



**WARRANT ARTICLE EXPLANATIONS
FILED BY PETITIONERS FOR THE
NOVEMBER 15, 2016 SPECIAL TOWN MEETING**

ARTICLE 1

Submitted by: Board of Selectmen

This article is inserted in the Warrant for every Town Meeting in case there are any unpaid bills from a prior fiscal year that are deemed to be legal obligations of the Town. Per Massachusetts General Law, unpaid bills from a prior fiscal year can only be paid from current year appropriations with the specific approval of Town Meeting.

ARTICLE 2

Submitted by: Human Resources

This article is inserted in the Warrant for any Town Meeting when there are unsettled labor contracts. Town Meeting must approve the funding for any collective bargaining agreements.

ARTICLE 3

Submitted by: Board of Selectmen

This article is inserted in the Warrant for any Town Meeting when budget amendments for the current fiscal year are required. For FY2017, the warrant article is necessary to balance the budget based on higher than projected State Aid, re-allocate funds, and appropriate two Water and Sewer Enterprise Fund capital improvement projects.

ARTICLE 4

Submitted by: Makena Binker-Cosen

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat¹;

Whereas among the 15.7% of students nationwide who currently smoke cigarettes and were less than 18 years old, 14.1% usually obtained them by buying them in a store (i.e. convenience store, supermarket, or discount store) or gas station²;

¹ Center for Disease Control and Prevention (CDC). 2012. *Health Effects of Cigarette Smoking Fact Sheet*. Retrieved from:

http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.

² CDC. 2009. *Youth Risk Behavior, Surveillance Summaries* (Morbidity and Mortality Weekly Report (MMWR) 2010: 59, 11 (No. SS-55)). Retrieved from: <http://www.cdc.gov/HealthyYouth/yrbs/index.htm>.

Whereas nationally in 2009, 72% of high school smokers and 66% of middle school smokers were not asked to show proof of age when purchasing cigarettes³;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin⁴ and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development⁵;

Whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major public health problem;

Whereas many non-cigarette tobacco products, such as cigars and cigarillos, can be sold in a single “dose”; enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth⁶;

Whereas sales of flavored cigars in convenience stores increased by 39% between 2008 and 2011⁷; and the top three most popular cigar brands among African-American youth aged 12-17 are the flavored and low-cost Black & Mild, White Owl, and Swisher Sweets⁸;

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes⁹, largely because these flavored products were marketed to youth and young adults¹⁰, and younger smokers were more likely to have tried these products than older smokers¹¹;

³ CDC. Office of Smoking and Health, *National Youth Tobacco Survey, 2009*. Analysis by the American Lung Association (ALA), Research and Program Services Division using SPSS software, as reported in “Trends in Tobacco Use”, ALA Research and Program Services, Epidemiology and Statistics Unit, July 2011. Retrieved from: www.lung.org/finding-cures/our-research/trend-reports/Tobacco-Trend-Report.pdf.

⁴ CDC. 2010. *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/sgr/2010/.

⁵ U.S. Department of Health and Human Services (HHS). 2014. *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 122. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

⁶ CDC. 2009. *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

⁷ Delnevo, CD, Giovenco, DP, Ambrose, BK, et al. 2014. Preference for flavoured cigar brands among youth, young adults and adults in the USA. *Tobacco Control*. 24(4): 389-394. Retrieved from: <http://www.ncbi.nlm.nih.gov/pubmed/24721967>.

⁸ SAMSHA, Analysis of data from the 2011 *National Survey on Drug Use and Health*. Retrieved from: <http://www.samhsa.gov/data/sites/default/files/NSDUH2011MRB/NSDUH2011MRB/NSDUHmrBMHSSDataColl2011.pdf>.

⁹ 21 U.S.C. § 387g.

¹⁰ Carpenter CM, Wayne GF, Pauly JL, et al. 2005. “New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies.” *Health Affairs*. 24(6): 1601–1610. Retrieved from: <http://content.healthaffairs.org/content/24/6/1601.full.pdf+html>; Lewis M and Wackowski O. 2006. “Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands.” *American Journal of Public Health*. 96(2): 244–251. Retrieved from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1470487/pdf/0960244.pdf>; Connolly GN. 2004. “Sweet and Spicy Flavours: New Brands for Minorities and Youth.” *Tobacco Control*. 13(3): 211–212. Retrieved from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1747891/pdf/v013p00211.pdf>; HHS. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S.

Whereas although the manufacture and distribution of flavored cigarettes (excluding menthol) is banned by federal law¹², neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic smoking devices and the nicotine solutions used in these devices;

Whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction¹³;

Whereas data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes¹⁴;

Whereas tobacco companies have used flavorings such as mint and wintergreen in smokeless tobacco products as part of a “graduation strategy” to encourage new users to start with products with lower levels of nicotine and progress to products with higher levels of nicotine¹⁵;

Whereas the U.S. Centers for Disease Control and Prevention has reported that electronic cigarette use among middle and high school students doubled from 2011 to 2012¹⁶;

Whereas nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum¹⁷;

National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹¹ HHS. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹² 21 U.S.C. § 387g.

¹³ Food and Drug Administration (FDA). 2011. *Fact Sheet: Flavored Tobacco Products*, www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf;

¹⁴ HHS. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁴ King BA, Tynan MA, Dube SR, et al. 2014. “Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students.” *J Adolesc Health*. 54(1):40-6, www.ncbi.nlm.nih.gov/pmc/articles/PMC4572463/pdf/nihms722043.pdf.

¹⁵ HHS. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁶ CDC. 2013. “Electronic Cigarette Use Among Middle and High School Students—United States, 2011–2012,” *Morbidity and Mortality Weekly Report (MMWR)* 62(35): 729–730. Retrieved from: <https://www.cdc.gov/mmwr/pdf/wk/mm6235.pdf>.

