

TOWN OF BROOKLINE



MINUTES

SPECIAL TOWN MEETING NOVEMBER 13, 2012

MINUTES OF THE SPECIAL TOWN MEETING NOVEMBER 13, 2012

Pursuant to the Warrant of the Board Selectmen, served according to law upon the inhabitants of the Town of Brookline by a Constable of said Town and pursuant to Section 2.1.5 (Notice of Meetings) of the General By-laws of the Town of Brookline, and written notices sent by the Town Clerk, at least fourteen days before the meeting to the Town Meeting Members qualified to act in Town Meetings in Brookline under the provisions of Chapter 43A of the General Laws of the Commonwealth, as amended, and accepted by the Town of Brookline on March 10, 1942, the Town Meeting Members, so qualified, met at the Roberts-Dubbs Auditorium at Brookline High School in said Town on Tuesday, November 13, 2012 at 7:00 P.M.

Lists of the duly qualified Town Meeting Members were used at the entrances to the meeting place and were in the charge of Checkers, who were appointed by and sworn to the faithful performance of their duties by the Town Clerk. These lists contained the names of two-hundred forty-eight (248) Town Meeting Members qualified to vote in Town Meetings in Brookline.

No Town Meeting Members were allowed within the rails until they signed the check-in lists.

At seven minutes past seven o'clock, the Checkers reported that one hundred twenty-nine (129) signatures of Town Meeting Members had been checked, or more than one-half of all qualified Town Meeting Members, and the Town Clerk reported to the Moderator that a quorum was present.

The meeting was called to order by the Moderator Edward (Sandy) Gadsby and he acknowledged the proper posting of the Warrant.

The first verse of the Star Spangled banner, led by Selectman Jesse Mermell - TMM #AL, was sung by the audience.

The Moderator made several announcements concerning seating, speakers and decorum. He then remarked about the implementation of the Town Meeting's new electronic hand-held voting devices. The Moderator conducted two test votes to demonstrate how to use the devices before proceeding on to the first article of the Warrant.

FIRST ARTICLE

Submitted by: Board of Selectmen

To see if the Town will, in accordance with General Laws, Chapter 44, Section 64, authorize the payment of one or more of the bills of previous fiscal years, which may be legally unenforceable due to the insufficiency of the appropriations therefor, and appropriate from available funds, a sum or sums of money therefor.

or act on anything relative thereto.

Upon motion of Betsy DeWitt – TMM #AL and duly seconded, a nine-tenths vote required, it was UNANIMOUSLY

VOTED: To authorize the payment of the following unpaid bills of a previous fiscal year from the FY2013 Police Budget:

Verizon \$932.81

VOTED: To authorize the payment of the following unpaid bills of a previous fiscal year from the FY2013 Fire Budget:

Verizon \$1,121.55

SECOND ARTICLE

Submitted by: Human Resources

To see if the Town will raise and appropriate, or appropriate from available funds, a sum or sums of money to fund the cost of items in collective bargaining agreements between the Town and various employee unions; fund wage and salary increases for employees not included in the collective bargaining agreements; and amend the Classification and Pay Plans of the Town.

Upon motion of Harry K. Bohrs – TMM #3 and seconded by Betsy DeWitt-TMM #AL, it was UNANIMOUSLY

Voted: That NO ACTION be taken under Article 2.

THIRD ARTICLE

Submitted by: Board of Selectmen

To see if the Town will:

- A) Appropriate additional funds to the various accounts in the fiscal year 2013 budget or transfer funds between said accounts;
- B) To see if the Town will vote to appropriate, borrow or transfer from available funds, \$1,750,000 to be expended under the direction of the Building Commission, with the approval of the Board of Selectman and the School Committee for a feasibility study to understand the extent of facility and programming deficiencies at the Devotion School located at 345 Harvard Street in the Town of Brookline, Massachusetts and as further described as Parcel I.D. No. 148-13-00 in the Town of Brookline Assessor's map and database and to explore the formulation of a solution to those deficiencies, for which feasibility study the Town may be eligible for a grant from the Massachusetts School Building Authority. The MSBA's grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any costs the Town incurs in connection with the feasibility study in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the Town;
- C) Appropriate a sum of money, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts to be approved by the Board of Selectmen, for enhancements to the Parking Meter System.
- D) And determine whether such appropriations shall be raised by taxation, transferred from available funds, provided by borrowing or provided by any combination of the foregoing; and authorize the Board of Selectmen, except in the case of the School Department Budget, and with regard to the School Department, the School Committee, to apply for, accept and expend grants and aid from both federal and state sources and agencies for any of the purposes aforesaid.

or act on anything relative thereto.

Upon motion of Gerald P. Koocher – TMM #16 and seconded by Betsy DeWitt – TMM #AL, it was by a COUNTED VOTE OF 202 IN FAVOR AND 1 OPPOSED

VOTED: That the Town:

1. Amend the FY2013 budget as shown below and in the attached Amended Tables I and II:

ITEM #	ORIGINAL BUDGET	PROPOSED CHANGE	AMENDED BUDGET
12. Public Works	\$13,484,466	\$ 22,500	\$13,506,966
21. Schools	\$78,649,602	\$430,222	\$79,079,824
22. Employee Benefits	\$45,569,508	-\$ 22,500	\$45,547,008

2. That the Town of Brookline appropriate the sum of \$1,750,000 for the purpose of paying costs of a feasibility study and schematic design to understand the extent of facility and programming deficiencies at the Devotion School located at 345 Harvard Street in the Town of Brookline, Massachusetts and as further described as Parcel I.D. No. 148-13-00 in the Town of Brookline Assessor's map and database and to explore the formulation of a solution to those deficiencies, including the payment of all costs incidental or related thereto, and for which the Town may be eligible for a grant from Massachusetts School Building Authority ("MSBA"), said sum to be expended under the direction of the Building Commission, with the approval of the Board of Selectmen and the School Committee; and to meet the appropriation transfer \$1,750,000 from the overlay surplus account; and further that the Town acknowledges that the MSBA's grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any costs the Town incurs in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the Town.

(Se Tables I & II)

FOURTH ARTICLE

Submitted by: Moderator's Committee on Public Hearings

To see if the Town will amend the General By-Laws as follows:

By inserting the following sentence immediately after the first sentence in Section 2.5.2 of Article 2.5 (addition in bold):

SECTION 2.5.2 COMBINED REPORTS

The explanation and relevant data submitted by the petitioners for a petition article shall be included, together with article, in the combined reports. **The Board of Selectmen and the Advisory Committee (or a subcommittee of the Advisory Committee) shall hold at least one duly noticed public hearing prior to a final vote of the Board of Selectmen or the Advisory Committee, as the case may be, on any article in the Warrant.** The Board of Selectmen and the Advisory Committee shall prepare written reports, stating their recommendations and the reasons therefor, for all articles in the Warrant for a Town Meeting. The reports shall be included in the combined reports to be delivered or mailed as follows:

Or act on anything relative thereto.

