



WARRANT

THE COMMONWEALTH OF MASSACHUSETTS TOWN OF BROOKLINE SPECIAL TOWN MEETING

Norfolk, ss

To Any Constable of the Town of Brookline

Greetings:

In the name of the Commonwealth of Massachusetts, you are hereby required to NOTIFY and WARN the Inhabitants of the TOWN OF BROOKLINE, qualified to vote at elections to meet at the High School Auditorium in said Brookline on TUESDAY, the FIFTEENTH day of NOVEMBER, 2016 at 7:00 o'clock in the evening for the Special Town Meeting at which time and place the following articles are to be acted upon and determined by the representative town meeting:

ARTICLE 1

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.

ARTICLE 2

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 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, or act on anything relative thereto.

ARTICLE 3

Submitted by: Board of Selectmen

To see if the Town will:

- A) Appropriate additional funds to the various accounts in the fiscal year 2017 budget or transfer funds between said accounts;
- B) Appropriate \$340,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for Singletree tank improvements.
- C) Appropriate \$320,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Board of Selectmen, for Singletree Hill Gatehouse improvements.
- 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.

ARTICLE 4

Submitted by: Makena Binker-Cosen

To see whether the Town will amend Article 8.23 of the Town's General By-laws, Tobacco Control, as follows (language to be deleted appearing in ~~strikethrough~~, new language appearing in **bold underline**):

ARTICLE 8.23 TOBACCO CONTROL

SECTION 8.23.1 - PURPOSE

In order to protect the health, safety and welfare of the inhabitants of the Town of Brookline, including but not limited to its younger population, by restricting the sale of and public exposure to tobacco and e-cigarette products known to be related to various and serious health conditions such as cancer, this by-law shall limit and restrict the sale of and public exposure to tobacco and e-cigarette products within the Town of Brookline.

SECTION 8.23.2 - DEFINITIONS

- a. ~~Tobacco—Cigarettes, cigars, snuff or tobacco in any of its forms.~~ **Tobacco - Any product containing, made, or derived from tobacco that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco or snuff. “Tobacco” does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.**
- b. E-Cigarette – Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery, and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid, with or without nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, hookah pens, or under any other product name.
- c. Smoking - Lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other tobacco product or non-tobacco product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette shall be considered smoking under this by-law.
- d. Tobacco Vending Machine - A mechanical or electrical device which dispenses tobacco or e-cigarette products by self-service, with or without assistance by a clerk or operator.
- e. Self-Service Display – Any display from which customers may select a tobacco or e-cigarette product without assistance from an employee or store personnel.
- f. Minor - A person under twenty-one years of age.
- g. Employee - An individual who performs services for an employer.
- h. Employer - An individual, partnership, association, corporation, trust or other organized group of individuals that utilizes the services of one (1) or more employees.
- i. Workplace - An indoor area, structure or facility or a portion thereof, at which one or more employees perform a service for compensation for the employer, other enclosed spaces rented to or otherwise used by the public; where the employer has the right or authority to exercise control over the space.
- j. Food Service Establishment - An establishment having one or more seats at which food is served to the public.
- k. Health Care Institution - An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs

health care providers licensed, or subject to licensing, by the Massachusetts Department of Health under M.G.L. c. 112. Health care institution includes hospitals, clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.

l. Entity - any single individual, group of individuals, corporation, partnership, institution, employer, association, firm or any other legal entity whether public or private.

m. Educational Institution - any public or private college, normal school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

n. Retail Establishment - any store that sells goods or articles of personal services to the public.

o. Blunt Wrap - Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

p. Characterizing flavor - A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco or e-cigarette product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco or e-cigarette product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product or the provision of ingredient information.

q. Component part - Any element of a tobacco or e-cigarette product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

r. Constituent - Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco or e-cigarette product during the processing, manufacturing or packaging of the tobacco or e-cigarette product. Such term shall include a smoke constituent.

s. Distinguishable - Perceivable by either the sense of smell or taste.

t. Flavored tobacco or e-cigarette product - Any tobacco or e-cigarette product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco or e-cigarette product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco or e-cigarette product, that such tobacco or e-cigarette product has or produces a characterizing flavor shall constitute presumptive

evidence that the tobacco or e-cigarette product is a flavored tobacco or e-cigarette product

u. Non-Residential Roll-Your-Own (RYO) Machine - A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

SECTION 8.23.3 REGULATED CONDUCT

a. Public Places

(1) To the extent that the following are not covered by applicable State laws or regulations, no person shall smoke in any rooms or interior areas in which the public is permitted. This includes, but is not limited to, any food service establishment, health care institution, classroom, lecture hall, museum, motion picture theater, school, day care facility, reception area, waiting room, restroom or lavatory, retail store, bank (including ATMs), hair salons or barber shops and meetings of government agencies open to the public.

(2) Taxi/Livery services licensed by the Town of Brookline shall be provided in smoke-free vehicles. The restriction of smoking in taxi/livery vehicles applies to drivers as well as passengers. Vehicles shall be posted in such a manner that their smoke-free status can be readily determined from the outside of the vehicle.

(3) Licensed Inns, Hotels, Motels and Lodging Houses in the Town of Brookline must provide smoke-free common areas. Licensed Inns, Hotels and Motels in the Town of Brookline must designate 100% of individual dwelling units or rooms as non-smoking.

(4) The use of tobacco or e-cigarette products by minors or school personnel is prohibited in or upon any public sidewalk or other public property located within four hundred (400) feet of Brookline High School grounds. The Commissioner of Public Works shall erect and maintain signage identifying the locations where smoking is prohibited under this paragraph (4). Such signage shall be erected so as to notify the public of the smoking prohibition and the areas affected thereby.

b. Workplaces

(1) Smoking in workplaces is prohibited.

(2) Notwithstanding subsection (1), smoking may be permitted in private residences; except during such time when the residence is utilized as part of a business as a group childcare center, school age child care center, school age day or overnight camp, or a facility licensed by the department of early education and care or as a health care related office or facility.

(3) Every establishment in which smoking is permitted pursuant to this by-law shall designate all positions where the employee's presence in an area in which smoking is permitted to be "smoking positions." The establishment shall notify every applicant for employment in a smoking position, in writing, that the position may cause continuous exposure to secondhand smoke, which may be hazardous to the employee's health.

(4) No establishment in which smoking is permitted pursuant to this by-law may require any employee whose effective date of employment was on or before November 1, 1994 to accept a designated smoking position as a condition of continued employment by the employer.

(5) No establishment in which smoking is permitted pursuant to this by-law may discharge, refuse to hire, or otherwise discriminate against any employee or applicant for employment by reason of such person's unwillingness to be subjected to secondhand smoke exposure unless the employee has been hired for a designated smoking position and has been so notified in writing at the time of hiring.

(6) It is the intent of this by-law that a designated smoking position shall not be considered suitable work for purposes of M.G.L. c. 151A, and that an employee who is required to work in a smoking position shall have good cause attributable to the employer for leaving work. c. E-cigarette Usage – Locations Prohibited (1) In addition to the smoking prohibitions set forth in this bylaw, the use of e-cigarettes is further prohibited wherever smoking is prohibited under M.G.L. Chapter 270, Section 22 (the "Smoke-Free Workplace Law"), and in all locations listed in Section 8.23.3 of this by-law. The Director of Health and Human Services and/or his or her designee(s) shall enforce this section in accordance with Section 8.23.6.

SECTION 8.23.4 - POSTING REQUIREMENTS

Every person having control of a premises where smoking is prohibited by this by-law, shall conspicuously display on the premises, including the primary entrance doorways, signs reading "Smoking Prohibited By Law." Posting of the international symbol for "No Smoking" shall be deemed as compliance.

SECTION 8.23.5 - SALE AND DISTRIBUTION OF TOBACCO AND E-CIGARETTE PRODUCTS

a. Permit Requirement – No Entity otherwise permitted to sell tobacco or e-cigarette products shall sell such products within the Town of Brookline without a valid tobacco sales permit issued by the Director of Public Health. Permits must be posted in a manner conspicuous to the public. Tobacco sales permits shall be renewed annually by June 1st, at a fee set forth in the Department's Schedule of Fees and Charges.

b. Prohibition of Tobacco Vending Machines – The sale of tobacco or e-cigarette products by means of vending machines is prohibited.

c. Restrictions on the Distribution of Tobacco or e-cigarette Products - No person, firm, corporation, establishment or agency shall distribute tobacco or e-cigarette products free of charge or in connection with a commercial or promotional endeavor within the Town of Brookline. Such endeavors include, but are not limited to, product “giveaways”, or distribution of a tobacco or e-cigarette product as an incentive, prize, award or bonus in a game, contest or tournament involving skill or chance.

d. Prohibition of Sales to Minors - No person, firm, corporation, establishment, or agency shall sell tobacco or e-cigarette products to a minor.

e. Self-Service Displays – All self-service displays as defined by 8.23.2 (e) are prohibited. All commercial humidors including, but not limited to walk-in humidors must be locked.

f. Prohibition of the Sale of Tobacco Products and e-cigarettes by Health Care Institutions - No health care institution located in the Town of Brookline shall sell or cause to be sold tobacco or e-cigarette products. Additionally, no retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco or e-cigarette products.

g. Prohibition of the Sale of Tobacco and e-cigarette Products by Educational Institutions - No educational institution located in the Town of Brookline shall sell or cause to be sold tobacco or e-cigarette products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

h. Required Signage

(1) The owner or other person in charge of an entity authorized to sell tobacco or e-cigarette products at retail shall conspicuously post signage provided by the Town of Brookline that discloses current referral information about smoking cessation.

(2) The owner or other person in charge of an entity authorized to sell tobacco or e-cigarette products at retail shall conspicuously post a sign stating that “The sale of tobacco or e-cigarette products to someone under the minimum legal sales age of 21 years of age is prohibited.” The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than eight (8) feet from the floor.

i. Tobacco Sales

(1) No Tobacco Product Sales Permit holder shall allow any employee to sell tobacco or e-cigarette products until such employee has received a copy of this By-law and

signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read this By-law.

(2) Identification - Each person selling or distributing tobacco or e-cigarette products at an entity authorized to sell tobacco or e-cigarette products at retail shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older. Such identification need not be required of any individual who reasonably appears to be at least thirty years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of tobacco or electronic cigarette products to an individual under 21 years of age.

(3) All retail sales of tobacco or e-cigarette products must be face-to-face between the seller and the buyer and occur at the permitted location.

(4) Single Cigar Sales - No entity shall sell or distribute or cause to be sold or distributed a single cigar. This prohibition shall not apply to the sale or distribution of any single cigar having a retail price of two dollars and fifty cents (\$2.50) or more or to an entity engaged in the business of selling or distributing cigars for commercial purposes to another entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Town of Brookline.

(5) Original Cigar Package Price - No entity shall sell or distribute or cause to be sold or distributed any original package of two or more cigars, unless such package is priced for retail sale at five dollars (\$5.00) or more.

(6) The amounts set forth in this Section may be adjusted from time to time to reflect changes in the applicable Consumer Price Index by amendment of this By-law.

(7) No person shall sell or distribute or cause to be sold or distributed any flavored tobacco or e-cigarette products, except in authorized retail tobacco stores.

(8) No entity shall sell or distribute or cause to be sold or distributed blunt wraps.

SECTION 8.23.6 VIOLATIONS AND PENALTIES

a. Any person who violates any provision of this by-law, or who smokes in any area in which a "Smoking Prohibited By Law" sign, or its equivalent, is conspicuously displayed, shall be punished by a fine of \$100 for each offense. For a first violation of this section, and for any subsequent violation, the violator may be afforded the option of enrolling in a smoking cessation/education program approved by the Director of Health and Human Services or his/her designee(s). Proof of completion of such approved program shall be in lieu of the fines set forth in this Section and in Section 10.3 of these By-laws.

b. Any person having control of any premises or place in which smoking is prohibited who allows a person to smoke or otherwise violate this bylaw, shall be punished by a fine of \$100 for a first offense, \$200 for a second offense, and \$300 for a third or subsequent offense.

c. Any entity violating any other section of this by-law shall receive a fine of \$300.00 for each offense.

d. Employees who violate any provision of Section 8.23.3(b) shall be punished by a fine of \$100 per day for each day of such violation.

e. Violations of this by-law may be dealt with in a noncriminal manner as provided in PART X of the Town by-laws.

f. Each calendar day an entity operates in violation of any provision of this regulation shall be deemed a separate violation.

g. No provision, clause or sentence of this section of this regulation shall be interpreted as prohibiting the Brookline Health Department or a Town department or Board from suspending, or revoking any license or permit issued by and within the jurisdiction of such departments or Board for repeated violations of this by-law.

SECTION 8.23.7 SEVERABILITY

Each provision of this by-law shall be construed as separate to the extent that if any section, sentence, clause or phrase is held to be invalid for any reason, the remainder of the by-law shall continue in full force and effect.

or act on anything relative thereto.

ARTICLE 5

Submitted by: Clint Richmond, Claire Stampfer

To see if the Town will amend Article 8.32 of the General By-Laws as follows (additions appear in underlined text, and deletions appear in stricken text):

Article 8.32

Sustainable~~Prohibition on the Use of Polystyrene Based Disposable~~ Food Containers and Packaging

~~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.~~

Section 1: DEFINITIONS

The following words and phrases shall, unless context clearly indicates otherwise, have the following meanings:

BIODEGRADABLE Entirely made of organic materials such as wood, paper, bagasse or cellulose; or bioplastics that meet the American Society for Testing and Materials (ASTM) D7081 standard for Biodegradable Plastics in the Marine Environment. Any ASTM D7081 product must be clearly labeled with the applicable standard.

COMPOSTABLE Refers to bioplastic materials certified to meet the American Society for Testing and Materials International Standards D6400 or D6868, as those standards may be amended. ASTM D6400 is the specification for plastics designed for compostability in municipal or industrial aerobic composting facilities. D6868 is the specification for aerobic compostability of plastics used as coatings on a compostable substrate. Any compostable product must be clearly labeled with the applicable standard.

DISPOSABLE FOOD SERVICE WARE All food and beverage containers, bowls, plates, trays, cartons, cups, lids, straws, stirrers, forks, spoons, knives, film wrap, and other items designed for one-time or non-durable uses on or in which any food vendor directly places or packages prepared foods or which are used to consume foods. This includes, but is not limited to, service ware for takeout foods and leftovers from partially consumed meals prepared at food establishments.

DIRECTOR refers to the Director of the Department of Public Health or its designee.

FOOD ESTABLISHMENT An operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption. This includes without limitation restaurants and food trucks.

PACKING MATERIAL means polystyrene foam used to hold, cushion, or protect items packed in a container for shipping, transport, or storage. This includes, for example, packing "peanuts"; and shipping boxes, coolers, ice chests, or similar containers made, in whole or in part, from polystyrene foam that is not wholly encapsulated or encased within a more durable material.

POLYSTYRENE means and includes (1) blown polystyrene and expanded and extruded foams (sometimes called "Styrofoam," a Dow Chemical Co. trademarked form of insulation) also referred to as expanded polystyrene (EPS); and in this chapter is referenced as "Foam Polystyrene." Foam Polystyrene is generally used to make opaque cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. The term also means and includes (2) clear or solid polystyrene, which is also known as "oriented," and referenced in this chapter as "Rigid Polystyrene." "Rigid Polystyrene" is generally used to make clear clamshell containers, cups, plates, straws, lids and utensils.

PREPARED FOOD Food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, bottled, frozen, squeezed or otherwise prepared on the food establishment's premises within the Town, regardless whether it is eaten either on or off the premises.

RECYCLABLE Material that can be sorted, cleansed, and reconstituted using the Brookline curbside municipal collection programs for the purpose of using the altered form in the manufacture of a new product. "Recycling" does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

RETAIL ESTABLISHMENT Any commercial business facility that sells goods directly to the consumer including but not limited to grocery stores, pharmacies, liquor stores, convenience stores, restaurants, retail stores and vendors selling clothing, food, and personal items, and dry cleaning services.

REUSABLE Products that will be used more than once in its same form by a food establishment. Reusable food service ware includes: tableware, flatware, food or beverage containers, packages or trays, such as, but not limited to, soft drink bottles and milk containers that are designed to be returned to the distributor and customer that is provided take-out containers. Reusable materials include aluminum and glass. Reusable also includes cleanable durable containers, packages, or trays used on-premises or returnable containers brought back to the food establishment.

Section 2. PROHIBITED USE AND DISTRIBUTION OF POLYSTYRENE PRODUCTS

Starting January 1, 2018:

- (a) Food establishments are prohibited from providing prepared food to customers using polystyrene or polyethylene terephthalate food service ware.
- (b) All food establishments using any disposable food service ware will use biodegradable, compostable, reusable or recyclable food service ware. All food establishments are strongly encouraged to use reusable food service ware in place of using disposable food service ware for all food served on premises.
- (c) Retail establishments are prohibited from selling or distributing foam polystyrene or rigid polystyrene food service ware to customers.
- (d) Retail establishments are prohibited from selling or distributing polystyrene foam packing material to customers.

Starting January 1, 2019:

(e) Food establishments are prohibited from providing prepared food to customers using any food service ware made of polystyrene, polyethylene terephthalate, high and low density polyethylene, polyvinyl chloride food or polypropylene.

Section 3. EXEMPTIONS

(ii) (a) Foods prepared or packaged outside the Town are exempt from the provisions of this chapter.

(iii) (b) Food establishments and retail establishments will be exempted from the provisions of this chapter for specific items or types of disposable food service ware if the Department of Health or its designee finds that a suitable biodegradable, compostable, reusable, or recyclable alternative does not exist for a specific application and/or that imposing the requirements of this chapter on that item or type of disposable food service ware would cause undue hardship.

(iv) (c) Any establishment may seek an exemption from the requirements of this chapter by filing a request in writing with the Department of Health or its designee. The Department of Health or its designee may waive any specific requirement of this chapter for a period of not more than one year if the establishment seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship. For purposes of this chapter, an “undue hardship” is a situation unique to the food establishment where there are no reasonable alternatives to the use of expanded polystyrene disposable food service containers and compliance with this provision would cause significant economic hardship to that food establishment. An establishment granted an exemption must re-apply prior to the end of the one-year exemption period and demonstrate continued undue hardship if the establishment wishes to have the exemption extended. The Health Department’s decision to grant or deny an exemption or to grant or deny an extension of a previously issued exemption shall be in writing and shall be final.

(v) Section 4. PENALTIES AND ENFORCEMENT

(vi) (a) Each permittee as defined above, operating in the Town of Brookline shall comply with this by-law.

(vii) (1) If it is determined that a violation has occurred the Director shall issue a warning notice to the permittee for the initial violation.

(viii) (2) If an additional violation of this by-law has occurred within one year after a warning notice has been issued for an initial violation, the Director shall issue a notice of violation and shall impose a penalty against the permittee.

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

1. A) \$50 for the first offense

2. B) \$100 for the second offense and all subsequent offenses. Payment of such fines may

be enforced through civil action in the Brookline District Court.

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

(xi) (5) A permittee shall have fifteen (15) calendar days after the date that a notice of violation is issued to pay the penalty.

(xii) **Section 5. SEVERABILITY**

(xiii) Each section of this chapter shall be construed as separate to the end that if any section, sentence, clause or phrase thereof shall be held invalid for any reason, the remainder of that chapter and all other chapters shall continue in full force.

Or take any other action relative thereto.

ARTICLE 6

Submitted by: Clint Richmond, Andrew Fischer

To see if the Town will amend the General By-Laws by revising the Article 8.33 as follows (additions are indicated in underlining, and deletions are indicated in strike-out):

ARTICLE 8.33 SUSTAINABLE PLASTIC BAGS REDUCTION

SECTION 8.33.1 Definitions

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

“~~Director~~Officer”, the ~~Director of Public Health Services~~Town Administrator or his/her designees responsible for enforcement.

“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”.

“Checkout bag”, a carryout bag provided by a store to a customer at the point of sale. ~~Checkout bags shall not include bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or check out area of the store.~~

“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.

~~“Department”, the Brookline Department of Public Health.~~

~~“Marine degradable plastic bag”, a plastic bag that conforms to the current ASTM D7081 standard specification for marine degradability; and conforms to any other standards deemed acceptable by the Officer~~Director~~, provided additional, Officer~~Director~~-approved standards are as stringent as ASTM D7081.~~

~~“Product Bag” bags in which loose produce, bulk items, unwrapped baked goods or prepared food, or other products are placed by the consumer to deliver such items to the point of sale or check out area of the store.~~

~~“Reusable bag”, a bag that is either (a) made of cloth or other machine washable fabric; or (b) made of plastic other than polyethylene or polyvinyl chloride that is durable, non-toxic, and generally considered a food-grade material that is more than 4 mils thick.~~

~~“Reusable check-out bag”, a sewn reusable bag with stitched handles that ~~is specifically designed for multiple reuse and is either (1) made of cloth or other machine washable fabric; or (2) made of durable plastic that is at least 2.25 mils thick; or (3) made of other durable material.~~ can carry 25 pounds over a distance of 300 feet.~~

~~“Recyclable Paper Bag” means a paper bag that is (1) 100 percent recyclable including the handles; (2) contains at least 40% post-consumer recycled paper content; and, (3) displays the words “recyclable” and “made from 40% post-consumer recycled content” (or other applicable amount) in a visible manner on the outside of the bag.~~

~~“Retail establishment”, any retail space located in the City including without limitation a restaurant, food or ice cream truck, convenience store, retail pharmacy, or supermarket.~~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 name within the Town 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 Town 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 8.33.2

~~(a) If a retail establishment as defined in Ssection 1 provides plastic-checkout bags to customers, the plastic-bags shall comply with the requirements of being either a recyclable paper bag, a reusable checkout bag, or a compostable-plastic bags that is compostable,-as well as marine degradable-plastic-bags.~~

~~(b) If a retail establishment provides product bags to customers, the bags shall comply with the requirements of being either a recyclable paper bag, reusable bag, or a compostable plastic bag.(a) 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 ~~Director~~Officer may promulgate rules and regulations to implement this section.

SECTION 8.33.3 PENALTIES AND ENFORCEMENT

(a) Each Retail Establishment as defined in Section 1, above, located in the Town of Brookline shall comply with this by-law.

(1) If it is determined that a violation has occurred the ~~Officer~~Director shall issue a warning notice to the Retail Establishment for the initial violation. (2) If an additional violation of this by-law has occurred within one year after a warning notice has been issued for an initial violation, the ~~Officer~~Director shall issue a notice of violation 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 and all subsequent offenses. Payment of such fines may be enforced through civil action in the Brookline District Court. (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 violation is issued to pay the penalty.

SECTION 8.33.4

All of the requirements set forth in this by-law shall take effect ~~December~~July 1, 20137. 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 checkout bags or economic hardship, the ~~Director~~Officer 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 six-month period upon showing of continued infeasibility as set forth above.

Or take any other action relative thereto.

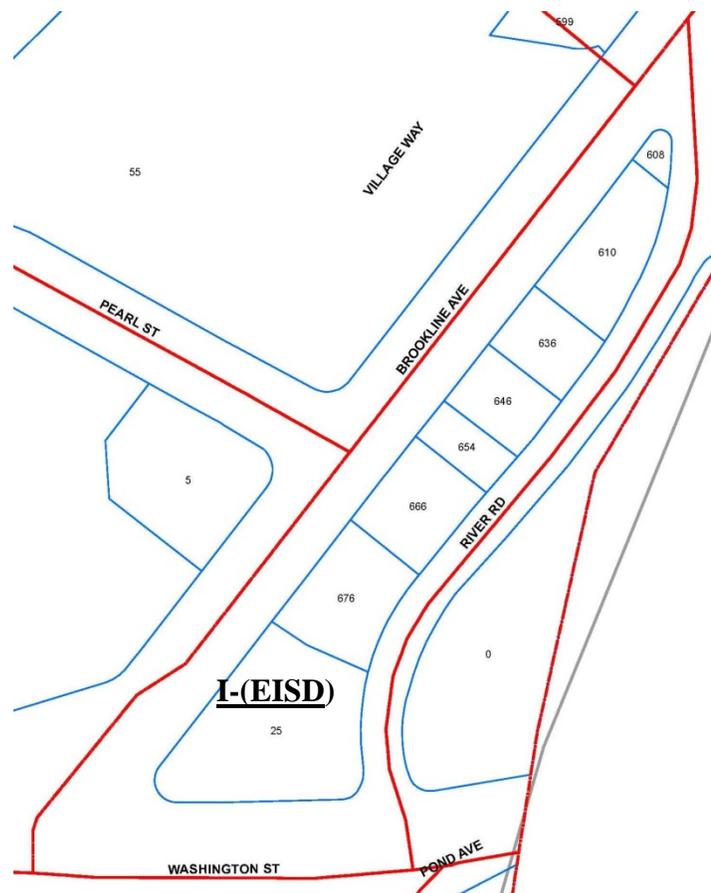
ARTICLE 7

Submitted by: River Road Study Committee

To see if the Town will amend the Zoning By-Law by amending the zoning district and corresponding sections of the Zoning By-law currently designated I-1.0 as shown on the current Zoning Map, as follows:

1. Amending the Zoning Map as shown to add a new I-(EISD) district as shown below.

(Changes in bold and underlined)



2. By amending Section 2.04.3 to add the following definitions

- a. “Dwelling, Live/Work Space: A building or any portion thereof containing common work space areas and/or dwelling units measuring no more than 900 square feet in gross floor area per unit that are used by at least one occupant as both their primary residence and primary work/artist studio space, including use 46 (Light Non-Nuisance Manufacturing) and 58A (Home Office) as certified annually by the property owner with the Building Commissioner.”

- b. “Dwelling, Age Restricted: A building where all residents are 62 years of age or older. Such units shall be subject to an age restriction described in a deed, deed rider, restrictive covenant, or other document in a form reasonably acceptable to Town Counsel that shall be recorded at the Registry of Deeds or the Land Court. Age and occupancy restrictions shall not preclude reasonable, time-limited guest visitation rights or accommodation for caretakers for the primary resident. The age and occupancy restrictions shall be enforceable solely against the violating unit and not the development as a whole, by the owner of one or more dwelling units or by the Town of Brookline. In the event of a violation, and at the request of the Town, the owner of the unit shall comply with the age and occupancy restrictions.”
- c. “Dwelling, Micro Unit: A building or any portion thereof containing residential units measuring no greater than 500 square feet in gross floor area per unit. Buildings containing Micro Units may have flexible common areas for living and/or working.”

3. By amending Section 3.01.3a as follows:

(Changes in bold and underlined)

- a. 3. Industrial Districts
 - a. Industrial Services (I)
 - 1) I-1.0
 - 2) I-(EISD)**

4. By amending Section 4.07 – Table of Use Regulations as follows:

(Changes in bold and underlined)

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
RESIDENCE USES									
<u>6B. Dwelling, Live/Work Space</u> <u>*Permitted by special permit in the I-(EISD)</u> <u>District in accordance with 5.06.4.j.</u>	No	No	No	No	No	No	No	No	No*
<u>6C. Dwelling, Age Restricted</u>	No	No	No	No	No	No	No	No	No*

<u>*Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u>									
<u>6D. Dwelling, Micro Unit</u> <u>*Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u>	<u>No</u>	<u>No*</u>							
8. Hotel *Permitted by special permit in M-2.5 Districts and in business districts only if the hotel building is not within 50 feet from a lot or lots in an S, SC, or T District. <u>**Permitted by special permit in I-(EISD) District in accordance with 5.06.4.j..</u>	No	No	No	No	No*	No	SP*	No	No**
8A. Limited Service Hotel *Permitted by Special permit in M-2.5, Cleveland Circle Hotel Overlay District <u>and I-(EISD) District.</u> **Permitted as of right only in the G-1.75 (LSH) Limited Service Hotel District, provided that the applicant for a building permit certifies to the Building Commissioner that (a) at least 20% of all on-site parking spaces will be available for overnight public parking at prevailing overnight public rates, (b) that all on-site parking spaces will be available between 8:00 a.m. and 6:00 p.m. at prevailing public meter rates and (c) at least 25% of the lot area is to be used for open space open to the public. Otherwise such use shall be by special permit in business districts only if the hotel building is not within 50 feet from a lot or lots in an S, SC or T District. Permitted by Special Permit in G-(DP) District in accordance with Section 5.06.4.g.	No	No	No	No	No*	No*	Yes**	No	No_*
INSTITUTIONAL, RECREATIONAL & EDUCATIONAL USES									
18A. Small group health and fitness club not exceeding 2,500 square feet of gross floor area operated for profit and for members only, solely for the purpose of providing physical fitness, exercise, therapy,	No	No	No	No	No	Yes	Yes	Yes	Yes_*

rehabilitation and/or health services. <u>*Permitted by special permit in the I-(EISD)</u> <u>District in accordance with 5.06.4.j.</u>									
OFFICE USES									
20A. Office or clinic of a licensed veterinarian for treatment of animals, including laboratories and holding facilities. No outdoor facilities for animals shall be permitted. Studies by recognized experts shall be submitted to insure, 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. *Verification of noise control shall include verification by a professional engineer (P.E.), utilizing an acoustical engineer under his/her supervision if necessary, that under worst-case (e.g., maximum number of animals, open windows if applicable) conditions neither daytime nor nighttime background noise levels, as defined in Article 8.15.3 of the Town By-Laws, will be exceeded at the boundary of the property where the use is located. Moreover, as a condition of a Special Permit, the ZBA shall require that further noise control measures be undertaken in the future if such background noise levels are exceeded during operation of the facility. <u>** Permitted by special permit in the I-(EISD)</u> <u>District in accordance with 5.06.4.j.</u>	No	No	No	No	No	SP*	SP	SP	SP**
21. Business, professional, or governmental office other than Use 20 and 20A. *Provided no commodities are kept for sale on the premises <u>** Permitted by special permit in the I-(EISD)</u> <u>District in accordance with 5.06.4.j.</u>	No	No	No	No	No	Yes	Yes	Yes*	Yes**
RETAIL AND CONSUMER SERVICE USES									
29. Store of less than 5,000 square feet of gross floor area per establishment, primarily serving the local retail business needs of the residents of the vicinity, including but not limited to grocer, baker, food store, package store; dry goods,	No	No	No	No	No	Yes	Yes	No	Yes*

<p>variety, clothing; hardware, paint, household appliances; books, tobacco, flowers, drugs.</p> <p><u>*Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u></p>									
<p>30. Eating places of less than 5,000 square feet of gross floor area per establishment, primarily serving local needs, including but not limited to lunch room, restaurant, cafeteria, place for the sale and consumption of beverages, ice cream and the like, primarily in enclosed structures with no dancing, nor entertainment other than music.</p> <p><u>*Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u></p>	No	No	No	No	No	Yes	Yes	No	Yes*
<p>32. Service business primarily serving local needs, including but not limited to the following uses:</p> <p>(a) Barber, beauty shop, laundry and dry-cleaning pickup agency, shoe repair, self-service laundry, or other similar use.</p> <p>(b) Hand laundry, dry-cleaning or tailoring, or other similar use, provided, in L and G Districts, personnel is limited to five persons at any one time.</p> <p>(c) Printing shop, photographer's studio, caterer, or other similar use, provided, in L and G Districts, personnel is limited to five persons at any one time.</p> <p>*Permitted by special permit in an M-1.0 (CAM) District.</p> <p><u>** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u></p>	No	No	No	No	No*	Yes	Yes	No	Yes**
<p>33. Stores not exceeding 10,000 square feet of gross floor area serving the general retail needs of a major part of the Town, including but not limited to general merchandise department store, furniture and household goods.</p> <p><u>* Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u></p>	No	No	No	No	No	No	Yes	No	No*
<p>33A. Stores over 10,000 square feet of gross floor</p>	No	No	No	No	No	No	SP	No	SP*

<p>area serving the general retail needs of a major part of the Town, including but not limited to general merchandise department store, supermarket, grocery store, furniture and household goods.</p> <p><u>* Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u></p>									
<p>34. Place for the sale and consumption of food and beverages exceeding 5,000 square feet of gross floor area, or providing dancing and entertainment.</p> <p>*Permitted by Special Permit in the Cleveland Circle Hotel Overlay District.</p> <p><u>** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u></p>	No	No	No	No	No	No*	Yes	No	Yes**
ACCESSORY USES									
<p>46. Light non-nuisance manufacturing, provided that all resulting particulate matter, flashing light, fumes, gases, odors, liquid and/or solid wastes, smoke, and vapor are effectively confined to the premises or disposed of in a manner so as not to create a nuisance or hazard to safety or health and in compliance with all applicable town, state, and federal laws and regulations; further provided that no vibration is perceptible without instruments at a distance greater than 50 feet from such premises and that noise limits shall conform to the Town's Noise By-law. At least 30 days prior to the Board of Appeals hearing, the applicant shall submit studies by recognized experts to insure, to the satisfaction of the Board of Appeals, that the use will be designed and operated so as to conform to the standards above. Such studies shall include description of operations and processes proposed, materials to be used, above-and-below-ground storage facilities, and waste products. Any applications, including the required studies, shall be referred to the Conservation Commission and the Health Department for advisory reports in accordance with the procedures in §9.04.*</p> <p>*For uses 42 to 46 inclusive, all storage of materials and equipment and all business operations, such as loading, parking, and</p>	No	No	No	No	No	No	No	No	SP**

storage of commercial vehicles, shall be within an enclosed building. This requirement may be modified by the Board of Appeals by special permit only, provided the requirements of §6.04, paragraph 8. and §9.05 are met. Such special permit may be rescinded or modified by the Board of Appeals after notice and hearing if noncompliance with the conditions of approval is determined. ** Permitted by Special Permit in the I-(EISD) District in accordance with 5.06.4.j.									
58A. Office/studio within the place of residence provided all of the following conditions are met, except that only condition (e) below needs to be met in the G-(DP) and I-(EISD) Districts: (a) the office occupies not more than one room; (b) there are no nonresident employees; (c) there are no clients visiting the premises (members of the clergy shall be exempt from this limitation); (d) there are no signs nor other external evidence of the office; and (e) there is no production of offensive noise, vibration, smoke, dust or other particulate matter, heat, humidity, glare, or other objectionable effects.	Yes								
66. Accessory laboratory. *In permitted institutions only. ** Permitted by Special Permit in the I-(EISD) District in permitted institutions only and in accordance with 5.06.4.j.	No	No	No	No	SP*	SP*	SP	SP	SP**

5. By amending Section 5.01 – Table of Dimensional Requirements by adding I-(EISD) and adding footnote 20 as follows:

(Changes in bold and underlined)

DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	PBI NB ONLY	LOT WIDTH MINIMUM (feet)	MAXIMUM HEIGHT	PBI		MINIMUM YARD			OPEN SPACE (% of gross floor area)	
							B	N	Front	Side	Rear	Landscape	Usable
I-1.0	Any structure	none ⁴	1-0	NA	none	40 <u>or</u> <u>110</u> ²⁰	N	N	20 ²⁰	NA	10+L/10 ²⁰	NA	NA

& <u>I-</u> <u>(EISD)²⁰</u>	e or principa l use (dwellin g- footnot e 5)		<u>1.0 or</u> <u>NA²⁰</u>									
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20. See Sections 4.07 and 5.06.4.j with respect to uses and all dimensional requirements.