¹⁷ Cameron JM, Howell DN, White JR, et al. 2014. “Variable and Potentially Fatal Amounts of Nicotine in E-cigarette Nicotine Solutions.” *Tob Control*. 23(1):77-8,

<http://tobaccocontrol.bmj.com/content/early/2013/02/12/tobaccocontrol-2012-050604.full>; HHS. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 549, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

Whereas in a lab analysis conducted by the FDA, electronic cigarette cartridges that were labeled as containing no nicotine actually had low levels of nicotine present in all cartridges tested, except for one¹⁸;

Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes¹⁹;

Whereas according to the CDC's youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days went from 11.8% in 2003 to 14.3% in 2011²⁰;

Whereas the 2015 Youth Risk Behavioral Survey (YRBS) results show that 27% of Town of Brookline high school smokers tried to quit smoking cigarettes, compared with 39% in 2013²¹;

Whereas survey results show that more youth report that they have smoked a cigar product when it is mentioned by name, than report that they smoked a cigar in general, indicating that cigar use among youth is underreported²²;

Whereas in Massachusetts, youth use of all other tobacco products, including cigars, rose from 13.3% in 2003 to 17.6% in 2009, and was higher than the rate of current cigarette use (16%) for the first time in history²³;

Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4%²⁴;

Whereas Non-Residential Roll-Your-Own (RYO) machines located in retail stores enable retailers to sell cigarettes without paying the excise taxes that are imposed on conventionally manufactured cigarettes. High excise taxes encourage adult smokers to

¹⁸ FDA, *Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA*, available at: <http://www.fda.gov/newsevents/publichealthfocus/ucm173146.htm>.

¹⁹ National Institute of Health (NIH), National Cancer Institute (NCI). 2010. *Cigar Smoking and Cancer*. Retrieved from: <http://www.cancer.gov/cancertopics/factsheet/Tobacco/cigars>.

²⁰ CDC. 2011. *Youth Risk Behavior, Surveillance Summaries* (MMWR 2012: 87 (No. SS-61)); and CDC. 2003. *Youth Risk Behavior, Surveillance Summaries* (MMWR 2004: 53, 54 (No. SS-02)). Retrieved from: www.cdc.gov.

²¹ 2016 Healthy Brookline Volume XVII - Youth Risk Behavior Survey. Retrieved from: <http://www.brooklinema.gov/ArchiveCenter/ViewFile/Item/1460>.

²² 2010 Boston Youth Risk Behavior Study. 16.5% of Boston youth responded that they had ever smoked a fruit or candy flavored cigar, cigarillo or little cigar, while 24.1% reported ever smoking a "Black and Mild" Cigar.

²³ Commonwealth of Massachusetts, Data Brief, Trends in Youth Tobacco Use in Massachusetts, 1993-2009. Retrieved from: http://www.mass.gov/Eeohhs2/docs/dph/tobacco_control/adolescent_tobacco_use_youth_trends_1993_2009.pdf.

²⁴ Ringel, J, Wasserman, J, & Andreyeva, T. 2005. *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey*. American Journal of Public Health. 95(6), 995-998. Retrieved from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1449297/pdf/0950995.pdf>; and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?* J. Prim. P. 2011:32(3-4):161-70. Retrieved from: www.ncbi.nlm.nih.gov/pubmed/21809109.

quit²⁵ and high prices deter youth from starting²⁶. Inexpensive cigarettes, like those produced from RYO machines, promote the use of tobacco, resulting in a negative impact on public health and increased health care costs, and severely undercut the evidence-based public health benefit of imposing high excise taxes on tobacco;

Whereas it is estimated that 90% of what is being sold as pipe tobacco is actually being used in Non-Residential RYO machines. Pipe tobacco shipments went from 11.5 million pounds in 2009 to 22.4 million pounds in 2010. Traditional RYO tobacco shipments dropped from 11.2 million pounds to 5.8 million pounds; and cigarette shipments dropped from 308.6 billion sticks to 292.7 billion sticks according to the December 2010 statistical report released by the U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB)²⁷;

Whereas the Massachusetts Supreme Judicial Court has held that “. . . [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means.”²⁸

ARTICLE 5

Submitted by: Clint Richmond, Claire Stampfer

Summary:

Polystyrene foam is perhaps the most unsustainable form of packaging and food serviceware. This is one of the reasons it was the first type of plastic to be restricted at the local level, back in 1987. Since then many communities have successfully banned it, including Brookline in 2012. However, this bylaw has some loopholes that can now be closed as they have been in neighboring Cambridge and other Massachusetts communities in the last four years. Furthermore, we need to extend this to a broader range petrochemical plastics that can be as harmful. This article seeks to push more strongly for sustainable packaging.

Problems with Petrochemical Plastics

1. The production of single-use plastic containers and packaging made from fossil fuels is not sustainable

Single-use containers are not the highest and best use of non-renewable fossil fuels. Our goal is to reduce unnecessary plastic packaging, as we have done in recent by-laws for bottled water and plastic shopping bags. We can't keep fossil fuels in the ground if fossil fuels are also being used for plastic. While Brookline and other communities have made

²⁵ Eriksen, M, Mackay, J, Ross, H. 2012. *The Tobacco Atlas*, Fourth Edition, American Cancer Society, Chapter 29, p. 80. Retrieved from: www.TobaccoAtlas.org.

²⁶ Chaloupka, FJ & Liccardo Pacula, R. NIH, NCI. 2001. *The Impact of Price on Youth Tobacco Use, Smoking* and Tobacco Control Monograph 14: 193 – 200. Retrieved from: http://cancercontrol.cancer.gov/brp/tcrb/monographs/14/m14_12.pdf.

²⁷ US Department of Treasury. Alcohol and Tobacco Tax and Trade Bureau (TTB). 2011. *Statistical Report – Tobacco* (2011) (TTB S 5210-12-2010). Retrieved from: <http://www.ttb.gov/statistics/2010/201012tobacco.pdf>.

²⁸ Druzik et al v. Board of Health of Haverhill, 324 Mass.129 (1949).

progress in the last four years, over the coming decades global plastic production is slated to increase nearly sixfold.

2. Solid waste problems

The enormous number of plastic packaging is difficult to manage.

Even if only a small percentage of the volume becomes litter, this causes a large amount of visual blight and animal harm. Plastic pollution is most acute in the marine environment. Hundreds of marine animal species suffer injury and death. In some cases, the *majority* of the population of a species have been affected (such as for whales).

Plastics are light, but occupy disproportionate space in recycling trucks and landfills.

These problems are compounded since bottles do not biodegrade. Such plastics can persist for 1000 years. However, they are subject to fragmentation, and may enter our human food chain.

Plastic suffers from low recycling rates compared to valuable natural materials like paper or aluminum. The Town actually loses money on plastic. Contamination makes them unsuitable for food or medical applications. Contaminants include additives and dyes; and the synthetic non-degradable adhesive (also made from petrochemicals) used to attach any label. Plastics are downcycled into non-recyclable products such as fleece or carpet. The label or other design elements can be printed with ink reducing its already extremely low value.