Upon motion Sean M. Lynn-Jones – TMM #1 and seconded by Harry K. Bohrs – TMM #3, it was by a COUNTED VOTE OF 202 IN FAVOR AND 2 OPPOSED

VOTED: That the Town amend the General By-Laws as follows:

By inserting the following sentence immediately after the first sentence in Section 2.5.2 of Article 2.5 (addition in bold):

SECTION 2.5.2 COMBINED REPORTS

The explanation and relevant data submitted by the petitioners for a petition article shall be included, together with article, in the combined reports. **The Board of Selectmen and the Advisory Committee (or *in the alternative to the full Advisory Committee* a subcommittee of the Advisory Committee) each shall hold at least one duly noticed public hearing prior to a final vote of the Board of Selectmen or the Advisory Committee, as the case may be, on any article in the Warrant.** The Board of Selectmen and the Advisory Committee shall prepare written reports, stating their recommendations and the reasons

therefor, for all articles in the Warrant for a Town Meeting. The reports shall be included in the combined reports to be delivered or mailed as follows:

Martin R. Rosenthal – TMM #9 moved that the Town Meeting vote adopted under Article 4 be reconsidered. That motion was duly seconded. After discussion, the Moderator Edward (Sandy) Gadsby ruled that he would not allow Mr. Rosenthal's motion to come before Town Meeting.

FIFTH ARTICLE

Submitted by: Regina Frawley and Jonathan Davis

To see if the Town will amend the Town's By-Laws in the following manner:

By adding Article 3.22 immediately between Article 3.21 and Article 4.1, as follows:

ARTICLE 3.22
The Public's Right To Be Heard On Warrant Articles

Any committee as defined in section 1.1.4, before taking its first or only vote with respect to an Article on the Warrant, must hold a duly noticed non-adjudicatory public hearing with respect to the Article, and the committee's permanent record must record that a duly noticed non-adjudicatory public hearing with respect to such Article occurred before such vote.

Due notice of the public hearing shall be satisfied if the due notice complies with the Open Meeting Law (G.L. 30A, secs. 18 et seq.) and By-law 3.21.3(a).

The vote may take place at any time or date after the completion of the duly noticed public hearing.

This Article shall not apply to the plenum of the Advisory Committee.

Or act on anything relative thereto.

Upon motion of Martin R. Rosenthal – TMM #9 and duly seconded, the following motion was offered

MOVED: That the Town amend the Town's By-Laws in the following manner:

By adding Article 3.22 immediately between Article 3.21 and Article 4.1, as follows:

ARTICLE 3.22 The Public's Right To Be Heard On Warrant Articles

Any committee as defined in section 1.1.4, before taking its first or only vote with respect to an Article on the Warrant, must hold a duly noticed non-adjudicatory public hearing with respect to the Article, and the committee's permanent record must record that a duly noticed non-adjudicatory public hearing with respect to such Article occurred before such vote.

Alternatively, any committee other than the Board of Selectmen and Advisory Committee may satisfy the preceding paragraph by (A) having a quorum of its members attend one or more public hearing(s) on a warrant article, (B) so noting in its public record prior to voting on such article; and (C) inviting the principle petitioner for all meetings discussing her/his article.

Due notice of all such public hearings shall be satisfied if it complies with the Open Meeting Law (G.L. c. 30A, §§18 et seq) and Brookline By-law 3.21.3(a). Any committee's vote on a warrant article may take place at any time after that committee's public hearing, or after that committee's quorum had attended one or more hearing(s) under the immediately preceding paragraph.

This Article shall not apply to the plenum of the Advisory Committee.

Upon motion of Martin R. Rosenthal – TMM #9 and duly seconded, the above motion was DEFEATED.

Upon motion of Stanley L. Spiegel – TMM #2 and duly seconded, the following motion was offered

MOVED: That the Town amend the Town's By-Laws in the following manner (edited against original Article):

By adding Article 3.22 immediately between Article 3.21 and Article 4.1, as follows:

ARTICLE 3.22
The Public's Right To Be Heard On Warrant Articles

Any committee as defined in section 1.1.4 **that transmits its position on an Article on the Warrant to Town Meeting, either in a written report, electronically, or by oral presentation at or prior to Town Meeting**, before taking its first or only vote with respect to said article, must hold a duly noticed ~~non-adjudicatory~~ public hearing with respect to the Article, and the committee's

permanent record must record that a duly noticed ~~non-adjudicatory~~ public hearing with respect to such Article occurred before such vote.

Due notice of the public hearing shall be satisfied if the due notice complies with the Open Meeting Law (G.L. c. 30A, secs. 18 et seq.) and By-law 3.21.3(a).

The vote may take place at any time or date after the completion of the duly noticed public hearing.

This Article shall not apply to the plenum of the Advisory Committee or School Committee, provided a subcommittee of those bodies assigned to review and report to the full Committee on a warrant article complies with the by-law by holding a duly noticed public hearing before any vote on said warrant article.

Failure to comply with the provisions of this Section 3.22 shall not affect the legality of any town meeting or of any action taken thereat.

Thirty-five (35) Town Meeting Members requested an electronic recorded vote for the motion offered by Stanley L. Spiegel – TMM #2 under Article 4.

Upon motion of Stanley L. Spiegel – TMM #2 and duly seconded, the above motion was DEFEATED by an ELECTRONIC RECORDED VOTE OF 76 IN FAVOR, 135 OPPOSED AND 5 ABSTENTIONS.

Thirty-five (35) Town Meeting Members requested an electronic recorded vote for the motion offered by Regina Frawley – TMM #16 under Article 4.

Upon motion of Regina Frawley – TMM #16 and seconded by Jonathan Davis – TMM #10, it was, by an ELECTRONIC RECORDED VOTE OF 164 IN FAVOR, 48 OPPOSED AND 5 ABSTENTIONS

VOTED: That the Town amend the Town’s By-Laws in the following manner:

By adding Article 3.22 immediately between Article 3.21 and Article 4.1, as follows:

ARTICLE 3.22
The Public’s Right To Be Heard On Warrant Articles

Any committee as defined in section 1.1.4, before taking its first or only vote with respect to an Article on the Warrant, must hold a duly noticed public hearing with respect to the Article, and the committee’s permanent record must record that a

duly noticed public hearing with respect to such Article occurred before such vote.

Due notice of the public hearing shall be satisfied if the due notice complies with the Open Meeting Law (G.L. C. 30A, secs. 18 et seq.) and By-law 3.21.3(a).

The vote may take place at any time or date after the completion of the duly noticed public hearing.

This Article shall not apply to the plenum of the Advisory Committee or School Committee, provided a subcommittee of those bodies assigned to review and report to the full Committee on a warrant article complies with the by-law by holding a duly noticed public hearing before any vote on said warrant article.

Failure to comply with the provisions of this Section 3.22 shall not affect the legality of any town meeting or of any action taken thereat.

SIXTH ARTICLE

Submitted by: Eleanor Demont, Andrew Martino, Lynda Roseman, and Kathleen O'Connell

To see if the Town will amend its General By-Laws to establish the Settlement Neighborhood Conservation District, defined by the map attached hereto, by adding a new section 5.10.3.d.2 as follows:

2__There shall be a Neighborhood Conservation District, to be entitled "The Settlement Neighborhood Conservation District" ("the Settlement NCD") the boundaries of which are shown on the map entitled "Settlement Neighborhood Conservation District," a copy of which is on file with the Town Clerk's office and which is hereby declared to be part of this by-law.

The Settlement NCD is part of the area near middle Boylston Street that was developed by the Irish immigrants and residents who had come to Brookline by the 1840s. The land originally was granted to John Ackers and had been slowly sold off and developed. The original houses in this area were modest cottages from the mid-1800s. The area took on its present configuration and character beginning in the late 1890s and up to the pre WWII period. The character of this area remains much as it was in 1940, with its triple deckers and single and two-family homes. Much of the area was developed by the same person, such as the houses on Ackers Terrace, giving the area a consistent and harmonious character. The majority of the original owners worked as gardeners, laborers, coachmen and domestics for the larger estates in South Brookline as founded the St. Lawrence Parish. Residents also worked for the Town and as clerks and agents in Boston. The pattern of development and design of houses

created an area with an intimate, pedestrian-scaled quality. Many of the houses were designed by local architect-builders and commissioned by local resident developers. Most of the buildings have ample space between them, back yards and modest front yards.