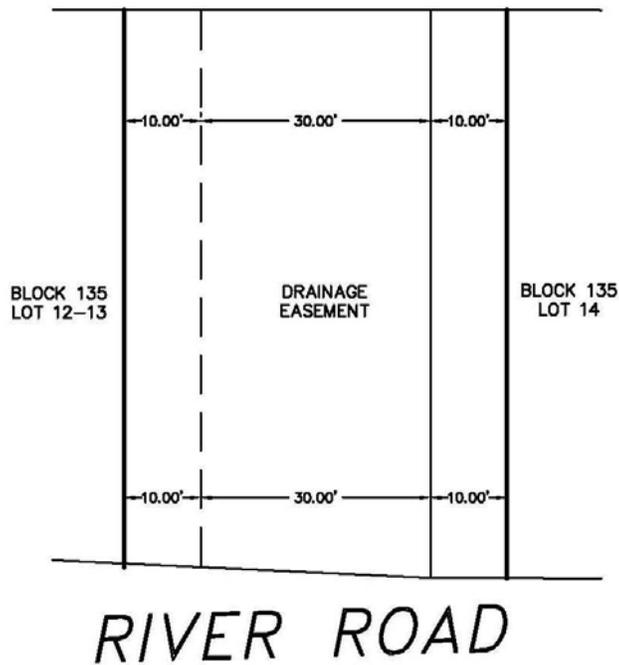
6. By amending Section 5.06.4 to create Section 5.06.4.j “Emerald Island Special District” as follows:

Emerald Island Special District I-(EISD)

1. The Emerald Island Special District – the area bounded by River Road, Brookline Avenue, and Washington Street – is an area in transition. It has been determined through study by the River Road Study Committee that specific zoning parameters are required to encourage appropriate redevelopment of this district. In developing these zoning parameters, due consideration has been given to the prominent location of this area as a major gateway to Brookline. The proximity of the Muddy River, Emerald Necklace, Longwood Medical Area as well as the differences in the scale of existing buildings, recently permitted and proposed developments, access to transit, and the solar orientation of sensitive nearby uses, including the residences of Village Way and Emerald Necklace Park all combined to shape the Special District parameters. Following a comprehensive study by financial, architecture, urban design and real estate experts, the Committee further concluded that the following concepts related to allowed uses, building heights, building form, parking requirements and the public realm are appropriate for this Special District.

2. All applications for new structures, outdoor uses, and exterior alterations in the Emerald Island Special District which exceed a floor area ratio of 1.0, a height greater than 40’ and/or seek alternative parking and loading zone requirements shall be permitted only on lots greater than 13,600 square feet in contiguous area and only for the uses described in Section 5.06.4.j.3, shall be subject to Site Plan Review by the Planning Board as described in Section 5.06.4.j.4, shall be subject to the requirements of Section 5.09, Design Review, shall obtain a special permit per Section 9.03, and shall meet the following requirements:
 - a. Setbacks and Sidewalk Widths:
 - i. All buildings shall be setback 10 feet from the mid-district drainage easement as shown in Figure 5.06.4.j.1 below.

BROOKLINE AVE



LEGEND:
10' SET BACK LINE ————
EASEMENT LINE - - - - -
PROPERTY LINE ————

FIGURE 5.06.4.j.1 Setbacks from Mid-District Drainage Easement

- ii. All buildings shall be setback 45 feet from the Point of Intersecting Tangents of Brookline Avenue and River Road as shown in Figure 5.06.4.j.2 below.

BROOKLINE AVE

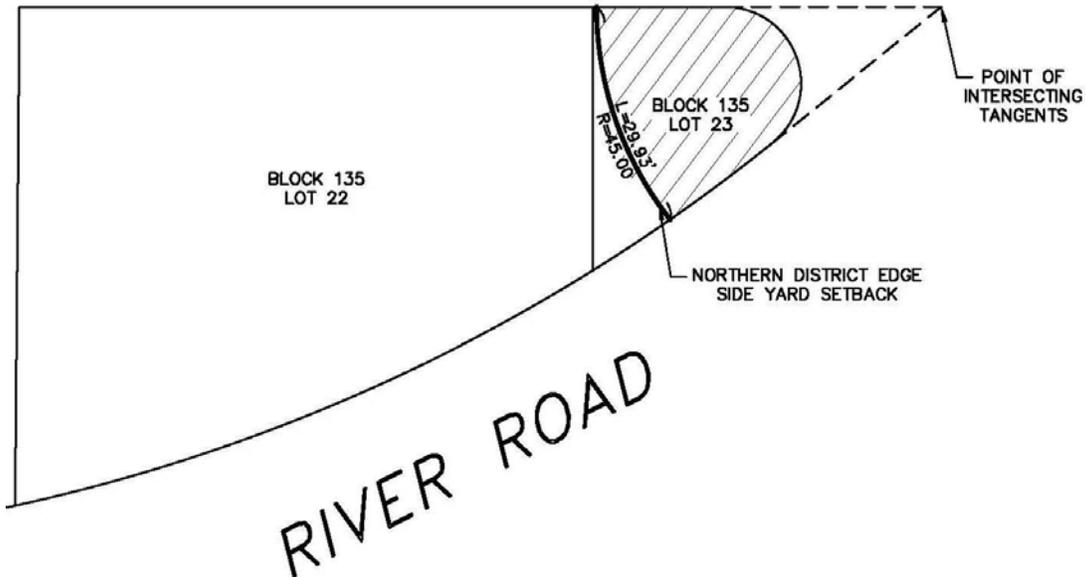


FIGURE 5.06.4.j.2 Northern District Edge Sideyard Setback

- iii. Notwithstanding Section 5.01 and other than as provided in Sections 5.06.4.j.2a.i and 5.06.4.j.2a.ii, there shall be no additional setback requirements except as is necessary to achieve the required sidewalk widths for the district. For the purposes of the EISD only, sidewalk shall be defined as the area between the building façade and the face of the curb. The required sidewalk width shall be measured from the ground level of the proposed building façade to the face of the curb at the time of special permit application. All sidewalks shall maintain a minimum 5 foot wide walkway clear from all obstructions, including, but not limited to tree pits, structural columns and street furniture. The minimum sidewalk width along Brookline Avenue and River Road shall be no less than 12 feet. The minimum sidewalk width along Washington Street shall be no less than 10 feet.
- iv. Where it can be demonstrated that achieving the required sidewalk width would be infeasible in limited areas, the Board of Appeals may by special permit reduce the required width of the affected areas to no less than 8 feet on Washington Street and River Road. No relief may be granted for a reduction in sidewalk width along Brookline Avenue. Applicants for a special permit to reduce the width of a sidewalk shall provide written and graphic documentation to the Planning Board illustrating why the required width is not attainable in the affected area. The Planning Board may in an affirmative and written determination

make a recommendation to the Board of Appeals to reduce the width of the sidewalk in limited areas. Where relief is granted, applicants shall provide counterbalancing amenities in the form of wider sidewalks and/or landscaping on-site or in the immediate area adjacent to their site, subject to the review and approval of the Planning Board.

- b. The minimum finished floor to floor height for all ground floor levels shall be no less than 15 feet.
- c. No permanent on-site parking spaces shall be located on the ground level in the Special District.
- d. All new buildings and renovations to existing buildings shall be LEED Silver Certifiable or higher. Applicants shall provide evidence to the satisfaction of the Building Commissioner and Director of Planning and Community Development that all new construction and renovations of existing buildings are LEED Certifiable Silver or a higher rating via the provision of a LEED scoring sheet. The construction or renovation of such buildings consistent with these plans shall be confirmed prior to the issuance of a Certificate of Occupancy.
- e. Street trees shall be provided at regular intervals approximately every 25 feet along the sidewalks of Brookline Avenue, Washington Street and River Road. The size, location and species of all trees at the time of planting and the final design of all landscaping in the public way shall be approved by the Director of Parks and Open Space or his/her designee. In circumstances where trees cannot be provided as stipulated above as determined by the Director of Parks and Open Space or his/her designee, the applicant shall provide an equivalent amount of trees and/or landscaping at appropriate locations on the site or make a financial contribution to the Town in an equivalent dollar amount for similar improvements in adjacent parks and public spaces.
- f. The applicant shall devote no less than 1% of the hard construction cost of constructing its project, (including any building, site work, above ground or underground structures, but exclusive of tenant fit-up) to making off-site, streetscape and parks improvements within 500 feet of the Special District boundaries. In addition to review by the Planning Board, a plan of the proposed off-site improvements shall be submitted for the review and approval of the Director of Transportation and the Director of Parks and Open Space or their designees. Alternatively, with the approval of the Director of Transportation and the Director of Parks and Open Space, the applicant may make a financial contribution to the Town in an equivalent dollar amount to be used by the Town for such purposes.
- g. Public seating and pedestrian-scale lighting shall be provided at regular intervals. The location, number and design of all seating and lighting in the public way shall be approved by the Director of Parks and Open Space or his/her designee.
- h. Notwithstanding the provisions of Sections 6.06.6 and 6.07, the number and size of required loading zones may be reduced in accordance with Site Plan Review as noted in Section 5.06.4.j.4 below.

- i. A building shall not have more than 30% of its frontage along a street devoted to residential use including associated lobby use.
- j. Any proposed building shall be permitted to have more than one principal use. For example, a restaurant or retail business may be located in the same building as a permitted residential, or office, or hotel use without being considered an accessory use.

3. Exceptions to Maximum FAR and Maximum Height

- a. Additional height may be granted by special permit up to 85 feet for buildings primarily containing only the following uses: 6B (Dwelling, Live/Work Space); 6C (Dwelling, Age Restricted); 6D (Dwelling, Micro Unit) 8 (Hotel); 8A (Limited Service Hotel); 20 (Medical Office); 21 (Professional Office); 29 (Store less than 5,000 SF), 30 (Eating Place less than 5,000 SF); 33 (Stores not exceeding 10,000 SF); 33a (Stores over 10,000 SF); 34 (Place for the sale and consumption of food and beverages exceeding 5,000 SF); 66 (Accessory Laboratory), only for buildings located a minimum of 189.12 feet from the intersection of Washington Street and Brookline Avenue, provided that the footprint of any building mass above a height of 65 feet covers no more than 55% of the lot area. Buildings may also contain Principal Uses 18A (Small Group Health/Fitness), 20a (Licensed Veterinarian), and 32 (Service Business) provided that such uses occupy no more than 25% of the building. The required 189.12 foot distance from the intersection of Washington Street and Brookline Avenue shall be measured from the Point of Intersecting Tangents as show in Figure 5.06.4.j.3 below.

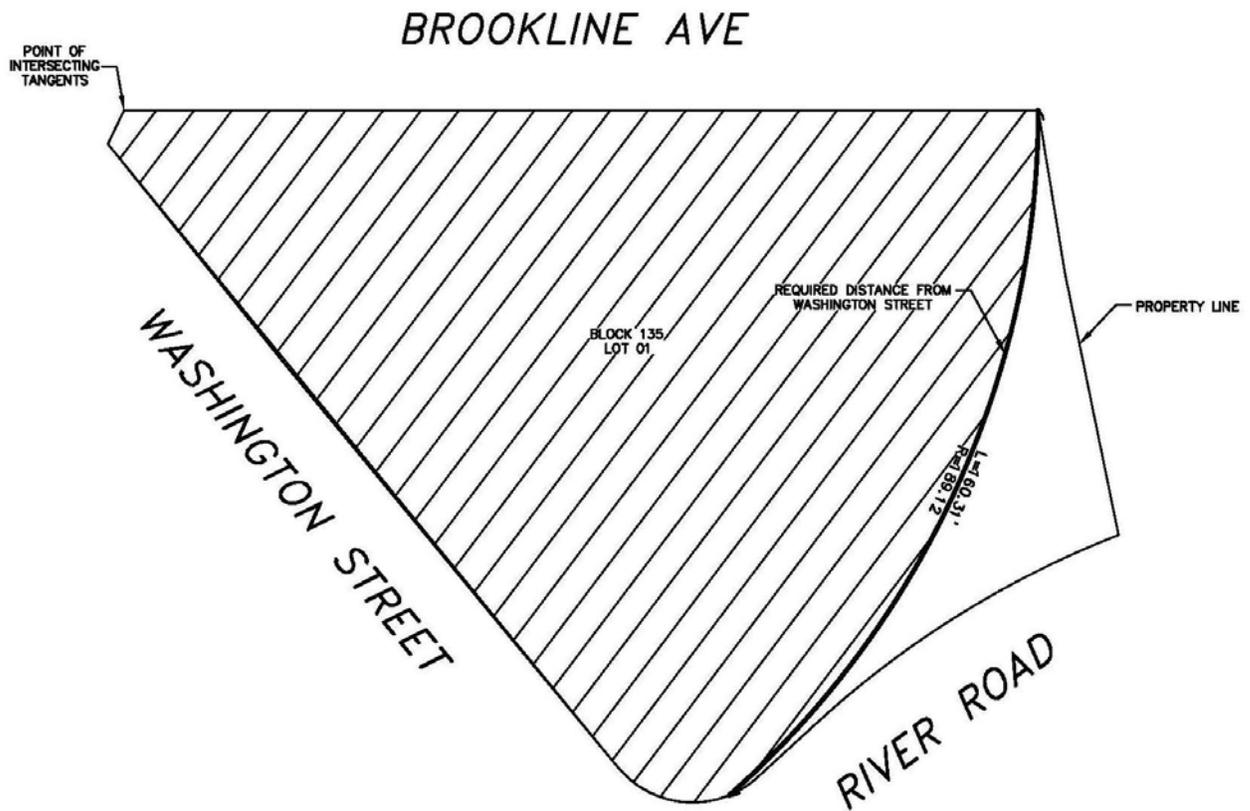


FIGURE 5.06.4.j.3 Required Distance from Washington Street

- b. Additional height of up to 110 feet may be granted by special permit for buildings containing only the following uses: 8 (Hotel) and 8A (Limited Service Hotel) and only for buildings with frontage on Washington Street provided that the footprint of any building mass covers no more of the lot area than is specified in Table 5.06.4.j.1 and as depicted in Figure 5.06.4.j.4 below. Where an applicant can demonstrate that additional lot coverage for any building mass above 35 feet would result in an improved building design, the Board of Appeals may by special permit grant an increase in the maximum percentage of lot coverage as shown in Table 5.06.4.j.1 below. Applicants for a special permit to increase the maximum percentage of lot coverage shall provide written and graphic documentation to the Planning Board and Design Advisory Team illustrating how the building design has improved. The Planning Board may in an affirmative and written determination make a recommendation to the Board of Appeals to increase the maximum percentage of lot coverage as shown in Table 5.06.4.j.1 below. The Design Advisory Team shall provide a similar affirmative written recommendation.

Building Mass Heights	Maximum % Lot Area Coverage	Maximum % Lot Area Coverage By Special Permit with Planning Board Recommendation
0 up to 15'	80%	N/A
15' up to 35'	92%	N/A
35' up to 50'	80%	85%
50' up to 75'	75%	80%
75' up to 110'	50%	55%

Table 5.06.4.j.1 - Maximum % Lot Area Coverage By Building Height

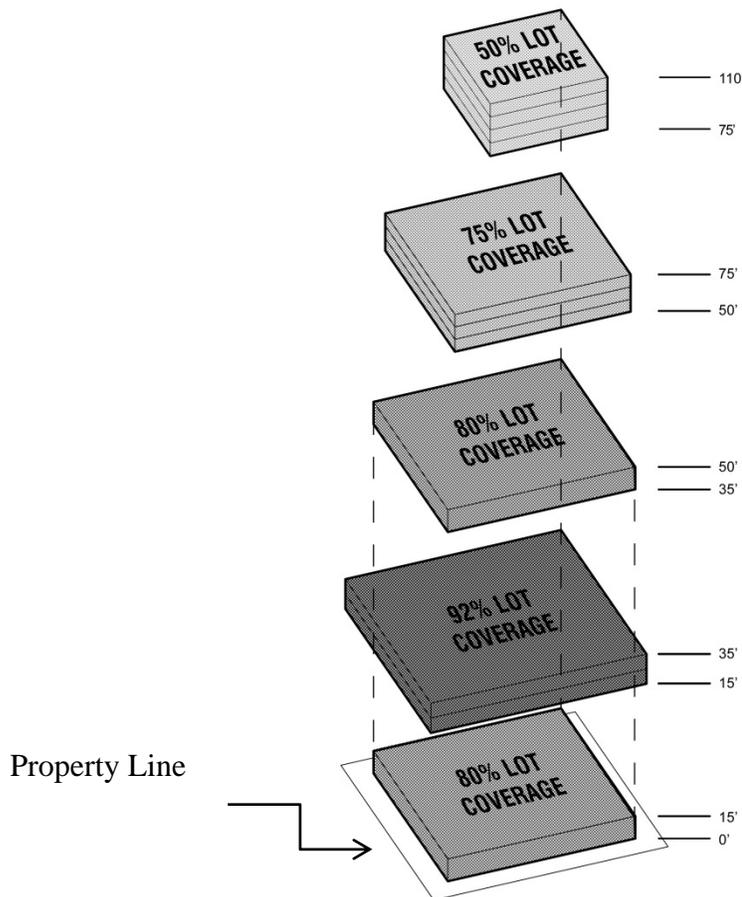


FIGURE 5.06.4.j.4 Maximum % Lot Coverage by Building Height

4. Site Plan Review

- a. All applications for new structures shall be subject to site plan review by the Planning Board to: ensure that there is adequate provision of access for fire and service equipment; ensure adequate provision for utilities and storm water storage and drainage; ensure adequate provision of loading zones; ensure adequate provision of parking; minimize impacts on wetland resource areas; minimize storm water flow from the site; minimize soil erosion; minimize the threat of air and water pollution; minimize groundwater contamination from on-site disposal of hazardous substances; maximize pedestrian and vehicle safety; screen parking, storage and outdoor service areas through landscaping or fencing; minimize headlight and other light intrusion; ensure compliance with the Brookline Zoning By-Laws; maximize property enhancement with sufficient landscaping, lighting, street furniture and other site amenities; minimize impacts on adjacent property associated with hours of operation, deliveries, noise, rubbish removal and storage. All plans and maps submitted for site plan review shall be prepared, stamped, and signed by a Professional Engineer licensed to practice in Massachusetts. Pursuant to the site plan review process, applicants shall provide to the Planning Board and the Director of Engineering a site plan showing:
 - i. Property lines and physical features, including roads, driveways, loading areas and trash storage for the project site;
 - ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting and exterior lighting.

5. Parking and Vehicular Requirements:

- a. Notwithstanding Section 6.02, there shall be no minimum parking requirements for the following uses and such uses shall have the maximum parking limits noted in Table 5.06.4.j.2 below.

USE	MAXIMUM PARKING
Principal Use 6B (Dwelling, age restricted)	1.25 per unit
Principal Use 6C (Live/Work space)	0.50 per unit
Principal Use 6D (Dwelling, Micro Unit)	0.50 per unit
Principal Use 8 (Hotel) and 8a (Limited Service Hotel)	0.40 per room
Principal Uses: 18A (Small group health/fitness); 20 (medical office); 20a (Licensed veterinarian); 21 (professional office); 29 (store less than 5,000K SF); 30 (Eating places less than 5,000K SF); 32 (Service use business); 33 (Stores not exceeding 10,000K SF); 33a (Stores over 10,000K SF); 34 (Place for	1.50 per 1,000 SF

sale and consumption of food not exceeding 5,000K SF); 66A (Accessory Laboratory)	
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Table 5.06.4.j.2 – Maximum Parking Limits

- b. Notwithstanding the above, where it can be demonstrated that additional parking is needed, the Board of Appeals may by special permit increase the maximum parking ratio by no more than 20%. Applicants for a special permit to increase the maximum parking ratio shall provide written documentation to the Planning Board demonstrating the need for additional parking. The Planning Board may in an affirmative and written determination make a recommendation to the Board of Appeals to increase the maximum parking ratio by no more than 20%.
- c. Notwithstanding the above, dedicated spaces for Car Sharing Organizations (CSO) may be provided without regard to such maximum parking limits. If such dedicated parking spaces are not leased by any CSO they shall be dedicated to bicycle parking and appropriate bicycle parking hardware shall be provided.

6. Design Standards:

- a. Building façades parallel to or within 45 degrees of parallel to any property line shall be designed and constructed with equal care and quality. Visual articulation shall be achieved for each façade by (a) employing variations in materials and/or ensuring that no portion of any such façade is coplanar or unbroken for more than 3,500 square feet without a change in depth of 2 feet or more, or (b) utilizing alternative methods of vertical or horizontal articulation, or (c) utilizing other design elements that, in the affirmative and written determination of the Design Advisory Team provide equivalent or better visual relief with respect to building massing, for the reasons expressed in such written determination. The Planning Board and the Board of Appeals shall provide a similar written determination and reasons with respect to façade design. During their review of all proposed building designs, both the Design Advisory Team and Planning Board shall consult the Emerald Island Special District Design Guidelines developed by the River Road Study Committee for guidance on general exterior massing, scale and design.
- b. In order to minimize visual and audible impacts, all rooftop mechanical equipment shall be insulated and screened to the greatest extent possible from all public ways via substantial screening materials and/or shall be located in the interior of the building. Additionally, all rooftop mechanical equipment shall be located such that all shadow impacts are minimized.

7. Amend Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements by adding a Footnote as follows:

2. For the I-(EISD) Special District, parking requirements shall be the same as those districts with a maximum floor area ratio of 1.0, except as otherwise provided for in Section 5.06.4.j.

or act upon anything else relative thereto

ARTICLE 8

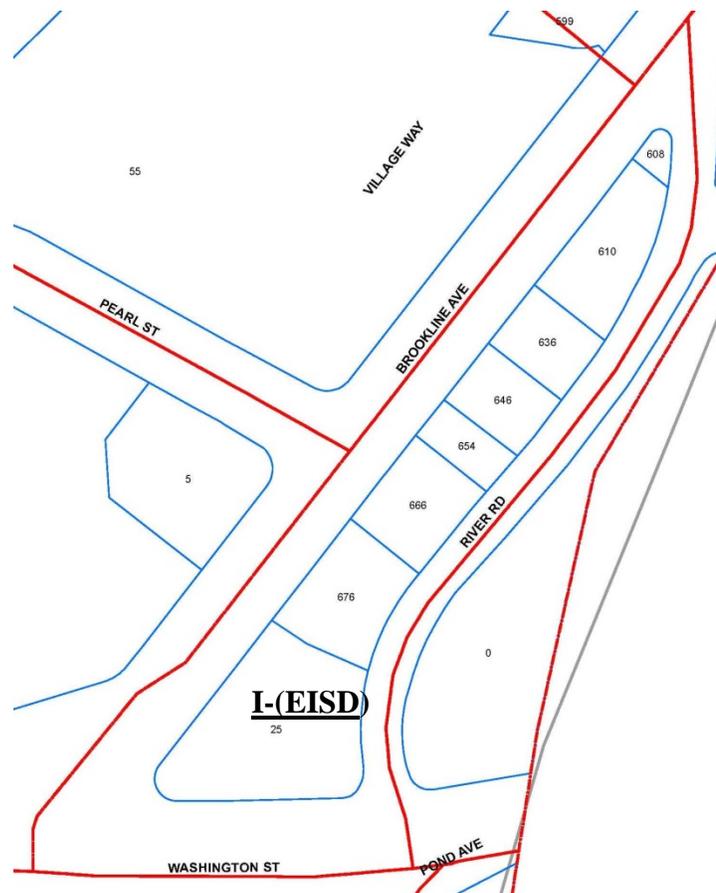
Submitted by: Hugh Mattison, TMM5

This Warrant Article is being submitted as an alternative to an article submitted by the River Road Study Committee. It addresses the need to provide a sidewalk at 25 Washington Street which is at least 18 feet wide, 10 feet of which will be used as a planting strip.

To see if the Town will amend the Zoning By-Law by amending the zoning district and corresponding sections of the Zoning By-law currently designated I-1.0 as shown on the current Zoning Map, as follows:

- 1. Amending the Zoning Map as shown to add a new I-(EISD) district as shown below.**

(Changes in bold and underlined)



2. By amending Section 2.04.3 to add the following definitions

- a. “Dwelling, Live/Work Space: A building or any portion thereof containing common work space areas and/or dwelling units measuring no more than 900 square feet in gross floor area per unit that are used by at least one occupant as both their primary residence and primary work/artist studio space, including use 46 (Light Non-Nuisance Manufacturing) and 58A (Home Office) as certified annually by the property owner with the Building Commissioner.”

- b. “Dwelling, Age Restricted: A building where all residents are 62 years of age or older. Such units shall be subject to an age restriction described in a deed, deed rider, restrictive covenant, or other document in a form reasonably acceptable to Town Counsel that shall be recorded at the Registry of Deeds or the Land Court. Age and occupancy restrictions shall not preclude reasonable, time-limited guest visitation rights or accommodation for caretakers for the primary resident. The age and occupancy restrictions shall be enforceable solely against the violating unit and not the development as a whole, by the owner of one or more dwelling units or by the

Town of Brookline. In the event of a violation, and at the request of the Town, the owner of the unit shall comply with the age and occupancy restrictions.”

- c. “Dwelling, Micro Unit: A building or any portion thereof containing residential units measuring no greater than 500 square feet in gross floor area per unit. Buildings containing Micro Units may have flexible common areas for living and/or working.”