3. Plastic containers are bad for human health

Satisfying the demand for the raw materials of plastics is one of the causes of the growth of fracking. Concerns around fracking include the exposure to toxic fracking chemicals, water use and pollution, and the generation of huge volumes of toxic liquid waste.

Some plastics such as PETE and PVC are a more harmful than others, and create greater potential occupational and environmental hazards (including accidental releases).

A further compromise to our health begins when food is placed in a plastic container. The industry is not required to list additives to plastics, which can migrate from the container into the liquids and be ingested by consumers. These can include:

- Phthalates - a class of plasticizer added to increase flexibility, which is also a hormonal disrupter.
- Benzophenone - an ultraviolet blocker to prevent photo-degradation especially of clear plastics.

In addition, there are:

- impurities and contaminants from the manufacturing process such as antimony (a polymerization catalyst), and
- degradation products (such as acetaldehyde from PETE when exposed to heat or the sun's ultraviolet rays).

Sustainable Packaging

The most sustainable packaging uses natural materials such as paper, cloth and aluminum. Such materials are biodegradable, compostable, or recyclable. We also want to encourage the use of re-usable solutions. This by-law will provide an opportunity to educate retailer and consumers about sustainable options.

Why revisit the polystyrene by-law?

The existing by-law contains an exemption for certain types of foodware that are no longer justifiable such as straws, sitters and utensils.

Then there are the issues from some replacements for polystyrene. While many retailers have substituted sustainable packaging, in many cases they have simply shifted from polystyrene to other petrochemical plastics such as PETE and polypropylene. While polystyrene is perhaps the most harmful to humans, this does not fully mitigate the health or solid waste impacts.

Summary

This bylaw is based on successful ordinances in Oakland in sustainable packaging, and San Francisco in the retail sale of polystyrene. Locally, Williamstown has a similar by-law.

The bylaw does three things starting on Jan. 1, 2018:

1. Allows only sustainable food packaging. This is divided into two phases. Phase one bans two of the most harmful starting in 2018: polystyrene and PETE. There is a phase-in period of two years (2019) for less harmful recyclable petrochemical plastics (polyethylene and polypropylene).
2. Prohibits the sale of polystyrene foodware in Town.
3. Prohibits the sale of polystyrene foam packaging in Town such as peanuts and single-use coolers.

We urge Town Meeting to take close the loopholes, and stay in the vanguard in the state on this highly visible issue.

ARTICLE 6

Submitted by: Clint Richmond, Andrew Fischer

Summary:

Brookline passed the first law specifically addressing plastic shopping bags in the Commonwealth in 2012. Since then 33 other communities have successfully banned them. In particular, there is a contiguous group of communities that includes Brookline, Cambridge, Somerville, Newton, Watertown and Wellesley. However, our pioneering bylaw had some loopholes that can now be closed as they have been especially in neighboring Cambridge and other Massachusetts communities. This article also seeks to be more comprehensive by addressing paper and produce bags.

Problems with Petrochemical Plastics

The executive director of the U.N. Environment Programme, Achim Steiner, said in 2009 that "There is simply zero justification for manufacturing plastic bags anymore, anywhere." Here are the reasons why:

4. The production of single-use plastic bags made from fossil fuels is not sustainable

Single-use bags are not the highest and best use of non-renewable fossil fuels. Our overall goal is to reduce unnecessary petrochemical plastic packaging. We can't keep fossil fuels in the ground if fossil fuels are also being used for plastic.

5. Solid waste problems

The enormous number of plastic bags makes them difficult to manage.

Even if only a small percentage of the volume becomes litter, this causes a large amount of visual blight and animal harm. Plastic pollution is most acute in the marine environment. Hundreds of marine animal species suffer injury and death. In some cases, the *majority* of the population of a species have been affected (such as for whales). The World Economic Forum published a study this year stating that there will be as much plastic as fish in the ocean by 2050. Commenting on the report, the CEO of the Plastic Pollution Coalition said "One of the biggest problems [to] focus on is single use and disposable plastic."

These problems are compounded since petrochemical plastics do not biodegrade. Such plastics can persist for 1000 years. However, they are subject to fragmentation, and may enter our human food chain.

Plastic bags are not easily recycled and suffer from especially low recycling rates compared to valuable natural materials like paper. Pre- and post-consumer contamination makes them unsuitable for food or medical applications. Intentional contaminants include additives and dyes. Plastics are generally downcycled into non-recyclable products such as plastic lumber. The printing inks reduce its already extremely low value.

6. Plastic packaging is bad for human health

Satisfying the demand for the raw materials of plastics is one of the causes of the growth of fracking. Concerns around fracking include the exposure to toxic fracking chemicals, water use and pollution, and the generation of huge volumes of toxic liquid waste.

The industry is not required to list additives to plastics, which can migrate from the bag into the contents and be ingested by consumers. These chemicals include dyes and copolymers. In addition, there are chemical impurities and contaminants from the manufacturing process.

Sustainable Bags

The most sustainable packaging uses natural materials such as paper or cloth. Such materials are biodegradable, compostable, and recyclable. We also want to encourage the use of re-usable solutions. This by-law will provide an opportunity to educate retailer and consumers about more sustainable options.

Why revisit the bag by-law?

The existing by-law contained deliberate exemptions modeled on the proposed state law at the time such as a small store exemption. While many retailers have substituted sustainable packaging, others (such as CVS and Pier 1) have simply adopted marginally thicker polyethylene bags (which use more fossil fuels and weigh more) that were counter to the intent of the law.

Summary

The bylaw does several things:

4. Applies the by-law equally to all stores as in most laws passed in the state since ours.
5. Defines re-usable plastic bags more robustly as in nearly every other law passed in the state since ours. This also includes eliminating polyvinyl chloride, a more toxic plastic than polyethylene or polypropylene.
6. Closes the loophole for petrochemical plastic produce bags. This is similar to the Williamstown by-law. The law will allow compostable plastic produce bags, which are readily available.
7. Makes paper bags more sustainable by requiring a minimum of 40% post-consumer recycled content as in Cambridge, Newton and most laws in California. Because of prior laws, these bags are readily available.

This by-law cannot impose a fee on paper or other single-use bags as has been done in other communities (most notably Cambridge). In Massachusetts, this right is reserved for cities (and has been confirmed by the Attorney General). However, retailers have always had the right to charge for bags, and we support retailers who wish to do so or otherwise provide incentives such as rebates when you bring your own bag.