All construction in the Settlement NCD shall be subject to review in accordance with the design guidelines contained in this section 5.10.3.d.2. Any reviewable project shall be compatible with the existing architecture and pattern of development of the district and its relationship to the adjacent neighborhood.

The intent of the Settlement NCD guidelines is to ensure that significant additions and new buildings are compatible with the historic patterns of scale, feeling and association of the district. Specifically the Settlement NCD shall subject the following sub-sections of section 5.10.2 Definitions of a Reviewable Project: 5.10.2 (i) change to a building such as addition or alteration of more than 20% of existing habitable floor area or partial or total demolition or the construction of a new building; and 5.10.2 (vii) removal of trees more than eight inches in diameter at 56" height (d.b.h). All activities that would otherwise be subject to other sub-sections of section 5.10.2 shall be exempt from review.

With respect to section 5.10.2 (i) the Settlement NCD Commission shall consider the following design guidelines when reviewing a project with the intent that reviewable projects shall be consistent with the character of the existing dwellings in the district and their relationship to each other.

i. Architectural style and character: The character-defining features of the surrounding dwellings or other buildings should be taken into consideration for any Reviewable Project including, but not limited to proportions and height of the upper and lower floor(s); the height and exposure of foundations; the scale of entrances, windows, and porches; the height and orientation of the roof; and features such as dormers, gables, porches, sunrooms, overhanging eaves and chimneys as well as the size, proportion and scale of door and windows of the surrounding dwellings and other buildings, especially those of abutting comparable buildings, unless such buildings are less than 50 years old to the extent that they are inconsistent in character with surrounding comparable buildings.

ii. Building size, height and massing: The total, size and height of any Reviewable Project should be compatible with surrounding comparable buildings, especially abutting buildings. New Dwellings and other buildings should be similar oriented, have similar yard depths, and similar distance between buildings as their existing counterparts. The height of the roof should fall within a range set by the highest and lowest of those of the surrounding comparable buildings. Dwellings in the neighborhood typically have two to three stories. Many have gabled roofs enclosing an attic, often with dormer windows or shed dormers. Existing cornice heights, eave lines (elevations), porch heights and foundation heights on the street should be considered, especially those of abutting comparable buildings.

iii. Materials: All building materials should be visually compatible with surrounding buildings.

Nothing in this Section 5.10.3.d.2 shall be construed as repealing or modifying any existing by-law or regulation of the Town, but it shall be in addition thereto. To the extent this Section 5.10.3.d.2 imposes greater restrictions upon a Reviewable Project than other by-laws, regulations or statutes, such greater restrictions shall prevail. The provisions of the Section 5.10.3.d.2 shall be deemed separable. If any of its provisions, subsections, sentences or clauses shall be held to be invalid or unconstitutional, the remainder shall continue in full force and effect.

Or act on anything relative thereto.

Upon motion of Neil A. Wishinsky – TMM #5 and seconded by Harry K. Bohrs – TMM #3, it was UNANIMOUSLY

VOTED: That NO ACTION be taken under Article 6.

SEVENTH ARTICLE

Submitted by: Merelice

To see if the Town will amend its General By-Laws by adding a new Section 5.11 as follows:

Article 5.11 MORTGAGES, FORECLOSURES, AND PROPERTY POLICY

5.11.1 Title and Purpose

This by-law shall be known as and may be titled the Mortgages, Foreclosures, and Property Policy. The by-law is enacted to promote the health, safety, and welfare of the public, to protect and preserve the quiet enjoyment and health of occupants, abutters, and neighborhoods, and to minimize hazards to public safety personnel inspecting or entering subject properties.

5.11.2 Facilitating Mediation of Mortgage Foreclosures of Owner Occupied Residential Real Property in Town of Brookline

This establishes a Mediation Program to address all issues reasonably related to a foreclosure on the subject property, including but not limited to reinstatement of the mortgage, modification of the loan, and restructuring of the mortgage debt, including the reduction and forgiveness of mortgage debt.

5.11.3 Definitions. For the purposes of this By-Law, the following words shall, unless the context clearly requires otherwise, have the following meanings:

- a. *commercially reasonable alternative* – an alternative based on a comparison of the net present value of receiving payments pursuant to a modified mortgage loan or the likely financial recovery from other foreclosure alternatives to the anticipated net recovery following foreclosure incorporating an assessment of the borrower’s current circumstances, including without limitation the borrower’s current income, debts and obligations.
- b. *creditor* – a person or entity that holds, owns, or controls, partially, wholly, directly, or indirectly, or in a nominee capacity, a mortgage loan secured by residential property, including, without limitation, a mortgagee, an originator, holder, investor, assignee, successor, trust, trustee, nominee holder, Mortgage Electronic Registration System, or mortgage loan servicer, including, but not limited to, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation or any other Government Sponsored Entity. The term “creditor” shall also include any servant, employee, subcontractor, or agent of a creditor.
- c. *good faith effort* – an effort by each party upon being present and fully taking part in the mortgage mediation conference as required and defined by this By-Law in an effort to negotiate and agree upon a commercially reasonable alternative to foreclosure.
- d. *homeowner* – an individual mortgagor, his or her assignee, successor, or a trust or trustee who owns and resides in residential real property located in the city, and for whom such residential real property is his/her principal residence.
- e. *mortgage mediation conference* or *mediation conference* or *mediation* – the formal discussion(s) and negotiation(s) undertaken by the parties in a good faith effort to negotiate and agree upon a commercially reasonable alternative to foreclosure and held at a location mutually convenient to the parties. Both the homeowner/mortgagor and lender/mortgagee must be physically present for the mortgage mediation conference unless telephone participation is agreed upon.
- f. *Mediation Program* or *Program* – the foreclosure mediation program established in the Town of Brookline pursuant to this By-Law and described in Section 6.
- g. *Mediation Program Manager* – a neutral not-for-profit organization experienced in the mediation of the residential foreclosure process, familiar with all programs available to help homeowners avoid foreclosure, and knowledgeable of the mortgage foreclosure laws of the Commonwealth. Mediation Program Manager(s) shall execute an appropriate user agreement with the municipality authorizing the receipt and use of personal and financial information for the purposes of the Mediation Program only. Such Mediation Program Manager(s) shall ensure the security and

confidentiality of any and all information received or exchanged under the Mediation Program consistent with applicable federal, state, and municipal laws. Access to program information shall be limited to those officers and employees of the organization who require the information to properly perform services under the municipality's Mediation Program, and that the organization or individual and/or its officers and employees shall not access, modify, use or disseminate any Mediation Program information for purposes unrelated to the Mediation Program and the Mediation Program Manager(s) shall provide the municipality with evidence that it maintains sufficient safeguards to protect against the loss or unauthorized dissemination of private or confidential information.