3. By amending Section 3.01.3a as follows:

(Changes in bold and underlined)

- a. 3. Industrial Districts
 - a. Industrial Services (I)
 - 1) I-1.0

2) I-(EISD)

4. By amending Section 4.07 – Table of Use Regulations as follows:

(Changes in bold and underlined)

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
RESIDENCE USES									
<u>6B. Dwelling, Live/Work Space</u> <u>*Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u>	<u>No</u>	<u>No*</u>							
<u>6C. Dwelling, Age Restricted</u> <u>*Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u>	<u>No</u>	<u>No*</u>							
<u>6D. Dwelling, Micro Unit</u> <u>*Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</u>	<u>No</u>	<u>No*</u>							

<p>8. Hotel</p> <p>*Permitted by special permit in M-2.5 Districts and in business districts only if the hotel building is not within 50 feet from a lot or lots in an S, SC, or T District.</p> <p>**Permitted by special permit in I-(EISD) District in accordance with 5.06.4.j.</p>	No	No	No	No	No*	No	SP*	No	No**
<p>8A. Limited Service Hotel</p> <p>*Permitted by Special permit in M-2.5, Cleveland Circle Hotel Overlay District and I-(EISD) District.</p> <p>**Permitted as of right only in the G-1.75 (LSH) Limited Service Hotel District, provided that the applicant for a building permit certifies to the Building Commissioner that (a) at least 20% of all on-site parking spaces will be available for overnight public parking at prevailing overnight public rates, (b) that all on-site parking spaces will be available between 8:00 a.m. and 6:00 p.m. at prevailing public meter rates and (c) at least 25% of the lot area is to be used for open space open to the public. Otherwise such use shall be by special permit in business districts only if the hotel building is not within 50 feet from a lot or lots in an S, SC or T District. Permitted by Special Permit in G-(DP) District in accordance with Section 5.06.4.g.</p>	No	No	No	No	No*	No*	Yes**	No	No_*
INSTUTIONAL, RECREATIONAL & EDUCATIONAL USES									
<p>18A. Small group health and fitness club not exceeding 2,500 square feet of gross floor area operated for profit and for members only, solely for the purpose of providing physical fitness, exercise, therapy, rehabilitation and/or health services.</p> <p>*Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</p>	No	No	No	No	No	Yes	Yes	Yes	Yes_*
OFFICE USES									

<p>20A. Office or clinic of a licensed veterinarian for treatment of animals, including laboratories and holding facilities. No outdoor facilities for animals shall be permitted. Studies by recognized experts shall be submitted to insure, 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.</p> <p>*Verification of noise control shall include verification by a professional engineer (P.E.), utilizing an acoustical engineer under his/her supervision if necessary, that under worst-case (e.g., maximum number of animals, open windows if applicable) conditions neither daytime nor nighttime background noise levels, as defined in Article 8.15.3 of the Town By-Laws, will be exceeded at the boundary of the property where the use is located. Moreover, as a condition of a Special Permit, the ZBA shall require that further noise control measures be undertaken in the future if such background noise levels are exceeded during operation of the facility.</p> <p>** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</p>	No	No	No	No	No	SP*	SP	SP	SP**
<p>21. Business, professional, or governmental office other than Use 20 and 20A.</p> <p>*Provided no commodities are kept for sale on the premises</p> <p>** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</p>	No	No	No	No	No	Yes	Yes	Yes*	Yes**
RETAIL AND CONSUMER SERVICE USES									
<p>29. Store of less than 5,000 square feet of gross floor area per establishment, primarily serving the local retail business needs of the residents of the vicinity, including but not limited to grocer, baker, food store, package store; dry goods, variety, clothing; hardware, paint, household appliances; books, tobacco, flowers, drugs.</p> <p>*Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.j.</p>	No	No	No	No	No	Yes	Yes	No	Yes_

<p>30. Eating places of less than 5,000 square feet of gross floor area per establishment, primarily serving local needs, including but not limited to lunch room, restaurant, cafeteria, place for the sale and consumption of beverages, ice cream and the like, primarily in enclosed structures with no dancing, nor entertainment other than music.</p> <p><u>*Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.i.</u></p>	No	No	No	No	No	Yes	Yes	No	Yes*
<p>32. Service business primarily serving local needs, including but not limited to the following uses:</p> <p>(a) Barber, beauty shop, laundry and dry-cleaning pickup agency, shoe repair, self-service laundry, or other similar use.</p> <p>(b) Hand laundry, dry-cleaning or tailoring, or other similar use, provided, in L and G Districts, personnel is limited to five persons at any one time.</p> <p>(c) Printing shop, photographer's studio, caterer, or other similar use, provided, in L and G Districts, personnel is limited to five persons at any one time.</p> <p>*Permitted by special permit in an M-1.0 (CAM) District.</p> <p><u>** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.i.</u></p>	No	No	No	No	No*	Yes	Yes	No	Yes**
<p>33. Stores not exceeding 10,000 square feet of gross floor area serving the general retail needs of a major part of the Town, including but not limited to general merchandise department store, furniture and household goods.</p> <p><u>* Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.i.</u></p>	No	No	No	No	No	No	Yes	No	No*
<p>33A. Stores over 10,000 square feet of gross floor area serving the general retail needs of a</p>	No	No	No	No	No	No	SP	No	SP*

<p>major part of the Town, including but not limited to general merchandise department store, supermarket, grocery store, furniture and household goods.</p> <p><u>* Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.i.</u></p>									
<p>34. Place for the sale and consumption of food and beverages exceeding 5,000 square feet of gross floor area, or providing dancing and entertainment.</p> <p>*Permitted by Special Permit in the Cleveland Circle Hotel Overlay District.</p> <p><u>** Permitted by special permit in the I-(EISD) District in accordance with 5.06.4.i.</u></p>	No	No	No	No	No	No*	Yes	No	Yes**
ACCESSORY USES									
<p>46. Light non-nuisance manufacturing, provided that all resulting particulate matter, flashing light, fumes, gases, odors, liquid and/or solid wastes, smoke, and vapor are effectively confined to the premises or disposed of in a manner so as not to create a nuisance or hazard to safety or health and in compliance with all applicable town, state, and federal laws and regulations; further provided that no vibration is perceptible without instruments at a distance greater than 50 feet from such premises and that noise limits shall conform to the Town's Noise By-law. At least 30 days prior to the Board of Appeals hearing, the applicant shall submit studies by recognized experts to insure, to the satisfaction of the Board of Appeals, that the use will be designed and operated so as to conform to the standards above. Such studies shall include description of operations and processes proposed, materials to be used, above-and-below-ground storage facilities, and waste products. Any applications, including the required studies, shall be referred to the Conservation Commission and the Health Department for advisory reports in accordance with the procedures in §9.04.*</p> <p>*For uses 42 to 46 inclusive, all storage of</p>	No	No	No	No	No	No	No	No	SP**

<p>materials and equipment and all business operations, such as loading, parking, and storage of commercial vehicles, shall be within an enclosed building. This requirement may be modified by the Board of Appeals by special permit only, provided the requirements of §6.04, paragraph 8. and §9.05 are met. Such special permit may be rescinded or modified by the Board of Appeals after notice and hearing if noncompliance with the conditions of approval is determined.</p> <p>** Permitted by Special Permit in the I-(EISD) District in accordance with 5.06.4.i.</p>									
<p>58A. Office/studio within the place of residence provided all of the following conditions are met, except that only condition (e) below needs to be met in the G-(DP) and I-(EISD) Districts:</p> <p>(a) the office occupies not more than one room;</p> <p>(b) there are no nonresident employees;</p> <p>(c) there are no clients visiting the premises (members of the clergy shall be exempt from this limitation);</p> <p>(d) there are no signs nor other external evidence of the office; and</p> <p>(e) there is no production of offensive noise, vibration, smoke, dust or other particulate matter, heat, humidity, glare, or other objectionable effects.</p>	Yes								
<p>66. Accessory laboratory. *In permitted institutions only. ** Permitted by Special Permit in the I-(EISD) District in permitted institutions only and in accordance with 5.06.4.i.</p>	No	No	No	No	SP*	SP*	SP	SP	SP**

5. By amending Section 5.01 – Table of Dimensional Requirements by adding I-(EISD) and adding footnote 20 as follows:

(Changes in bold and underlined)

DISTRICT	USE	LOT SIZE MINIM	FLOOR AREA RATIO	PBI NB ON	LOT WIDTH MINIM	MAXIMUM HEIGHT	PBI	MINIMUM YARD	OPEN SPACE (% of gross floor area)
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		UM (sq. ft.)	MAXIMUM	LY	UM (feet)		B	N B	Front	Sid e	Rear	Lands c.	Usab le
1-1-0 <u>I-</u> <u>(EISD)</u> ²⁰	Any structure or principal use (dwelling-footnote 5)	none ⁴	1-0 <u>1.0 or NA</u> ²⁰	NA	none	<u>40 or 110</u> ²⁰	NA	NA	<u>20</u> ²⁰	NA	<u>10+L/10</u> ²⁰	NA	NA

20. See Sections 4.07 and 5.06.4.j with respect to uses and all dimensional requirements.

6. By amending Section 5.06.4 to create Section 5.06.4.j “Emerald Island Special District” as follows:

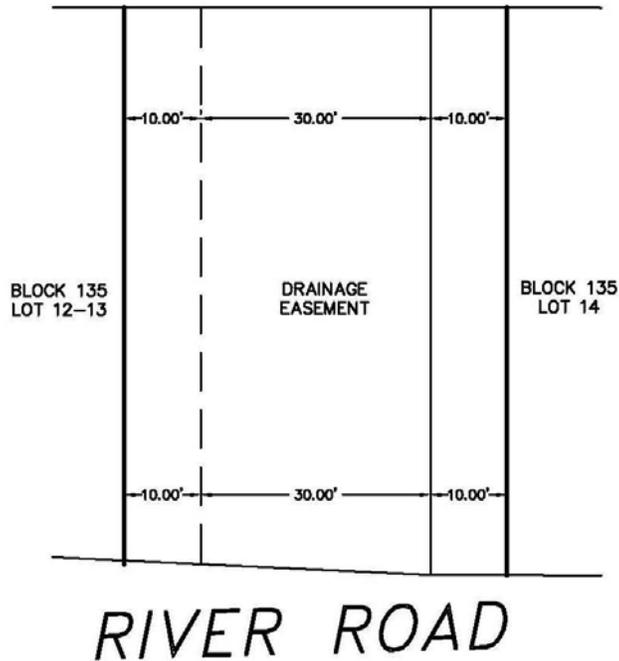
Emerald Island Special District I-(EISD)

1. The Emerald Island Special District – the area bounded by River Road, Brookline Avenue, and Washington Street – is an area in transition. It has been determined through study by the River Road Study Committee that specific zoning parameters are required to encourage appropriate redevelopment of this district. In developing these zoning parameters, due consideration has been given to the prominent location of this area as a major gateway to Brookline. The proximity of the Muddy River, Emerald Necklace, Longwood Medical Area as well as the differences in the scale of existing buildings, recently permitted and proposed developments, access to transit, and the solar orientation of sensitive nearby uses, including the residences of Village Way and Emerald Necklace Park all combined to shape the Special District parameters. Following a comprehensive study by financial, architecture, urban design and real estate experts, the Committee further concluded that the following concepts related to allowed uses, building heights, building form, parking requirements and the public realm are appropriate for this Special District.
2. All applications for new structures, outdoor uses, and exterior alterations in the Emerald Island Special District which exceed a floor area ratio of 1.0, a height greater than 40’ and/or seek alternative parking and loading zone requirements shall be permitted only on lots greater than 13,600 square feet in contiguous area and only for the uses described in Section 5.06.4.j.3, shall be subject to Site Plan Review by the Planning Board as described in Section 5.06.4.j.4, shall be subject to the requirements of Section 5.09, Design Review, shall obtain a special permit per Section 9.03, and shall meet the following requirements:

- a. Setbacks and Sidewalk Widths:

- i. All buildings shall be setback 10 feet from the mid-district drainage easement as shown in Figure 5.06.4.j.1 below.

BROOKLINE AVE



LEGEND:
10' SET BACK LINE ———
EASEMENT LINE - - - -
PROPERTY LINE ———

FIGURE 5.06.4.j.1 Setbacks from Mid-District Drainage Easement

- ii. All buildings shall be setback 45 feet from the point of intersecting tangents of Brookline Avenue and River Road as shown in Figure 5.06.4.j.2 below.

BROOKLINE AVE

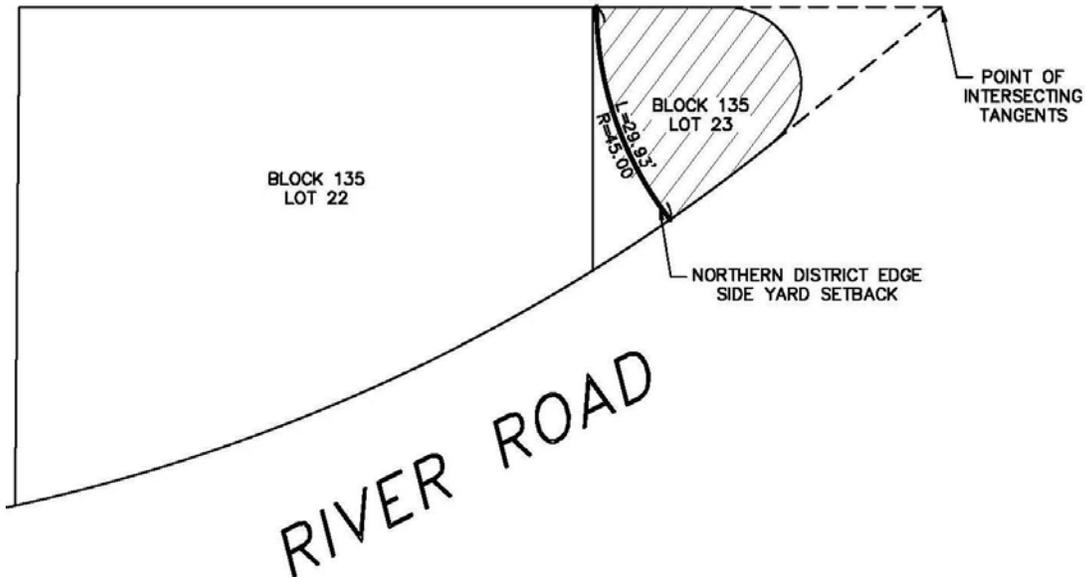


FIGURE 5.06.4.j.2 Northern District Edge Sideyard Setback

- i. Notwithstanding Section 5.01 and other than as provided in Sections 5.06.4.j.2a.i and 5.06.4.j.2a.ii, there shall be no additional setback requirements except as is necessary to achieve the required sidewalk widths for the district. For the purposes of the EISD only, sidewalk shall be defined as the area between the building façade and the face of the curb. The required sidewalk width shall be measured from the ground level of the proposed building façade to the face of the curb at the time of special permit application. All sidewalks shall maintain a minimum 5 foot wide walkway clear from all obstructions, including, but not limited to tree pits, structural columns and street furniture. The minimum sidewalk width along Brookline Avenue and River Road shall be no less than 12 feet. The minimum sidewalk width along Washington Street shall be no less than 18 feet including 10 feet reserved as a planting strip, with the final design of all landscaping in this planting strip to be approved by the Director of Parks and Open Space or his/her designee. No relief may be granted for a reduction in sidewalk width along Washington Street.
- ii. Where it can be demonstrated that achieving the required sidewalk width would be infeasible in limited areas, the Board of Appeals may by special permit reduce the required width of the affected areas to no less than 8 feet on ~~Washington Street and River Road~~. No relief may be granted for a reduction in sidewalk width along Brookline Avenue or Washington

Street. Applicants for a special permit to reduce the width of a sidewalk shall provide written and graphic documentation to the Planning Board illustrating why the required width is not attainable in the affected area. The Planning Board may in an affirmative and written determination make a recommendation to the Board of Appeals to reduce the width of the sidewalk in limited areas. Where relief is granted, applicants shall provide counterbalancing amenities in the form of wider sidewalks and/or landscaping on-site or in the immediate area adjacent to their site, subject to the review and approval of the Planning Board.

- b. The minimum finished floor to floor height for all ground floor levels shall be no less than 15 feet.
- c. No permanent on-site parking spaces shall be located on the ground level in the Special District.
- d. All new buildings and renovations to existing buildings shall be LEED Silver Certifiable or higher. Applicants shall provide evidence to the satisfaction of the Building Commissioner and Director of Planning and Community Development that all new construction and renovations of existing buildings are LEED Certifiable Silver or a higher rating via the provision of a LEED scoring sheet. The construction or renovation of such buildings consistent with these plans shall be confirmed prior to the issuance of a Certificate of Occupancy.
- e. Street trees shall be provided at regular intervals approximately every 25 feet along the sidewalks of Brookline Avenue, Washington Street and River Road. The size, location and species of all trees at the time of planting and the final design of all landscaping in the public way shall be approved by the Director of Parks and Open Space or his/her designee. In circumstances where trees cannot be provided as stipulated above as determined by the Director of Parks and Open Space or his/her designee, the applicant shall provide an equivalent amount of trees and/or landscaping at appropriate locations on the site or make a financial contribution to the Town in an equivalent dollar amount for similar improvements in adjacent parks and public spaces.
- f. The applicant shall devote no less than 1% of the hard construction cost of constructing its project, (including any building, site work, above ground or underground structures, but exclusive of tenant fit-up) to making off-site, streetscape and parks improvements within 500 feet of the Special District boundaries. In addition to review by the Planning Board, a plan of the proposed off-site improvements shall be submitted for the review and approval of the Director of Transportation and the Director of Parks and Open Space or their designees. Alternatively, with the approval of the Director of Transportation and the Director of Parks and Open Space, the applicant may make a financial contribution to the Town in an equivalent dollar amount to be used by the Town for such purposes.
- g. Public seating and pedestrian-scale lighting shall be provided at regular intervals. The location, number and design of all seating and lighting in the public way shall be approved by the Director of Parks and Open Space or his/her designee.

- h. Notwithstanding the provisions of Sections 6.06.6 and 6.07, the number and size of required loading zones may be reduced in accordance with Site Plan Review as noted in Section 5.06.4.j.4 below.
- i. A building shall not have more than 30% of its frontage along a street devoted to residential use including associated lobby use.
- j. Any proposed building shall be permitted to have more than one principal use. For example, a restaurant or retail business may be located in the same building as a permitted residential, or office, or hotel use without being considered an accessory use.

3. Exceptions to Maximum FAR and Maximum Height

- a. Additional height may be granted by special permit up to 85 feet for buildings primarily containing only the following uses: 6B (Dwelling, Live/Work Space); 6C (Dwelling, Age Restricted); 6D (Dwelling, Micro Unit) 8 (Hotel); 8A (Limited Service Hotel); 20 (Medical Office); 21 (Professional Office); 29 (Store less than 5,000 SF), 30 (Eating Place less than 5,000 SF); 33 (Stores not exceeding 10,000 SF); 33a (Stores over 10,000 SF); 34 (Place for the sale and consumption of food and beverages exceeding 5,000 SF); 66 (Accessory Laboratory), only for buildings located a minimum of 189.12 feet from the intersection of Washington Street and Brookline Avenue, provided that the footprint of any building mass above a height of 65 feet covers no more than 55% of the lot area. Buildings may also contain Principle Uses 18A (Small Group Health/Fitness), 20a (Licensed Veterinarian), and 32 (Service Business) provided that such uses occupy no more than 25% of the building. The required 189.12 foot distance from the intersection of Washington Street and Brookline Avenue shall be measured from the Point of Intersecting Tangents as show in Figure 5.06.4.j.3 below.

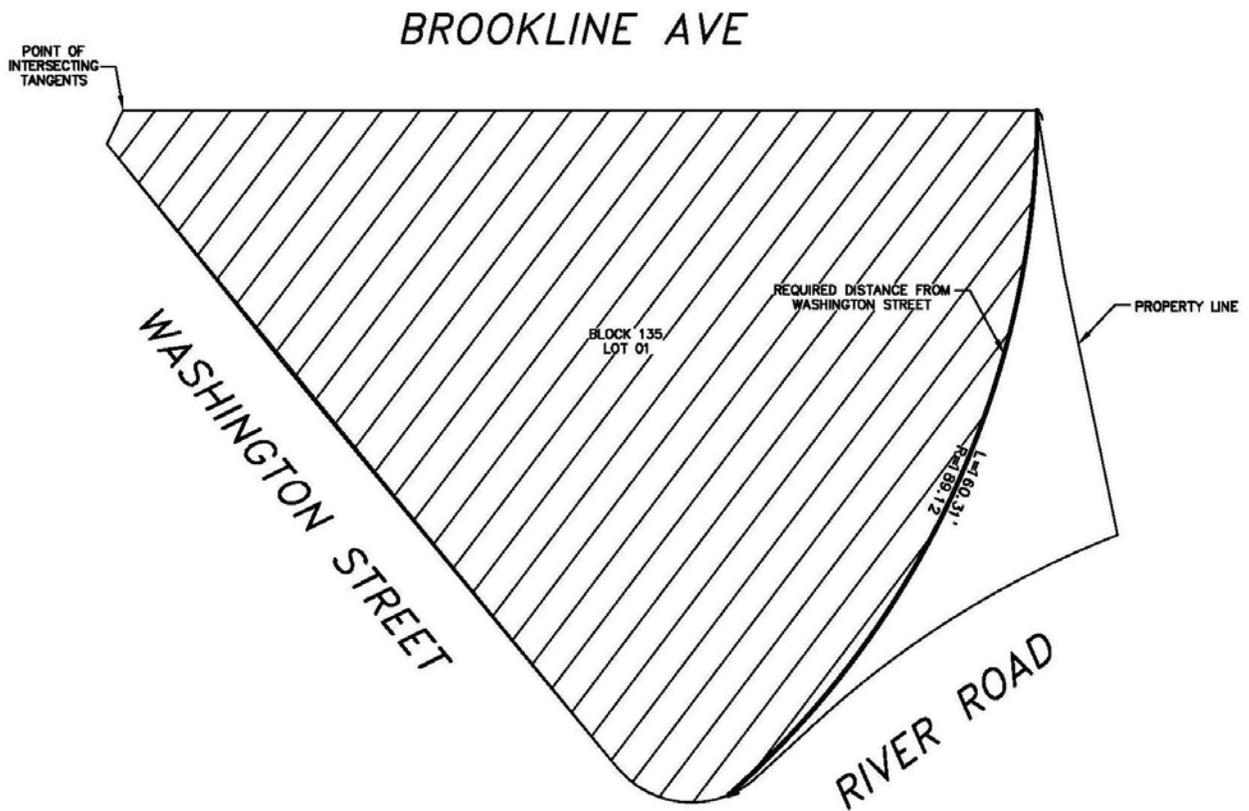


FIGURE 5.06.4.j.3 Required Distance from Washington Street

- b. Additional height of up to 110 feet may be granted by special permit for buildings containing only the following uses: 8 (Hotel) and 8A (Limited Service Hotel) and only for buildings with frontage on Washington Street provided that the footprint of any building mass covers no more of the lot area than is specified in Table 5.06.4.j.1 and as depicted in Figure 5.06.4.j.4 below. Where an applicant can demonstrate that additional lot coverage for any building mass above 35 feet would result in an improved building design, the Board of Appeals may by special permit grant an increase in the maximum percentage of lot coverage by special permit as shown in Table 5.06.4.j.1 below. Applicants for a special permit to increase the maximum percentage of lot coverage shall provide written and graphic documentation to the Planning Board and Design Advisory Team illustrating how the building design has improved. The Planning Board may in an affirmative and written determination make a recommendation to the Board of Appeals to increase the maximum percentage of lot coverage as shown in Table 5.06.4.j.1 below. The Design Advisory Team shall provide a similar affirmative written recommendation.

Building Mass Heights	Maximum % Lot Area Coverage	Maximum % Lot Area Coverage By Special Permit with Planning Board Recommendation
0 up to 15'	80%	N/A
15' up to 35'	92%	N/A
35' up to 50'	80%	85%
50' up to 75'	75%	80%
75' up to 110'	50%	55%

Table 5.06.4.j.1 - Maximum % Lot Area Coverage By Building Height

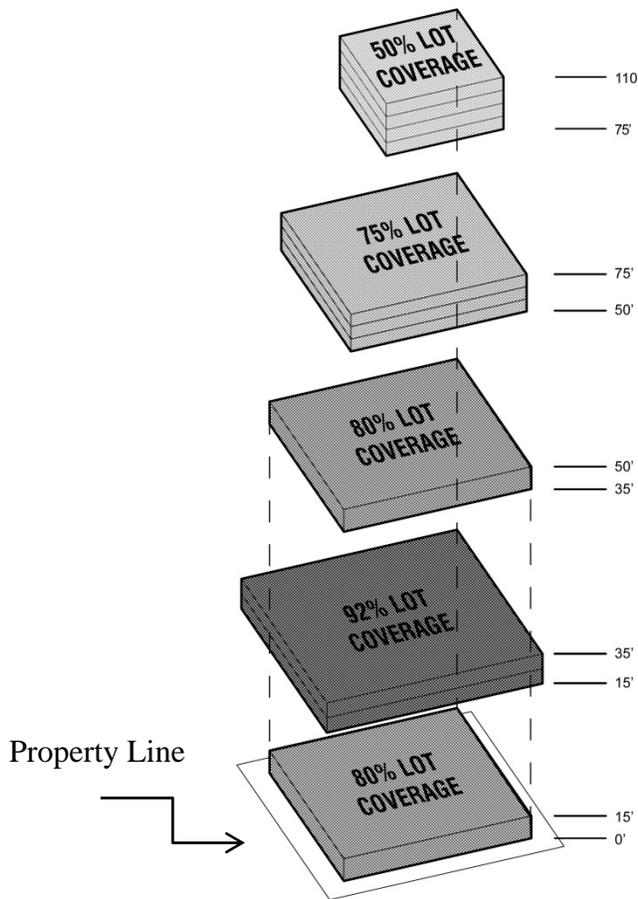


FIGURE 5.06.4.j.4 Maximum % Lot Coverage by Building Height

4. Site Plan Review

- a. All applications for new structures shall be subject to site plan review by the Planning Board to: ensure that there is adequate provision of access for fire and service equipment; ensure adequate provision for utilities and storm water storage and drainage; ensure adequate provision of loading zones; ensure adequate provision of parking; minimize impacts on wetland resource areas; minimize storm water flow from the site; minimize soil erosion; minimize the threat of air and water pollution; minimize groundwater contamination from on-site disposal of hazardous substances; maximize pedestrian and vehicle safety; screen parking, storage and outdoor service areas through landscaping or fencing; minimize headlight and other light intrusion; ensure compliance with the Brookline Zoning By-Laws; maximize property enhancement with sufficient landscaping, lighting, street furniture and other site amenities; minimize impacts on adjacent property associated with hours of operation, deliveries, noise, rubbish removal and storage. All plans and maps submitted for site plan review shall be prepared, stamped, and signed by a Professional Engineer licensed to practice in Massachusetts. Pursuant to the site plan review process, applicants shall provide to the Planning Board and the Director of Engineering a site plan showing:
- i. Property lines and physical features, including roads, driveways, loading areas and trash storage for the project site;
 - ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting and exterior lighting.

5. Parking and Vehicular Requirements:

- a. Notwithstanding Section 6.02, there shall be no minimum parking requirements for the following uses and such uses shall have the maximum parking limits noted in Table 5.06.4.j.2 below.

USE	MAXIMUM PARKING
Principal Use 6B (Dwelling, age restricted)	1.25 per unit
Principal Use 6C (Live/Work space)	0.50 per unit
Principal Use 6D (Dwelling, Micro Unit)	0.50 per unit
Principal Use 8 (Hotel) and 8a (Limited Service Hotel)	0.40 per room
Principal Uses: 18A (Small group health/fitness); 20 (medical office); 20a (Licensed veterinarian); 21 (professional office); 29 (store less than 5,000K SF); 30 (Eating places less than 5,000K SF); 32 (Service use business); 33 (Stores not exceeding 10,000K SF); 33a (Stores over 10,000K SF); 34 (Place for sale and consumption of food not exceeding 5,000K SF); 66A (Accessory Laboratory)	1.50 per 1,000 SF

Table 5.06.4.j.2 – Maximum Parking Limits

- b. Notwithstanding the above, where it can be demonstrated that additional parking is needed, the Board of Appeals may by special permit increase the maximum parking ratio by no more than 20%. Applicants for a special permit to increase the maximum parking ratio shall provide written documentation to the Planning Board demonstrating the need for additional parking. The Planning Board may in an affirmative and written determination make a recommendation to the Board of Appeals to increase the maximum parking ratio by no more than 20%.
- c. Notwithstanding the above, dedicated spaces for Car Sharing Organizations (CSO) may be provided without regard to such maximum parking limits. If such dedicated parking spaces are not leased by any CSO they shall be dedicated to bicycle parking and appropriate bicycle parking hardware shall be provided.

6. Design Standards:

- a. Building façades parallel to or within 45 degrees of parallel to any property line shall be designed and constructed with equal care and quality. Visual articulation shall be achieved for each façade by (a) employing variations in materials and/or ensuring that no portion of any such façade is coplanar or unbroken for more than 3,500 square feet without a change in depth of 2 feet or more, or (b) utilizing alternative methods of vertical or horizontal articulation, or (c) utilizing other design elements that, in the affirmative and written determination of the Design Advisory Team provide equivalent or better visual relief with respect to building massing, for the reasons expressed in such written determination. The Planning Board and the Board of Appeals shall provide a similar written determination and reasons with respect to façade design. During their review of all proposed building designs, both the Design Advisory Team and Planning Board shall consult the Emerald Island Special District Design Guidelines developed by the River Road Study Committee for guidance on general exterior massing, scale and design.
- b. In order to minimize visual and audible impacts, all rooftop mechanical equipment shall be insulated and screened to the greatest extent possible from all public ways via substantial screening materials and/or shall be located in the interior of the building. Additionally, all rooftop mechanical equipment shall be located such that all shadow impacts are minimized.

7. Amend Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements by adding a Footnote as follows:

2. For the I-(EISD) Special District, parking requirements shall be the same as those districts with a maximum floor area ratio of 1.0, except as otherwise provided for in Section 5.06.4.j.

or act upon anything else relative thereto

ARTICLE 9

Submitted by: Board of Selectmen

To see if the Town will accept a Restrictive Covenant, in substantially the same form as the draft attached hereto as Exhibit A and incorporated herein by reference, from Claremont Brookline Development, LLC a Massachusetts limited liability company and the entity owning the eight parcels of land referred to as 25 Washington Street in Brookline, Massachusetts and described below; said Covenant will be upon such terms and conditions as the Board deems in the best interests of the Town with respect to the proposed development of the site referred to as 25 Washington Street and will provide for the future tax certainty of the land and buildings thereon, and authorize the Board of Selectmen to enter into any necessary agreement(s) in furtherance of the purposes of the Restrictive Covenant with respect to the future tax certainty of the land and buildings as more specifically set forth in the Restrictive Covenant.

Legal Description of 25 Washington Street Property

The following parcels of land situated in Brookline in the County of Norfolk and said Commonwealth of Massachusetts:

Parcel One:

A certain parcel of land with the buildings thereon situate and now numbered 690 and 692 on Brookline Avenue, bounded and described as follows: Northwesternly on Brookline Avenue fifty-three and 29/100 feet (53.29); Northeasterly by land formerly of John Dillon and now or late of Charles A. Crush et al. eighty-nine and 54/100 (89.54) feet; Easterly by River Road forty-four and 51/100 (44.51) feet; Southerly by land now or late of Yiannacopoulos forty-seven and 08/100 (47.08) feet; and Southwesterly by land now or late of Curry seventy-four (74.00) feet. Containing 5,924 square feet.

Parcel Two:

A certain parcel of land with the buildings thereon situate and now numbered 9 and 11 on Washington Street, bounded and described as follows: Southerly by said Washington Street twenty-two (22.00) feet; Westerly by the parcel next hereinafter described fifty-nine and 30/100 (59.30) feet; Northwesternly five (5.00) feet and Northerly eighteen and 44/100 (18.44) feet by land now or late of Curry, and Easterly by land now or late of Yiannacopoulos sixty-three and 70/100 (63.70) feet. Containing 1,300 square feet.

Parcel Three:

A certain parcel of land with the buildings thereon situate and now numbered 13 and 15 on said Washington Street, bounded and described as follows: Southerly by said Washington Street twenty-two and 07/100 (22.07) feet; Westerly by land now or late of Orelovitz thirty-nine and 02/100 (39.02) feet; Northwesterly by the same land seventeen and 50/100 (17.50) feet and by the parcel next hereinafter described twelve (12.00) feet and Easterly by the second parcel herein described fifty-nine and 30/100 (59.30) feet. Containing 1,047 square feet.

Parcel Four:

A certain parcel of registered land lying Northwesterly of the third parcel herein described, bounded and described as follows: Westerly by Lot A as shown on the plan hereinafter referred to eighteen and 56/100 (18.56) feet; Northeasterly by land now or formerly by Charles H. Stearns et al. twenty-one and 83/100 (21.83) feet; Southeasterly by the third parcel hereby conveyed twelve (12.00) feet; Southwesterly by land now or formerly of Israel Jacobs ten and 50/100 (10.50) feet; Southeasterly by the same land seven and 72/100 (7.72) feet. Said parcel is shown as Lot B on a plan drawn by Aspinwall & Lincoln, Civil Engineers dated Feb. 9, 1924, as approved by the Land Court, filed in the Land Registration Office as Plan No. 7247B, a copy of a portion of which is filed with the Norfolk Registry District with Certificate of Title No. 7071, in Volume 36, and is described in Certificate of Title No. 7072, in said Registry District.

Parcel Five:

A certain parcel of registered land with the buildings thereon situate and now numbered 706 and 708 on Brookline Avenue, bounded and described as follows: Northwesterly by Brookline Avenue thirty-eight and 60/100 (38.60) feet; Northeasterly by land now or formerly of Charles H. Stearns et al. thirty-four and 34/100 (34.34) feet; Easterly by Lot B shown on the plan hereinafter referred to eighteen and 56/100 (18.56) feet; Southeasterly by land now or formerly of Israel Jacobs six and 45/100 (6.45) feet; Southerly by lands now or formerly of Israel Jacobs and of Eva Jacobs fifty-four and 73/100 (54.73) feet. Said parcel is shown as Lot A on a plan drawn by Aspinwall & Lincoln, Civil Engineers dated Feb. 9, 1924, as approved by the Land Court, filed in the Land Registration Office as Plan No. 7247B, a copy of a portion of which is filed in the Norfolk Registry District with Certificate of Title No. 7071, Vol. 36.

Parcel Six:

A certain parcel of land with the buildings thereon situate and now numbered 698 on Brookline Avenue, formerly numbered 27 on Brookline Avenue, bounded and described as follows: Northwesterly by said Brookline Avenue forty-five and 13/100 (45.13) feet; Northeasterly by land now or late of Warren seventy-four (74.00) feet; Southerly in part by land now or late of Yiannacopoulos and in part by land now or late of Warren twenty-eight and 28/100 (28.28) feet; Southeasterly by the last-mentioned land five (5.00) feet; Southwesterly fifty-six and 17/100 (56.17) feet in part by other land now or late of said

Warren; being the premises described in Certificate of Title No. 7072 issued from the Norfolk Registry District, and in part by land now or late of Nichelini, being the premises described in Certificate of Title No. 11228 in said Registry District. Containing 2,047 square feet.