We urge Town Meeting to close the loopholes, and make the other proposed improvements. In doing so we will stay in the vanguard in the state on this highly visible issue.

ARTICLE 7

Submitted by: River Road Study Committee

This article is submitted by the members of the River Road Study Committee (RRSC) appointed by the Board of Selectmen. The RRSC was charged with reviewing and analyzing the redevelopment potential of the Industrial (I-1.0) District bounded by Brookline Avenue, River Road and Washington Street (Route 9), including Claremont Companies' proposed hotel redevelopment at 25 Washington Street that was presented to the Economic Development Advisory Board at their January 4, 2016 meeting. As part of its study, the RRSC was tasked with reviewing existing physical and economic conditions, and the redevelopment potential of the district under current zoning and parking requirements. Various land use planning tools were evaluated and applied to the Industrial District, such as, design guidelines, public realm enhancements, shadow studies and transit-oriented development.

Building on the recommendations outlined in the Town's Comprehensive Plan to create district plans that encourage mixed-use development and promote commercial growth along Route 9 as well as the vision articulated in the 2015 M.I.T. study of Route 9 East, the RRSC reviewed and analyzed the connectivity of the district with adjacent neighborhoods, buildings, the Emerald Necklace, River Road, the Brookline Village MBTA stop, the Route 9 and Brookline Avenue roadways, and the planned Gateway East intersection improvements. The RRSC consisted of 17 residents, including many with professional backgrounds and expertise in architecture, landscape architecture, commercial development, finance, planning, real estate and environmental law, as well as; representatives from the Advisory Committee, Planning Board, Economic Development Advisory Board, Zoning By-Law Committee, Tree Planting Committee, Transportation Board, Village at Brookline Tenants' Association and the Brook House Condominium Association. The Committee was staffed by Andy Martineau, the Town's Economic Development and Long- Term Planner and Chaired by Selectman Ben Franco. The RRSC also retained an expert real estate finance consultant to review the issues of financial feasibility and parking requirements for the proposed Special District.

Given the complexity of the issues, and the desire to hear from a wide range of stakeholders, there were 23 committee and subcommittee meetings and countless hours of additional volunteer work by RRSC members. The Committee met regularly with Claremont throughout its process, resulting in significant changes to its proposed hotel massing, parking configuration and sidewalk widths. All of the Committee's meetings were open to the general public and were attended by neighborhood representatives, owners of property within the proposed Special District, representatives from the existing businesses as well as representatives from the Emerald Necklace Conservancy. Members of the public were given the opportunity to, and did, actively participate in the process. The Committee's fundamental charge was to establish zoning parameters for a Special District that would incentivize redevelopment of an appropriate scale and type that enhances and connects with the Emerald Necklace, while minimizing impacts on the public and adjacent neighborhoods. The proposed Special District Zoning utilizes several means to achieve that goal, including a form-based zoning approach that prioritizes height, massing and creative building design over Floor Area Ratio (FAR). In addition to height limitations and corresponding lot coverage limits to establish a more articulated building envelope, the proposed Special District Zoning imposes on-site parking limits, design guidelines adopted by the Planning Board and pedestrian amenity requirements, most notably minimum requirements for sidewalk widths on all sides of the district. As described below, the Special District Zoning amendment encourages a mix of uses for the eight parcels that comprise the 1.2 +/- acre Industrial District that have positive municipal financial impacts.

If adopted by Town Meeting, this zoning amendment would establish the "Emerald Island Special District" (the "EISD"). The proposed amendment would enable a proposed hotel at 25 Washington Street consisting of an 11 story, 153,000 +/- gross square foot building with up to 175 rooms and up to 70 structured parking spaces to move forward, subject to the Town's Major Impact Project permitting process, Special Permit approvals and the terms and conditions of a Memorandum of Agreement between Claremont and the Town. It should be noted that the hotel developer, Claremont Companies has agreed to significant mitigation and community benefit funding for public realm improvements in addition to those required in the Special District Zoning. These

improvements will advance the vision for the public realm established by the RRSC. The remainder of the district, consisting of seven parcels including, VCA Boston, Swanson Automotive Services, Alignment Specialty Co., Shambhala Meditation Center, Brookline Foreign Motors, Brookline Ice and Coal and a small parcel owned by the Town, totaling 35,600 +/- square feet in area, will remain unchanged until such time that one or more developers is able to assemble land area sufficient to meet the minimum required lot size for the Special District.

What is a Special District?

The Town's Zoning By-Law allows for the creation of Special Districts in recognition that conditions present within the Town may require detailed neighborhood, district or site planning and design review to insure: orderly and planned growth and development; historic and natural resource conservation; residential neighborhood preservation; economic viability of commercial areas; and concurrent planning for transportation, infrastructure and related public improvements. To insure that the dimensional and related requirements of the Zoning By-Law address these unique conditions, Town Meeting, from time to time, in accordance with MGL Chapter 40 A, may establish Special District Regulations and the Board of Appeals may consider applications for Special Permits based on those regulations. The Emerald Island Special District Zoning does not replace the underlying I-1.0 zoning; rather it supplements it by allowing for new and expanded uses at a greater density than would otherwise be allowed via the underlying zoning. Those new and expanded uses would all be subject to the Special District Zoning requirements.

How is the EISD Different from Other Districts?

The Town typically relies on FAR and setbacks to limit and guide the massing, size and location of buildings and density of development, primarily to prevent overbuilding and out-of-scale structures in more traditional residential neighborhoods. As recent experience has shown, reliance on traditional zoning tools like FAR does not necessarily result in predictable, well-designed buildings. Throughout its analyses, the Committee remained cognizant of this issue, as well as the fact that the uses included in the Special District Zoning would each have unique floorplate and program requirements with varying floor area totals which would result in various building heights and massing regardless of having the same FAR. The Committee felt that achieving predictable and consistent height, scale and massing of buildings constructed in the Special District is more important than rigid adherence to a FAR coefficient. It was also recognized that this district is small and constrained due in large part to the shallow, odd shaped lots, and because of existing and planned infrastructure improvements. However, the district is also unique as it is bound on all sides by the public way and therefore requires a different and more innovative approach towards achieving the Committee's goals of fostering a greener, more walkable gateway district. The Committee seized the opportunity to take a more form-based approach to defining an acceptable building envelope by developing specific, but flexible dimensional criteria and supplementary design guidelines for the zoning which prioritize the public realm, encourage articulated building mass, creative design solutions and limited building heights over Floor Area Ratio.