- h. mediator* – an individual (a) whose training complies with the qualifications standards for neutrals specified in the guidelines for training mediators adopted by the Supreme Judicial Court of Massachusetts pursuant to Rule 8 of the Uniform Rules for Dispute Resolution; and (b) who has completed training on foreclosure mediation; and (c) who has a working knowledge of all federal, state, and municipality programs available to help homeowners retain their homes.
- i. mortgagee* – an entity to whom real property is mortgaged, the mortgage creditor or lender including, but not limited to, mortgage loan servicers, lenders in a mortgage agreement and any agent or employee of the mortgagee acting outside of his/her authority, or any successor in interest or assignee of the mortgagee's rights, interests or obligations under the mortgage agreement.
- j. mortgage loan* – a loan to a natural person (or to a nominee trust or any such other entity commonly recognized under Massachusetts law as a lawful borrower) made primarily for personal, family or household purposes secured wholly or partially by a mortgage on residential property.
- k. mortgage loan servicer* – an entity which administers or services or at any point administered or serviced the mortgage loan; provided, however that such administration or servicing shall include, but not be limited to, calculating principal and interest due on the mortgage loan, assessing fees and costs onto a mortgagor's loan account, collecting regular payments from the mortgagor, acting as escrow agent for the owner of the mortgage loan or foreclosing on a mortgage loan in the event of a default.
- l. Mortgagor or homeowner* – the holder of a mortgage loan that is secured wholly or partially by a mortgage on residential property.
- m. residential property* – real property that is owner-occupied as a principal or primary residence, located within the Town of Brookline, that is either a single-family dwelling or a structure containing not more than four (4) residential units, and shall also include a residential condominium unit or a residential co-op unit occupied by an owner as an owner's principal or primary residence.

n. *non-judicial mortgage foreclosure* - a foreclosure process under the “power of sale” contained in a mortgage pursuant to G.L. c. 183, s. 21 and G.L. c. 244.

o. *the parties* – the homeowner/mortgagor and the creditor/mortgagee or their successors or assignees.

5.11.4. Notwithstanding any general or special law to the contrary, all non-judicial mortgage foreclosures in the Town of Brookline pertaining to residential property which is occupied as the owner’s principal residence shall be required to engage in a municipality-approved Mediation Program as set out in this By-Law, and shall obtain a certificate verifying the mortgagee’s good faith participation in the Mediation Program.

5.11.5. The Town of Brookline shall establish a Mediation Program relative to mortgage foreclosures in accordance with this By-Law and promulgate regulations as necessary and appropriate to implementing such a Mediation Program involving mortgagees, creditors, mortgagors, homeowners, utilizing municipality-approved Mediation Program Manager(s) and mediators to mediate between the mortgagee and a mortgagor who owns residential real property in the Town of Brookline which is occupied by the mortgagor as his or her principal residence. Such mediation shall be facilitated by a municipality-approved Mediation Program Manager according to procedures established by this By-Law. Said Mediation Program may only relate to the mediation of mortgage foreclosures of residential real property in the Town of Brookline that is the mortgagor’s principal residence.

5.11.6. Pursuant to this Act, the Town of Brookline shall establish a Mediation Program to provide mediation for all foreclosures of mortgages on owner-occupied residential property with no more than four (4) units that is the primary residence of the owner-occupant. The Mediation Program shall address all issues reasonably related to a foreclosure on the subject property, including but not limited to reinstatement of the mortgage, modification of the loan and restructuring of the mortgage debt, including the reduction and forgiveness of mortgage debt. Mediation conferences conducted pursuant to the Mediation Program shall use the calculations, assumptions and forms that are established or made available through (i) the Federal Deposit Insurance Corporation and published in the Federal Deposit Insurance Corporations Loan Modification Program Guide available on the Federal Deposit Insurance Corporation’s publicly accessible website, (ii) the Home Affordable Modification Program; (iii) any modification program that a mortgagee may use which is based on accepted principles and the safety and soundness of the institution and recognized by the National Credit Union Administration, the Division of Banks or any other instrumentality of the commonwealth; (iv) the Federal Housing Agency; or (v) similar federal programs.

The Town of Brookline shall provide for a means of evaluating and selecting qualified Mediation Program Managers. The municipality shall also provide for a means of assessing and evaluating annually the municipality’s Mediation Program including reports and data related to (a) the number of mortgagors who are notified of mediation; (b) the number of mortgagors/homeowners who attend mediation and who receive

counseling or assistance; (c) the number of certificates of completion issued under the Mediation Program, (d) the results of the mediation process, including the number of loans restructured, number of principal write-downs, interest rate reductions and, to the extent such information is available, the number of mortgagors/homeowners who default on mortgages within a year after successful mediation conferences, (e) any such other information as the municipality may determine to be necessary and or helpful in assessing the value of a Mediation Program and any adjustments that may need to be made thereto.

The Town of Brookline may terminate a Mediation Program Manager's participation in the Mediation Program for good cause, as determined by the appropriate municipal official and subject to any applicable rules and regulations developed by the municipality. In such case, the Mediation Program Manager shall promptly deliver to the municipality all records and information in its possession for appropriate preservation and storage.

5.11.7. Except for financial information otherwise permitted by law to be disclosed, any financial statement or information provided to the Town of Brookline or its approved independent counseling agencies or provided to the mortgagee or mortgagor during the course of mediation in accordance with this By-Law shall be confidential and shall not be available for public inspection. Any financial statement or information to reasonably facilitate the mediation conference(s) shall be made available as necessary to the mediator and to the attorneys or representatives, if any, of the parties to the mediation. Any financial statement or information designated as confidential under this section shall be kept separate and apart from other papers and matters not the subject of the mediation.

5.11.8. For the purpose of the Mediation Program established by the Town of Brookline, the municipality shall receive a copy of all notices filed pursuant to G.L. c. 244 § 35A(g),(h), within ten (10) days of receipt by the Commissioner of the Division of Banks pursuant to G.L. c. 244, §35A(k) that relate to residential properties in the Town of Brookline. The municipality shall thereafter promptly notify the creditor/mortgagee and the mortgagor/homeowner of their rights and responsibilities under this By-Law regarding mediation. It is the intent and purpose of this By-Law that a mediation conference take place within forty-five (45) days of the mortgagor/homeowner receiving notice of his or her right to cure as provided in G.L. c. 244, §35A (g) and (h). The Town of Brookline shall refer the matter for mediation to an approved Mediation Program Manager who shall have the responsibility of assigning a mediator and scheduling the parties to immediately commence mediation pursuant to this By-Law. The mediation shall proceed with the parties' good faith effort to negotiate and agree upon a commercially reasonable alternative to foreclosure as defined in G.L. c. 244, §35A(c). The mediation conference shall continue without delay until completion, but shall in no way constitute an extension of the foreclosure process, nor an extension of the mortgagor/homeowner's right to cure period. Notwithstanding the limitation in the previous sentence, the mediation conference may be extended by mutual agreement of the parties which the mediator shall document.

5.11.9. The mediation program established by this By-Law shall include, and be limited to, the following steps:

(a) the parties shall participate in a mandatory loan/mortgage mediation conference at a location mutually convenient to the parties. All parties present at said mediation conference must have authority to enter into any agreements renegotiating the mortgage that is the subject of the foreclosure, or to otherwise resolve the pending foreclosure.

(b) said mediation conference shall be scheduled at a time and place to be determined by the Mediation Program Manager, but not later than forty-five (45) days following the mortgagor/homeowner's receipt of his or her statutory notice of right to cure under G.L. c. 244, §35A (g) and (h). The parties will be noticed under the mediation program by certified and first class mail at the parties' last known address(es), if any, or if none, then to the address to which the tax collector last sent the tax bill for mortgaged premises. The notice shall contain the following declaration on the first page in Spanish, in any other language which the lender knows is the debtor's primary language, and any other language deemed appropriate by the Mediation Program Manager: "This is an important notice concerning your right to live in your home. Have it translated at once."

(c) prior to the scheduled mediation conference, the mortgagor/homeowner shall be assigned a municipality-approved loan counselor. If the mortgagor/homeowner is already working with a municipality-approved loan counselor, no assignment is necessary. However, such loan counselor shall work with the mortgagor/homeowner during the mediation process in accordance with the provisions of this By-Law.