Parcel Seven:

The land in Brookline, together with the buildings thereon, and shown as Lots A and B on a plan of land in Brookline, Aspinwall & Lincoln, Civil Engineers, dated June 5, 1926, and recorded with Norfolk Deeds, Book 1711, Page 475, and bounded and described as follows:

Commencing at the Southeasterly corner of said premises on Washington Street by land now or formerly of James J. Warren, running Northerly and bounded Easterly by said land now or formerly said of James J. Warren, thirty-nine and 8/100 (39.08) feet to a stake three (3) feet six (6) inches from the end of the building formerly standing thereon; thence running Northeasterly seventeen and 50/100 (17.50) feet, bounded by land now or formerly of said James J. Warren, to a stake; thence turning and running Westerly bounded Northerly by land now or formerly of said James J. Warren, ten and 50/100 (10.50) feet; thence turning and running Southerly bounded Westerly by land now or formerly of said James J. Warren fourteen and 17/100 (14.17) feet to the corner of the dwelling house which formerly stood thereon; thence turning and running Westerly bounded by a 3-foot passageway and land now or formerly of James J. Warren fifty-four and 73/100 (54.73) feet to Brookline Avenue; thence turning and running Southwesterly by said Brookline Avenue fifty-two and 3/100 (52.03) feet; thence turning and running at the junction of Brookline Avenue and Washington Street in a Southeasterly direction as shown on said plan, seven and 79/100 (7.79) feet; thence turning and running Easterly by said Washington Street eighty-three and 96/100 (83.96) feet to the point of beginning; together with the right to pass and re-pass at all times over said 3-foot passageway.

Parcel Eight:

All of that certain parcel of land situate in Brookline in the County of Norfolk and said Commonwealth, bounded and described as follows:

Easterly by the Westerly line of River Road, forty-five and 67/100 (45.67) feet; Southeasterly by the Northwesterly line forming the junction of said River Road and Washington Street, thirty-two and 69/100 (32.69) feet; Southerly by the Northerly line of said Washington Street, thirty-eight and 72/100 (38.72) feet; and Westerly, sixty-three and 81/100 (63.81) feet, and Northerly, fifty-six and 92/100 (56.92) feet, by land now or formerly of the Gulf Oil Corporation.

All of said boundaries are determined by the Land Court to be located as shown upon plan numbered 25231A, which is filed in Norfolk Registry District with Certificate No. 53210, Book 267, the same being compiled from a plan drawn by William S. Crocker, Civil Engineer dated June 15, 1954, and additional data on file in the Land Registration Office, all as modified by and approved by the Court.

The legal description of the parcels making up the land at 25 Washington Street in Brookline is also contained in Exhibit A to a Deed recorded on January 12, 2016 at the Norfolk County Registry of Deeds in Book 33782, Page 592 and filed with the Norfolk Registry District of the Land Court as Document Number 1,345,623 on Certificate of Title Number 192558:

Or act on anything relative thereto.

Exhibit A:

**DRAFT
AGREEMENT**

Claremont Brookline Avenue LLC, a Massachusetts limited liability company, with a principal place of business at Claremont Companies, One Lakeshore Center, Bridgewater MA 02324, its successors and assigns (“Claremont”) and the Town of Brookline, a municipal corporation (“Town”), located in Norfolk County, Massachusetts and acting by and through its Board of Selectmen (the “Board”), is made and entered into this ___ day of _____, 2016, upon the mutual promises and obligations hereinafter set forth and additional consideration which the parties acknowledge is adequate and appropriate, upon the following terms and conditions:

PREAMBLE

WHEREAS, the Town through its comprehensive plan seeks to encourage the redevelopment of underutilized, vacant and/or abandoned buildings and land along Route 9 and to be assured that such redevelopment results in the improvements remaining as taxable properties within the Town to help protect the Town’s existing property tax revenue; and

WHEREAS, Claremont owns the real property known as and numbered 25 Washington Street (hereinafter the “Premises,” the legal description of which is attached hereto as Exhibit “XX”) which currently consists of a vacant parcel formally occupied by a gas station, and

WHEREAS, Claremont has proposed the development on the Premises of a modern select service hotel and related parking facilities (the “Project”); and

WHEREAS, the Town requires an easement of approximately 201 square feet of land on the southeast corner of Premises to construct roadway improvements which is more particularly shown on a sketch plan provided by the Town and attached hereto as Exhibit XX (hereinafter the “The Easement”);

WHEREAS, Claremont requires a zoning amendment to construct the Project;

WHEREAS, Claremont acknowledges the value of The Easement to the Project;
and

WHEREAS, Claremont has stated to the Town that the Project is not likely to result in a loss of the Town's taxable property, and in order to assure that the Premises will pay taxes or the equivalent thereof in the future it has offered to enter into this Agreement; and

WHEREAS, the Town intends to file a Warrant Article for consideration by Town Meeting to accept The Easement and authorize the Board of Selectmen to execute and record The Easement from Claremont on certain terms and conditions and upon the assurance that Claremont would enter into an agreement binding upon its successors and assigns with respect to the future payment of taxes or the equivalent thereof; and

WHEREAS, the Town and Claremont seek to confirm their shared commitment to keeping the Premises upon which the Project may be constructed as a taxable parcel notwithstanding that by virtue of its potential use, it may be exempt from the payment of real estate taxes as nontaxable real property under Massachusetts General Laws, Chapter 59, §5, Clause Third; and

WHEREAS, for the reasons stated above and pursuant to the terms of this Agreement, the Town and Claremont have agreed that Claremont and its successors and assigns in title to the Premises will make, during the Term, voluntary payments to the Town in lieu of real estate taxes in circumstances in which Claremont or its successors and assigns in title would not otherwise be obligated to pay real property taxes on the Premises to the Town under applicable law. Voluntary in-lieu of tax payments are in addition to other economic enhancements provided by Claremont in developing the Premises as may be mutually agreed between the Town acting through its Board of Selectmen and Claremont;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Claremont and the Town agree as follows:

1. Claremont Commitment to Voluntary Annual Payment to the Town. In each fiscal tax year commencing on the first fiscal year next following the assessment date on which the improvements to be constructed by Claremont on the Premises pursuant to permits and approvals sought by Claremont and granted or issued by the Town acting by and through its departments, boards and commissions are completed and receive a final Certificate of Occupancy from the Town, and for the fiscal years thereafter during which the Premises is being used for an Exempt Use or Uses, as hereinafter defined, and expiring seventy-five years from the Effective Date of this Agreement (the "Term"), CLAREMONT shall make a direct financial contribution to the Town (the "Annual Payment"), and the Town shall accept the Annual Payment in full satisfaction of CLAREMONT's obligations to make payments to the Town under

this Agreement and/or applicable law (whether now in effect or, subject to Section 4, hereafter amended or adopted) on account of the Premises being used for an Exempt Use or Uses. During the Term, the Annual Payment shall consist of the “Voluntary Payment” more particularly described in Section 2 below. The assessment date shall mean January 1st or another date on which the Town Assessors by statute determine the value of real property for the next following fiscal year.

2. Voluntary Payment To Be Made by CLAREMONT. The “Voluntary Payment” shall be paid by CLAREMONT to the Town pursuant to this Agreement in quarterly installments on the date real property taxes are due and payable in the Town in each applicable fiscal tax year during the Term. The total Voluntary Payment shall be equal to the amount of real property taxes that would otherwise have been levied by and owed to the Town for all or any portion of the Premises were it not used for an Exempt Use or Uses and thus not exempt from real property taxes under applicable law in the relevant fiscal tax year. CLAREMONT shall have the right to contest the amount of the Voluntary Payment on the basis of over valuation or disproportionate valuation in comparison to similar properties, provided CLAREMONT shall before commencing legal action first use good faith efforts to mediate the issue of valuation with the Assessors. An Exempt Use or Uses shall mean those uses of real property that render such property eligible for exemption from real property taxation pursuant to Massachusetts General Laws Chapter 59, Section 5, Clause Third or other similar law that may be adopted during the Term of this Agreement. The Town shall provide CLAREMONT with a written statement of the amount due not less than thirty (30) days prior to the due date.

3. Termination of Agreement. The Town or CLAREMONT shall have the right to terminate this Agreement by, and effective upon, written notice of such termination delivered to the other in accordance with Section 8(a), in the event that, at any time after the Effective Date the federal or state laws, regulations, ordinances and/or other government requirements applicable to the payment by Claremont of taxes, similar assessments or payments in lieu of such taxes on the Premises used for an Exempt Use or Uses and/or any judicial or administrative interpretation of any of them (other than by the Town), change in any manner, the direct or indirect effect of which is to change the terms, conditions, and/or benefits of this Agreement in any way that is materially adverse to the Town or Claremont. This Agreement shall not in any manner whatsoever restrict the Town’s exercise of its police power. Upon transfer of title of the Premises Claremont’s obligations under the Agreement shall automatically terminate and the successor owner of the Premises shall be bound by the terms of this Agreement in accordance with the Successor Affirmation set forth in Section 7 of this Agreement.

4. Representations as to Authority. *The Town’s Authority.* The Town represents that it is duly organized, validly existing and in good standing under the laws of Massachusetts and has all requisite municipal power and authority under the Town’s Bylaws and under the laws of Massachusetts to execute, deliver, perform and

be bound by this Agreement. The Town represents that (i) the individuals executing and delivering this Agreement on the Town's behalf, are the incumbents of the offices stated under their names, and such offices have been duly authorized to do so by all necessary municipal action taken by and on the part of the Town, (ii) the Agreement has been duly and validly authorized, executed and delivered by the Town, and (iii) subject to any future decision of a court or arbitrator of competent jurisdiction (which the Town will not instigate and has no reason to believe will be forthcoming), the Agreement constitutes the valid and binding obligation of the Town, enforceable against the Town in accordance with its provisions. If a third party challenges the validity and enforceability of this Agreement against the Town, the Town agrees to use best reasonable efforts to defend the validity and enforceability of this Agreement.

Claremont's Authority. CLAREMONT represents that it is duly organized, validly existing and in good standing under the laws of Massachusetts and has all requisite power and authority to execute, deliver, perform and be bound by this Agreement. CLAREMONT represents that (i) the individual executing and delivering this Agreement on CLAREMONT's behalf, is the incumbent of the office stated under his name, and such offices has been authorized to do so by all necessary corporate action taken by and on the part of CLAREMONT, (ii) the Agreement has been duly and validly authorized, executed and delivered by CLAREMONT, and (iii) subject to any future decision of a court or arbitrator of competent jurisdiction (which CLAREMONT will not instigate and has no reason to believe will be forthcoming), the Agreement constitutes the valid and binding obligation of CLAREMONT, enforceable against CLAREMONT in accordance with its provisions. If a third party challenges the validity and enforceability of this Agreement against CLAREMONT, CLAREMONT agrees to use best reasonable efforts to defend the validity and enforceability of this Agreement.

5. Dispute Costs In any dispute arising from this Agreement, the parties hereby agree that the prevailing party shall be entitled to costs and attorneys' fees, including, but not limited to, any fees and costs incurred in collecting a judgment arising from such action. However, prior to the initiation of any court proceeding regarding the terms of this Agreement or performance thereunder, the Town and Claremont agree that such disputes shall first be subject to non-binding mediation, for a period not to exceed ninety (90) days. Costs of such mediation shall be shared equally by the Parties.

6. Lien/Collection Remedies Upon the failure to make any Voluntary Payment to the Town, the Town may take whatever action it deems feasible to collect said payment whether in law or equity. The parties agree that the Voluntary Payment may constitute a fee for collection proceedings and may constitute a lien on the property for collection purposes. Upon written request from time to time to the Town Tax Collector, the Tax Collector shall provide the record owner of the Premises with a written statement certifying compliance with this Agreement as of said date and

otherwise stating any amounts due and payable and the amount of the Voluntary Payment.

5. Deed Reference and Affirmation of Successor In Title CLAREMONT and its successors in title agree that during the Term, that each successive deed to the Premises executed and delivered by the grantor shall contain the following statement:

“Reference is made to an Agreement by and between Claremont Corporation. and the Town of Brookline dated _____, 2016, recorded with Norfolk County Registry of Deeds in Book _____, Page _____ (the ‘Payment in Lieu of Tax Agreement’). By acceptance and recording of this deed, the Grantee acknowledges and accepts the Payment in Lieu of Tax Agreement and agrees that the same shall be binding and enforceable against the Grantee in accordance with its terms.”

CLAREMONT and such successors in title shall notify the Town in the manner provided in Section 8 hereof of the conveyance of the Premises and shall provide the Town with a copy of the deed evidencing the same conforming to this Section 7. The Town shall not be required to issue the certification provided for in Section 6 hereof absent compliance with Section 7, where applicable.

6. Miscellaneous Provisions.

(a) Notices. All notices, consents, directions, approvals, waivers, submissions, requests and other communications under this Agreement shall be effective only if made in writing with all delivery charges prepaid by a method set forth below, shall be effective at the times specified below, and shall be addressed to:

CLAREMONT COMPANIES
One Lakeshore Center
Bridgewater, MA 02324

With a copy to:

Robert Allen, Esq.
Law Offices of Robert L. Allen
10 St. James Avenue
Brookline, MA 02445

to Town of Brookline
Attn: Town Administrator
Brookline Town Hall

333 Washington Street
Brookline, MA 02445

With a copy to:

Town of Brookline
Attn: Town Counsel
333 Washington Street
Brookline, MA 02445

___ By commercially recognized overnight or expedited commercial courier service, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the delivery receipt;

___ By hand delivery, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the messenger's receipt; or

___ By US certified or registered mail, return receipt requested, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the return receipt.

Any party may change or add to the addressees and/or addresses for notice by giving notice of such change or addition to the other party in accordance with this paragraph.

(b) **Severability/Captions. The provisions of this Agreement are severable and, if any provision, or any portion thereof, is deemed by a court or arbitrator of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, the remaining provisions, or remaining portions thereof, shall remain valid and enforceable to the fullest extent permitted by law, provided that (as determined by agreement of the parties or by a court or arbitrator of competent jurisdiction) such continuing validity and enforceability results in neither the loss of any material benefit to, nor the increase of any material burden on, either party or both of them, as such benefits and burdens are originally provided in this Agreement. If this Agreement is terminated or rendered of no effect due to the invalidity, illegality, or unenforceability of any of its provisions, those CLAREMONT obligations that otherwise would survive the Term shall end. The captions used in this Agreement are for convenience only and shall not be deemed to have any relevance to the meaning of any of the provisions.**

(c) **Waivers/Time of Essence. The provisions and any breach of this Agreement shall not be waived, except expressly in writing signed by the waiving party. A waiver on one occasion or of one provision or breach shall not constitute a waiver on another occasion or of another provision or breach. Time is of the essence of this Agreement.**

(d) Amendments. This Agreement shall not be amended unless such amendment shall be expressly agreed in writing executed by duly authorized representatives both parties.

(e) Whole Agreement/Survival. This Agreement supersedes any previous negotiations or agreements between the parties to this Agreement, whether oral or in writing, in relation to the matters dealt with herein and represents the entire agreement between the parties in relation thereto. The provisions of this Agreement that, by their specific terms apply after the Term shall, except as provided in Sections 4 and 8(b), survive the Term for so long as applicable; and all of the provisions of this Section 8 shall also survive the Term in relation to any of this Agreement's other surviving provisions.

(f) Real Property. All references in this Agreement to real property or property owned by or of CLAREMONT shall be deemed to mean fee ownership of the Premises, including fixtures and/or improvements thereto and any use and/or occupancy of the Premises, including leases, which would affect the determination of whether the property is exempt or taxable by the Town.

(g) Reservations. The Town and CLAREMONT agree that this Agreement provides the Town with protection of its tax base; but nothing in this Agreement in any way restricts the Town's complete discretion in the exercise of its police power or imposes any restrictions on CLAREMONT's complete discretion to determine whether and how the Premises shall be developed and improved and the use of the Premises and whether the Premises shall be reserved for, converted to, or acquired for, an Exempt Use or Uses and/or taxable purposes, taking into account economic conditions from time to time, relevant site constraints of development and any and all other considerations it desires. The Town and CLAREMONT each reserves all of its respective positions, rights and remedies at law and equity in connection with real estate taxes and exemptions in the event of the termination, expiration or inapplicability of this Agreement. CLAREMONT is entering into this Agreement voluntarily; and nothing in this Agreement or CLAREMONT's performance of its covenants hereunder shall be construed for any purposes whatsoever to constitute an acknowledgement by CLAREMONT of any regulatory, statutory or contractual obligation to make the Voluntary Payment or any other payment to the Town on account of real property owned by CLAREMONT for Exempt Purposes, beyond the explicit contractual commitments voluntarily made by CLAREMONT under, and subject to all of the terms and conditions of, this Agreement.

(h) Counterparts. This Agreement may be executed by the parties hereto in multiple separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument of which there may be multiple originals.

(i) Applicable Law. This Agreement shall be governed by, and construed accordance with, the laws of The Commonwealth of Massachusetts for all purposes, without regard to any such laws governing choice of law.

(j) Successor In Title/Recording. This Agreement shall bind CLAREMONT and its successors and assigns in title to the Premises and shall be deemed to "run with the land" for the duration of the Term. This Agreement shall be recorded at the Norfolk County Registry of Deeds and Norfolk Registry District of the Land Court as appropriate upon execution of this Agreement and approval of all permitting for the Project.

IN WITNESS whereof the parties have executed this Agreement under seal as of the Effective Date.

Claremont Brookline Avenue, LLC

Town of Brookline
Board of Selectmen:

By: The Claremont Company, Inc.
Its Manager

By _____
Elias Patoucheas
President

Hereunto duly authorized

Date: _____

Hereunto duly authorized

Date: _____

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared Elias Patoucheas, President of The Claremont Company, Inc, as Manager of Claremont Brookline Avenue, LLC , proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose..

Personally Known _____
Produced Identification _____
Expires: _____
Type of Identification _____

Notary Public
My Commission

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss

On this _____ day of _____ 20__, before me, the undersigned notary public, personally appeared _____, _____, _____ Board of Selectmen, of the Town of Brookline, proved to me through satisfactory evidence of identification to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as the Board of Selectmen of the Town of Brookline.

Personally Known _____
Produced Identification _____
Expires: _____
Type of Identification _____

Notary Public
My Commission

ARTICLE 10

Submitted by: Board of Selectmen

To see if the Town will authorize the Board of Selectmen to enter into any necessary agreement(s) and/or amendments to existing agreements or other action(s) required to carry out the terms and conditions set forth in that certain Memorandum of Agreement and Restrictive Covenant between the Town and Claremont Brookline Avenue, LLC, a Massachusetts limited liability company and the entity owning the eight parcels of land referred to as 25 Washington Street in Brookline, Massachusetts in connection with a proposed hotel development consisting of approximately 153,000 square feet and containing a maximum of 175 hotel rooms and a maximum of 70 structured parking spaces; as further described below, said Memorandum of Agreement and Restrictive Covenants to include the following terms at a minimum: 1) limiting the number of hotel rooms to a maximum of 175; 2) limiting the number of structured parking spaces to a maximum of 70 spaces; 3) requiring the owner to provide a shared parking ramp design

for the building for future adjacent developments; 4) providing public benefits to mitigate the impact of the proposed project including but not limited to pedestrian, bicycle and landscaping improvements; a traffic impact study and mitigation measures; and maintenance of nearby parkland; 5) granting the Town a future easement on the property in connection with the Gateway East Project; 6) providing a 75-year payment in lieu of tax agreement to protect the tax certainty of the property, in substantially the same form as the draft attached as Exhibit A to Article 9 of this Warrant and incorporated herein by reference; and 7) requiring that the agreement(s) be recorded in the chain of title; and upon any further terms and conditions that the Board deems in the best interest of the Town with respect to the proposed development of the said described land.

Legal Description of 25 Washington Street Property

The following parcels of land situated in Brookline in the County of Norfolk and said Commonwealth of Massachusetts:

Parcel One:

A certain parcel of land with the buildings thereon situate and now numbered 690 and 692 on Brookline Avenue, bounded and described as follows: Northwesterly on Brookline Avenue fifty-three and 29/100 feet (53.29); Northeasterly by land formerly of John Dillon and now or late of Charles A. Crush et al. eighty-nine and 54/100 (89.54) feet; Easterly by River Road forty-four and 51/100 (44.51) feet; Southerly by land now or late of Yiannacopoulos forty-seven and 08/100 (47.08) feet; and Southwesterly by land now or late of Curry seventy-four (74.00) feet. Containing 5,924 square feet.

Parcel Two:

A certain parcel of land with the buildings thereon situate and now numbered 9 and 11 on Washington Street, bounded and described as follows: Southerly by said Washington Street twenty-two (22.00) feet; Westerly by the parcel next hereinafter described fifty-nine and 30/100 (59.30) feet; Northwesterly five (5.00) feet and Northerly eighteen and 44/100 (18.44) feet by land now or late of Curry, and Easterly by land now or late of Yiannacopoulos sixty-three and 70/100 (63.70) feet. Containing 1,300 square feet.

Parcel Three:

A certain parcel of land with the buildings thereon situate and now numbered 13 and 15 on said Washington Street, bounded and described as follows: Southerly by said Washington Street twenty-two and 07/100 (22.07) feet; Westerly by land now or late of Orelowitz thirty-nine and 02/100 (39.02) feet; Northwesterly by the same land seventeen and 50/100 (17.50) feet and by the parcel next hereinafter described twelve (12.00) feet and Easterly by the second parcel herein described fifty-nine and 30/100 (59.30) feet. Containing 1,047 square feet.

Parcel Four:

A certain parcel of registered land lying Northwesterly of the third parcel herein described, bounded and described as follows: Westerly by Lot A as shown on the plan hereinafter referred to eighteen and 56/100 (18.56) feet; Northeasterly by land now or formerly by Charles H. Stearns et al. twenty-one and 83/100 (21.83) feet; Southeasterly by the third parcel hereby conveyed twelve (12.00) feet; Southwesterly by land now or formerly of Israel Jacobs ten and 50/100 (10.50) feet; Southeasterly by the same land seven and 72/100 (7.72) feet. Said parcel is shown as Lot B on a plan drawn by Aspinwall & Lincoln, Civil Engineers dated Feb. 9, 1924, as approved by the Land Court, filed in the Land Registration Office as Plan No. 7247B, a copy of a portion of which is filed with the Norfolk Registry District with Certificate of Title No. 7071, in Volume 36, and is described in Certificate of Title No. 7072, in said Registry District.

Parcel Five:

A certain parcel of registered land with the buildings thereon situate and now numbered 706 and 708 on Brookline Avenue, bounded and described as follows: Northwesterly by Brookline Avenue thirty-eight and 60/100 (38.60) feet; Northeasterly by land now or formerly of Charles H. Stearns et al. thirty-four and 34/100 (34.34) feet; Easterly by Lot B shown on the plan hereinafter referred to eighteen and 56/100 (18.56) feet; Southeasterly by land now or formerly of Israel Jacobs six and 45/100 (6.45) feet; Southerly by lands now or formerly of Israel Jacobs and of Eva Jacobs fifty-four and 73/100 (54.73) feet. Said parcel is shown as Lot A on a plan drawn by Aspinwall & Lincoln, Civil Engineers dated Feb. 9, 1924, as approved by the Land Court, filed in the Land Registration Office as Plan No. 7247B, a copy of a portion of which is filed in the Norfolk Registry District with Certificate of Title No. 7071, Vol. 36.

Parcel Six:

A certain parcel of land with the buildings thereon situate and now numbered 698 on Brookline Avenue, formerly numbered 27 on Brookline Avenue, bounded and described as follows: Northwesterly by said Brookline Avenue forty-five and 13/100 (45.13) feet; Northeasterly by land now or late of Warren seventy-four (74.00) feet; Southerly in part by land now or late of Yiannacopoulos and in part by land now or late of Warren twenty-eight and 28/100 (28.28) feet; Southeasterly by the last-mentioned land five (5.00) feet; Southwesterly fifty-six and 17/100 (56.17) feet in part by other land now or late of said Warren; being the premises described in Certificate of Title No. 7072 issued from the Norfolk Registry District, and in part by land now or late of Nichelini, being the premises described in Certificate of Title No. 11228 in said Registry District. Containing 2,047 square feet.

Parcel Seven:

The land in Brookline, together with the buildings thereon, and shown as Lots A and B on a plan of land in Brookline, Aspinwall & Lincoln, Civil Engineers, dated June 5, 1926, and recorded with Norfolk Deeds, Book 1711, Page 475, and bounded and described as follows:

Commencing at the Southeasterly corner of said premises on Washington Street by land now or formerly of James J. Warren, running Northerly and bounded Easterly by said land now or formerly said of James J. Warren, thirty-nine and 8/100 (39.08) feet to a stake three (3) feet six (6) inches from the end of the building formerly standing thereon; thence running Northeasterly seventeen and 50/100 (17.50) feet, bounded by land now or formerly of said James J. Warren, to a stake; thence turning and running Westerly bounded Northerly by land now or formerly of said James J. Warren, ten and 50/100 (10.50) feet; thence turning and running Southerly bounded Westerly by land now or formerly of said James J. Warren fourteen and 17/100 (14.17) feet to the corner of the dwelling house which formerly stood thereon; thence turning and running Westerly bounded by a 3-foot passageway and land now or formerly of James J. Warren fifty-four and 73/100 (54.73) feet to Brookline Avenue; thence turning and running Southwesterly by said Brookline Avenue fifty-two and 3/100 (52.03) feet; thence turning and running at the junction of Brookline Avenue and Washington Street in a Southeasterly direction as shown on said plan, seven and 79/100 (7.79) feet; thence turning and running Easterly by said Washington Street eighty-three and 96/100 (83.96) feet to the point of beginning; together with the right to pass and re-pass at all times over said 3-foot passageway.

Parcel Eight:

All of that certain parcel of land situate in Brookline in the County of Norfolk and said Commonwealth, bounded and described as follows:

Easterly by the Westerly line of River Road, forty-five and 67/100 (45.67) feet; Southeasterly by the Northwesterly line forming the junction of said River Road and Washington Street, thirty-two and 69/100 (32.69) feet; Southerly by the Northerly line of said Washington Street, thirty-eight and 72/100 (38.72) feet; and Westerly, sixty-three and 81/100 (63.81) feet, and Northerly, fifty-six and 92/100 (56.92) feet, by land now or formerly of the Gulf Oil Corporation.

All of said boundaries are determined by the Land Court to be located as shown upon plan numbered 25231A, which is filed in Norfolk Registry District with Certificate No. 53210, Book 267, the same being compiled from a plan drawn by William S. Crocker, Civil Engineer dated June 15, 1954, and additional data on file in the Land Registration Office, all as modified by and approved by the Court.

Or act on anything relative thereto.

ARTICLE 11

Submitted by: Hugh Mattison, TMM5

TO SEE IF THE TOWN WILL ADOPT THE FOLLOWING RESOLUTION:

WHEREAS, the 2005-2015 Comprehensive Plan for Brookline developed by over 30 residents identifies the following goals and strategies to:

- Create an attractive new gateway to the town at Brookline Village;

- Improve pedestrian amenities and safety throughout the (Route Nine) corridor;
- Create a visual gateway to the Town of Brookline at the Boston line;

WHEREAS, the Emerald Island Special District was formed to build on the vision articulated in the recently completed M.I.T. study of Route 9 East (December 2015) in which over 70 residents participated recommends transforming the Boylston/Washington Street corridor into a “safe, multi-modal Complete Street;

WHEREAS, the Brookline Complete Streets Policy adopted in 2016 to further the Massachusetts Department of Transportation (MassDOT) transportation goal of shifting users to more healthful and sustainable transportation modes and to comply with M.G.L. Chapter 90I, §1 eligibility requirements to receive funding under MassDOT’s Complete Streets Program, the Town’s transportation projects shall be designed and implemented to provide safe and comfortable access for healthful transportation choices such as walking, bicycling, and mass transit;

WHEREAS, this section of Washington Street will be even more heavily travelled by pedestrians once the proposed hotel, and construction of Two Brookline Place, are complete;

WHEREAS, the proposed sidewalk width of 8-11 feet is inadequate to provide comfortable walkability abutting a 110’-tall building, does not allow separation between the pedestrian path and the proposed bicycle cycle track or allow planting of large-canopy street trees;

WHEREAS, this represents a once-in-a-generation opportunity to improve this Brookline gateway and maintain the visual character with a sidewalk width/setback similar to other nearby buildings;

THEREFORE, BE IT RESOLVED that Brookline Town Meeting supports the vision expressed in previous reports to create an inviting gateway to Brookline at Washington Street which will increase pedestrian safety, provide visual amenity, contribute to healthier air quality, and enhance the streetscape;

BE IT FURTHER RESOLVED that Brookline Town Meeting urges the Board of Selectmen to require a sidewalk of at least 18 feet, on the south property line of 25 Washington Street (Parcel ID 135-01-00) to include a 10 foot planting strip, with the final design of all landscaping in this strip to be determined by the Director of Parks and Open Space, or his/her designee;

Or act on anything relative thereto.

ARTICLE 12

Submitted by: Board of Selectmen

To see whether the Town will authorize the Board of Selectmen to lease, for a term not to exceed ten years, the following property, including land, buildings and Town-owned light poles, upon such terms and conditions the Selectmen determine to be in the best interest of the Town:

1. A portion of 870 Hammond Street (The Municipal Service Center), and
2. Town-owned light polls on the following streets and ways:

Addington Road	High Street Place
Allandale Road	Holland Road
Aston Road	Lagrange Street
Bonad Road	Laurel Road
Chestnut Street	Lee Street
Clyde Street	Leland Road
Cotswold Road	Meadowbrook Road
Druce Street	Newton Street
Dudley Street	Olmsted Road
Fisher Street	Payson Road
Gardner Road	Philbrick Road
Greenough Street	Pine Road
Goddard Avenue	Rockwood Street
Grassmere Road	Tappan Street
Grove Street	Warren Street
Harvard Avenue	West Roxbury Parkway
Heath Street	Zanthus Road

Or act on anything relative thereto.

ARTICLE 13

Submitted by: Department of Planning and Community Development

To see if the Town will amend Article 5.8 of the Town's General By-Laws pertaining to Signs as follows: (new language appearing in bold/italics, deleted language appearing in strikeout):

ARTICLE 5.8 SIGN BY-LAW

SECTION 5.8.1 PURPOSE

Pursuant to the authority conferred by General Laws, Chapter 93, Section 29, and every other power and authority thereto pertaining, the Town of Brookline adopts this Bylaw for the regulation and restriction of ~~billboards, signs and other advertising devices~~ within

the Town *and on Town property* on public ways. ~~or on private property within public view of a public way, public park or reservation.~~

SECTION 5.8.2 DEFINITIONS

~~Accessory Sign: Any billboard, sign or other advertising device that advertises, calls attention to, or indicates the person occupying the premises on which the sign is erected or the business transacted thereon, or advertises the property itself or any part thereof as for sale or to let, and which contains no other advertising matter. The words "Accessory Sign" shall include an "on premise" sign as defined and permitted by the Zoning By-law.~~

~~Non-Accessory Sign: Any sign not an accessory sign.~~

~~"Person" and "whoever" shall include a corporation, society, association and partnership.~~

~~Public Way shall include a private way that is open to public use. Sign:~~

~~"Sign" shall mean and include any permanent or temporary structure, device, letter, word, model, banner, pennant, insignia, trade flag, or representation used as, or which is in the nature of, an advertisement, announcement, or direction, or is designated to attract the eye by intermittent or repeated motion or illumination, which is on a public way or on private property within public view of a public way, public park or reservation.~~

Sign: Any device, fixture, placard, or structure that uses any color, form, graphic, illumination, symbol, or writing to advertise, attract attention to or announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public. For the purposes of this by-law, the term "sign" shall not include the following:

- i. Official traffic control devices required, maintained, or installed by a Federal, State or local governmental agency.***
- ii. Town of Brookline government signs, including signs permitted by the Town on Town property.***
- iii. Building markers indicating the name of a building and date and incidental information about its construction, which marker is cut into a masonry surface or made of other permanent material.***
- iv. National , state or municipal flags, or the official flag of any institution.***
- v. War Veteran markers installed within the public right of way at locations designated by the town's naming committee.***
- vi. Holiday lights and decorations.***

Sign, Area of:

For a sign, either free-standing or attached, the area shall be considered to include all lettering, wording, and accompanying designs and symbols, together with the background, whether open or enclosed, on which they are displayed, but not including

any supporting framework and bracing which are incidental to the display itself.(b) For a sign painted upon or applied to a building, the area shall be considered to include all lettering, wording, and accompanying designs or symbols together with any backing of a different color than the finish material of the building face. (c) Where the sign consists of individual letters or symbols attached to or painted on a surface, building, wall or window, the areas shall be considered to be that of the smallest rectangle or other convex shape which encompasses all of the letters and symbols.