Some of the key Special District zoning provisions for the proposed EISD include:

- **No maximum FAR values specified**, instead:
The height, massing and scale of buildings are defined by maximum building heights ranging from 110' for a portion of the 25 Washington Street parcel to 85'

- for a portion of the buildings located in other parts of the district, with limits on lot coverage percentages for upper floors, and design guidelines.
- **Limited setback requirements**, instead:
the zoning employs minimum sidewalk widths for each side of the district with the goal of creating more space than currently exists for pedestrians, street furniture, lighting and tree planting. Additionally there are side-yard setback requirements for buildings abutting a mid-block drainage easement and for buildings abutting the northern most edge of the district for the same reasons.
 - **No minimum parking requirements**, instead:
there are parking maximums specified for each use reflective of the transit rich nature of the district, challenges with locating structured parking and less parking intensive uses being encouraged.
 - **A minimum lot size of 13,600 sq. ft. is required to trigger the Special District zoning**:
this will require developers who own a lot under the minimum lot size to consolidate additional parcels and significantly limits the potential that any one small parcel might remain undeveloped in the future.
 - **Public realm treatment**: street trees, public seating and lighting are required throughout the district at regular intervals.
 - **1% of the hard construction costs of constructing a project (exclusive of tenant fit-up)** will be dedicated to improvements to the public realm within the EISD.
 - **Design standards in the zoning and supplementary guidelines will provide guidance to the Planning Board and Design Advisory Team on**: building articulation, ground floor facades, driveway placement, architectural detailing and the public realm.

RRSC Focus and Process:

The Committee focused its work on the following questions:

1. What type of building and mass is appropriate for a unique and highly visible district that is also financially feasible;
2. Where in the district should the bulk of any building mass and taller buildings heights be located;
3. What combination of uses will maximize the revenue potential of the sites while minimizing impacts on schools;
4. What public realm enhancements should be required as part of the Special District Zoning to establish a more walkable, greener gateway district for the town;
5. How to craft Special District Zoning that encourages appropriate and coordinated development for the entire I-1.0 District which has several unique constraints and character defining features, rather than for development on only one parcel of a particular size; and
6. How can redevelopment respect and enhance the Emerald Necklace.

Early on in the process, the RRSC identified a number of potential commercial and very specific types of residential uses that would serve to both maximize the revenue and redevelopment potential of the district and would serve the surrounding neighborhoods while fostering new types of housing that would minimize impacts on schools. The commercial uses the Special District Zoning seeks to incentivize include hotel, retail,

restaurant, medical office, general office and limited types of service uses. The site of the proposed hotel development at 25 Washington Street, in particular, represents a tremendous opportunity to transform a former dilapidated gas station and the adjacent public realm into a gateway to the town that complements the Emerald Necklace while generating significantly more tax revenue.

With respect to the residential uses, the Committee is proposing to add three new housing types and corresponding definitions to the Zoning By-Law, including age-restricted housing for residents 62 and older, "Micro Units," and "Live/Work Space." The proposed definitions of Micro Unit and Live/Work Space include limits on the maximum unit size for each. In addition to minimizing impacts on schools, these uses were identified as desirable because of their viability in a physically constrained area; because of the demand in the marketplace and because they are less parking intensive. There is a segment of the Brookline population that desires to "age in place," however; the Town's existing zoning does not provide any height or density incentives for the creation of senior housing. Moreover, there is demand by young professionals to live in the more urban neighborhoods of North Brookline. However, the high cost of rental housing is prohibitive and creates an incentive to pack rental units with multiple tenants thereby reducing the per-person cost. Because of the high costs and the resulting need to live with roommates, young professionals who no longer find this type of shared-housing arrangement desirable often leave Town. The Special District zoning would allow for and incentivize the creation of Micro Units to help mitigate some of the financial barriers young professionals face in securing housing and could help Brookline retain this desirable segment of the population. Development of this type of housing in this location may also serve to increase much needed foot traffic for existing Brookline Village businesses.

Redevelopment Feasibility and Financial Analysis:

The Town's independent real estate finance consultant, Pam McKinney, was asked to review the feasibility of the 25 Washington Street hotel proposal and the other redevelopment scenarios the Committee modeled throughout its process, including the proposed minimum building envelopes the architects and real estate experts on the Committee determined would likely be necessary for any of the proposed redevelopment scenarios to be financially viable. In addition to conducting her own analyses, Ms. McKinney reviewed the financial models developed by the Committee against the Committee's proposed minimum building envelopes. Ms. McKinney determined that all of the uses included in the Special District Zoning are viable from a financial perspective and that the Committee's proposed building envelopes and parking requirements for those uses as well as those proposed for the hotel development are appropriate and are in fact the minimum required for development to be feasible considering market conditions, construction costs and site constraints. Specifically, Ms. McKinney's analysis confirmed that there is strong demand in the market for the type of hotel being proposed for 25 Washington Street as well as for the specific types of residential uses included in the EISD. Her analysis indicated that medical and general office are potentially viable uses, but are less likely given the shape of the lots, the existing and planned supply of medical office in the immediate area as well as the need for more parking for those specific uses. With respect to parking, Ms. McKinney advised that, given the Special District's proximity to public transit, this area is an opportunity to employ alternative parking

restrictions versus what might normally be required in a more suburban setting, especially where the most likely uses are those that are the least parking intensive and where neighbors in the immediate area indicated that there is no shortage of off-street parking.

RRSC Conclusions:

Given current and projected market conditions, the uses the Special District seeks to incentivize require buildings of the proposed scale. The underlying zoning for the Industrial District limits the height and FAR of buildings to 40 feet and 1.0 respectively, meaning that the built-out space within buildings could be no greater than the lot area and that buildings could be no higher than 40 feet. The analyses conducted by both the Town's independent real estate finance expert and by those on the RRSC confirmed that the desired uses are not viable within the limitations of the existing zoning, further underscoring the need to create Special District Zoning that incentivizes and allows for the proposed building envelopes. The need for more flexible dimensional and parking requirements was reinforced by the high water table in the area as well as the RRSC's desire to prohibit any on-site parking on the ground level of the district in recognition that "buildings on stilts" were not a desired outcome and that active uses on the ground floor of any future building would help create a vibrant public realm. This means that any on-site parking will need to be housed within future buildings already physically constrained by narrow, irregular-shaped parcels.