(d) the mortgagor/homeowner shall cooperate in all respects with the requirements of Mediation Program Manager, providing all necessary financial and employment information. The mortgagor/homeowner shall complete any and all loan resolution proposals and applications as appropriate. The mortgagor/homeowner must provide evidence of current income. The creditor/mortgagee's representative must bring and make available, the mortgage, a certified copy of the promissory note in its then-current condition evidencing the debt, all assignments of the mortgage loan whether recorded or unrecorded, as well as a detailed accounting of the outstanding balance on the mortgage loan including all lawful costs and fees assessed to the mortgagor/homeowner's account as of the date of the scheduled mediation.

(e) if after two (2) attempts by the mediation program manager to contact the mortgagor/homeowner as required by this section, the mortgagor/homeowner fails to respond to the Mediation Program Manager's request to appear for the mediation conference, or the mortgagor/homeowner fails to cooperate in any respect with the requirements outlined in this By-Law, the requirements of the By-Law shall be deemed to be satisfied upon verification by the municipality-approved Mediation Program Manager that the required notice was sent; and if so, a certificate shall be issued immediately by the Mediation Program Manager certifying that the creditor/mortgagee has satisfied the mediation requirements of this By-Law.

(f) the mediator shall determine whether the parties have engaged in a good faith effort at the mediation conference.

(g) if, it is determined after a good faith effort made by the creditor/mortgagee and/or homeowner/mortgagor at the mediation conference, that the parties cannot come to an agreement to re-negotiate the terms of the loan in an effort to avoid foreclosure, such good faith effort on behalf of the creditor/mortgagee and/or of the homeowner/mortgagor shall be deemed to satisfy the requirements of this By-Law. A certificate certifying such good faith effort pursuant to this By-Law shall be issued immediately to the party(s) that made a good faith effort and without delay by the Mediation Program Manager to the party(s) authorizing the creditor/mortgagee and/or homeowner/mortgagor to proceed with its rights under Chapter 244 of the General Laws.

5.11.10. Notwithstanding any provisions of G.L. c. 244, s. 14 relating to the power of sale, no sale in the Town of Brookline shall be effective to foreclose on any mortgage under this By-Law, unless all notices required by G.L. c. 244, § 14 specifically reference that a certificate from a municipality-approved Mediation Program Manager has been issued verifying that the creditor/mortgagee, its assignee or any person identified in G.L. c. 244, §14, has successfully participated in a mediation program in accordance with this By-Law.

5.11.11. No entry by foreclosure in the Town of Brookline shall be effectual unless the memorandum or certificate recorded as required by G.L. c. 244, § 2 includes as an attachment or exhibit a copy of a certificate from a municipality-approved Mediation Program Manager verifying that the creditor/mortgagee has participated in mediation with the mortgagor/homeowner as required by this By-Law.

5.11.12. A creditor/mortgagee's failure to comply with any section of this By-Law shall result in a fine of \$300.00 owed to the Town of Brookline, for each instance of a violation, to be charged to the creditor/mortgagee in accordance with G.L. c. 40, s. 21. Every calendar day of non-compliance with the sections of this By-Law shall constitute a separate violation subject to the penalties described under this section, up until the end of the right to cure period given under a lawful notice pursuant to G.L. c. 244, §35A (g) and (h). Said fine or fines under this section shall be recovered by indictment or complaint pursuant to G.L. c. 40, s. 21. Any fines assessed pursuant to this By-Law shall not be charged to the mortgagor/homeowner either directly or indirectly by the creditor/mortgagee

5.11.13. The Town of Brookline is hereby authorized to enact and from time to time to revise by By-Law, a reasonable and appropriate mediation registration fee to be charged to the creditor/mortgagee for the services attendant to administering the Mediation Program established under this By-Law.

5.11.14. In the event any part of this By-Law shall be held invalid, such invalidity shall not invalidate the whole By-Law but the remaining provisions of this By-Law shall not be affected thereby.

5.11.15. This By-Law shall take effect no later than sixty (60) days from its passage

5.11.16: Securing and Maintaining Vacant Properties and Foreclosing Properties

Subsection (a) Unsecured and unmaintained properties and especially vacant properties present a danger to the safety and welfare of public safety officers, the public, occupants, abutters and neighborhoods, and as such, constitute a public nuisance. This section is enacted to promote the health, safety and welfare of the public, to protect and preserve the quiet enjoyment and health of occupants, abutters and neighborhoods, and to minimize hazards to public safety personnel inspecting or entering such properties.

Subsection (b) The following words and phrases, when used in this section, shall have the following meanings:

- a. *building* – any combination of materials having a roof and enclosed within exterior walls or firewalls, built to form a structure for the shelter of persons or property or as otherwise defined under the municipality’s applicable zoning bylaw.
- b. *certificate of closure* – certificate issued by the director to the owner of a vacant or foreclosing property upon compliance with the provisions of paragraph (c) herein.
- c. *director* – the director of health and housing inspection or other municipal official designated by the municipality under this By-Law.
- d. *days* – consecutive calendar days
- e. *fire chief* – the chief of the Town of Brookline Fire Department or his or her designee.
- f. *foreclosing* – the process by which real property, placed as security for a real estate loan, is prepared for sale to satisfy the debt if the borrower defaults.
- g. *initiation of the foreclosure process* – taking any of the following actions:
 - i. taking possession of a residential property pursuant to G.L. c. 244, s. 1;
 - ii. Commencing a foreclosure action on a property in any court of competent jurisdiction, including without limitation filing a complaint in Land Court under the Servicemembers Civil Relief Act - Public Law 108-189 (50 U.S.C.S. App. § 501-536);
 - iii. In any instance, where the mortgage authorizes mortgagee entry to make repairs upon mortgagor's failure to do so.

- h. *local* – within twenty (20) miles of the property in question
- i. *mortgagee* – the creditor, assignee or current holder of a mortgage on real property including but not limited to, a mortgage loan servicer, any lender(s) a mortgage and any agent, subcontractor or employee of the mortgagee acting without his or her authority, or any successor in interest and/or assignee of the mortgagee’s rights, interests or obligations under a mortgage.
- j. *owner* – every person, entity, service company, property manager or real estate Broker, who alone or severally with others has legal title to any real property, including but not limited to a dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park; or has care, charge or control of real property, including but not limited to any dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park, or any administrator, administratrix, executor, trustee or guardian of the estate of the holder of legal title; or is a mortgagee of any such property who has initiated the foreclosure process as defined in this section;; is an agent trustee or other person appointed by the courts and vested with possession or control of any such property; or is an officer or trustee of the association of unit owners of a condominium. Each such person is bound to comply with the provisions of these minimum standards as if he were the owner. However, “owner” shall not mean a condominium association created pursuant to General Laws chapter 183A to the extent that such association forecloses on or initiates the foreclosure process for unpaid assessments due or owing to the association; or every person who operates a rooming house; or is a trustee who holds, owns or controls mortgage loans for mortgage-backed securities transactions and has initiated the foreclosure process; or
- k. *property* – any real property, or portion thereof, located in the Town of Brookline, including buildings or structures situated on the property; provided, however, that “property” shall not include property owned or under the control of the Town of Brookline, the Commonwealth or the United States of America.
- l. *secured, securing* – making the property inaccessible to unauthorized persons.
- m. *vacant* – any property not currently legally occupied and not properly maintained or secured.