Zoning By-law: The Zoning By-law of the Town of Brookline which as from time to time is in force and effect.

SECTION 5.8.3 ~~ACCESSORY SIGNS~~

~~Accessory signs shall be permitted as regulated and permitted by the Zoning By law. No person shall erect, display or maintain an accessory sign except as permitted by the Zoning By law. The Zoning By law is incorporated herein by reference.~~

Signs shall be permitted as regulated and permitted by the Zoning By-law. No person shall erect, display or maintain a sign except as permitted by the ***Planning Board and/or Planning and Community Development Department Staff***. The Zoning By-law is incorporated herein by reference. No person shall erect, display or maintain a sign:(a) On any premises located in a Residence District ***except*** as designated by the Zoning By-law.(b) Within any public way upon any property owned by the Town of Brookline or any other governmental body or agency.(c) Within fifty (50) feet of any public way.(d) Within three hundred (300) feet of any public park playground, or other public grounds, if within view of any portion of the same.(e) Within a radius of one hundred and fifty (150)feet from the point where the center lines of two or more public ways intersect.(f) Upon the roof of any building.(g) Exceeding an area of three hundred (300) square feet or a height of twelve (12) feet.(h) Containing visible moving or moveable parts or be lighted with flashing, animated, or intermittent illumination. This section shall not apply to signs exempted by M.G.L. c. 93, s. 32.

SECTION 5.8.4 ~~NON-ACCESSORY SIGNS PERTINENCE TO OTHER LAWS~~

~~No person shall erect, display or maintain a non-accessory sign: (a) On any premises located in a Residence District as designated by the Zoning By law. (b) Within any public way upon any property owned by the Town of Brookline or any other governmental body or agency. (c) Within fifty (50) feet of any public way. (d) Within three hundred (300) feet of any public park playground, or other public grounds, if within view of any portion of the same. (e) Within a radius of one hundred and fifty (150) feet from the point where the center lines of two or more public ways intersect. (f) Upon the roof of any building. (g) Exceeding an area of three hundred (300) square feet or a height of twelve (12) feet. (h) Containing visible moving or moveable parts or be lighted with flashing, animated, or intermittent illumination.~~

~~This section shall not apply to signs exempted by Section 32 of Chapter 93 of the General Laws.~~

All signs shall be subject to the State Building Code and when applicable, the Town's Zoning By-law and the Regulations of the Board of Selectmen regulating signs, etc. projecting into, on, or over a public street or way. ***This Article shall not be construed in any manner that is inconsistent with the provisions in M.G.L. c. 93, ss. 29 through 33, or M.G.L. c. 85, s. 8, or 700 CMR 3.00***.~~This Article shall not be construed as to be inconsistent with or in contravention to Sections twenty nine through thirty three inclusive of Chapter 93 or Section 8 of Chapter 85 of the General Laws, as amended.~~ Attention is called to the Rules and Regulations of the Outdoor Advertising Board for signs which may also be subject to the Rules and Regulations of said Board.

~~SECTION 5.8.5 SIGNS FOR GASOLINE SERVICE STATIONS ENFORCEMENT~~

~~All signs that display self service gasoline pricing, including signs attached to a building, freestanding signs and signs affixed to gasoline pumps shall clearly indicate that the price is for self service sale of gasoline.~~

This By-law shall be enforced by the Building Commissioner. The Building Commissioner shall not issue a permit for the erection, maintenance, enlargement or alteration of any sign which is not in conformance with this By-law.

~~SECTION 5.8.6 PERTINENCE TO OTHER LAWS PENALTY FOR VIOLATION~~

~~All signs shall be subject to the Building Code of the Town of Brookline and when applicable, the Zoning By law and the Regulations of the Board of Selectmen regulating signs, etc. projecting into, on, or over a public street or way.1 The Sign By law shall not be construed as to be inconsistent with or in contravention to Sections twentynine through thirty three inclusive of Chapter 93 or Section 8 of Chapter 85 of the General Laws, as amended. Attention is called to the Rules and Regulations of the Outdoor Advertising Board for signs which may also be subject to the Rules and Regulations of said~~

~~Board.~~ Whoever violates any provision of this By-law shall be punished by a fine of not more than \$100.00, and whoever after conviction of such violation unlawfully maintains such a billboard, sign or other device for twenty (20) days thereafter shall be punished by a fine of not more than \$300.00.

~~SECTION 5.8.7 NON-CONFORMING SIGNS SEVERABILITY~~

~~Any accessory sign in any of the categories listed below which was legally erected prior to the adoption of this paragraph may continue to be maintained for a period of not longer than five years after the effective date of this paragraph:~~

~~(1) roof signs;~~

~~(2) projecting signs, unless such sign is approved by a variance subsequent to January 1, 1970; 1 See General Laws Chapter 85 Sec. 8 & 9.~~

~~(3) any other sign, including facade and free standing signs, which exceeds by more than 50% the applicable size limitations in the Zoning By law as of the effective date of this paragraph, unless such sign is approved by a variance subsequent to January 1, 1970.~~

~~(b) Any non-accessory sign legally erected prior to the adoption of the by-law may continue to be maintained for a period of not longer than five years after the effective date of this by-law; provided however, that during said five-year period no such sign shall be enlarged, redesigned or altered except in accordance with the provisions of this by-law and provided further that any such sign which has been destroyed or damaged to such an extent that the cost of restoration would exceed thirty-five percent of the replacement value of the sign at the time of destruction or damage, shall not be repaired or rebuilt or altered except in accordance with the provisions of this by-law.~~

~~(c) The exemption herein granted shall terminate with respect to any sign which (1) shall have been abandoned; (2) advertises or calls attention to any products, businesses or activities which are no longer carried on or sold for at least sixty (60) days; or (3) shall not have been repaired or properly maintained within sixty (60) days after notice to that effect has been given by the Building Commissioner.~~

~~(d) Nonilluminated noncommercial public message signs may be placed on private property in all zoning districts. Such signs related to a specific event shall be removed by the property owner within 7 days following the event.~~

The invalidity of section or provision of this By-law shall not invalidate any other section or provision thereof.

or act on anything relative thereto.

ARTICLE 14

Submitted by: Department of Planning and Community Development

To see if the Town will amend Article VII of the Town's Zoning By-Laws as follows (new language appearing in bold/italics, deleted language appearing in strikethrough):

ARTICLE VII

SIGNS, ILLUMINATION, & REGULATED FACADE ALTERATIONS

§7.00 - SIGN BY-LAW

§7.01 - SIGNS IN ALL DISTRICTS

§7.02 - SIGNS IN S, SC, T AND F DISTRICTS

§7.03 - SIGNS IN M DISTRICTS

§7.04 - SIGNS IN I, G, L AND O DISTRICTS

§7.05 - TEMPORARY SIGNS

§7.06 - ILLUMINATION

§7.07 - EXCEPTIONS TO THE ABOVE

§7.08 - DESIGN REVIEW PROCEDURES

§7.09 - NONCONFORMANCE OF SIGNS

§7.00 SIGNS IN ALL DISTRICTS SIGN BY-LAW

~~The following requirements shall apply to all signs and other advertising devices in all districts:~~

- ~~a. No sign or other advertising device with visible moving or moveable parts or with flashing animated or intermittent illumination shall be erected or maintained, except that a traditional rotating barber pole may be permitted by the Planning Board subject to the design review process in **§7.03, paragraph 2.**~~
- ~~b. No sign or other advertising device, or part thereof, shall be more than 25 feet above ground level except signs announcing the name of an individual building by special permit of the Board of Appeals.~~
- ~~c. No sign or other advertising device attached to a building shall project above the roof or parapet line nor more than 12 inches out from the wall to which it is attached. However, a non-combustible projecting sign constructed of wood, a composite of wood and plastic, metal, glass or another substantial material, or vertical banner sign, composed of pliable fabric or similar material, may project more than 12 inches perpendicular to the wall to which it is attached subject to the approval of the Planning Board. Projecting and banner signs shall not be internally illuminated and shall maintain an 8' minimum clearance above the ground. The Planning Board may limit the number of projecting or banner signs on the facade of a building. No projecting or banner sign shall be larger than 12 square feet in area per face.~~
- ~~d. In cases where an attached sign size larger than permitted in this Article VII is appropriate because of the size of a natural space for a sign on a facade or because of other architectural features of a building, a larger attached sign up to but not more than 25% larger than permitted by the specific regulations in this Article may be allowed by the Planning Board in accordance with the procedures of **§7.03, paragraph 2.** only if such an increase is necessary to fill the most appropriate sign area on the building and the sign location is a proper one for an oversized sign. No lettering or other advertising message shall be placed in the additional sign area authorized by this paragraph. The increase of the background up to 25% shall not in any event permit an increase in the size of the lettering had the background increase not been permitted.~~
- ~~e. Signs or advertising devices not attached to the building shall not exceed 20 square feet in area of each face exclusive of posts or other structural supports and shall not exceed 12 feet in height, except gasoline service station signs as regulated by **§7.03, paragraph 1, subparagraph h.** Except for signs regulated by paragraphs 3 and 4 below, all permitted signs in excess of one square foot in area shall be set back one half the depth of the required front yard setback from all street lot lines. Except for signs regulated by **paragraph 2** below, any freestanding sign of more than 10 square feet in area, or more than four square feet for a nonconforming use, or a freestanding sign of any size for a gasoline service station shall be subject to the requirements of **§7.03, paragraph 2.** Except for signs regulated by paragraph 3 below, there shall be not more than one freestanding sign, except that the Board of~~

~~Appeals by special permit may allow additional freestanding signs on a property with more than one building or more than one street frontage but not more than one sign per building per street frontage. Whenever possible, signs shall be combined or clustered to minimize their number.~~

- ~~f. Signs, whether temporary or permanent, on the exterior of buildings shall be made of substantial materials. A special permit of the Board of Appeals shall be required to determine the appropriateness to the building of any flags, streamers, and balloons etc. used for sign purposes. National, state and Town flags are exempted from this provision. The Building Commissioner may approve temporary banners for public events.~~
- ~~2. Non illuminated non commercial public message signs may be placed on private property in all zoning districts. Such signs related to a specific event shall be removed by the property owner within 7 days following the event.~~
- ~~3. Non illuminated signage that does not exceed 1.5 square feet in area and that identifies allowed users of individual parking spaces is allowed in all zoning districts.~~
- ~~4. Required signage for parking facilities renting or leasing spaces to a Car Sharing Organization (CSO) as described in §6.01, paragraph 5 is allowed in all zoning districts.~~

1. Purpose: The purpose of this Article 7.00 is to improve pedestrian and traffic safety; to avoid the proliferation of signs; to minimize their adverse effect on nearby public and private property, to preserve the esthetic environment; to encourage the effective use of signs; and, to enable fair, consistent and content-neutral enforcement of this section.

Applicability: The following shall apply to all signs in all zoning districts.

Severability: The provisions of this By-Law shall be deemed to be severable. Should any of its provisions be held to be invalid, unenforceable or unconstitutional, the remainder of this By-Law shall continue to be in full force and effect.

Definitions: The following words and phrases used in this section shall have the meanings set forth below:

b. Sign: Any device, fixture, placard, or structure that uses any color, form, graphic, illumination, symbol, or writing to advertise, attract attention to or announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public. For the purposes of this by-law, the term "sign" shall not include the following:

i. Official traffic control devices required, maintained, or installed by a Federal, State or local governmental agency.

- ii. *Town of Brookline government signs including signs permitted by the Town on Town property.*
 - iii. *Building markers indicating the name of a building and date and incidental information about its construction, which marker is cut into a masonry surface or made of other permanent material.*
 - iv. *National , state or municipal flags, or the official flag of any institution.*
 - v. *War Veteran markers installed within the public right of way at locations designated by the town’s naming committee.*
 - vi. *Holiday lights and decorations.*
- c. *Regulated Façade Alteration: Any change in the visual appearance of the facade including the blocking of the view through a street-level window and any change in door or window style, unless such change consists of an exact replication in terms of size, color, location and detail of the replaced element. A regulated alteration shall also include installation of a fence, wall or driveway. A regulated facade alteration shall include:*
- i. *commercial building facades in all districts; and*
 - ii. *residential building facades on lots with frontage on Beacon Street, Boylston Street, Brookline Avenue, Commonwealth Avenue, Harvard Street, or Washington Street, with the exception of buildings on lots located in S, SC, and T districts.*

§7.01 SIGNS IN ~~S, SC, T, AND F~~ ALL DISTRICTS

1. ~~In any S, SC, T, and F district, no sign or other advertising device shall be permitted except as follows:~~
- a. ~~One sign displaying the street number or name of the occupant of the premises, or both, not exceeding one square foot in area. Such sign may include identification of a permitted accessory professional use.~~
 - b. ~~Two bulletin or announcement boards or identification signs for a permitted principal non-residential building or use, neither of which may exceed 10 square feet in area.~~
 - c. ~~One sign in connection with a lawfully maintained nonconforming use, not exceeding 10 square feet in area.~~
 - d. ~~One “For Sale” or “For Rent” sign not exceeding six square feet in area, and advertising only the premises on which the sign is located; such sign to be removed at once upon rental or sale of property, and, in any case, to remain no longer than a four month period in any calendar year, after which period, permit may be given by the Building Commissioner for an additional four month period upon written application, if need is shown.~~

- e. ~~One contractor's sign, not exceeding 10 square feet in area, maintained on the premises while a building is actually under construction.~~
- f. ~~Other temporary signs in connection with the construction or development of a building or lot, by special permit of the Board of Appeals which shall specify limits on the size and number of signs and the length of time to be maintained.~~
- a. *All regulated facade alterations shall be subject to the design review process in §7.07.*
 - b. *Signs with visible moving or moveable parts or with flashing animated or intermittent illumination are prohibited.*
 - c. *Signs or parts thereof attached to a building, shall not exceed a height of 25 feet above ground level.*
 - d. *Projecting or banner signs attached to a building shall not be internally illuminated, shall not exceed 12 square feet in area per face and shall not extend lower than a height of 8 feet.*
 - e. *Signs attached to a building shall not project above the roof or parapet line nor more than 12 inches out from the wall to which it is attached.*
 - f. *Signs shall not be permitted on building walls nor parallel or within 45 degrees of parallel to the street.*
 - g. *No A-Frame or "Sandwich board" signs shall be permitted in any district.*
 - h. *Signs, whether attached to a building or free-standing, shall have an aggregate area not exceeding two square feet for each foot of building face parallel or substantially parallel to a street lot line. Where a lot fronts on more than one street, the aggregate sign area facing each street frontage shall be calculated separately.*
 - i. *The aggregate area of all signs in any window, whether temporary or permanent, shall not exceed 30% of the area of such window, and the area of permanent window signs shall be included in the aggregate sign area permitted in paragraph (h) above.*
 - j. *All free standing signs in excess of 1 square foot shall be set back one-half the depth of the required front yard setback from all street lot lines.*
 - k. *Signs not attached to a building shall not exceed 30 square feet in area of each face exclusive of posts or other structural supports and shall not exceed 19 feet in height.*

- l. Temporary, non-illuminated, signs may be placed on private property in all zoning districts. Signs related to an event on a specific date or dates shall be removed by the property owner within 7 days the event.*
- m. Non-illuminated signs that do not exceed 1.5 square feet in area identifying allowed users of individual parking spaces may be placed in all zoning districts.*
- n. All lighting shall be installed and maintained so that no direct light or glare shines on any street or nearby property.*
- o. No neon type or exposed gas-illuminated tube type of sign which is red, yellow, or green shall be located within 100 feet of a traffic signal unless it is shielded from the line of sight of any driver of a motor vehicle approaching the traffic signal.*
- p. There shall be not more than one freestanding sign per property, except that the Board of Appeals by special permit may allow additional freestanding signs on a property with more than one building or more than one street frontage but not more than one sign per building per street frontage. Whenever possible, signs shall be combined or clustered to minimize their number.*
- q. Signs, whether temporary or permanently attached to the exterior of buildings shall be made of substantial materials.*

§7.02 - SIGNS IN M-S, SC, T AND F DISTRICTS:

~~In any M-District, no on-premises sign or other on-premises advertising device shall be permitted except as follows:~~

- ~~a. As permitted in S, SC, T, and F Districts.~~
- ~~b. Two signs for a permitted hotel use or permitted principal non-residential use, neither of which may exceed 20 square feet in area.~~
- ~~c. Two signs announcing the name of an individual multiple dwelling and identifying accessory uses with an aggregate area not exceeding twenty square feet except that multiple dwellings with more than 200 units may have an additional aggregate area of five square feet per 100 units above 100 units, up to a maximum aggregate area of forty square feet. If the Planning Board determines that a central directory is not adequate for identifying an individual exterior entrance to an accessory use, the Board may approve an individual sign displaying the street number and/or name of the occupant and specialty, not exceeding two square feet in area.~~
- ~~d. Two signs in connection with a lawfully maintained principal nonconforming use, not exceeding a total of 20 square feet in area.~~

- e. ~~One sign, not exceeding 20 square feet in area, in connection with the construction, development, conversion or leasing of a new or substantially rehabilitated building.~~
- 2. ~~All signs permitted in this section shall be subject to the design review process as regulated by **§7.03, paragraph 2.**~~

- a. One sign located in a manner intended to identify the address and/or occupant of the premises not exceeding 1 square foot in area.*

- b. Two bulletin board or announcement board signs not exceeding 10 square feet in area.*

§7.03 - SIGNS IN ~~L, G, I AND O~~ M DISTRICTS

1. ~~In any L, G, I or O District, no on premises sign or other on premises advertising device shall be permitted except as follows:~~

~~As permitted in S, SC, T, F, and M Districts.~~

- ~~b. Signs or advertising devices, whether attached to the building or free standing, shall have an aggregate area not exceeding two square feet for each foot of building face parallel or substantially parallel to a street lot line. Where a lot fronts on more than one street, the aggregate sign area facing each street frontage shall be calculated separately.~~

- ~~c. Signs for commercial uses on upper floors of a building may have signage additional to subparagraph b. above, if located at the second floor level, but not exceeding the height limit of 25 feet as stipulated in **§7.00, paragraph 1., subparagraph b.**, at an additional aggregate area of a half a square foot for each foot of building face parallel or substantially parallel to a street lot line. Signage, particularly for office and services uses, preferably should be located on windows or, if not possible, in an architectural element of the facade. In cases where an existing architectural element needs a larger sign background to fill the space, the Planning Board may allow an increase up to 25%; however, the lettering on the sign should not be increased correspondingly.~~

- ~~d. Signs shall not be permitted on building walls not parallel or within 45 degrees of parallel to the street, except for one directional or identification sign not exceeding twelve square feet in area for structures with a single business and not exceeding eighteen square feet in area for structures with more than one business provided that the sign is proportionate to the area of the building wall to which it will be attached. Where such building wall contains the main business entrance or entrances, the Planning Board may allow a larger sign or signs, but in no case shall the aggregate area of such signs exceed two square feet for each linear foot of building face of that wall.~~

- e. For open lot uses, where a calculation of aggregate sign area based upon building-face dimensions would result in inequitable deprivation of identification, the Board of Appeals by special permit under **Article IX** may authorize an aggregate sign area up to but not more than one square foot for each foot of street lot line.
- f. All window signs, other than temporary identification signs regulated in subparagraph g. below and non-commercial signs regulated by **§7.03, paragraph 2**, shall be subject to the design review process, except that paper or similar temporary signs may be installed in a window only if the sign advertises a particular sale or special event and is not a general identification sign for the business or for goods sold or services rendered thereby. Such signs may be displayed in a window for no more than 30 days. The aggregate area of all signs in any window, either temporary or permanent, shall not exceed 30% of the area of such window, and the area of permanent window signs shall be included in the aggregate sign area permitted in subparagraph b. above.
- g. One temporary identification sign for a property or use subject to the design review process specified in **paragraph 2** below or in **§5.09** may be permitted by the Building Commissioner to be displayed during the period from submission of an application to the Building Commissioner to thirty days after the decision of the Planning Board or the Board of Appeals if an appeals is taken, provided that the temporary sign conforms with all dimensional regulations of this By law, is in fact a temporary sign not involving any substantial expense, and is displayed in a manner which will not deface the building facade or otherwise impinge upon the design review of the proposed sign.
- h. Freestanding signs for gasoline service stations may exceed the dimensional restrictions of **§7.00, paragraph 1, subparagraph e** by a maximum of 10 square feet in area for each face and 7 feet in height, only if the design of the sign incorporates gasoline prices. For all gasoline service stations, no additional price signs shall be displayed on the lot, except for the standard price signs typically affixed to gasoline pumps. No sandwich or cardboard signs, or the like, shall be permitted on the lot, and all temporary signs shall be confined to the windows of the building as permitted by **§7.03, paragraph 1, subparagraph e**.
- i. One "For Sale" or "For Rent" or other sign required for sale or leasing of a commercial or industrial property not exceeding 20 square feet in area and advertising only the premises on which the sign is located; such sign to be removed at once upon rental or sale of property; and, in any case, to remain no longer than a four month period in any calendar year; after which period, permit may be given by the Building Commissioner for an additional four month period upon written application, if need is shown. The sign design and location shall be subject to the approval of the Building Commissioner following guidelines approved by the Planning Board.
2. All signs permitted in **§§ 7.02 and 7.03**, except temporary signs or advertising devices permitted in **§7.03, paragraph 1, subparagraphs f. and g.** or signs

~~permitted in §7.00, paragraphs 2, 3, and 4, shall be subject to the following design review process:~~

- ~~a. The applicant shall submit to the Building Commissioner an application form, plans of the proposed sign, facade alterations, if any, and photographs showing the existing building or site, and such other material as may be required by the Building Commissioner or Planning Board.~~
- ~~b. Within five working days, the Building Commissioner shall refer the application and accompanying material to the Planning Board.~~
- ~~c. After its receipt of the application and all required material, the Planning Board shall review the application at its next public meeting for which legal notice can be given. At least seven days before such meeting, the Planning Board shall mail or deliver a notice of the meeting, with a description of such application or a copy thereof, to each elected Town Meeting Member for the precinct in which the property is located, and to those Town Meeting Members of a precinct which is within 200 feet of such property as to which such application has been made. The notice requirements of this section shall be deemed satisfied if such notices are mailed to those individuals whose names appear as Town Meeting Members in the records of the Town Clerk at the addresses as they appear in such records. The Planning Board shall submit its recommendations in writing to the applicant and the Building Commissioner. The recommendations shall be based on the Design Review requirements in §5.09 and such design guidelines as the Planning Board may adopt.~~
- ~~d. Upon receipt of the Planning Board's report or the lapse of thirty days from his referral to the Board without such report, the Building Commissioner may issue a permit for a sign which conforms to the Planning Board's recommendations, if any, the regulations in the Zoning By law, and such other technical requirements as are within the Building Commissioner's jurisdiction.~~
- ~~e. If the applicant or any other interested party or any citizen of the Town of Brookline does not agree with the recommendations of the Planning Board or other requirements imposed by the Building Commissioner, he may appeal to the Board of Appeals within 30 days through the special permit procedure in **Article IX**.~~
 - a. As permitted in S, SC, T and F districts.*
 - b. Two signs not exceeding a total aggregate of 20 square feet in area.*
 - c. Dwellings with more than 200 units may have an additional aggregate area of 5 square feet per 100 units above 100 units, up to a maximum aggregate area of 40 square feet.*

1. ~~In all districts, all lighting shall be installed and maintained so that no direct light or glare shines on any street or nearby property.~~
2. ~~In all districts no neon type or exposed gas illuminated tube type of sign which is red, yellow, or green shall be located within 100 feet of a traffic signal unless it is shielded from the line of sight of any driver of a motor vehicle approaching the traffic signal.~~
3. ~~In any residence district no sign or other advertising device shall be of the neon type or exposed gas illuminated tube type; and any lighting of a sign or other advertising device shall be continuous, indirect white light installed in a manner that will prevent direct light from shining onto any street or nearby property. In S, SC, T, and F Districts no sign or advertising device shall be illuminated after 11 p.m. local time.~~
4. ~~In an S, SC, T, F, M 0.5, M 1.0, or M 1.5 District no outdoor floodlighting or decorative lighting shall be permitted except lighting primarily designed to illuminate walks, driveways, doorways, outdoor living areas, or outdoor recreational facilities and except temporary holiday lighting in use for no longer than a four week period in any calendar year, except that decorative floodlighting of institutional or historic buildings may be permitted by the Board of Appeals by special permit. Any permanent lighting permitted by the preceding sentence shall be continuous, indirect, white light, installed in a manner that will prevent direct light from shining onto any street or nearby property.~~

a. As permitted in S, SC, T, F and M districts

b. Signs on upper floors of a building may have signage additional to §7.01(h), above, if located at the second floor level, but not exceeding the height limit of 25 feet as stipulated in §7.01(c), at an additional aggregate area of a half a square foot for each foot of building face parallel or substantially parallel to a street lot line.

c. One sign not parallel or within 45 degrees of parallel to a street, not exceeding twelve square feet in area for structures with a single business and not exceeding eighteen square feet in area for structures with more than one business provided that the sign is proportionate to the area of the building wall to which it will be attached. Where such building wall contains the main business entrance or entrances, the Planning Board may allow a larger sign or signs, but in no case shall the aggregate area of such signs exceed two square feet for each linear foot of building face of that wall.

~~§7.05 – NON-CONFORMANCE OF ACCESSORY SIGNS~~ **TEMPORARY SIGNS**

~~Accessory signs or other advertising devices legally erected may continue to be maintained, subject to the provisions of §5.83 of the Town of Brookline Sign By law (Article 5.8); provided, however, that no such sign or other advertising device shall be permitted if it is enlarged, reworded (other than in the case of theatre or cinema signs or signs with automatically changing messages) redesigned or altered in any way including repainting in a different color, except to conform to the requirements of this By law; and~~

~~provided further that any such sign or other advertising device which has deteriorated to such an extent that the cost of restoration would exceed thirty five percent of the replacement cost of the sign or other advertising device at the time of the restoration shall not be repaired or rebuilt or altered except to conform to the requirements of this By-law. Any exemption provided in this **Article VII** shall terminate with respect to any sign or other advertising device which:~~

- ~~1. shall have been abandoned;~~
- ~~2. advertises or calls attention to any products, businesses or activities which are no longer sold or carried on at the particular premises; or~~
- ~~3. shall not have been repaired or properly maintained within thirty days after notice to that effect has been given by the Building Commissioner.~~

- a. The design and location of all temporary signs shall be subject to the approval of the Building Commissioner following guidelines approved by the Planning Board.*
- b. Except as provided in Section 7.07 b.,the Building Commissioner may approve temporary signs for no more than a four month period in any calendar year.*
- c. One temporary sign not exceeding 10 square feet for a property or use subject to the design review process specified in paragraph §7.07 below may be permitted by the Building Commissioner to be displayed during the period from submission of an application to the Building Commissioner to thirty days after the decision of the Planning Board or the Board of Appeals if an appeal is taken, provided that the temporary sign conforms with all dimensional regulations of this By-law, is in fact a temporary sign not involving any substantial expense, and is displayed in a manner which will not deface the building facade or otherwise impinge upon the design review of the proposed sign.*
- d. Temporary signs shall be maintained no longer than a four month period in any calendar year*

~~§7.06 - REGULATED FAÇADE ALTERATIONS ILLUMINATION~~

- ~~1. A regulated facade shall include:
 - a. commercial building facades in all districts; and
 - b. residential building facades on lots with frontage on Beacon Street, Boylston Street, Brookline Avenue, Commonwealth Avenue, Harvard Street, or Washington Street, with the exception of buildings on lots located in S, SC, T, and F districts.
 - c. Conversion of attic or basement space in Single Family and Two Family Residential Dwellings where exterior modifications beyond that required by the State building code are made.~~

- ~~2. A regulated alteration shall be defined as any change in the visual appearance of the facade including the blocking of the view through a street level window and any change in door or window style, unless such change consists of an exact replication in terms of size, color, location and detail of the replaced element. A regulated alteration shall also include installation of a fence, wall or driveway.~~
- ~~3. All regulated facade alterations shall be subject to the design review process of §7.03, paragraph 2.~~

- a. In any residence district, no sign shall be of the neon type or exposed gas-illuminated tube type; and any lighting of a sign shall be continuous, indirect white light installed in a manner that will prevent direct light from shining onto any street or nearby property. In S, SC, and T Districts no sign shall be illuminated after 11 p.m.*
- b. In an S, SC, T, M-0.5, M-1.0, or M-1.5 District, no outdoor floodlighting or decorative lighting shall be permitted except lighting primarily designed to illuminate walks, driveways, doorways, outdoor living areas, or outdoor recreational facilities.*
- c. New signs in L, G, I and O Districts may be illuminated via low intensity LED light bulbs from 5 am until 11 pm; or ½ hour past the close of business, whichever is later. In the case of a business that operates 24 hours per day; illuminated signs shall be dimmed between the hours of 11 pm and 5 am. Signs shall be installed with an automatic timer to comply with this Section.*

§7.07 – EXCEPTIONS TO THE ABOVE

- a. In cases where an attached sign size larger than permitted in this Article VII is appropriate because of the size of a natural space for a sign on a facade or because of other architectural features of a building, a larger attached sign up to but not more than 25% larger than permitted by the specific regulations in this Article may be allowed by the Planning Board in accordance with the procedures of §7.01(h) only if such an increase is necessary to fill the most appropriate sign area on the building and the sign location is a proper one for an oversized sign. No lettering or other advertising message shall be placed in the additional sign area authorized by this paragraph. The increase of the background up to 25% shall not in any event permit an increase in the size of the lettering had the background increase not been permitted.*
- b. Upon the expiration of the initial four month period for a temporary sign, the Building Commissioner may permit a temporary sign for an additional four month period upon written application, if need is shown.*

- c. *Additional temporary signs on a construction or development site may be allowed by special permit of the Board of Appeals which shall specify limits on the size and number of signs and the length of time to be maintained.*
- d. *Permanent decorative floodlighting of institutional or historic buildings may be permitted by the Board of Appeals by special permit. Any permanent lighting permitted by the preceding sentence shall be continuous, indirect, white light, installed in a manner that will prevent direct light from shining onto any street or nearby property.*

§7.08 – DESIGN REVIEW PROCEDURES

All signs permitted in §7.02, 7.03 and 7.04, except temporary signs permitted in paragraph 7.02(a) shall be subject to the following design review process:

- a. *The applicant shall submit to the ~~Building Commissioner~~ Planning Department an application form, plans of the proposed sign, facade alterations, if any, and photographs showing the existing building or site, and such other material as may be required by the Building Commissioner or Planning Board.*
- b. *Within ~~five~~ 10 working days, the ~~Building Commissioner~~ Planning Department shall refer the application, its recommendations and accompanying material to the Planning Board.*
- c. *After its receipt of the application and all required material, the Planning Board shall review the application at its next public meeting for which legal notice can be given. At least seven days before such meeting, the Planning Board shall mail or deliver a notice of the meeting, with a description of such application or a copy thereof, to each elected Town Meeting Member for the precinct in which the property is located, and to those Town Meeting Members of a precinct which is within 200 feet of such property as to which such application has been made. The notice requirements of this section shall be deemed satisfied if such notices are mailed and/or emailed to those individuals whose names appear as Town Meeting Members in the records of the Town Clerk at the addresses as they appear in such records. The Planning Board shall submit its recommendations in writing to the applicant and the Building Commissioner. The recommendations shall be based on the provisions of this Section of the Zoning By-law, the community and Environmental Impact and Design Standards in §5.09 and such design guidelines as the Planning Board may adopt.*
- d. *Upon receipt of the Planning Board's report or the lapse of thirty days from his referral to the Board without such report, the Building Commissioner may issue a permit for a sign which conforms to the Planning Board's recommendations,*

if any, the regulations in the Zoning By-law, and such other technical requirements as are within the Building Commissioner's jurisdiction.

e. If the applicant or other aggrieved party does not agree with the recommendations of the Planning Board or other requirements imposed by the Building Commissioner, he may appeal to the Board of Appeals within 30 days through the special permit procedure in Article IX.