There were a number of tradeoffs inherent in the RRSC's process of trying to incentivize certain uses and to improve the public realm, resulting in the creation of Special District Zoning that allows for significantly larger buildings, subject to the EISD requirements. Following several meetings to analyze the financial and architectural feasibility of different types and sizes of potential buildings in this district, it was determined that larger buildings would be required not only for the financial feasibility of the proposed uses, but also to accommodate the unique geometric requirements for structured parking within the buildings. While the Committee acknowledged the need for larger buildings, every effort was made to balance the overall size and form of the building envelopes necessary for financial and architectural viability with the goal of minimizing negative impacts on the surrounding neighborhoods and sensitive nearby park areas.

Anticipated Outcomes:

- If the Special District Zoning passes, the Town will position itself to get ahead of future developers for the balance of the district and proactively shape future redevelopments in this important area of Town.
- The Town will facilitate the transformation of a former gas station at 25 Washington Street into a hotel that is anticipated to yield over \$1.5M in net new taxes (rooms and excise).
- The hotel and future redevelopments will provide for significant additional public realm improvements within the EISD, further implementing the vision of the River Road Study Committee.
- The industrial district will be transformed from an overlooked corner of town into a greener and more attractive mixed-use gateway district with amenities for neighborhood residents, pedestrians and park users alike.

Companion Warrant Articles:

Two companion non-zoning warrant articles are being filed by the Board of Selectmen, which if passed at Town Meeting, would authorize the Selectmen to: (i) accept a Restrictive Covenant to protect the tax certainty for the proposed new development at 25 Washington Street; and (ii) enter into agreements or take other action necessary for the Town to receive the full benefits and protections of a Memorandum of Agreement including mitigation and community benefits pertaining to the proposed development at 25 Washington Street.

River Road Study Committee Membership:

Ben Franco, Chair
Dick Benka
Alan Christ
Chris Dempsey
Steve Heikin
Brian Hochleutner
Yvette Johnson
Ken Lewis
Wendy Machmuller
Hugh Mattison
Tom Nally
Marilyn Newman
Mariah Nobrega
Charles Osborne
Linda Pehlke
Bill Reyelt
Daniel Weingart

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.

Background

In 2004, the Planning Department led an effort to write the 2005-2015 Comprehensive Plan “to help Brookline make choices about its future.” Over 30 residents participated. By January 2005, both the Planning Board and the Board of Selectmen had adopted the Plan.

The eastern end of Washington Street at the Boston line, dubbed Gateway East, was described as “an attractive new gateway to the town at Brookline Village and which will reshape the overall character of the corridor between the Emerald Necklace and Cypress Street.” A key urban design goal was to “create an attractive new gateway to the town at Brookline Village”.

In 2006, the Gateway East Public Realm Plan guided by a 25-citizen CAC identified a defining principle: “Define a strong, green gateway to Brookline and Brookline Village” and stated that “Street tree plantings provide a buffer between the pedestrian and the road and are the most effective tool to achieve a ‘green gateway’ concept.”

In May 2016, the Selectmen adopted the Complete Streets Policy. To meet the objective of accommodating pedestrians, and “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.” The Policy further states “Achieving these objectives will require context-sensitive treatments and operational strategies to balance the needs of all users”, “the safety, comfort, and convenience of vulnerable users [i.e. pedestrians] must be fully considered”, and “private land to be incorporated into the public way by the Town should comply with the Complete Streets Policy.”

Most recently, in 2015 the MIT Department of Urban Studies and Planning issued a report *Bringing Back Boylston: A Vision and Action Plan for Route 9 East*. It recommended “public realm improvements that enhance the pedestrian experience.”

This warrant article seeks to make the development of the Emerald Island Special District (EISD) compatible with other development planned as part of Gateway East and contribute to realizing the green, pedestrian-friendly vision that has been expressed in prior studies.

Preliminary landscape plans for development at 2 Brookline Place include planting of *full-canopy* street trees (see Mikyoung kim diagram below), contributing to the previous commitment of a green entrance. Modern sustainable practice includes providing pedestrian-friendly environments that encourage walking and use of public transportation.

At the very edge of town, a safe, green connection with the Huntington Avenue Green Line and bus routes is necessary. The currently planned narrow, almost tree-less sidewalk in front of 25 Washington Street offered by Claremont is the exception to a greening process that Brookline has already agreed to. It is an example of what *not* to do in meeting future needs. This warrant article seeks to complete this vision of a green, welcoming, safe entrance to our town.

Sidewalk Width at 25 Washington Street (Continued)

Specifically, passage of this warrant article would create a 10-foot wide planting strip between the planned cycle track and 8’ pedestrian walkway section in front of 25 Washington Street.

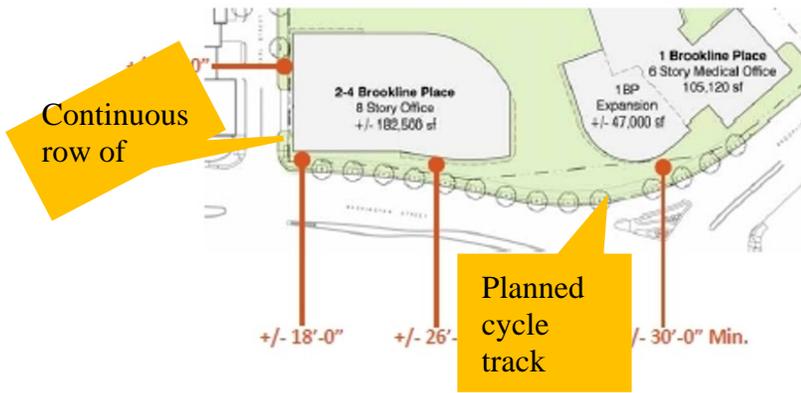
The benefits of this planting would:

- separate pedestrians from other traffic
- extend the green of the Emerald Necklace into Brookline Village
- honor previous plans
- mitigate the effect of an abutting tall building

- reduce traffic noise and improve air quality
- provide visual amenity and a welcoming entrance to Brookline
- continuous row of trees
- create a safe setting that encourages walkability

Mikyong kim
Sidewalks – proposed widths

2 Brookline Place



Boston Children's Hospital

mikyong kim design

Claremont



Few trees, no buffer from cycle

This pedestrian path on Western Ave. near Central Square in Cambridge is similar to the design proposed by this article. The 8-foot pedestrian path is flanked on the right by a planting strip 9-13 feet wide. This is our once-in-a-generation chance to have an entrance we'll be proud of!