Section (c) Any owner of a vacant and/or foreclosing property shall forthwith:

Provide written notification to the director and the fire chief of the status of such property, including in such notice, the name, address and telephone number of the owner; the location of the property; the length of time the building has been vacant; the estimated time the building will remain vacant; and the nature of the contents of the building; and,

As may be required by the fire chief, file one set of space utilization floor plans for any buildings on said property with the fire chief and one set of said plans with the director. The owner shall certify space utilization plans as accurate twice annually, in January and July; and

Remove from the property, to the satisfaction of the fire chief, hazardous material as that term is defined in G.L. c. 21K, as that statute may be amended from time to time; and

At the discretion of the fire chief or director, secure all windows and door openings and ensure that the building is secured from all unauthorized entry continuously in accordance with the United States Fire Administration, National Arson Initiative Board Up Procedures or provide twenty-four (24) hour on-site security personnel on the property. When a vacant or foreclosing property is located within a complex of buildings owned by a single owner, twenty-four (24) hour on-site security shall be provided within the building or within the complex wherein the building is located; and

Where a property is vacant, post “No Trespassing” signs on the property; and

Maintain the property in accordance with {appropriate Chapter of these Ordinances}, free of overgrowth trash and debris, and pools of stagnant water, and ensure that structures are maintained in a structurally sound condition; and

If the property is vacant, drain all water from the plumbing and turn off all electricity between September 15 and June 15 of each calendar year to guard against burst pipes and fires; and

Maintain the property in accordance with the minimum requirements of the Massachusetts State Sanitary Code, the Massachusetts State Building Code and all specialized codes incorporated therein, and any Town of Brookline Ordinances concerning the maintenance of property and the Town of Brookline Zoning Ordinances; and

Provide the fire chief and director with the name, local address, and telephone number of a responsible person who can be contacted in case of emergency. The owner shall cause the name and contact number to be marked on the front of the property as may be required by the fire chief or director; and,

Maintain liability insurance on the property and furnish the director with a copy of said certificate of insurance; and

Provide a cash bond acceptable to the director, in the sum of not less than ten thousand (\$10,000.00) dollars, to secure the continued maintenance of the property throughout its vacancy and remunerate the Town of Brookline for any expenses incurred in inspecting, securing, marking or making such building safe. A portion of said bond shall be retained by the Town of Brookline as an administrative fee to fund an account for expenses incurred in inspecting, securing, and marking other such buildings that are not in

compliance with this Section. Any owner of a vacant or foreclosing property providing a bond pursuant to this section must also provide bonds for all other vacant or foreclosing properties it owns in the Town of Brookline.

Once the property is no longer vacant or is sold, provide proof of sale or written notice and proof of occupancy to the director and fire chief.

Upon satisfactory compliance with the above provisions the director shall issue a certificate of building closure. Said certificate shall be valid for the length of time prescribed by the director and noted thereon; provided, however, the certificate shall be subject to continued compliance with the provisions of this section.

Section (d) Signs/Markings – When required pursuant to this section signs or markings shall be applied on the front of the property, and elsewhere as the fire chief may require, at or above the second floor level and shall not be placed over doors windows or other openings. All signs/markings shall be visible from the street and when requested by the fire chief shall be placed on the sides and rear of the property. Signs markings shall be a minimum of 24 inches by 24 inches, with lines of 2 inch width, and shall have a reflective background, or be painted with reflective paint in contrasting colors. Signs/markings shall be applied directly on the surface of the property, and shall state the date of posting and the most recent date of inspection by the fire chief and director.

Section (e) Enforcement – Failure to comply with any provision of paragraph (c) above shall be punished by a fine of five hundred (\$500.00) dollars with each day of violation constituting a separate offence. This section may also be enforced by civil, criminal process or non-criminal process including injunctive relief. The director and or the fire chief shall be enforcing persons for purposes of this section.

Section (f) The director or fire chief, upon being informed of the existence of a vacant or foreclosing property without a certificate of building closure, shall cause notice to issue to the owner of the status of said property and shall order said person to immediately obtain a certificate of building closure. If any person fails to comply with said order, the fire chief or director may enter the premises to inspect, secure, and mark the property, and/or remove rubbish or overgrowth, or to abate a stagnant pool of water. The fire chief or director may also seek enforcement pursuant to section (e).

Section (g) Expenses – The owner of a vacant or foreclosing property who fails to obtain a certificate of building closure as required herein, shall be liable to the Town of Brookline for expenses incurred by the Town of Brookline in securing such property, for removing rubbish and overgrowth and/or for abating stagnant pools of water. The director shall provide the owner with a written statement of all costs associated with inspecting, securing, and marking the property, and removing rubbish or overgrowth, or abating stagnant pools of water. If the owner fails to pay or reimburse the Town of Brookline within seven days of notice of expenses the Town of Brookline shall draw down upon the bond paid by the owner as required in subsection 10, above. If there is no bond available, the director shall record the notice of claim in the {county} District

Registry of Deeds (or the Land Court Department) forthwith, establishing a lien on the property for the balance due

Section (h) No owner of a vacant or foreclosing property shall allow said property to become or remain unsecured, or to contain an accumulation of rubbish, or to contain overgrowth, or to have a stagnant pool of water. If it appears that any vacant or foreclosing property is unsecured, contains rubbish, overgrowth, or a stagnant pool of water, the director shall send written notification to the owner, requiring that the owner promptly secure the property, remove the rubbish or overgrowth, or abate the stagnant pool of water.

If the owner fails to comply with any order issued pursuant to this provision (h), the fire chief or director may immediately seek to obtain the proceeds secured by the bond filed pursuant to paragraph (c)(11) herein and shall enter upon the premises and cause the property to be inspected, secured, and marked, or to remove rubbish, overgrowth, or stagnant pools using said proceeds.

Section (i) All unsecured vacant or foreclosing properties shall be immediately referred to the director for a determination relative to whether the property is a nuisance or dangerous pursuant to chapter 139 and procedures promulgated thereunder.

Section (j) Notices required pursuant to this section shall be served in the following manner:

Personally on any owner as defined in this section or on the contact person specified pursuant to paragraph (c)(9); or ,

Left at the last and usual place of abode of any owner, or contact person as specified pursuant to paragraph (c)(9), if such place of abode is known and is within or without the commonwealth; or,

By certified or registered mail, return receipt requested, to any owner, or the contact person specified pursuant to paragraph (c)(9).

Or act on anything relative thereto.

Upon motion of M.K. Merelice – TMM #6 and seconded by Harry K. Bohrs – TMM #3, it was, by a COUNTED VOTE OF 212 IN FAVOR AND 3 OPPOSED

VOTED: That the Town adopt the following Resolution:

Whereas families, neighborhoods, communities, and the general economy have been and continue to be devastated by the foreclosure crisis;

Whereas the foreclosure crisis has increased the number of homeless families and has

disrupted tenants in foreclosed properties;

Whereas Massachusetts is the only New England state that is not using pre-foreclosure mediation programs;

Whereas pre-foreclosure mediation has a clear record of benefiting both the lending institution and homeowner, leading to a high percentage of mutually agreed upon loan modifications and providing better alternatives to foreclosure;

Whereas stemming the tide of foreclosures leads to stabilizing life at home, at work, and at school and, thereby, in the community and economy;

Whereas the state legislature has failed to sufficiently address the broad scope of the ongoing foreclosure crisis and its threat to economic recovery;

Whereas it appears that towns and cities throughout the Commonwealth need to convey an urgent message to all levels of government that emergency action is needed;

Whereas Brookline can be in the leadership of communities fighting foreclosures that could better be addressed by other actions;

Therefore be it resolved that Brookline supports the concept of state-wide pre-foreclosure mortgage mediation under appropriate circumstances and considers this Resolution an important step in joining other cities and towns to advance and advocate for its implementation.