§7.09 – NON-CONFORMANCE OF SIGNS

Signs legally erected may continue to be maintained, subject to the provisions of § 5.83 of the Town of Brookline Sign By-law (Article 5.8); provided, however, that no such sign shall be permitted if it is enlarged, reworded (other than in the case of theatre or cinema signs or signs with automatically changing messages) redesigned or altered in any way including repainting in a different color, except to conform to the requirements of this By-law; and provided further that any such sign which has deteriorated to such an extent that the cost of restoration would exceed thirty-five percent of the replacement cost of the sign at the time of the restoration shall not be repaired or rebuilt or altered except to conform to the requirements of this By-law. Any exemption provided in this Article VII shall terminate with respect to any sign which:

- 1. has been abandoned;*
- 2. advertises or calls attention to any products, businesses or activities which are no longer sold or carried on at the particular premises; or*
- 3. has not been repaired or properly maintained within thirty days after notice to that effect has been given by the Building Commissioner.*

Or act on anything relative thereto.

ARTICLE 15

Submitted by: Police Department

To see if the Town will amend the General By-Laws, Article 8.20, Soliciting Money, as follows (the proposed deletion appears in stricken bold text):

ARTICLE 8.20 ~~SOLICITING MONEY~~

No person shall, on any street or other public place, ~~solicit money, or~~ sell or offer for sale any tag, badge or other article of any intrinsic value for the purpose of obtaining money, without having obtained permission to do so from the Chief of Police.

or act on anything relative thereto.

ARTICLE 16

Submitted by: C. Scott Ananian

TO SEE IF THE TOWN WILL ADOPT THE FOLLOWING RESOLUTION:

To see if the Town will adopt the following Resolution:

Whereas, greenhouse gas pollution from cars account for more emissions than from industries like iron, steel, cement and chemicals combined;

Whereas, increasing access to the infrastructure required to charge electric vehicles is a means to get more people into electric vehicles and thus lower greenhouse gases;

Whereas, the Town installed electric vehicle charging stations in 2011 that are currently hooded and inactive;

Now, therefore, be it hereby Resolved that the Town shall designate responsibility for the town-owned electric vehicle charging stations and annually appropriate funding as needed.

or act on anything relative thereto.

ARTICLE 17

Submitted by: C. Scott Ananian

To see if the Town will amend Section 6.04 of the Zoning By-law ("Design of All Off-Street Parking Facilities") by adding a new paragraph, to read:

§6.04.15 - ELECTRIC VEHICLES

15. At least 2% of parking spaces, and not less than a single parking space, must be equipped for electric vehicle charging. Electric vehicle charging spaces must provide a Level 2 or Level 3 charger of at least 5kW capacity, or an accessible electrical receptacle capable of providing equivalent power. If a charger is provided, users may be charged a reasonable fee for time the equipment is in use. The count of spaces equipped for electric vehicle charging may include spaces designated for visitors or tradespeople. Changes in the requirements of this section, consistent with the intent of encouraging electric vehicle adoption, may be approved by the Board of Appeals for an individual building by special permit.

or act on anything relative thereto.

ARTICLE 18

Submitted by: C. Scott Ananian

To see if the Town will adopt the following Resolution:

Whereas, greenhouse gas pollution from cars account for more emissions than from industries like iron, steel, cement and chemicals combined;

Whereas, increasing access to the infrastructure required to charge electric vehicles is a means to get more people into electric vehicles and thus lower greenhouse gases;

Whereas, the Town has a special interest in addressing climate change;

Whereas, Massachusetts General Laws c. 143 § 98 provides that the Board of Selectmen may recommend to the State Board of Building Regulations and Standards the adoption of more restrictive building codes for the Town;

Now, therefore, be it hereby Resolved that the Board of Selectmen should seek to further the construction of electric-vehicle-ready garages in the Town by pursuing the adoption within the Town of the following amendment to Title 527 Code Mass. Regs. §§ 12.00, the Massachusetts Electrical Code:

210.65. Add a new section numbered 210.65 to read:

210.65. Electric Vehicle Charging Outlet. For dwelling units, in each attached garage and in each detached garage with electric power, shall be installed either electric vehicle supply equipment meeting the requirements of article 625 and rated at least 5kW, or a 50-ampere, 125/250- volt receptacle conforming to the configuration as identified in Figure 551.46(C) and installed at a location compliant with 625.50. The electric vehicle supply equipment or receptacle shall be fed from an Electric Vehicle Branch Circuit in accordance with 210.17.

Either by recommendation to the state Board of Building Regulations and Standards under the process described in M.G.L. c. 143 § 98, or via alternate means if so advised by Town Council.

or act on anything relative thereto.

ARTICLE 19

Submitted by: Scott Englander

To see if the Town will amend the Zoning By-Law by:

1. Creating a new Overlay District by adding the following language to Section 3.01(4):
“e. Transit Parking Overlay District”
2. Amending the Zoning Map as shown on the following pages to add a new Transit Parking Overlay District.

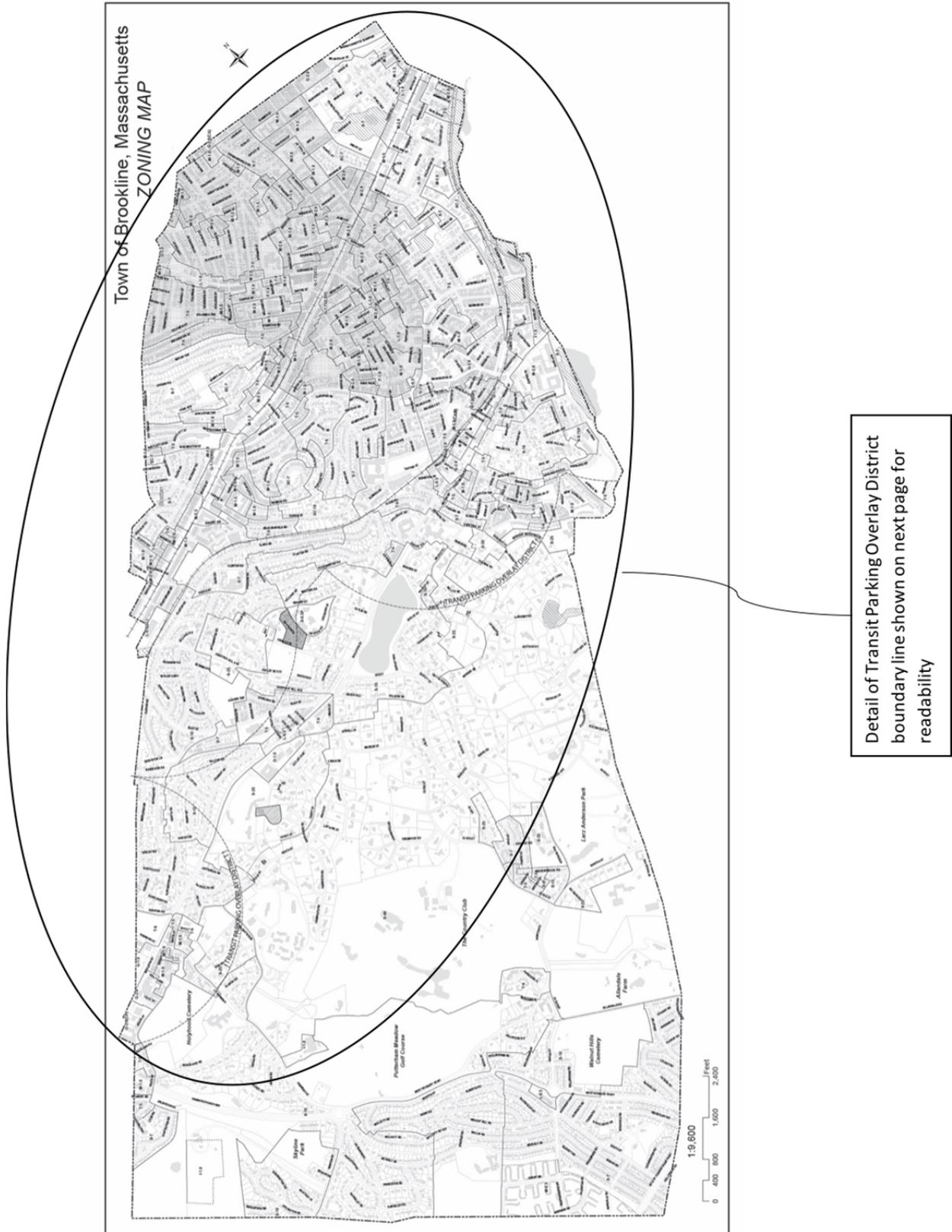


Figure 1.



Figure 2. Detail of Transit Parking Overlay District boundary line. The Transit Parking Overlay District boundary reflects a half mile radius from the centroid of all MBTA green-line stations in or near Brookline. The centroids were taken from the Town's GIS data.

3. Adding the following language to Section 6.02, Paragraph 2:

“i. Residential uses on any lot for which any portion of the lot is within the Transit Parking Overlay District, notwithstanding the requirements of §3.02 paragraph 4, must provide no fewer off-street parking spaces per dwelling unit than 0.5 for studio units, 0.8 for one-bedroom units, 1.1 for two-bedroom units, 1.5 for dwelling units of three or more bedrooms in zoning districts defined by a maximum floor area ratio of 0.5 or more, and 1.9 for dwelling units of three or more bedrooms in zoning districts defined by a maximum floor area ratio of less than 0.5.”

4. Amending the last footnote of Sec. 6.02, paragraph 1, Table of Off-Street Parking Space Requirements, in the Brookline Zoning By-Law, as follows: [new language in bold]

§6.02, paragraphs 2. through 7. contain additional requirements by type of use and by location.

Or act on anything relative thereto.

ARTICLE 20

Submitted by: Department of Planning & Community Development

To see if the Town will authorize the Board of Selectmen to enter into a contract for the services of an operator to support the Town’s participation in the Hubway regional bicycle share program for a period of up to ten (10) years, said contract term to begin in 2017.

or act on anything relative thereto.

ARTICLE 21

Submitted by: Department of Planning & Community Development

To see whether the Town will amend Section 4.07 of the Town’s Zoning By-law, Table of Use Regulations, to prohibit commercial and non-commercial manned aircraft landing areas in all residential districts in the Town, and to allow such landing areas in non-residential districts by Special Permit only.

or act on anything relative thereto.

ARTICLE 22

Submitted by: Members of the Moderator’s Committee on Zoning FAR and others

To see if the Town will amend Sections 5.09, 5.22 and 7.06 of the Brookline Zoning By-Law as follows (additions appear as underlined bold text; deletions appear with strike-throughs):

A. To amend Section 5.09.2 (Design Review, Scope) as follows:

2. Scope.

In the following categories all new structures and outdoor uses, exterior alterations, exterior additions, and exterior **modifications or** changes, including exterior demolitions, which require a building permit from the building department under the Building Code, shall require a special permit subject to the community and environmental impact and design review procedures and standards hereinafter specified. Exterior alterations, exterior additions and exterior changes (**except as provided below**), including fences, walls, and driveways, to residential uses permitted by right in S, SC, T, and F districts; signs as regulated in §§ 7.02, and 7.03; and regulated facade alterations as defined and regulated in §7.06 shall be exempt from the requirements of this section.

....

j. any exterior addition **or exterior modification** for which a special permit is requested pursuant to §5.22

.....

n. any construction of space, whether or not habitable, finished or built out, where such space substantially satisfies the requirements for habitability under the State Building Code or could with the addition of windows or doors and without other significant alterations to the exterior of the building be modified to substantially meet such habitability requirements, and which space if finished or built out or converted to habitable space would result in the total Gross Floor Area of the structure being greater than the permitted Gross Floor Area in Table 5.01. In granting any such special permit, the Board of Appeals, in addition to the requirements of §5.09 and §§9.03 to 9.05, shall be required to find that the massing, scale, footprint, and height of the building are not substantially greater than, and that the setbacks of the building are not substantially less than, those of abutting structures and of other structures conforming to the zoning by-law on similarly sized lots in the neighborhood. In granting a special permit for construction of such non-habitable space, the Board of Appeals shall set forth as a condition of the special permit the extent to which such space may or may not be converted to habitable space in the future pursuant to Section 5.22 or otherwise, with the allowed future conversion to habitable space no greater than the applicant's representation of the intended amount of future conversion.

B. To amend Section 5.09.3.c.4 (Procedure, Photographs) as follows:

4. Photographs – Photographs show the proposed building site and surrounding properties, and of the model (if required). Applications for alterations, **modifications** and additions shall include photographs showing existing structure or sign to be altered and its relationship to adjacent properties.

C. To amend Section 5.09.4.c (Design Review Standards, Relation to Streetscape) as follows:

c. Relation of Buildings to the Form of the Streetscape and Neighborhood—Proposed development shall be consistent with the use, scale, **massing, height, footprint, siting,** yard setbacks and architecture of existing buildings and the overall streetscape of the surrounding area, **including existing abutting buildings and existing buildings that conform to the zoning by-law on lots of similar size in the neighborhood.** The Board of Appeals may require modification in **massing, scale, height, footprint, siting, setbacks** or design so as to make the proposed building more consistent with the form of **such existing buildings and** the existing streetscape, and may rely upon data gathered that documents the character of the existing streetscape in making such a determination. Examples of changes that may be required include addition of bays or roof types consistent with those nearby; alteration of the **massing, scale, siting, footprint, setbacks and** height of the building to more closely match **such** existing buildings **and the existing streetscape,** or changes to the fenestration. The street level of a commercial building should be designed for occupancy and not for parking. Unenclosed street level parking along the frontage of any major street as listed in paragraph 2., subparagraph a. of this section is strongly discouraged. Otherwise, street level parking should be enclosed or screened from view.

D. To amend Sections 5.22.1.a, 5.22.1.b and 5.22.1.c (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, General Provisions) as follows:

a. Any expanded unit (individual residential units subject to an increase in gross floor area as per this Section) shall not be eligible to be **concurrently or** subsequently divided into multiple units. **If the limitations set forth in this paragraph 1, subparagraph a, or the limitations in paragraph 2 regarding separate dwelling units, should be found to be invalid, § 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.**

b. Insofar as practicable, the additional floor area allowed pursuant to this Section shall be located and designed so as to minimize the adverse impact on abutting properties and ways, and interior conversions shall be considered preferable to exterior additions. **Any exterior additions or modifications shall further comply with the provisions of §5.09, including §5.09.4.c, §§ 9.03 to 9.05, and this Section. The limitations and standards set forth in such provisions shall also guide the Zoning Board of Appeals in determining under G.L. c.40A, §6 whether a change, extension or alteration is substantially more detrimental to the neighborhood than an existing nonconforming use.**

c. Additional floor area shall be allowed pursuant to this Section only if the Certificate of Occupancy for the original construction was granted at least ten years prior to the date of the application for additional gross floor area under this section or if there is other evidence of lawful occupancy at least ten years prior to the date of such application.

In the case of the substantial demolition of a structure or of an increase in the number of units, the time period prior to such demolition or unit increase shall not be counted toward the required ten-year waiting period, and the ten-year waiting period shall be deemed to commence with the grant of a new Certificate of Occupancy after such demolition or unit increase. As used in this paragraph 1, subparagraph c, “substantial demolition” shall mean the act of pulling down, destroying, removing or razing a structure or a significant portion thereof, by removing one or more sides of the structure, or removing the roof, or removing 25% or more of the structure. If the limitation set forth in this paragraph 1, subparagraph c should be found to be invalid, § 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.

E. To amend Section 5.22.2 (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, Conversion of Attic or Basement Space) as follows:

2. Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings.

Conversions of attics or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing the gross floor area of the dwelling, shall be allowed ~~as of right~~ **in S and SC Districts** provided the following conditions are met in addition to the conditions set forth in paragraph 1 of this Section:

a. Any exterior modifications that are made to the structure to accommodate the conversion shall be subject to **the procedures, limitations, and conditions specified in §5.09, §§9.03 to 9.05, and this Section.** ~~the façade and sign design review process as provided in §7.06, paragraph 1 of the Zoning Bylaw.~~ No exterior modifications made under the provisions of this subparagraph may project above the ridge of the roof nor project beyond the eaves.

b. Any increase in gross floor area through such basement or attic conversion shall be limited such that the total resulting gross floor area of the building(s) after such conversion is no more than **130%** ~~150%~~ of the total permitted in Table 5.01 (the “permitted gross floor area”).

F. To amend Sections 5.22.3.a., 5.22.3.a.1 and 5.22.3.a.2 as follows:

a. The Board of Appeals may allow, by special permit, a maximum gross floor area greater than permitted gross floor area for an existing residential building(s) on a single lot, subject to the procedures, limitations, and conditions specified in §5.09, **§§9.03 to 9.05, and this Section** for an existing residential building which meets the following basic requirements:

1) The existing building(s) is located on a lot (or part of a lot) in a ~~an~~ **S or SC District with a permitted maximum floor area ratio no greater than 1.5.**

2) The existing building contains at least one residential unit but no more than ~~four~~ **two** total units. For the purpose of this paragraph 3, subparagraph (a)(2), total units shall be defined to include all residential dwellings, offices, and commercial spaces within the building.

G. To delete Section 5.22.3.b.2 as follows:

~~In all T, F, M-0.5, M-1.0, and M-1.5 Districts, a special permit may be granted for an increase in floor area that is less than or equal to 20% of the permitted gross floor area, whether it be for an exterior addition, interior conversion, or a combination of the two. The total increase in floor area granted by special permit for all applications made under this paragraph 3, subparagraph (b)(2), or any prior version of Section 5.22, shall not exceed 20% of the permitted gross floor area.~~

H. To delete Section 7.06.1.c as follows:

~~Conversion of attic or basement space in Single Family and Two Family Residential Dwellings where exterior modifications beyond that required by the State building code are made.~~

Or act on anything relative thereto.

ARTICLE 23

Submitted by: The Moderator's Committee on Leaf Blowers, Chair John Doggett and Committee Member Jonathan Margolis

To see if the Town will amend the General By-Laws by amending Article 8.15 - Noise Control and Article 8.31 – Leaf Blowers as follows, to: Consolidate leaf blower regulations into a single By-law (i.e. Article 8.31);

1. Accordingly, delete references to leaf blower regulations from Article 8.15 (i.e. the noise control By-law);
2. Modify leaf blower regulations as follows:
 - Make changes to dates and times of permitted leaf blower operation;
 - Limit the number of simultaneous leaf blowers permitted on lots of 7,500 square feet or less;
 - Exempt properties with at least 2 acres of open space;
 - Add an exemption process provision;
 - Change the responsibility for By-law compliance to the real property owner (in similar fashion to the current nuisance control By-law);
 - Provide for a mandatory warning in lieu of fine for first violations;
 - Otherwise increase fines for second and subsequent violations;
 - Provide for enforcement by code enforcing Town Departments as well as the Police Department;
 - Add a requirement that complainants identify themselves when reporting violations;

Article 8.31 has been substantially rewritten and the original Article 8.31 has been included for comparison.

Committee proposed new Article 8.31 below:

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Article 8.31
Leaf Blowers

Section 8.31.1: STATEMENT OF PURPOSE

The reduction of noise and emissions of particulate matter resulting from the use of leaf blowers as well as reducing the use of gasoline and oil fuels and reducing carbon emissions into the environment are public purposes of the Town, as are protecting the health, welfare and environment public purposes of the Town. Therefore, this By-law shall limit and regulate the use of leaf blowers as defined and set forth herein.

Section 8.31.2: DEFINITIONS

- a. "Leaf Blowers" governed by this By-law are defined as any portable powered machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.
- b. "Property Owner" as used in this By-law shall mean the legal owner of record of real property as listed by the tax assessor's records.
- c. "Property Manager" shall mean any tenant in possession or person or entity in control of real property, including, but not limited to, a condominium association.
- d. "User" means the person or entity using the Leaf Blower at the time of the violation.

Section 8.31.3: LIMITATIONS ON USE

- a. No Property Owner or Manager shall authorize the operation of leaf blowers on property under their control except between March 15th and May 15th and between October 1st and December 31st in each year, and except for leaf blowers powered by electricity which are exempt from this seasonal usage limitation. The provisions of this Section 3.a. shall not apply to parcels of land that contain at least two acres of open space.
- b. No Property Owner or Manager shall authorize the operation of leaf blowers on property under their control except between the hours of 8 (eight) A.M. to 8(eight) P.M.

Monday through Friday, and from 9 (nine) A.M. to 6 (six) P.M. on Saturdays, Sundays and legal holidays.

c. On land parcels equal to or less than 7,500 (seven thousand five hundred) square feet in size, no Property Owner or Manager shall authorize the operation of more than 2 (two) leaf blowers simultaneously. This limitation shall apply to sidewalks and roadways contiguous to such parcel.

d. No Property Owner or Manager shall authorize the operation of any leaf blower which does not bear an affixed manufacturer's label or a label from the Town indicating the model number of the leaf blower and designating a noise level not in excess of sixty-seven (67) dBA when measured from a distance of fifty feet utilizing American National Standard Institute (ANSI) methodology on their property. Any leaf blower bearing such a manufacturer's label or Town label shall be presumed to comply with the approved ANSI Noise Level limit under this By-law. However, Leaf Blowers must be operated as per the operating instructions provided by the manufacturer. Any modifications to the equipment or label are prohibited. However, any leaf blower(s) that have been modified or damaged, as determined visually by anyone who has enforcement authority for this By-law, may be required to have the unit tested by the Town as provided for in this section, even if the unit has an affixed manufacturer's ANSI or Town label. The Controller of any leaf blower without a manufacturer's ANSI label on such equipment may obtain a label from the Town by bringing the equipment to the town's municipal vehicle service center or such other facility designated by the Town for testing. Such testing will be provided by the Town's designated person for no more than a nominal fee (which shall be non-refundable) and by appointment only at the Town's discretion. If the equipment passes, a Town label will be affixed to the equipment indicating Decibel Level. In the event that the label has been destroyed, the Town may replace it after verifying the specifications listed in the Controller's manual that it meets the requirements of this By-law.

The provisions of this Article 8.31.3 shall not apply to the use of leaf blowers by the Town, its employees or contractors while performing work for the Town.

Section 8.31.4: REGULATIONS

a. The Commissioner of Public Works shall have the authority to promulgate regulations to implement the provisions of this By-law, subject to the approval of the Board of Selectmen.

b. The Commissioner of Public Works shall have the authority to waive temporarily any of the limitations on the use of Leaf Blowers set forth in this By-law in order to aid in emergency operations and clean-up associated with severe storms. In the event of issuing a temporary waiver, the Commissioner of Public Works shall post a notice prominently on the Town of Brookline's internet home page and make other good faith efforts to notify the public including, but not limited to, social media.

SECTION 8.31.5: DUTIES AND RESPONSIBILITIES OF TOWN DEPARTMENTS

a. Departmental Actions

All Town departments and agencies shall, to the fullest extent consistent with other laws, carry out their programs in such a manner as to further the objectives of this By-law.

b. Departmental Compliance with Other Laws

All Town departments and agencies shall comply with federal and state laws and regulations to the same extent that any person is subject to such laws and regulations.

c. Town Exemption

The Department of Public Works shall be exempt for day and night time operations for routine maintenance. However, the DPW shall make every effort to reduce noise in residential areas, particularly during the limited use hours set forth in Section 8.31.3.b of this By-law.

d. Town Leaf Blower Equipment

Prior to purchasing new equipment, the Town must consider equipment with the lowest Decibel rating for the performance standard required.

SECTION 8.31.6: PERMITS FOR EXEMPTIONS FROM THIS BY-LAW

- (a) The Board of Selectmen, or its designee, may grant a special permit to a Property Owner or Manager:
- (i) for any activity otherwise prohibited under the provisions of this By-law,
 - (ii) for an extension of time to comply with the provisions of this By-law and any abatement orders issued pursuant to it,
 - (iii) when it can be demonstrated that bringing a source of noise into compliance with the provisions of this By-law would create an undue hardship on a person or the community. A Property Owner or Manager ~~or~~ seeking such a permit should make a written application to the Board of Selectmen, or its designee. The Town will make reasonable efforts to notify all direct abutters prior to the date of the Selectmen's meeting at which the issuance of a permit will be heard.
- (b) The Board of Selectmen, or designee, may issue guidelines defining the procedures to be followed in applying for a special permit. The following criteria and conditions shall be considered:
- (1) the cost of compliance will not cause the applicant excessive financial hardship;
 - (2) additional noise will not have an excessive impact on neighboring citizens.
 - (3) the permit may require portable acoustic barriers during night use.
 - (4) the guidelines shall include reasonable deadlines for compliance or extension of non-compliance.
 - (5) the number of days a person seeking a special permit shall have to make written application after receiving notification from the Town that (s)he is in violation of the provisions of this By-law.
 - (6) If the Board of Selectmen, or its designee, finds that sufficient controversy exists regarding the application, a public hearing may be held. A person who claims that any special permit granted under (a) would have

adverse effects may file a statement with the Board of Selectmen, or designee, to support this claim.

SECTION 8.31.7: HEARINGS ON APPLICATION FOR SPECIAL PERMITS

Resolution of controversy shall be based upon the information supplied by both sides in support of their individual claims and shall be in accordance with the procedures defined in the appropriate guidelines issued by the Board of Selectmen, or designee.

Section 8.31.8: ENFORCEMENT AND PENALTIES

a. This By-law may be enforced in accordance with Articles 10.1, 10.2 and/or 10.3 of the General By-laws by a police officer, the Building Commissioner or his/her designee, the Commissioner of Public Works or his/her designee and/or the Director of Public Health or his/her designee.

b. The Property Owner and/or Manager of any real property upon which a Leaf Blower is operated in violation of this By-law, or upon any abutting sidewalk or way in connection with such operation, shall be liable for all violations of this By-law. Any User in violation of this By-law other than the Property Owner or Manager shall be issued a written notice, whenever practical, notifying the User of the enforcement action to be taken against the Property Owner or Manager for the violation.

For the first violation in each calendar year a written warning will be issued to the Property Owner or Manager.

Second and subsequent violations occurring on the same property under the same ownership or management Property shall be issued to the Property Owner or Manager according to the following schedule:

1. \$100.00 for the second offense;
2. \$200.00 for the third offense;
3. \$300.00 for the each subsequent offense;
4. plus court costs for any enforcement action taken.

SECTION 8.31.9: ENFORCEMENT

The Health, Building, Police and Public Works Departments shall have enforcement authority for this By-law. On complaint by any individual not an employee or agent of the Town, complainant is required at a minimum to provide her/his name and contact information as well as address of alleged violation for the complaint.

SECTION 8.31.10: EFFECTIVE DATE

The provisions of this By-law shall be effective as provided in M.G.L. c. 40, s.32.

The current Article 8.31:

**Article 8.31
Leaf Blowers**

Section 8.31.1: STATEMENT OF PURPOSE

Reducing the use of gasoline and oil fuels and reducing carbon emissions into the environment are public purpose of the Town and the reduction of noise and emissions of particulate matter resulting from the use of leaf blowers are public purposes in protecting the health, welfare and environment of the Town. Therefore, this by-law shall limit and regulate the use of leaf blowers as defined and set forth herein.

Section 8.31.2: USE REGULATIONS

1. Leaf Blowers.

Leaf blowers are defined as any portable gasoline powered machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.

2. Limitations on Use.

a. Leaf blowers shall not be operated except between March 15 and May 15 and between September 15 and December 15 in each year. The Commissioner of Public Works shall have the authority to temporarily waive the limitations on the use of leaf blowers set forth in this section in order to aid in emergency operations and clean-up associated with severe storms. In the event of issuing a temporary waiver, the Commissioner of Public Works shall post a notice prominently on the Town of Brookline's internet home page

and make other good faith efforts to notify the public including, but not limited to, social media.

3. *Regulations.*

The Commissioner of Public Works with the approval of the Board of Selectmen shall have the authority to promulgate regulations to implement the provisions of this Leaf Blower By-Law.

4. Enforcement and Penalties

a. This bylaw may be enforced in accordance with Articles 10.1, 10.2 and/or 10.3 of the General By-Laws by a police officer, the Building Commissioner or his/her designee, the Commissioner of Public Works or his/her designee and/or the Director of Public Health or his/her designee.

b. For the purposes of this section "person" shall be defined as any individual, company, occupant, real property owner, or agent in control of real property. Each violation shall be subject to fines according to the following schedule:

- (a) a warning or \$50.00 for the first offense;
- (b) \$100.00 for the second offense;
- (c) \$200.00 for the third offense;
- (d) \$200.00 for successive violations, plus
- (e) court costs for any enforcement action.

5. *Effective Date.*

The provisions of this Leaf Blower By-Law shall be effective in accordance with the provisions of G.L.c.40, s.32.

The Committee proposed new Article 8.15, additions are indicated by underlining, and deletions are indicated by strike-out below:

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ARTICLE 8.15
NOISE CONTROL

SECTION 8.15.1 SHORT TITLE

This By-law may be cited as the "Noise Control By-law of The Town of Brookline".

SECTION 8.15.2

DECLARATION OF FINDINGS,
POLICY AND SCOPE

(a) Whereas excessive Noise is a serious hazard to the public health and welfare, safety, and the quality of life; and whereas a substantial body of science and technology exists by which excessive Noise may be substantially abated; and whereas the people have a right to and should be ensured an environment free from excessive Noise that may jeopardize their health or welfare or safety or degrade the quality of life; now, therefore, it is the policy of the Town of Brookline to prevent excessive Noise which may jeopardize the health and welfare or safety of its citizens or degrade the quality of life.

(b) Scope.

This By-law shall apply to the control of all sound originating within the limits of the Town of Brookline.

1. Provisions in this By-law shall not apply to the emission of sound for the purpose of alerting persons to the existence of an emergency or to the emission of sound in the performance of emergency work or in training exercises related to emergency activities, and in the performance of public safety activities.
2. Emergency generators used for power outages or testing are exempt from this By-law. However, generator testing must be done during daylight hours.
3. Noncommercial public speaking and public assembly activities as guaranteed by state and federal constitutions shall be exempt from the operation of this By-law.

4. Noise regulations concerning Leaf blowers are found in Article 8.31

SECTION 8.15.3 DEFINITIONS

- (a) Ambient or Background Noise Level: Is the term used to describe the Noise measured in the absence of the Noise under investigation. It shall be calculated using the average lowest sound pressure level measured over a period of not less than five minutes using a sound pressure level meter set for slow response on the “A” weighting filter in a specific area of the town under investigation.
- (b) Construction and Demolition: Any site preparation, assembly erection, substantial repair, alteration, destruction or similar action for public or private rights-of-way, structures, utilities, or similar property.
- (c) Day: 7:01 AM - 10:59 PM and Night: 11:00 PM – 7:00 AM
- (d) Electronic Devices: Any radio, tape recorder, television, CD, stereo, public address system, loud speaker, amplified musical instrument including a hand held device, and any other electronic noise producing equipment. Exemption: two-way communication radios used for emergency, safety and public works requirements.
- (e) Emergencies: Any occurrence or set of circumstances necessary to restore, preserve, protect or save lives or property from imminent danger of loss or harm.
- (f) Decibels (dB): The decibel is used to measure sound pressure level. The dB is a logarithmic unit used to describe a ratio of sound pressure, loudness, power, voltage and several other things.
- (g) Decibels “A” weighted scale (dBA): The most widely used sound level filter is the “A” weighted scale. This filter simulates the average human hearing profile. Using the “A” weighted scale, the meter is less sensitive to very low and high frequencies.
- (h) Decibels “C” weighted scale (dBC): The “C” filter uses little filtering and has nearly a flat frequency response (equal magnitude of frequencies) throughout the audio range.
- (i) Fixed Plant Equipment: Any equipment such as generators, air conditioners, compressors, engines, pumps, refrigeration units, fans, boilers, heat pumps and similar equipment.
- (j) Frequency response: Is the measure of any system’s response at the output to a signal of varying frequency but constant amplitude at its input. The theoretical frequency range for humans is 20 - 20,000 cycles/second (Hz).
- (k) Hertz (Hz): Cycles per Second (cps).

(l) Loudness: A rise of 10dB in sound pressure level corresponds approximately to doubling of subjective loudness. That is, a sound of 65dB is twice as loud as a sound of 55dB.

(m) Leaf blowers: Any hand-held or backpack machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.