Stormwater is diverted by this swale and



helps to water plantings.

Prepared and submitted by:

Hugh Mattison, Town Meeting Member,
Precinct 5
209 Pond Ave.
Brookline, MA 02445
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ARTICLE 9

Submitted by: Board of Selectmen

As set forth in the terms of the Restrictive Covenant, currently formulated as a Payment-In-Lieu-of-Taxes or PILOT Agreement, this Article, if passed, will provide a Restrictive Covenant that runs with the land and provides tax-certainty for a 75-year term for the proposed development at 25 Washington Street.

ARTICLE 10

Submitted by: Board of Selectmen

This Article, if approved, will authorize the Selectmen to enter into and/or amend as necessary any new or existing agreements so that the Town receives the full benefits and protections as set forth in the Memorandum of Agreement and Restrictive Covenant, currently formulated as a Payment-In-Lieu-of-Taxes or PILOT Agreement, pertaining to the proposed development at the 25 Washington Street site in Brookline.

By entering into the PILOT Agreement, the Town intends to guarantee tax certainty for the project proposed by Claremont Brookline Avenue, LLC for the parcel known as 25 Washington Street. The current proposed use is for a hotel, but future uses could potentially include ones exempt from taxation, such as would be the case if it was used for university housing. Although no such use is currently contemplated, the PILOT Agreement provides that for the 75-year term the amount the Town receives will not be affected by any tax exemptions stemming from the use. Once the Agreement is recorded, the covenant will run with the land for 75 years and bind each successive owner.

The Memorandum of Agreement is intended to memorialize the understanding between Claremont Brookline Avenue, LLC and the Town, secure promised benefits due to the Town while minimizing impacts to the neighborhood and the Town as a whole, and guarantee that the parameters of the Proposed Project fall within those developed by the River Road Study Committee and Town staff. While the exact language of the Memorandum of Agreement is still being negotiated, its terms will include the following:

- Description of the Proposed Project
 - 153,000 +/- gross square feet
 - Maximum of 175 hotel rooms
 - Maximum of 70 structured parking spaces
- Provision for the developer to pay an amount equal to 1% of the hard construction costs, exclusive of tenant fit-out, to be used towards improvements to River Road
- Terms related to the development of a “Shared Parking Ramp Design” allowing neighboring parcels to utilize the Proposed Project’s parking ramp so as to limit traffic congestion on neighboring streets and allow for more efficient structured parking in future developments
- Provisions for the developer to provide additional public benefits and improvements to mitigate the Proposed Project’s impacts, including:

- Pedestrian, bicycle and landscaping improvements, both on-site, site-adjacent and at the nearby Emerald Necklace park area
- A traffic study and accompanying traffic mitigation related to the hotel use
- A PILOT Agreement, as described above
- A Memorandum of Understanding providing for joint maintenance of nearby parkland
- The grant of a certain easement necessary in the future to allow for the development of the Town's Gateway East project

It is the intention of the Board to have the agreement executed far enough in advance of Town Meeting so as to allow Town Meeting Members to review its terms prior to voting on the series of warrant articles related to the 25 Washington Street project. Copies of said Memorandum of Agreement, once executed, will be available at the Selectmen's Office

ARTICLE 11

Submitted by: Hugh Mattison, TMM5

This Resolution is being submitted to provide an expression of Town Meeting support for a sidewalk at least 18 feet wide, 10 feet of which will be used as a planting strip, and to provide direction to the Board of Selectmen if neither the zoning warrant article from the River Road Study Committee or the alternative article by citizen petition is not passed. The explanation below is the same as for the zoning article.

Background

In 2004, the Planning Department led an effort to write the 2005-2015 Comprehensive Plan "to help Brookline make choices about its future." Over 30 residents participated. By January 2005, both the Planning Board and the Board of Selectmen had adopted the Plan.

The eastern end of Washington Street at the Boston line, dubbed Gateway East, was described as "an attractive new gateway to the town at Brookline Village and which will reshape the overall character of the corridor between the Emerald Necklace and Cypress Street." A key urban design goal was to "create an attractive new gateway to the town at Brookline Village".

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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.” The Policy further states “Achieving these objectives will require context-sensitive treatments and operational strategies to balance the needs of all users”, “the safety, comfort, and convenience of vulnerable users [i.e. pedestrians] must be fully considered”, and “private land to be incorporated into the public way by the Town should comply with the Complete Streets Policy.”

Most recently, in 2015 the MIT Department of Urban Studies and Planning issued a report Bringing Back Boylston: A Vision and Action Plan for Route 9 East. It recommended “public realm improvements that enhance the pedestrian experience.”

This warrant article seeks to make the development of the Emerald Island Special District (EISD) compatible with other development planned as part of Gateway East and contribute to realizing the green, pedestrian-friendly vision that has been expressed in prior studies.

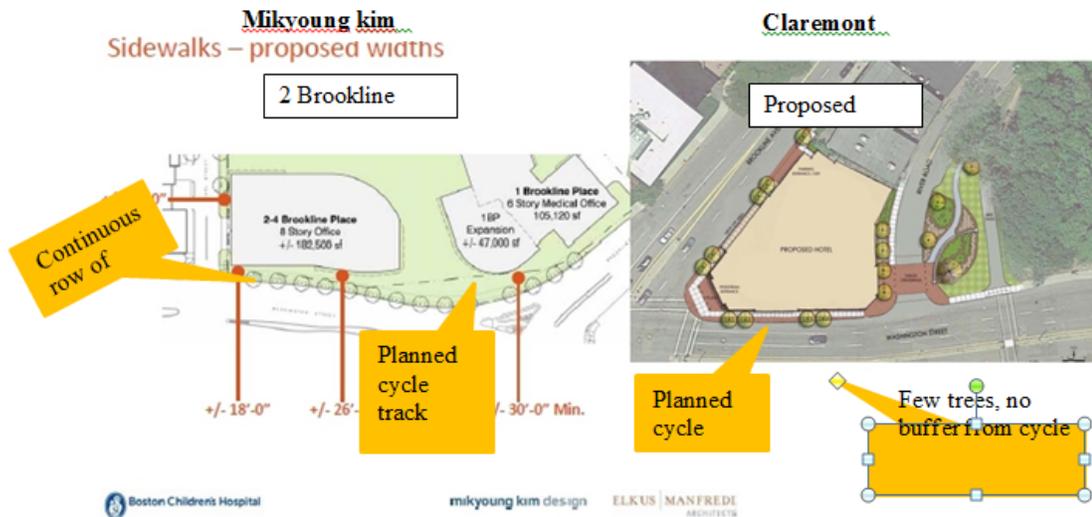
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At the very edge of town, a safe, green connection with the Huntington Avenue Green Line and bus routes is necessary. The currently planned narrow, almost tree-less sidewalk in front of 25 Washington Street offered by Claremont is the exception to a greening process that Brookline has already agreed to. It is an example of what *not* to do in meeting future needs. This warrant article seeks to complete this vision of a green, welcoming, safe entrance to our town.