EIGHTH ARTICLE

Submitted by: Nancy Heller

To see if the town will amend the General By-Laws as follows:

By adding the following Article:

Article 8.32 Prohibition on the Use of Polystyrene Based Disposable Food Containers
Effective December 1, 2013, polystyrene food or beverage containers shall not be used in the Town of Brookline to package or serve food or beverages if that packaging takes place on the premises of food service establishments, as defined in Article 8.10.2, within the Town of Brookline.

In the event that compliance with the effective date of this by-law is not feasible for a food service establishment because of either unavailability of alternative non-polystyrene containers or economic hardship, the Director of Health and Human Services may grant a waiver of not more than six months upon application of the owner or the owner's

representative. The waiver may be extended for one (1) additional 6 month period upon the showing of continued infeasibility as set forth above.

And by adding a reference to this Article 8.32 in the General By-Laws, Article 10.2 Prosecutions and Enforcement, by including Article 8.32 under the list of by-laws enforceable by the Director of Health and Human Services.

Or act on anything relative thereto.

After discussion of the various motions under Article 8 that were before Town Meeting, a motion was made and duly seconded, to call the question. That motion was put to a vote and PASSED by a TWO-THIRDS VOTE and was so declared by the Moderator.

Upon motion of Janice S. Kahn – TMM #15 and seconded by Harry K. Bohrs – TMM #3, the following motion was offered

MOVED: That the Town amend the General By-Laws as follows:

By adding the following Article:

Article 8.32 Prohibition on the Use of Polystyrene Based Disposable Food Containers

Effective December 1, 2013, polystyrene food or beverage containers shall not be used in the Town of Brookline to package or serve food or beverages if that packaging takes place on the premises of food service establishments, as defined in Article 8.10.2, within the Town of Brookline. **This provision shall not apply to the packaging of uncooked meat, uncooked poultry and/or uncooked fish.**

In the event that compliance with the effective date of this by-law is not feasible for a food service establishment because of either unavailability of alternative non-polystyrene containers or economic hardship, the Director of Health and Human Services may grant a waiver of not more than six months upon application of the owner or the owner's representative. The waiver may be extended for one (1) additional 6 month period upon the showing of continued infeasibility as set forth above.

And by adding a reference to this Article 8.32 in the General By-Laws, Article 10.2 Prosecutions and Enforcement, by including Article 8.32 under the list of by-laws enforceable by the Director of Health and Human Services.

Thirty-five (35) Town Meeting Members requested an electronic recorded vote for the motion offered by Janice S. Kahn – TMM #15 under Article 8.

Upon motion of Janice S. Kahn – TMM #15 and seconded by Harry K. Bohrs – TMM #3, the above motion was DEFEATED by an ELECTRONIC RECORDED VOTE OF 92 IN FAVOR, 111 OPPOSED AND 6 ABSTENTIONS.

Upon motion of Jesse R. Mermell – TMM #AL and seconded by Betsy DeWitt – TMM #AL, the following motion was offered

VOTED: That the Town amend the General By-Laws as follows:

By adding the following Article:

Article 8.32 Prohibition on the Use of Polystyrene Based Disposable Food Containers

Effective December 1, 2013, polystyrene foam (expanded or “blown” polystyrene) food or beverage containers shall not be used in the Town of Brookline to package or serve food or beverages if that packaging takes place on the premises of food service establishments, as defined in Article 8.10.2, within the Town of Brookline. This prohibition shall not apply to trays for uncooked meat, poultry, or fish.

In the event that compliance with the effective date of this by-law is not feasible for a food service establishment because of either unavailability of alternative non-polystyrene foam containers or economic hardship, the Director of Health and Human Services may grant a waiver of not more than six months upon application of the owner or the owner’s representative. The waiver may be extended for one (1) additional 6 month period upon the showing of continued infeasibility as set forth above.

And by adding a reference to this Article 8.32 in the General By-Laws, Article 10.2 Prosecutions and Enforcement, by including Article 8.32 under the list of by-laws enforceable by the Director of Health and Human Services.

Thirty-five (35) Town Meeting Members requested an electronic recorded vote for the motion offered by Jesse R. Mermell – TMM #AL under Article 8.

Upon motion of Jesse R. Mermell – TMM #AL and seconded by Betsy DeWitt – TMM #AL, the above motion was DEFEATED by an ELECTRONIC RECORDED VOTE OF 66 IN FAVOR, 139 OPPOSED AND 6 ABSTENTIONS.

Thirty-five (35) Town Meeting Members requested an electronic recorded vote for the motion offered by Nancy S. Heller – TMM #8 under Article 8.

Upon motion of Nancy S. Heller – TMM #8 and duly seconded, it was by an ELECTRONIC RECORDED VOTE OF 169 IN FAVOR, 27 OPPOSED AND 11 ABSTENTIONS

VOTED: To see if the town will amend the General By-Laws as follows:

By adding the following Article:

Article 8.32 Prohibition on the Use of Polystyrene Based Disposable Food Containers

Effective December 1, 2013, polystyrene food or beverage containers shall not be used in the Town of Brookline to package or serve food or beverages if that packaging takes place on the premises of food service establishments, as defined in Article 8.10.2, within the Town of Brookline.

In the event that compliance with the effective date of this by-law is not feasible for a food service establishment because of either unavailability of alternative non-polystyrene containers or economic hardship, the Director of Health and Human Services may grant a waiver of not more than six months upon application of the owner or the owner’s representative. The waiver may be extended for one (1) additional 6 month period upon the showing of continued infeasibility as set forth above.

And by adding a reference to this Article 8.32 in the General By-Laws, Article 10.2 Prosecutions and Enforcement, by including Article 8.32 under the list of by-laws enforceable by the Director of Health and Human Services.

NINTH ARTICLE

Submitted by: Jessica Arconti

To see if the Town will amend the General By-Laws by adding the following Article:

Article 8.XX PLASTIC BAG REDUCTION ACT

Section 1.

The following words shall, unless the context clearly requires otherwise, have the following meanings:

“Commissioner”, the Commissioner of the Department of Inspectional Services.

“ASTM D6400”, the American Society for Testing and Materials (ASTM) International

“Standard Specification for Compostable Plastics”.

“ASTM D7081”, ASTM International “Standard Specification for Biodegradable Plastics in the Marine Environment”

“Compostable plastic bag”, a plastic bag that (1) conforms to the current ASTM D6400 for compostability; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) conforms to any other standards deemed acceptable by this section.

“Checkout bag”, a carryout bag provided by a store to a customer at the point of sale.

“Department”, the Brookline Department of Inspectional Services.

“Home compostable plastic bag”, a plastic bag that conforms to the EU 13432 standard for compostability.

“Marine degradable plastic bag”, a plastic bag that conforms to the current ASTM D7081 standard specification for marine degradability.

“Person”, an individual, trust, firm, joint stock company, corporation, cooperative, partnership, or association.

“Recyclable paper bag”, a paper bag that is 100 percent recyclable overall and contains at least 70 per cent recycled content, and displays the word “Recyclable” in a highly visible manner on the outside of the bag.

“Reusable bag”, a bag with handles that is specifically designed and manufactured for multiple reuse and is either (1) made of cloth or other fabric; or (2) made of durable plastic that is at least 2.25 mils thick; or (3) made of other durable material.