(n) Noise: Sound which a listener does not wish to hear and is under investigation that may exceed the Noise requirements located in this Noise By-law.

(o) Noise Injury: Any sound that:

1. endangers the safety of, or could cause injury to the health of humans; or
2. endangers or injures personal or real property.

(p) Noise Level: The Sound Pressure Level measurements shall be made with a Type I or II sound level meter as specified under American National Standard Institute (ANSI) standards.

(q) Noise Pollution: If a Noise source increases Noise levels 10 dBA or more above the Background Noise Level, it shall be judged that a condition of Noise Pollution exists. However, if the Noise source is judged by ear to have a tonal sound, an increase of 5 dBA above Background Noise Level is sufficient to cause Noise Pollution.

(r) Person: Any individual, company, occupant, real property owner, or agent in control of real property.

(t) Sound: A fluctuation of air pressure which is propagated as a wave through air.

(u) Sound Level Meter: An instrument meeting Type I or Type II American National Standard Institute (ANSI) standards, consisting of a microphone, amplifier, filters, and indicating device, and designed to measure sound pressure levels accurately according to acceptable engineering practices.

(v) Sound Pressure Level: The level of Noise, normally expressed in decibels, as measured by a sound level meter.

(w) Tonal Sound: Any sound that is judged by a listener to have the characteristics of a pure tone, whine, hum or buzz.

SECTION 8.15.3A MOTOR VEHICLE DEFINITIONS

(a) Gross Vehicle Weight Rating (GVWR): The value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating, (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

(b) Motorcycle: Any unenclosed motor vehicle having two or three wheels in contact with the ground, including, but not limited to, motor scooters and minibikes.

(c) Motor Vehicle: Any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck-trailers, semi-trailers, campers, go-carts, snowmobiles, dune buggies, or racing vehicles, but not including motorcycles.

SECTION 8.15.4 SOUND LEVEL EXAMPLES

The following are examples of approximate decibel readings of every day sounds:

0dBA	The faintest sound we can hear
30dBA	A typical library
45dBA	Typical office space
55dBA	Background Noise of a typical urban environment at night
65dBA	Background Noise of a typical urban environment during the day
70dBA	The sound of a car passing on the street
72dBA	The sound of two people speaking 4' apart
80dBA	Loud music played at home
90dBA	The sound of a truck passing on the street
100dBA	The sound of a rock band
115dBA	Limit of sound permitted in industry by OSHA
120dBA	Deafening
130dBA	Threshold of pain
140dBA	Rifle being fired at 3'
150dBA	Jet engine at a distance of 100'
194dBA	Theoretical limit for a sound wave at one atmosphere environmental pressure

SECTION 8.15.5 DUTIES AND RESPONSIBILITIES OF TOWN DEPARTMENTS

(a) Departmental Actions

All town departments and agencies shall, to the fullest extent consistent with other laws, carry out their programs in such a manner as to further the policy of this By-law.

(b) Departmental Compliance with Other Laws

All town departments and agencies shall comply with federal and state laws and regulations and the provisions and intent of this By-law respecting the control and abatement of Noise to the same extent that any person is subject to such laws and regulations.

(c) The Department of Public Works is exempt for Day and Night time operations for routine maintenance including but not limited to snow removal, street cleaning, litter control, and graffiti removal, etc. However, the DPW shall make every effort to reduce Noise in residential areas, particularly at night.

(d) Prior to purchasing new equipment, the Department of Public Works must consider equipment with the lowest Decibel rating for the performance standard required.

(e) Any proposed new or proposed upgrade for a park or recreation facility must incorporate appropriate and feasible Noise abatement measures during the design review process.

SECTION 8.15.6 PROHIBITIONS AND MEASUREMENT OF NOISE EMISSIONS

(a) Use Restrictions

1. The following devices shall not be operated except between the hours of 8 (eight) A.M. to 8(eight) P.M. Monday through Friday, and from 9 (nine) A.M. to 8(eight) P.M. on Saturdays, Sundays and holidays:

All electric motor and internal combustion engine devices employed in yard and garden maintenance and repair.
Turf maintenance equipment employed in the maintenance of golf courses, snow blowers and snow removal equipment are exempt from this section.

2. The following devices shall not be operated except between the hours of 7(seven) A.M. to 7(seven) P.M. Monday through Friday, and from 8:30(eight-thirty) A.M. to 6(six) P.M. on Saturdays, Sundays and holidays:

All devices employed in construction or demolition, subject to the maximum Noise Levels specified in Section 8.15.6b and 8.15.6c.

- (b) Vehicular Sources: Maximum Noise Levels Measurements shall be made at a distance of 50 (fifty) feet from the closest point of pass-by of a Noise source or 50(fifty) feet from a stationary vehicle.

MAXIMUM NOISE LEVEL dBA

	Stationary Run-up or Limit	Speed
	Speed Limit 35 mph or less mph	35-45
Vehicle Class		
All vehicles over 10,000 lbs. 83 87 GVWR or GCWR	83	87

All motorcycles	79	79
Automobiles and light trucks	75	75

(c) Construction and Maintenance Equipment:
Maximum Noise Levels
Noise measurements shall be made at 50 (fifty) feet from the source. The following Noise Levels shall not be exceeded:

<u>Construction Item</u>	<u>Maximum Noise Level dBA</u>	<u>Maintenance Item</u>	<u>Maximum Noise Level dBA</u>
Backhoe, bulldozer concrete mixer dumptruck, loader, roller, scraper, pneumatic tools, paver	90	Wood Chipper running concrete mixer, leaf vacuum	90
Air compressor	85	Chainsaw, solid waste compactor, tractor (full-size)	85
Generator	80	Home tractor, snow blower	80
		Lawn mower, trimmer,	75
Electric drills, power tools, sanders, saws, etc	75	Leafblowers	67

(c) Fixed Plant Equipment

Any person shall operate such equipment in a manner not to exceed 10 dBA over the Background Noise and not greater than 5 dBA of Tonal sound over the Background Noise. However, if the fixed equipment is operated during night time hours, the night time Sound Pressure Level of the Fixed Plant Equipment must not exceed the average daytime Background Noise to compensate for night time operations, which is assumed to be 10dBA below daytime Background Noise. See Definitions Section

(e) Electronic Devices and Musical Instruments

No person owning, leasing or controlling the operation of any electronic device shall willfully or negligently permit the establishment or condition of Noise Injury or Noise Pollution.

In public spaces, the existence of Noise Injury or Noise Pollution is to be judged to occur at any location a passerby might reasonably occupy. When the offending Noise source is located on private property, Noise Injury or Noise Pollution judgments shall be made at the property line within which the offending source is located.

Any and all Decibel Levels of sound caused by playing non-electrified musical instruments between 9 A.M. and 9 P.M. shall be exempt with exception of drums.

~~(f) — Leaf Blowers~~

~~No person shall operate any portable Leaf Blower(s) which does not bear an affixed manufacturer's label or a label from the town indicating the model number of the Leaf Blower(s) and designating a Noise Level not in excess of sixty seven(67)dBA when measured from a distance of fifty feet utilizing American National Standard Institute (ANSI) methodology. Any Leaf Blower(s) which bears such a manufacturer's label or town's label shall be presumed to comply with the approved ANSI Noise Level limit under this By law. However, any Leaf Blowers must be operated as per the operating instructions provided by the manufacturer. Any modifications to the equipment or label are prohibited. However, any portable Leaf Blower(s) that have been modified or damaged, determined visually by anyone who has enforcement authority for this By law, may be required to have the unit tested by the town as provided for in this section, even if the unit has an affixed manufacturer's ANSI or town label. Any portable Leaf Blower(s) must comply with the labeling provisions of this By law by January 1, 2010. However, the owner's of any Leaf Blower(s) operating after January 1, 2010 without a manufacturer's ANSI label on the equipment, may obtain a label from the town by bringing the equipment to the town's municipal vehicle service center or such other facility designated by the Town for testing. The testing will be provided by the town's designated person for a nominal fee and by appointment only. Testing will be provided only between the months of May and October. If the equipment passes, a town label will be affixed to the equipment indicating Decibel Level. Whether the equipment passes or not, the testing fee is non-refundable. Leaf blowers may be operated only during the hours specified in Section 8.15.6(a)(1). In the event that the label has been destroyed, the Town may replace the label after verifying the specifications listed in the owner's manual that it meets the requirements of this By law.~~

(g) Animals

No person owning, keeping or controlling any animal shall willfully, negligently or through failure to provide necessary equipment or facilities or to take necessary precautions, permit the existence of Noise Pollution or Noise Injury.

(h) Additional Noise Sources

No person shall emit noise so as to cause a condition of Noise Pollution or Noise Injury.

(i) Alternative Measurement Procedures

If it is not possible to make a good Sound Pressure Level measurement at the distance as defined for specific equipment throughout Article 8.15, measurement may be made at an alternate distance and the level at the specified distance subsequently calculated. Calculations shall be made in accordance with established engineering procedures.

(j) Noise Level Exclusions

Any equipment that is used to satisfy local, state, federal health, welfare, environmental or safety codes shall be exempt from limitations for hours of operation (See Section 8.15.6(a)), except to the extent otherwise determined by the Board of Selectman. The following equipment shall also be exempt from Section 8.15.6(a) if necessary for emergency work performed by the Department of Public Works:

- jack hammers
- pavement breakers
- pile drivers
- rock drills
- or such other equipment as the DPW deems necessary,

providing that effective Noise barriers are used to shield nearby areas from excessive Noise.

(k) Motor Vehicle Alarms

The sounding of any horn or signaling device as a part of a burglar, fire or alarm system (alarm) for any motor vehicle, unless such alarm is automatically terminated within ten minutes of activation and is not sounded again at all within the next sixty minutes, is prohibited. Any motor vehicle located on a public or private way or on public or private property whose alarm has been or continues to sound in excess of ten minutes in any sixty minute cycle is hereby deemed to be a public nuisance subject to immediate abatement. Any police officer who observes that the alarm has or is sounding in excess of ten minutes in any sixty minute cycle, who, after making a reasonable effort, is unable to contact the owner of such motor vehicle or, after contact, such owner fails or refuses to shut-off or silence the alarm or authorize the police officer to have the alarm shut-off or silenced, may abate the nuisance caused by the alarm by entering the vehicle to shut off or disconnect the power source of the alarm, by authorizing a member of the fire department or a tow company employee to enter such vehicle to shut off or disconnect the power source of the alarm and, if such efforts are unsuccessful, such officer is authorized to abate the nuisance by arranging for a tow company to tow the motor vehicle to an approved storage area or other place of safety. If a motor vehicle's alarm is shut off or disconnected from its power source and a police officer determines that the motor vehicle is not safe in its then location and condition, the police officer may arrange for a tow company to tow the motor vehicle to an approved storage area or other place of safety. The registered owner of the motor vehicle shall be responsible for all reasonable costs, charges and expenses incurred for the shutting-off or silencing of the alarm and all costs of the removal and storage of the motor vehicle. The provisions of Article 10.1 or Section 8.15.10 shall not apply to this paragraph (k).

(k) Tonal Sound Corrections

When a Tonal Sound is emitted by a Noise source, the limit on maximum Noise levels shall be 5 dB lower than specified.

SECTION 8.15.7 PERMITS FOR EXEMPTIONS FROM THIS BY-LAW

- (a) The Board of Selectmen, or designee, may give a special permit
 - (i) for any activity otherwise forbidden by the provisions of this By-law,
 - (ii) for an extension of time to comply with the provisions of this By-law and any abatement orders issued pursuant to it, and
 - (iii) when it can be demonstrated that bringing a source of Noise into compliance with the provisions of this By-law would create an undue hardship on a person or the community. A person seeking such a permit should make a written application to the Board of Selectmen, or designee. The Town will make all reasonable efforts to notify all direct abutters prior to the date of the Selectmen's meeting at which the issuance of a permit will be heard.
- (b) The applications required by (a) shall be on appropriate forms available at the office of the Selectman. The Board of Selectmen, or designee, may issue guidelines defining the procedures to be followed in applying for a special permit.

The following criteria and conditions shall be considered:

- (1) the cost of compliance will not cause the applicant excessive financial hardship;
- (2) additional Noise will not have an excessive impact on neighboring citizens.
- (3) the permit may require portable acoustic barriers during Night.
- (4) the guidelines shall include reasonable deadlines for compliance or extension of non-compliance.
- (5) the number of days a person seeking a special permit shall have to make written application after receiving notification from the Town that (s)he is in violation of the provisions of this By-law.
- (b) If the Board of Selectmen, or designee, finds that sufficient controversy exists regarding the application, a public hearing may be held. A person who claims that any special permit granted under (a) would have adverse effects may file a statement with the Board of Selectmen, or designee, to support this claim.

SECTION 8.15.8 HEARINGS ON APPLICATION FOR PERMITS FOR EXEMPTIONS

Resolution of controversy shall be based upon the information supplied by both sides in support of their individual claims and shall be in accordance with the procedures defined in the appropriate guidelines issued by the Board of Selectmen, or designee.

SECTION 8.15.9 APPEALS

[Disapproved and deleted by the Attorney General on May 14, 2009.]

SECTION 8.15.10 PENALTIES

(a) Any person who violates any provision of this By-law shall be subject to a fine pursuant to Article 10.3 (Non-Criminal Disposition) in accordance with GL c.40. Section 21d or they may be guilty of a misdemeanor in accordance with Article 10.1 of the Town By-law and each violation shall be subject to fines according to the following schedule:

- (1) \$50.00 for first offense;
- (2) \$100.00 for the second offense;
- (3) \$200.00 for the third offense;
- (4) \$200.00 for successive violations;
- plus (5) court costs for any enforcement action.

Each day of a continuing violation shall be considered a separate violation. Fines that remain unpaid after 30 days shall accrue interest at the statutory rate of interest.

(b) If a person in violation of the Noise Control By-law at a real property is an occupant but not the record owner of the real property, the Police, Health, or Building Departments may notify the owner of record of the real property of the violation. If a fine is issued in connection with excessive Noise at real property to someone other than the record owner of the property then the record owner of that property shall be notified. If there are any successive violations at least 14 days after the notification of the record owner but within a one-year period, then the record owner of the property shall also be subject to the fine schedule delineated in Section (a).

(c) **[Disapproved and deleted by the Attorney General on May 14, 2009.]**

(d) The Health, Building, Police and Public Works Departments shall have enforcement authority for the By-law. To report a violation, contact the appropriate department.

SECTION 8.15.11 SEVERABILITY

If any provisions of this article or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of this article and the applicability of such provision to other persons or circumstances shall not be affected thereby.

ARTICLE 24

Submitted by: The Moderator's Committee on Leaf Blowers, Chair John Doggett and Committee Member Jonathan Margolis

To see if the Town will adopt the following Resolution:

Resolution to Appoint a Leaf Blower Code Enforcement Officer

WHEREAS the Police Department is currently the sole enforcer of the Leaf Blower By-laws and is using valuable resources that do not directly concern public safety;

WHEREAS many Town residents have expressed concern about calling the Police to report violations of the Leaf Blower By-Law;

WHEREAS, accordingly, there are, apparently, many current leaf blower by-law violations that are not reported and therefore not resolved;

WHEREAS noise deemed excessive and/or annoying which is within the legal scope of the current and proposed By-law could be reduced through negotiation with the parties involved;

WHEREAS the Police Department estimates that about 30% of noise complaints involved exempt Town operations and 50% of leaf blower complaints originate from a small number of “hot spots” around Town, a more systemic approach working with Town Departmental managers, residents, and landscape contractors might be more successful in reducing noise overall;

WHEREAS negotiating with neighbors and/or landscape service providers with a focus on education and best practices is likely to be productive in reducing noise pollution;

WHEREAS the Town and its contractors performing Town work are exempt from Leaf Blower By-laws; now, therefore, be it

RESOLVED that:

The Board of Selectmen appoint a Leaf Blower Code Enforcement Officer, or equivalent officer, who should not be part of the Police Department, who reports to the Board of Selectmen or its designee, and whose duties include:

1. Take calls during Town Hall business hours;
2. Investigate and attempt to resolve complaints with the parties involved;
3. Work with the landscape service provider community to build awareness of the noise concerns, help further the use of best practices and promote use of protective equipment for operators;
4. Liaise with the Police Department Community Service Officer designated to support leaf blower complaint resolution;
5. Issue warnings and citations as appropriate;
6. Call on the Police Department for support and/or enforcement, as appropriate;
7. Track, monitor and report periodically to the Board of Selectmen on complaint statistics and resolutions;
8. Communicate and educate Town residents as to their responsibilities to reduce noise;
9. Recommend regulation changes as appropriate;

And be it further:

RESOLVED that:

The Department of Public Works work closely with the Leaf Blower Code Enforcement Officer or equivalent officer to adopt practices and equipment standards that adhere as near as practical to the Leaf Blower By-Laws.

ARTICLE 25

Submitted by: Harry Friedman, TMM12

To see if the Town will amend the General by-laws by making the current section 8.16.3 into section 8.16.3(a), and adding the following as section 8.16.3(b):

(b) Notwithstanding the powers of the Board of Selectmen outlined above in Section 8.16.3(a), any adoption of a “Pay As You Throw” system of waste removal, defined as a variable rate pricing system under which those owners and occupants of residential units whose waste is collected as a town service are charged a rate based on how much waste they present for collection, shall not be effective without the express prior approval of Town Meeting.

or act on anything relative thereto.

ARTICLE 26

Submitted by: Harry Friedman, TMM12

To see if the Town will amend the General by-laws by making the current section 8.16.3 into section 8.16.3(a), and adding the following as section 8.16.3(b):

(b) Notwithstanding the rules and regulations promulgated pursuant to this Bylaw regarding the collection of waste or recyclable materials, owners and occupants of residential units whose waste or recycling is collected as a town service, cannot be required as a condition of the town service to utilize wheeled receptacles that weigh more than ten pounds, or any other receptacles that weigh more than ten pounds. With regard to receptacles used for recycling, this subsection shall only take effect once the contract with the Town’s current recycling hauler ends, or two years from enactment of this subsection, whichever occurs first.

or act on anything relative thereto.

ARTICLE 27

Submitted by: Fred Lebow on behalf of the Naming Committee

To see if the Town will approve the name of a square at utility pole 44/16A, near the northeast corner of Cypress and Boylston Streets, as Walter F. Brookings Square, or act on anything relative thereto.

ARTICLE 28

Submitted by: Ernest Frey, TMM7 (on behalf of the Commission for Diversity Inclusion & Community Relations)

To see if the Town will amend Articles 3.14, 3.15, 5.5 and 10.2 of the General By-laws as follows

(language ~~to be deleted is shown as striken~~, and new language is underlined):

ARTICLE 3.14

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS

~~COMMISSION~~ AND OFFICE

OF DIVERSITY, INCLUSION AND COMMUNITY RELATIONS

SECTION 3.14.1 ESTABLISHMENT AND PURPOSE

This ~~by-law~~By-law establishes the Commission for Diversity, Inclusion, and Community Relations ~~Commission~~-(~~the~~ “Commission” or “CDICR”) and the Office of Diversity, Inclusion, and Community Relations-~~Department~~ (~~the~~ “Office” or “ODICR”).

Valuing diversity and inclusion in and for the Brookline community, the Commission, in coordination with the Office, aims to support a welcoming environment by encouraging cooperation, tolerance, and respect among and by all persons who come in contact with the Town of Brookline (~~the~~ “Town”), including residents, visitors, persons passing through the Town, employers, employees, and job applicants, and by advancing, promoting and advocating for the human and civil rights of all through education, awareness, outreach and advocacy.

The Purpose of the Commission and the goal of the Town shall be to strive for a community characterized by the values of inclusion. The Town believes that inclusion will provide opportunities and incentives to all who touch Brookline to offer their energy, creativity, knowledge, and experiences to the community and to all civic engagements, including town government; and that inclusion is, therefore, a critically important government interest of the Town.

Inclusion is defined as actively pursuing goals of including, integrating, engaging, and welcoming into the community all persons who come in contact with the Town regardless of their race, color, ethnicity, gender, sexual orientation, gender identity or expression, disability, age, religion, creed, ancestry, national origin, military or veteran status, genetic information, marital status, receipt of public benefits (including housing subsidies), or family status (e.g., because one has or doesn't have children) (herein, “Brookline Protected Classes”).

In striving to achieve the goal of inclusion, the Commission shall be guided by the following general principles: (1) the foundation of community is strong and

positive community relations among and between all groups and individuals in the community, regardless of their membership in a Brookline Protected Class; (2) ~~that~~ the substance of community is the recognition of human rights principles as applicable to all persons who come in contact with the Town; (3) ~~that~~ justice in a community requires, at a minimum, monitoring and enforcing civil rights laws as they apply to all persons who come in contact with the Town; and (4) ~~that~~ the commitment of the Town to these principles requires vigorous affirmative steps to carry out the word and spirit of the foregoing.

The Commission shall consist of fifteen (15) residents of the ~~Town—~~Town, who shall be called Commissioners.

Commissioners shall be appointed by the Board of Selectmen (~~the~~ “BoS”) and shall hold office for a period of approximately three (3) years, ~~except that of the fifteen (15) Commissioners first appointed; five or 1/3 of the total shall be appointed for one (1) year, five or 1/3 of the total shall be appointed for two (2) years, and five or 1/3 of the total shall be appointed for three (3) years.~~ The with terms of office ~~of the Commissioners shall expire~~ expiring on August 31 of the appropriate year in a staggered manner so that approximately one-third (1/3) of the Commissioners are appointed or reappointed 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 yet been notified by the Town Administrator that their term has been renewed, the term of that Commissioner shall be extended by sixty days to permit the BoS to complete that process. The ~~BOS~~BoS may appoint additional non-voting associate ~~(bylaw §3.1.5)~~ members (Section 3.1.5) as it determines to be necessary, which may include youth or persons who do not reside in Brookline, but have a substantial connection to Brookline, or to the Brookline Public Schools. The ~~BOS~~BoS shall select one of its members to serve *ex officio* as a non-voting member of the Commission. A quorum of the Commission shall consist of a majority of the serving members on the Commission, with a minimum of six.

The ~~BOS~~BoS shall seek a diverse and inclusive group of candidates for the Commission, which may include youth. Candidates for Commissioner shall be qualified for such appointment by virtue of demonstrated relevant and significant knowledge, life experience, or training. The composition of the Commission shall include persons with the types of such knowledge, experience, or training as is necessary to enable the Commission to perform the duties assigned to it by this By-law. All Commissioners shall serve without compensation.

In the event of ~~the~~ discontinuance of the service of a Commissioner due to death or resignation, such Commissioner’s successor shall be appointed to serve the unexpired period of the term of said Commissioner. The Commission may recommend to the ~~BOS~~BoS candidates to fill such vacancies. ~~The current Human Relations/Youth Resources Commission shall be dissolved at the time that appointments are made for the Commission established by this Bylaw. However, the current Human Relations/Youth Resources Commissioners may be considered for appointment to the new Commission.~~

SECTION 3.14.2 APPOINTMENT, ROLES AND RESPONSIBILITIES
OF THE DIRECTOR AND CHIEF DIVERSITY
OFFICER

There shall be an Office of Diversity, Inclusion and Community Relations Office (the “Office”), which shall be a unit of the Selectmen's Office, and led by ~~—The Town Administrator, after consultation with the Commission, shall recommend to the BOS for appointment~~ a professional in the field of human relations or similar relevant field of knowledge, who shall be known as the Director of the Office of Diversity, Inclusion and Community Relations Office (the “Director”), and ~~and~~ that person shall also serve as the Chief Diversity Officer (“CDO”) for the Town. In the event of a vacancy in the position of Director, the Town Administrator, after consultation with the Commission, shall recommend to the BoS a replacement with appropriate qualifications.

The Director shall offer professional and administrative support to the Commission in the administration of its functions and policies under this By-law or any other By-law giving the Commission responsibilities. If needed, the Director shall ask for additional assistance to carry out ~~that person's~~ the Director's duties. The Office shall be physically situated in whatever department the Town Administrator determines would ~~be easiest to~~ most easily provide the Director any such assistance.

The Director shall be a Department Head/Senior Administrator and shall report to the Town Administrator. The Director/CDO may bring a matter directly to the attention of the BOSBoS in the event that person believes, in their professional judgment, that a particular situation so warrants. The CDO ~~may attend meetings held by the Town Administrator with Department Heads and~~ shall work with the Human Resources Office to promote diversity and inclusion.

The CDO shall serve in the role of ombudsperson to provide information and guidance and dispute resolution services to all persons who come in contact with the Town who feel that they have been discriminated against or treated unfairly due to their membership in a Brookline Protected Class, or in relation to Fair Housing or Contracting issues, interactions with businesses or institutions in the Town, or interactions with the Town and/or employees of the Town.

The CDO shall be responsible, with the advice and counsel of the Commission, the Human Resources Director, and the Human Resources Board, for the preparation and submission to the BOSBoS of a recommended diversity and inclusion policy for the Town, including equal employment opportunity and affirmative action, and recommended implementation procedures. The diversity and inclusion policy shall address hiring, retention, and promotion, and steps to ensure a work environment that is friendly to diversity and inclusion.

The CDO shall respect the rights to privacy and confidentiality of all individuals to the fullest extent required by law. The CDO may attempt to mediate

disputes/complaints and/or to refer such complainants to the Massachusetts Commission Against Discrimination, the Equal Employment Opportunity Commission, the Office of Town Counsel, or such other body as the CDO deems appropriate. The Director/CDO ~~will~~shall report on these incidents to the Commission in terms of issues and trends but shall show full respect for the rights to privacy and confidentiality of the individuals involved to the fullest extent required by law. In the event that a person who comes in contact with the Town, except for employees of the Town, chooses to bring a complaint to the Commission after ~~having sought~~seeking the services of the CDO in said officer's role as an ombudsperson, the Director/CDO may discuss the case in general terms with the Commission (see ~~section~~Section 3.14.3(A)(v)).

The CDO shall also serve as an ombudsperson for employees of the Town if they feel they have been discriminated against or treated unfairly on the basis of membership in a Brookline Protected Class. The CDO may attempt to mediate such disputes or refer such employees to the Human Resources Office, the Massachusetts Commission Against Discrimination, the Equal Employment Opportunity Commission, their union representative, and/or such other body that the CDO deems appropriate. The Director/CDO shall hold all such Town/employee matters in confidence and shall respect the privacy rights of any such individuals but may discuss with the Commission, in general terms, the problems or issues that such individual cases suggest ~~with the Commission~~, provided, however, that ~~there is no ongoing or threatened litigation concerning the matter, and~~ doing so does not violate any person's rights to privacy.

SECTION 3.14.3 POWERS AND DUTIES OF THE COMMISSION

(A) To implement the Mission of the Commission and the Office, the Commission, with the assistance of the Director and the Director's staff, shall have the following responsibilities:

- (i) Strive to eliminate discriminatory barriers to jobs, education, and housing opportunities within the Town and work to increase the capacity of public and private institutions to respond to discrimination against individuals in the Town based on their membership in a Brookline Protected Class;
- (ii) Enhance communications across and among the community to promote awareness, understanding and the value of cultural differences, and create common ground for efforts toward public order and social justice;
- (iii) Work with the ~~BOS~~BoS, the Town's Human Resources Office, the School Committee, and other Town departments, commissions, boards, and committees to develop commitments and meaningful steps to increase diversity and inclusion, and awareness, of and sensitivity to civil and human rights in all departments and agencies of Town government;

(iv) Provide advice and counsel to the CDO on the preparation of a diversity and inclusion policy for recommendation to the **BOSBoS**, including equal employment opportunity and affirmative action procedures, or amendments or revisions thereto; and make suggestions, through the CDO to the Human Resources Director, the Human Resources Board, and the School Committee on the implementation of the diversity and inclusion policy;

(v) Receive Complaints Against the Town: ~~Receive complaints~~, directly or through the CDO, against the Town, its employees, agencies, or officials concerning allegations of discrimination or bias from all persons who come in contact with the Town, except Town employees (see ~~section~~Section 3.14.2), and after notifying the Town Administrator, review and summarize the complaint ~~as well as any~~and issues of concern to the Commission, without investigating or making determinations of fact, or drawing any legal conclusions, concerning allegations of discrimination or bias against a member of a Brookline Protected Class, by any Town agency, Town official or employee. The Commission/CDO, may in addition (1) present its summary and concerns to the Town Administrator and the **BOSBoS** for consideration of further action and/or (2) provide the complainant with information on ~~their~~complainant's options to bring proceedings at the Massachusetts Commission ~~on~~Against Discrimination or other appropriate federal, state, or local agencies. This ~~by-law~~By-law does not preclude any complainant from alternatively or additionally using other complaint procedures, such as the Police Department's Citizen Complaint Procedure or the Human Resources Office's procedures;

(vi) Receive Complaints Against the Public Schools of Brookline: ~~Receive complaints~~, directly or through the CDO, against the Public Schools of Brookline, its employees, agencies, or officials concerning allegations of discrimination or bias from all persons who come in contact with the Schools, except school employees, and, after notifying the Superintendent of Schools, the Assistant Superintendent for Human Resources, and/or the School Committee of the complaint, review and summarize the complaint ~~as well as any~~and any issues of concern to the Commission, without investigating or making determinations of fact or drawing any legal conclusions, concerning allegations of discrimination or bias against a member of a Brookline Protected Class, by any School official or employee. The Commission/CDO, may in addition (1) present its summary and concerns to the School Superintendent and/or the School Committee for consideration of further action and/or (2) provide the complainant with information on ~~their~~complainant's options regarding dispute resolution and the boards, agencies, or courts to which the complainant may file a complaint. The Public Schools of Brookline are encouraged to engage the expertise and/or resources of the CDO/Commission when pursuing resolution of any such complaints and/or when revising policies and procedures relative to diversity and inclusion.

(vii) ~~Receive~~ Other Complaints: ~~Receive complaints~~, according to procedures developed by the Commission and ~~as~~ approved by the ~~BOSBoS~~, and initiate preliminary review of the facts, without drawing any legal conclusions, from any person who comes in contact with the Town, concerning allegations of discrimination or bias against a member of a Brookline Protected Class. The Commission shall also have the authority, in its discretion, to take one or more of the following actions:

(1) Provide the complainant with information about ~~their complainant's~~ options to bring proceedings at the Massachusetts Commission ~~on~~ ~~Against~~ Discrimination or other appropriate federal, state, or local agency;

(2) Refer the complainant and any other parties to the complaint to the CDO acting as ombudsperson or to a local or regional mediation service;

(3) Present any results of preliminary review of the alleged facts to the Town Administrator and/or the ~~BOSBoS~~, in an appropriate case, for action;

(viii) The Commission shall develop, to the extent permissible by law, a log for the complaints referred to in subsections (v), ~~(vi)~~, and ~~(vii)~~ above, provided that such publication contains public record information only and does not violate anyone's right to privacy, and the Commission shall compile and maintain statistical records regarding the nature of complaints, types of incidents, number and types of complaints, and other pertinent information, without identifying specific individuals, and include such information in the ~~Annual Report~~ filed with the Board pursuant to Section ~~3.14.43.14.6~~ of this ~~By-law~~.

(ix) Develop official forms for the filing of complaints under paragraphs (v) and (vi) above and also procedures for the receipt ~~of such complaints~~ and follow-up by the Commission ~~of such complaints~~;

(x) Carry out the responsibilities and duties given to the Commission by rules or regulations, if any, promulgated under Section 3.14.4 of this ~~By-law~~ ~~By-law~~ in relation to ~~its~~ Fair Housing responsibilities, as authorized by law, under ~~By-Law~~ ~~By-law~~ 5.5;

(xi) With respect to any complaints or patterns of complaints involving the civil or human rights of any persons who come in contact with the Town, work with the CDO, in such officer's role as ombudsperson, to facilitate ~~necessary~~ changes that will reduce and eliminate violations of rights;

(xii) Institute and assist in the development of educational programs to further community relations and understanding among all persons in the Town, including Town employees;

(xiii) Serve as an advocate for youth on issues arising in the schools and the community, concerning diversity and inclusion, and encourage public and private agencies to respond to those youth needs.

