addressed in section 3 part and this has been a cleanup job these cases now referred to provisions and procedures in 3.14 forwards complaints

to other agencies in town that are capable to handle them. Back into conformity with reality since the CDICR can only hear complaints but cannot action anything.

### Questions and Comments

Need to define “senior” – can’t we just add it to the list of definitions. Need time to research this.

How does anything differ in here from the State regulation – what defines a Brookline Protected Class vs a Massachusetts Protected Class? Brookline’s definition is broader. The State has come around to include gender identity and expression in accommodation.

Take exception to the notion that the Commission has no power. Make suggestion regarding altering the language in the section regarding appointment of commissioners and terms.

We have been using the definitions in 3.14 to set up the commission is the one we have been operating on.

Is there anything compelling us to decide on this tonight? None of the rest of the ByLaws were addressed after 3.14 .

This is only housekeeping and the only substantive was court piece.

Term limits, protected classes, and functions and powers to reflect what is currently happening. Seems pretty straight forward that is just cleaning up language, there may be need for future revisions but for right now you would have a current document of what you do and the everyone in the Town what the role of the commission is and does.

5.5 section BoS asked us to do it and made it consistent with our complaint processes.

Existing By-Laws have a legal procedure that needs to be changed.

A **MOTION** was made and seconded to recommend favorable action on WA 28 with restored language of 5.5.7 a.

A **MOTION** was made and seconded to **AMEND** the language the “Moderator’s Approved Change” on 22 September with the following changes to Section 3.14.1 near the top of p. 2, insert “the terms of” between “that” and “approximately”; delete “are appointed or reappointed” and replace with “expire”; and, after “has been renewed” insert “or terminated”.

Here is how that section of text would read after the AC amendment:

“...in a staggered manner so that **the terms of** approximately one-third (1/3) of the Commissioners-~~appointed or reappointed~~ **expire** each year. In the event that a Commissioner whose term is expiring has submitted their renewal application to the BoS in a timely manner, and has not been not yet been notified by the Town Administrator that their term has been renewed **or terminated**, the term of that Commissioner shall be extended by sixty days to permit the BoS to complete that process.”

By a **VOTE** of 5 in favor, 2 opposed and 7 abstentions the **MOTION** to **AMEND** as outlined above was approved.

By a **VOTE** of 9 in favor, 1 opposed with 4 abstentions, the Advisory Committee recommends favorable action on WA28 as **AMENDED**.

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Upon a **MOTION** made and seconded to adjourn, and voted unanimously, the meeting was adjourned at 10:30pm.

**Documents Presented:**

- Human Services Subcommittee report on WA 4
- Schools Subcommittee report on WAs 13 and 14.
- Supporting material from the Petitioner for WAs 13 and 14.
- Human Services Subcommittee report on WA 28
- Requested Revisions to WA 28 and the Moderator Approved Changes to WA 28 submitted by the Petitioner.
- Letter from Lloyd W. Gellineau Jr. Ph.D., MS , Director- Chief Diversity Officer, Office of Diversity, Inclusion and Community Relations in Support of WA 28