“Retail establishment”, any retail store that satisfies at least one of the following requirements:

- (a) a retail space of 2,500 square feet or larger or at least three (3) locations under the same ownership within the City of Brookline that total 2,500 square feet or more; or
- (b) a retail pharmacy with at least two locations under the same ownership within the City of Brookline; or
- (c) a full-line, self-service supermarket that had annual gross sales in excess of \$1,000,000 during the previous tax year, and which sells a line of dry grocery, canned goods or nonfood items and some perishable items;

Section 2.

(a) If a retail establishment provides plastic checkout bags to customers, the bags shall comply with the requirements of being compostable or home compostable plastic bags, as well as marine degradable plastic bags.

(b) Nothing in this section shall be read to preclude any establishment from making reusable checkout bags available for sale to customers or utilizing recyclable paper bags as defined in this section at checkout.

(c) The enforcement and penalty provisions of section two shall apply to this chapter.

(d) The commissioner shall promulgate rules and regulations to implement this section.

Section 3.

Audits and Violations:

(a) Each Retail Establishment located in the City of Brookline shall comply with this act.

(c) Violation of any of the requirements of this act shall subject a retail establishment to the penalties set forth by the Brookline Town Council.

(1) If it is determined that a violation has occurred, the City of Brookline shall issue a warning notice to the Retail Establishment for the initial violation.

(2) If it is determined that an additional violation of this Chapter has occurred within one year after a warning notice has been issued for an initial violation, the City of Brookline shall issue a notice of infraction and shall impose a penalty against the retail establishment.

(3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:

A) \$50 for the first offense

B) \$100 for the second offense

C) For the third and all subsequent offenses there shall be a mandatory Court appearance and such penalty as may be determined by the Court pursuant to _____

(4) No more than one (1) penalty shall be imposed upon a Retail Establishment within a seven (7) calendar day period.

(5) A Retail Establishment shall have fifteen (15) calendar days after the date that a notice of infraction is issued to pay the penalty.

(6) The penalty shall double after fifteen (15) calendar days if the Retail Establishment does not pay the penalty; or fails to respond to a notice of infraction by either denying or objecting in writing to the infraction or penalty.

Section 4.

All of the requirements set forth in this act shall take effect 90 days after its effective date.

Or act on anything relative thereto.

Upon motion made and duly seconded it was UNANIMOUSLY

VOTED: To defer Article 9 as the first order of business to the Adjourned Session of the November 13, 2012 Special Town Meeting.

TENTH ARTICLE

Submitted by: Department of Planning and Community Development

To see if the Town will amend Sec. 4.07, Table of Use Regulations, in the Zoning By-Law by adding a new Use 32A, Domestic Household Animal Day Care Center.

Principal Uses	Residence					Business			Ind
	S	SC	T	F	M	L	G	O	I
32A. Domestic Household Animal Day Care Center, including grooming, training, walking and other accessory services, and excluding overnight kenneling. No outdoor facilities for the animals shall be permitted. Studies by recognized experts shall be submitted to ensure, to the satisfaction of the Board of Appeals, that the use will be constructed so as to safeguard nearby properties against undue noise, odor and improper waste disposal. A recommendation from the Director of Public Health shall be required to address the size and location of the facility and any potential impacts. Additionally, annual licenses issued by the licensing authority are required, with the recommendation of the Director of Public Health, the Police Department's Animal Control Officer, and the Director of Parks and Open Space.	No	No	No	No	No	SP	SP	No	SP

Or act on anything relative thereto.

Upon motion of Richard (Dick) Benka – TMM #AL and seconded by Stanley L. Spieel – TMM #2, a two-thirds vote required, it was by a TWO-THIRDS VOTE

VOTED: That the Town amend Sec. 4.07, Table of Use Regulations, in the Zoning By-Law by adding a new Use 32A, Domestic Household Animal Day Care Center.

Principal Uses	Residence	Business	Ind
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	S	SC	T	F	M	L	G	O	I
<p>32A. Domestic Household Animal Day Care Center, including grooming, training, walking and other accessory services, and excluding overnight kenneling. No outdoor facilities for the animals shall be permitted. Studies by recognized experts shall be submitted to ensure, to the satisfaction of the Board of Appeals, that the use will be constructed so as to safeguard nearby properties against undue noise, odor and improper waste disposal. A recommendation from the Director of Public Health shall be required to address the size and location of the facility and any potential impacts. Additionally, annual licenses issued by the licensing authority are required, with the recommendation of the Director of Public Health, the Police Department's Animal Control Officer, and the Director of Parks and Open Space.</p>	No	No	No	No	No	SP	SP	No	SP

ELEVENTH ARTICLE

Submitted by: Department of Planning and Community Development

To see if the Town will amend Article IX, Administration and Procedure, in the Zoning By-Law by adding a Sec. 9.12, Administrative Review for Day Care Centers, as follows:

§9.12 – ADMINISTRATIVE REVIEW FOR DAY CARE CENTERS

1. Prior to the issuance of a building permit from the Building Department, an applicant shall submit to the following departments - Planning and Community Development, Building, Transportation, Public Health, and Parks and Open Space - a description of the number of children and employees; operating hours, location of outdoor play activities (whether on-site or at a public playground);

employee and drop-off/pick-up parking, and if requested, a site plan showing the location of outdoor play space and parking.

2. After review, the departments above may submit to the applicant, with copies to the Planning and Community Development Department, written recommendations for suggested improvements to the proposal, especially to improve safety and/or mitigate any negative impacts to the surrounding area.
3. Within 14 business days of receipt of the required information, the Planning Director, or designee, shall indicate in writing to the Building Commissioner that the procedural requirements, as stated above, have been met. If within the above stated time period, such statement is not received by the Building Commissioner, a building permit may be issued if all other applicable regulations have been met. Or act on anything relative thereto.

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Upon motion of Angela B. Hyatt – TMM #5 and seconded by Kenneth M. Goldstein – TMM #AL, it was UNANIMOUSLY

VOTED: That the Town amend Article IX, Administration and Procedure, in the Zoning By-Law by adding a Sec. 9.12, Administrative Review for Day Care Centers, as follows:

§9.12 – ADMINISTRATIVE REVIEW FOR DAY CARE CENTERS

1. Prior to the issuance of a building permit from the Building Department, an applicant shall submit to the following departments - Planning and Community Development, Building, Transportation, Public Health, and Parks and Open Space - a description of the number of children and employees; operating hours, location of outdoor play activities (whether on-site or at a public playground); employee and drop-off/pick-up parking, and if requested, a site plan showing the location of outdoor play space and parking.
2. After review, the departments above may submit to the applicant, with copies to the Planning and Community Development Department, written recommendations for suggested improvements to the proposal, especially to improve safety and/or mitigate any negative impacts to the surrounding area.
3. Within 14 business days of receipt of the required information, the Planning Director, or designee, shall indicate in writing to the Building Commissioner that the procedural requirements, as stated above, have been met. If within the above stated time period, such statement is not received by the Building Commissioner, a building permit may be issued if all other applicable regulations have been met.

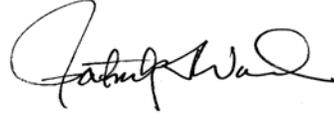
At 10:34 P.M., on motion made and duly seconded, it was UNANIMOUSLY

VOTED: To adjourn the November 13, 2012 Special Town Meeting to Wednesday, November 14, 2012 at 7:00 P.M.

At the close of the meeting the Checkers at the entrances reported that the names of two-hundred and twenty-three (223) Town Meeting Members had been checked as present at the meeting.

ADJOURNED

Patrick J. Ward

A handwritten signature in black ink, appearing to read "Patrick J. Ward", written in a cursive style.

Town Clerk.