(B) To carry out the foregoing responsibilities, the Commission is authorized to work with community organizations, government and nonprofit agencies, educational institutions, persons with relevant expertise, and others to:

(i) Develop educational programs and campaigns to increase awareness of human and civil rights, advance diversity and inclusion, eliminate discrimination, and ensure that the human and civil rights of all persons are protected and assist in the development of educational programs to further community relations and understanding among all people, including employees of all departments and agencies within the Town;

(ii) Conduct or receive research in the field of human relations and issue reports and publications on its findings or, where appropriate, submit local or state-wide proposed legislation, after approval by the **BOSBoS** and review by Town Counsel, to further human and civil rights of all persons who come in contact with the Town, provided that the Commission shall evaluate all such research conducted or received for its relevancey and validity and for its openness to diverse viewpoints and perspectives;

(iii) Receive and review information on trends and developments in youth research, services, and programs, both generally and as they relate to youth who are members of a Brookline Protected Class, and consider the applicability of such research, services, or programs to Brookline, provided that the Commission shall evaluate all such research conducted or received for its relevancey and validity and for its openness to diverse viewpoints and perspectives;

(iv) Do anything else deemed appropriate in the furtherance of its general duties and that are not inconsistent with its Mission, the State Constitution and laws, or the Town By-laws.

(C) ~~On a bi-annual basis~~At least every two years, prepare written organizational goals for the Commission (~~the~~“Commission's Goals”) that are (i) specific, (ii) measurable, (iii) attainable with the resources and personnel of the Commission, (iv) relevant to the mission of the Commission, (v) ~~time bound~~designated as either short term or long term, and (vi) capable of being evaluated on a continuing basis and at the next goal setting point. The Commission’s Goals shall be submitted to the **BOSBoS** at a public meeting and posted on the Town’s website. The Commission shall receive and consider the

comments of the **BOSBoS** at the public meeting and shall also receive and consider written comments from the community on the Commission's Goals.

SECTION 3.14.4 RULES AND REGULATIONS

In order to carry out the purposes and provisions of this **BylawBy-law**, the Commission, with the approval of the **BOSBoS**, after review by the Town Counsel, shall adopt procedural rules and regulations as necessary to guide it in carrying out its responsibilities. Such rules and regulations shall require that actions by the Commission be taken by a quorum or larger vote of the Commissioners and shall include procedures for holding regular public meetings, including at least one public hearing annually to apprise the public on the status of civil rights, diversity, inclusion and community relations in the Town and to hear the concerns of the public on those issues; ~~and.~~ **The Commission may also establish procedures and rules and regulations to carry out its responsibilities with respect to Fair Housing, with the approval of the BOS, after review by Town Counsel.** Such rules and regulations may **also further** provide for the governance of the Commission with respect to matters such as the appointments of **sub**committees as necessary to deal with specific community issues or concerns.

SECTION 3.14.5 INFORMATION, COOPERATION, AND DIALOGUE

The **Commission shall notify the** Town Administrator ~~shall be notified~~ of all complaints ~~that the Commission receives~~ **it records.** In the event that such complaints fall within the purview of the Superintendent of Schools, the Superintendent shall also be notified. All departments and agencies in the Town shall cooperate fully with the Commission's reasonable requests for information concerning such complaints and when appropriate engage with the Commission in a dialogue on them. All such requests and dialogue shall respect and protect, to the fullest extent possible, the privacy of all involved and shall comply with all local, state and federal laws.

The Director of Human Resources shall annually present a report to the Commission concerning the Town's statistics on employment diversity in Town departments and staff, as well as the efforts of the Town to increase the employment diversity of Town departments and staff. The School Superintendent and the Library Director, or their designees, shall annually provide a report to the Commission on their statistics on employment diversity, including but not limited to the most recently completed EEO-5 form. The Police Chief shall **annually** present a report to the Commission on other police matters that touch on the Commission's mission. The Commission may respond to such reports through dialogue and/or through written reports; and all Town departments, including the Brookline Public Schools, are encouraged to cooperate with the Commission as it reasonably requests.

SECTION 3.14.6 REPORT

With the assistance of the Director, the ~~The~~ Commission shall submit an annual report to the **BOSBoS**, the School Committee, and the Board of Library

Trustees, detailing its activities and the results thereof. ~~The Annual Report~~This report shall include (i) a review of the implementation of the diversity and inclusion policy by the Town, (ii) the Commission's Goals and a report on the extent to which the goals have been achieved to that point, (iii) a review of reports received by the Commission from the Director of Human Resources, the School Superintendent, the Library Director, and other Town departments or agencies, (iv) a narrative discussion of any impediments to the implementation and achievement of the Commission's Goals and ~~the implementation of the~~ diversity and inclusion policy, and (v) recommendations of ways that such impediments could be removed. A synopsis of such report shall be published as part of the Annual Report of the Town.

SECTION 3.14.7 FIVE YEAR REVIEW

Beginning no later than July 1, 2019 and at least every five years thereafter, the Commission shall review this ~~Bylaw~~By-law and any other related Town by-laws, in consultation with other pertinent departments, and ~~suggest~~propose changes if necessary, by preparation of appropriate Warrant Articles for consideration by Town Meeting.

SECTION 3.14.8 SEVERABILITY

The provisions of this ~~Bylaw~~By-law shall be deemed to be severable. Should any of its provisions be held to be invalid or unconstitutional, the remainder ~~of this Bylaw~~ shall continue to be in full force and effect.

SECTION 3.14.9 RESOLUTION OF CONFLICTING PROVISIONS

~~References in Bylaws adopted prior to May 2014 to the Human Relations/Youth Resources Commission and the Human Relations/Youth Resources Department henceforth shall be interpreted as referring to the Diversity, Inclusion and Community Relations Commission and Office, respectively.~~ In case of any conflict between this ~~Bylaw~~By-law and other ~~Bylaws~~By-laws, the Provision(s) last adopted by Town Meeting shall prevail.

SECTION 3.14.10 APPLICATION OF THIS ~~BYLAW~~BY-LAW

~~To the extent that~~Should any remedies in this ~~Bylaw~~By-law conflict with grievance or dispute resolution procedures in collective bargaining agreements with ~~Town employees~~the Town's unions, the provisions of the collective bargaining agreements shall apply so long as all members of Brookline Protected Classes are protected.

ARTICLE 3.15

HUMAN RESOURCES PROGRAM, BOARD AND OFFICE

SECTION 3.15.1 PURPOSE AND INTENT

The purpose of this bylaw is to ensure the establishment of fair and equitable Human Resources policies for the Town of Brookline and its employees; and to provide a system of Human Resources administration that is uniform, fair, and efficient and which represents the mutual interests of the citizens of the Town and the employees of the Town.

SECTION 3.15.2 HUMAN RESOURCES PROGRAM TO BE CONSISTENT WITH ACCEPTED MERIT PRINCIPLES AND APPLICABLE STATE AND FEDERAL LAWS

The Town of Brookline Human Resources program shall be consistent with all applicable State and Federal Laws and with well accepted merit principles, which include, but are not limited to:

[...]

(g) In cooperation with the ~~Department of Human Relations–Youth Resources~~Office of Diversity, Inclusion and Community Relations, and the Commission for Diversity, Inclusion and Community Relations, striving for diversity in the Town workforce by, among other things, adhering to the Town’s affirmative action guidelines, and generally assuring an environment throughout Town government that fosters community relations, mutual respect, understanding and tolerance.

ARTICLE 5.5 FAIR HOUSING BY-LAW

SECTION 5.5.1 POLICY OF THE TOWN OF BROOKLINE

It is hereby declared to be the policy of the Town of Brookline (“Town”) that ~~each individual regardless of race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, source of income, military status, age, ancestry gender identity or gender expression, and/or national origin~~all members of Brookline Protected Classes, as defined in Section 3.14.1 of this By-law, shall have equal access to housing accommodations within the Town. Further, it is the policy of the Town to encourage and bring about mutual understanding and respect among all ~~individuals~~persons in the Town by the elimination of prejudice and discrimination in the area of housing.

SECTION 5.5.2 EXERCISE OF POLICE POWER

This ~~by-law~~By-law shall be deemed an exercise of the police power of ~~said~~the Town for the protection of the public welfare, prosperity, health and peace of its people.

SECTION 5.5.3 DEFINITION OF TERMS

"Commission" means the Town’s ~~of Brookline Human Relations–Youth Resources~~Commission for Diversity, Inclusion and Community Relations Commission, its agents and employees.

To "discriminate" includes means to design, promote, implement or carry out any policy, practice or act which by design or effect segregates, separates, distinguishes or has a disproportionate impact ~~according to race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, receipt of rental housing assistance or other public assistance, military status, age, ancestry gender identity or gender expression, and/or national origin~~ on one or more members of Brookline Protected Classes.

"Person" includes means one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers and the Town of Brookline and all boards, commissions, offices, and agencies thereof.

"Housing Accommodation" includes means any building or structure or portion thereof or any parcel of land, developed or undeveloped, which is occupied or to be developed for occupancy as the home, or residence for one or more persons.

~~"Handicap" means any condition or characteristic that renders a person an individual with handicaps as defined in Title 24, Part 8.3 of the Code of Federal Regulations (53 FR 20233, June 2, 1988) as follows: "Disability", which includes the term "Handicap", is any person's physical or mental impairment that substantially limits one or more major life activities, or is regarded as having such an effect or having had such an effect. the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.~~

"Age" includes any duration of time since an individual's birth of greater than 40 years.

SECTION 5.5.4 UNLAWFUL HOUSING PRACTICES

It shall be an unlawful housing practice:

(a) for any owner, lessee, sub-lessee, assignee, managing agent, real estate agent, or other person having the right to sell, rent, lease, or manage a housing accommodation or an agent of any of those:

1. to discriminate or directly or indirectly make or cause to be made any written or oral inquiry concerning the ~~race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, military status, age, ancestry gender identity or gender expression, and/or national origin~~ membership in a Brookline Protected Class of any prospective purchaser, occupant, or tenant of such housing accommodations;
2. to discriminate or directly or indirectly to refuse to sell, rent, lease, let or otherwise deny to or withhold from any individual person, such

housing accommodation because of ~~race, color, creed, religion, sex, handicap, marital status, children, sexual orientation, receipt of rental housing assistance or other public assistance, military status, age, ancestry gender identity or gender expression, and/or national origin~~membership in a Brookline Protected Class;

3. to discriminate or to directly or indirectly print or publish or cause to be printed or published, circulated, broadcasted, issued, used, displayed, posted, or mailed any written, printed, painted or oral communication, notice or advertisement relating to the sale, rental, lease or let of such housing accommodation which indicates any preference, denial, limitation, specification, qualification, or discrimination, ~~based upon race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, receipt of rental housing assistance or other public assistance, military status, age, ancestry gender identity or gender expression, and/or national origin~~ because of membership in a Brookline Protected Class;

4. to directly or indirectly discriminate against any person because of ~~race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, receipt of rental housing assistance or other public assistance, military status, age, ancestry gender identity or gender expression, and/or national origin~~membership in a Brookline Protected Class in the terms, conditions or privileges of the sale, rental, lease, or let of any such housing accommodation or in the furnishing of facilities or services in connection therewith.

(b) for any person to whom application is made for a loan or other form of financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, whether secured or unsecured:

1. to discriminate or to directly or indirectly make or cause to be made any written or oral inquiry concerning the ~~race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, military status, age, ancestry gender identity or gender expression, and/or national origin~~membership in a Brookline Protected Class of any individual person seeking such financial assistance, or of existing or prospective occupants or tenants of such housing accommodation;

2. to discriminate directly or indirectly in the terms, conditions or privileges relating to the obtaining or use of any such financial assistance because of ~~race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, receipt of rental housing assistance or other public assistance, military status, age, ancestry gender identity or gender expression, and/or national origin~~membership in a Brookline Protected Class;

3. to discriminate or to directly or indirectly deny or limit such application for financial assistance on the basis of an appraiser's evaluation,

independent or not, of the property or neighborhood under consideration, when such evaluation is based on ~~race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, receipt of rental housing assistance or other public assistance, military status, age, ancestry gender identity or gender expression, and/or national origin~~membership in a Brookline Protected Class.

(c) for any person, agent, firm, corporation or association whether or not acting for monetary gain, to directly or indirectly induce, attempt to induce, prevent or attempt to prevent the sale, purchase, rental, or letting of any housing accommodation by:

1. implicit or explicit representations regarding the existing or potential proximity of real property owned, used or occupied by ~~persons of any particular race, color, creed, religion, sex, handicap, marital status, sexual orientation, receipt of rental housing assistance or other public assistance, military status, age, ancestry gender identity or gender expression, and/or national origin, or the presence of children~~a member or members of a Brookline Protected Class;

2. implicit or explicit representations regarding the effects or consequences of any such existing or potential proximity including, but not limited to, the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other facilities;

3. implicit or explicit false representations regarding the availability of suitable housing within a particular neighborhood or area, or failure to disclose or offer to show all properties listed or held for sale, rent, lease, or let within a requested price range, regardless of location, on the basis of ~~race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, receipt of rental housing assistance or other public assistance, military status, age, ancestry gender identity or gender expression, and/or national origin~~membership in a Brookline Protected Class.

(d) except where based on a valid affirmative action programs or record keeping or reporting requirement approved by ~~the state or federal~~any government or adopted pursuant to a court decree_;

~~1.~~ for any person, agent, manager, owner, or developer of any apartment or housing unit, complex or development, whether commercial or residential_;

1. to directly or indirectly make or keep a record of any applicant's, prospective tenant's or existing tenant's ~~race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, receipt of rental housing assistance or other public assistance, military status, age, ancestry gender identity or gender expression, and/or national origin~~membership in a Brookline Protected Class;

2. to use any form of housing or loan application which contains questions or entries directly or indirectly pertaining to ~~race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, age, ancestry gender identity or gender expression, and/or national origin~~membership in a Brookline Protected Class;

3. to establish, announce or follow a pattern, practice, or policy of denying, excluding or limiting ~~by any means whatsoever~~ housing accommodations by any means whatsoever because of ~~race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, age, ancestry gender identity or gender expression, and/or national origin~~membership in a Brookline Protected Class.

(e) for any person to discriminate in any manner against any individual person or to otherwise deny or to withhold from such individual person housing accommodations because ~~he or she~~said person has opposed any practice forbidden by this ~~by-law~~By-law or ~~he or she~~ has made a charge, testified, or assisted in any manner in any investigation or proceedings under this ~~by-law~~By-law;

(f) for any person, whether or not acting for monetary gain, to aid, abet, incite, compel or coerce the ~~doing performance~~ of any act declared by this ~~by-law~~By-law to be an unlawful housing practice, or to obstruct or prevent any person from complying with the provisions of this ~~by-law~~By-law or any regulations or orders issued thereunder, or to attempt directly or indirectly to commit any act declared by this section to be an unlawful housing practice.

SECTION 5.5.5 EXERCISE OF PRIVILEGE – EXEMPTIONS

Notwithstanding anything herein contained, the following specific actions shall not be violations of this ~~by-law~~By-law:

1. for a religious organization or institution to restrict any of its housing accommodations which are operated as a direct part of religious activities to persons of the denomination involved;

2. for the owner of a housing facility devoted entirely to the housing of individuals of one ~~sex~~ gender; to restrict occupancy and use on the basis of ~~sex~~that gender or gender identity;

3. the operation or establishment of housing facilities designed for the exclusive use of ~~the~~ handicapped persons with disabilities and/or elderseniors or the establishment of programs designed to meet the needs or circumstances of handicapped persons with disabilities and/or elderseniors, or self-contained retirement communities of at least twenty acres in size ~~with~~constructed expressly for use by the elderly which are at least

~~twenty acres in size and have~~ a minimum age requirement for residency of at least fifty-five years;

4. the operation or establishment of housing facilities owned by an educational institution and designed and used for the exclusive use of students of that particular institution.

SECTION 5.5.6 ~~HUMAN RELATIONS-YOUTH RESOURCES~~
COMMISSION ~~FOR~~ DIVERSITY, INCLUSION AND COMMUNITY
RELATIONS

This ~~by-law~~By-law shall be ~~enforced~~administered by the ~~Human Relations-Youth Resources~~ Commission for Diversity, Inclusion and Community Relations. The Commission shall have all powers given to it under ~~the by-laws of the Town of Brookline, including the additional powers~~other Town By-laws, as well as those given to it by this ~~by-law~~By-law.

SECTION 5.5.7 FUNCTIONS, POWERS AND DUTIES OF THE COMMISSION

~~(a) Whenever the Commission receives a complaint that is or appears to be within the jurisdiction of the Massachusetts Commission Against Discrimination hereinafter "MCAD", the Commission shall inform the complainant of his/her right to file a complaint at the MCAD with the Commission's assistance. At the complaint's discretion, the Commission shall either:~~

- ~~1. take the action required by the provisions of subsection (b) below; and~~
- ~~2. prepare an MCAD complaint in the form and manner prescribed by MCAD and have such complaint signed under oath by the complainant and transmit such MCAD complaint to MCAD for filing without delay.~~

~~(b) Whenever the Commission receives a complaint that is not within the jurisdiction of MCAD, or is referred to the Commission by the MCAD, or over which the Commission retains jurisdiction under Section A above, the Commission shall:~~

- ~~1. prepare a complaint in the form and manner prescribed by the Commission;~~
- ~~2. investigate such complaint. In connection with any investigation, the Commission may hold hearings, summon witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and require the protection of any evidence relating to any matter in question or under investigation by the Commission. The~~

~~power to summon witnesses as defined herein shall be limited to those powers and procedures set forth in G.L. Chapter 233 Section 8. At any hearing before the Commission, or any committee thereof, a witness shall have the right to be advised and represented by counsel. However, unavailability of counsel is not an adequate basis for requiring a delay of any hearing or proceeding;~~

~~3. attempt by mediation to resolve such complaint and recommend to all appropriate governmental agencies, federal, state or local, such action as it feels will resolve such complaint;~~

~~4. after completion of the investigation of any such complaint not resolved by mediation, make a written report of its findings and recommendations (including, where appropriate, the seeking of equitable relief, or fines, or money damages) to the Board of Selectmen and to any governmental agency having jurisdiction of the matter in question and, in all cases, urge and use its best efforts to bring about compliance with its recommendations.~~

(a) All persons who wish to file complaints for violations of this Article 5.5 shall be strongly encouraged to refer their complaints to the Chief Diversity Officer for assistance in resolving the complaint. If for good cause shown to the CDO or to the Commission's Complaint Screening Committee, the complainant does not wish to refer the complaint to the CDO, or if the CDO requests recusal, the complaint shall then be handled according to the procedures developed under Section 3.14.3(A) and approved by the full Commission, with the approval of the BoS, after review by Town Counsel. Complaints against the Town or its employees shall follow the procedures developed for 3.14.3(A)(v) – Complaints Against the Town; complaints against other persons, groups, entities or businesses in the Town shall follow the procedures developed for 3.14.3(A)(vii) – Other Complaints.

(eb) In addition to the aforementioned complaint-processing responsibilities, the Commission shall have the following additional functions, powers and duties:

1. to make studies and survey and to issue such publications and such results of investigations and research as, in its judgment, will tend to promote good will and minimize or eliminate discrimination in housing ~~against because of race, color, creed, religion, sex, handicap, children, marital status, sexual orientation, source of income including rental housing assistance, military status, age, ancestry gender identity or gender expression, and/or national origin~~persons who are members of a Brookline Protected Class.

2. to develop courses of instruction for presentation in public and private schools, public libraries and other suitable places, devoted to eliminating prejudice, intolerance, bigotry and discrimination in housing and showing the need for mutual respect and the achievement of harmonious relations among various groups in the Town of Brookline.

3. to render each year to the ~~Board of Selectmen,BoS~~ a full ~~written~~ report of all the Commission's activities and recommendations regarding this ~~by-law~~By-law;
4. to create such ~~sub~~committees from the members of the ~~e~~C~~ommission~~ as, in the ~~e~~C~~ommission's~~ judgment, will best aid in effectuating the policy of this ~~by-law~~By-law;
5. to enter into cooperative working agreements with federal, state and ~~city~~other municipal agencies, and to enlist the cooperation of the various racial, religious and ethnic groups, civic and community organizations and other groups in order to effectuate the policy of this ~~by-law~~By-law with respect to Brookline Protected Classes.

SECTION 5.5.8 RULES, REGULATIONS AND PROCEDURES OF COMMISSION

The Commission may adopt rules and regulations consistent with this ~~by-law~~By-law and the laws of the Commonwealth to carry out the policy and provisions of this ~~by-law~~By-law and the powers and duties of the Commission. ~~The Commission shall adopt rules of procedure for the conduct of its investigations. Said rules shall ensure the due process rights of all persons involved in the investigations.~~

Any charge filed under this ~~by-law~~By-law must be filed within 180 days of the alleged act of discrimination.

All Commission records shall be public except those that are necessary to insure privacy rights under other local, state or federal laws and those records that must be kept confidential in compliance with laws and rules of evidence.

SECTION 5.5.9 SEVERABILITY

If any provision or section of this ~~by-law~~By-law shall be held to be invalid, then such provision or section shall be considered separately and apart from the remaining provisions or sections of this ~~by-law~~By-law, which shall remain in full force and effect.

**ARTICLE 10.2
PROSECUTIONS AND ENFORCEMENT**

The provisions in Parts V, VI, VII and VIII of the by-laws of the Town of Brookline shall be enforced and violations prosecuted by any police officer of the town. In addition, enforcement and prosecution of the following by-laws and articles shall be by the following department heads ~~s~~ or ~~his or her~~their designees:

DEPARTMENT HEAD	ARTICLE
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BUILDING COMMISSIONER		
Part V-Private Property	Articles	5.2, 5.3, 5.4,
Part VI-Public Property	Articles	6.1, 6.5, 6.9, 6.10
Part VII-Streets & Ways	Articles	7.3, 7.5, 7.7, 7.8, 7.9
Part VIII-Public Health & Safety	Articles	8.3, 8.6, 8.7, 8.8, 8.9, 8.11, 8.13, 8.14, 8.15, 8.16,
COMMISSIONER OF PUBLIC WORKS		
Part VI-Public Property	Articles	5.7, 6.1, 6.2, 6.3, 6.4, 6.5, 6.9
Part VII-Streets & Ways	Articles	7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.10, 7.11
Part VIII-Public Health & Safety	Articles	8.2, 8.8, 8.14, 8.15, 8.16, 8.18, 8.24, 8.25, 8.26
DIRECTOR OF HEALTH & HUMAN SERVICES		
Part V-Private Property	Articles	5.1, 5.2, 5.4, 5.5, 5.7
Part VI-Public Property	Articles	6.2, 6.6
Part VII-Streets & Ways	Articles	7.1, 7.5, 7.7
Part VIII-Public Health & Safety	Articles	8.1, 8.2, 8.3, 8.4, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11, 8.12, 8.13, 8.14, 8.15, 8.16, 8.22, 8.23, 8.32, 8.35
PRESERVATION COMMISSION		
Part V-Private Property	Articles	5.3, 5.6
<u>HUMAN RELATIONS-YOUTH RESOURCES</u>		
<u>COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY</u>		
<u>RELATIONS</u>		
Part V-Private Property	Article	5.5

Or act on anything relative thereto.

ARTICLE 29

Submitted by: Gary Jones

This article makes it clear it's the police officer's duty to protect the public from a dangerous dog or animal.

The Brookline Police Department shall train each police officer in the proper handling of dangerous, violent dog and other animal attacks. Such training shall teach each officer it's their responsibility in the event of such an attack to secure the dangerous dog or animal. The public expects the officers to ensure their public safety. They cannot expect the public to protect themselves from dangerous dogs and animals. Public safety is a police function.

ARTICLE 30

Submitted by: Gary Jones

This article shall require the Brookline Police Department to post every police report on line on the town website within forty eight hours of the incident.

The Brookline Police Department shall create a link on the town web site which shall list all police incident reports by the date of their occurrences. Each report shall have a title which accurately reflects said occurrence. Full and accurate reports shall be filed on line no later than forty-eight hours after the event. If the incident is under investigation a descriptive title of the event shall be posted. At the conclusion of the investigation the full police report shall be filed on line with the date the investigation was completed and posted on line.

ARTICLE 31

Submitted by: Regina Millette Frawley, TMM16

To see if the Town will amend Article 2.1 of the Town's General Bylaws –Town Meetings, by adding a new Section, as follows:

Town Meeting Committees. Any committee established by Town Meeting shall be considered a committee to which all provisions of the Open Meeting Law shall apply.

Such Town Meeting-created committees shall be supported by non-voting staff assigned by the Board of Selectmen to assist in OML compliance and efficient functioning of such committees.

Enforcement: Town Counsel shall enforce the OML of such committees and shall assess penalties and fines for repeated violations, which fines will be placed in the General Fund, after at least one valid complaint was received by Town Counsel, and/or if a violation occurs after an advisory by Town Counsel to the Committee citing any previous violation, or if Town Counsel deemed a violation was committed in "bad faith", whether the violation was committed by the committee or its members, and whether such

members constituted a quorum, or should reasonably expect the deliberation could result in a “serial” quorum.

No fine shall exceed an amount authorized under the Open Meeting Law and enforced by the Attorney General for comparable violations assessed by the Attorney General’s office.

Town Counsel may recommend other penalties, not excluding replacement of any committee member by the appointing authority, which/who may deliberate in Executive Session on any such removal of a committee member and is empowered under this Bylaw to remove such a committee member.

Nothing in this Bylaw shall preclude or deny the rights of residents to pursue judicial remedies.

Town Counsel’s office will be the repository of all complaints, findings and actions, available for review by the public upon request. Complaints must be investigated within ten days of receipt of a complaint. Town Counsel’s methodology, findings and determinations must be recorded in the public log within ten days post-investigation. Or act on anything thereto.

ARTICLE 32

Submitted by:

To See if the Town Will Adopt the Following Resolution:

Whereas, the Town of Brookline supports the provision of affordable housing and has expended significant resources to expand housing opportunities for vulnerable populations, through the Brookline Housing Authority public housing, the Affordable Housing Trust Fund, the Community Development Block Grants, and the Inclusionary Zoning By-Law;

Whereas, M.G.L. Chapter 40B mandates specific levels of affordable housing in Massachusetts cities and towns. Municipalities deemed deficient in such housing are subject to penalties, which can be remedied by public or private measures;

Whereas, M.G.L. Chapter 40B enables Applicants for construction or conversion of housing with at least 20% affordable units to request waivers of the Town's Zoning By-Laws, by applying for a Comprehensive Permit;

Whereas, four Comprehensive Permit applications, proposing a total of 352 housing units, were submitted to the Zoning Board of Appeals in April and May 2016;

Whereas, three additional Comprehensive Permit applications, proposing a total of 269 housing units, are anticipated by the Zoning Board of Appeals before October 2016;

Whereas, the unprecedented number of recent Comprehensive Permit applications and the unprecedented scale of most proposed developments come as the Town approaches its state-mandated level of affordable units;

Whereas, the sheer number of recent Comprehensive Permit applications threatens to overwhelm the Town's resources;

Whereas, we commend the Planning Department, Zoning Board of Appeals and other Town Boards and Departments for their extraordinary efforts in reviewing these current and anticipated applications;

Whereas, the Zoning Board of Appeals is mandated to review each Comprehensive Permit Application within 180 days, a period whose brevity often abhors the Board's success in mitigating all of its Local Concerns: environment, health, safety, open space, planning and design;

Whereas, the Zoning Board of Appeals attempts to protect Local Concerns by imposing conditions on Comprehensive Permits;

Whereas, Applicants' legal appeals to the Massachusetts Housing Appeals Committee can blunt or negate these conditions on Comprehensive Permits;

Whereas, the Housing Appeals Committee hearing process is time-sensitive and the issues complex;

Whereas, the Town now faces up to seven simultaneous appeals, whose demands can easily overwhelm the intellectual and budgetary resources of Town Counsel;

Whereas, it is Town Meeting's duty to represent and sustain the best interests of the Town's citizens and the Town in its entirety;

Whereas, Town Meeting necessarily expects the Town to support the Zoning Board of Appeals in its decisions and conditions on Comprehensive Permits;

Now, therefore, be it hereby Resolved, that Town Meeting supports Town Counsel's future funding requests to defend the Town's planning interests before the Housing Appeals Committee and other appeals courts.

Or act on anything relative thereto.

ARTICLE 33

Submitted by: Susan Granoff, TMM7

TO SEE IF THE TOWN WILL ADOPT THE FOLLOWING RESOLUTION:

Whereas addressing the needs of Brookline's growing school population has resulted in

one tax override within the last two years and may well result in two to three additional tax overrides during the next ten years;

Whereas Brookline's rapidly increasing property taxes are creating growing hardships for hundreds of Brookline's seniors with modest incomes who have owned and lived in their Brookline home for decades;

Whereas many of Brookline's senior homeowners with modest incomes no longer qualify for the Massachusetts Circuit Breaker Income Tax Credit because of Brookline's escalating residential real estate values during recent years and the declining residential real estate values in the western part of Massachusetts during the same time period;

Whereas Brookline's existing programs to provide tax relief to senior homeowners are not meeting the needs of many of Brookline's senior homeowners with modest incomes;

Whereas certain neighboring communities such as Sudbury and Newton currently offer innovative and more generous programs to their senior homeowners with modest incomes than does Brookline;

THEREFORE, be it resolved, that Town Meeting urges the Board of Selectmen to establish a committee to study property tax relief programs that other Massachusetts communities (including but not limited to Sudbury and Newton) offer to senior homeowners with modest incomes, and to make policy recommendations and propose warrant articles for comparable new programs for Brookline and improvements to Brookline's existing senior homeowner property tax relief programs; and

Be it further resolved that said committee will first convene not later than February 1, 2017 and provide to the Board of Selectmen not later than August 15, 2017 a report, policy recommendations, and proposed warrant articles for consideration by the November 2017 Town Meeting;

Or act on anything relative thereto.

ARTICLE 34

Submitted by:

TO SEE IF THE TOWN WILL ADOPT THE FOLLOWING RESOLUTION:

Whereas, the Town of Brookline has committed to taking meaningful actions toward becoming a more age-friendly community;

Whereas, the aging of the baby boom population cohort has created a need for a substantial expansion of Brookline's supply of housing for seniors;

Whereas, Brookline's need for more affordable housing for seniors with low and moderate incomes is already acute;

Whereas, senior citizens benefit from living within walking distance of public transit, services, shopping, and cultural resources;

Whereas, Brookline Village is a pedestrian friendly location that meets the living needs of seniors, including those who do not own an automobile;

Whereas, the Town's municipally-owned parking lots offer an opportunity for attractive air rights development of senior housing, including for low and moderate income households; and

Whereas, the public process leading to the Town's Housing Production Plan identified Town-owned municipal parking lots, including the Town-owned site situated between Station and Kent Streets in Brookline Village as a suitable location for affordable senior housing development;

THEREFORE, be it resolved, that Town Meeting urges the Board of Selectmen, the Planning Board and the Housing Advisory Board to pursue a suitable air rights development of age-restricted affordable, mixed-income housing over the existing Town-owned parking lot in Brookline Village situated between Kent and Station Streets across from the Brookline Village MBTA station (Parcel No. 140-05-00);

And act on anything relative thereto.

ARTICLE 35

Reports of Town Officers and Committees

AND YOU ARE DIRECTED TO SERVE THIS WARRANT IN ACCORDANCE WITH THE BY-LAWS OF THE TOWN OF BROOKLINE.

HEREOF FAIL NOT, and make due return of this WARRANT, with your doings thereon, to the Selectmen at least FOURTEEN DAYS before the day of said meeting.

Given under our hands and the seal of the TOWN of Brookline, Massachusetts, this 6th day of September, 2016.

BOARD OF SELECTMEN



BY VIRTUE OF THIS WARRANT, I THIS DAY NOTIFIED AND WARNED THE INHABITANTS OF SAID TOWN TO MEET AT THE HIGH SCHOOL AUDITORIUM IN SAID TOWN ON TUESDAY, November 15, 2016 AT 7:00 P.M. BY POSTING TRUE AND ATTESTED COPIES OF THE WITHIN WARRANT IN TEN (10) PUBLIC PLACES. ALL OF THIS WAS DONE AT LEAST FOURTEEN (14) DAYS BEFORE SAID MEETING.

CONSTABLE

DATE