Sidewalk Width at 25 Washington Street (Continued)

Specifically, passage of this warrant article would create a 10-foot wide planting strip between the planned cycle track and 8’ pedestrian walkway section in front of 25

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- honor previous plans
- mitigate the effect of an abutting tall building
- reduce traffic noise and improve air quality
- provide visual amenity and a welcoming entrance to Brookline
- continuous row of trees
- create a safe setting that encourages walkability



This pedestrian path on Western Ave. near Central Square in Cambridge is similar to the design proposed by this article. The 8-foot pedestrian path is flanked on the right by a planting strip 9-13 feet wide. This is our once-in-generation chance to have an entrance we'll be proud of!



a-

Stormwater is diverted by this swale and helps to water plantings.

Prepared and submitted by:
Hugh Mattison, Town Meeting Member, Precinct 5
209 Pond Ave.
Brookline, MA 02445
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Tel: 617-232-6083



ARTICLE 12

Submitted by: Board of Selectmen

In November, 2005 Town Meeting authorized the Selectmen to enter into a lease in order to construct a Distributed Antenna System (DAS). The Town is nearing the end of its lease period with Extenet Systems and would like to ask Town Meeting for authority to either extend or enter into a new lease agreement.

ARTICLE 13

Submitted by: Department of Planning and Community Development

This amendment would update the Town's General By-law pertaining to signs following the Supreme Court's decision in *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015). The proposed amendment would update the by-laws so that signs are regulated in a content-neutral fashion consistent with the Supreme Court's decision in Reed. This amendment

would update the By-law so that it only regulates government speech and signs on town property. An accompanying warrant article proposing to amend the Zoning By-Law regulating signs on private property has also been submitted.

ARTICLE 14

Submitted by: Department of Planning and Community Development

This amendment would update the Town's Zoning By-law pertaining to signs following the Supreme Court's decision in *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015). The proposed amendment would revise the by-law so that signs are regulated in a content-neutral fashion consistent with the Supreme Court's decision in *Reed*. In addition, upon review of the Zoning By-law, staff observed a number of redundancies with respect to how signs are regulated dimensionally. For example, the existing zoning by-law permits signs up to 20 square feet in area in M Districts for three separate categories of signs that are distinguished based on their content. Staff also noticed that the Design Review Procedures are not consistent with what occurs in practice. For example, applications start with and are processed by the Planning Department, not the Building Commissioner. Additionally, applications are scheduled for review by the Planning Board approximately every two weeks, not every five working days. The proposed amendment eliminates redundancies and inconsistencies such as these, while retaining the existing language that is content-neutral. The proposed amendment addresses the regulation of signs on private property. An accompanying warrant article proposing to amend the Town's General Sign By-Law regulating signs on Town property has also been submitted.

ARTICLE 15

Submitted by: Police Department

In *Reed v. Town of Gilbert*, --- U.S. ---, 135 S. Ct. 2218 (2015), the United States Supreme Court struck down a municipal sign code that provided for different treatment of signs (for example, with regard to their size, permissible placement, etc.) based on the type of information they conveyed. The specific regulation at issue in *Reed* pertained to temporary directional signs (*e.g.*, signs that are event-related). The Court opined that the regulation was "content-based," and therefore subject to "strict scrutiny." *Reed*, 135 S. Ct. at 2231 (a regulation is content-based if it "applies to particular speech because of the topic discussed or the idea or message expressed."). Regulations subject to "strict scrutiny" must have "compelling" justifications behind them, and they must be "narrowly tailored" to those justifications. The "narrow tailoring" requirement means that a regulation can neither be substantially over-inclusive (sweeping within its ambit too much speech unrelated to the justifications) or under-inclusive (leaving out too much speech related to the justifications). The Supreme Court struck down *Gilbert's* sign regulation as fatally under-inclusive, where *Gilbert* maintained that the regulation served to protect the community's appearance and limit driver distraction, but all signs impact a community's appearance and can distract drivers, according to the Court.

Several subsequent lower court decisions have struck down panhandling-related local regulations on the basis of *Reed*. See *Norton v. City of Springfield, Illinois*, 806 F.3d 411 (7th Cir. 2015); *McLaughlin v. City of Lowell*, --- F. Supp. 3d --- [2015 WL 6453144] at *4 (D. Mass. Oct. 23, 2015); *Thayer v. City of Worcester*, --- F. Supp. 3d --- [2015 WL

6872450] (D. Mass. 2015); *Browne v. City of Grand Junction, Colo.*, --- F. Supp. 3d --- [2015 WL 5728755]. In addition, an older decision from the Massachusetts Supreme Judicial struck down a restriction on peaceful panhandling. See, e.g., *Benefit v. City of Cambridge*, 424 Mass. 918 (1997).

Article 8.20 singles out non-commercial speech as requiring Police Chief approval when it requests money.²⁹ This could be problematic under the court decisions cited above. Accordingly, this warrant article proposes to delete that language from Article 8.20

ARTICLE 16

Submitted by: C. Scott Ananian

Greenhouse gas pollution from cars account for more emissions than from industries like iron, steel, cement and chemicals combined. The purpose of this article is to help get more people into electric vehicles and lower greenhouse gases, by increasing access to the infrastructure required to charge electric vehicles. The town installed electric vehicle charging stations in 2011 as part of its Green Community designation, but these are currently hooded and inactive. This resolution encourages the Town executive to remedy this situation.

ARTICLE 17

Submitted by: C. Scott Ananian

Greenhouse gas pollution from cars account for more emissions than from industries like iron, steel, cement and chemicals combined. The purpose of this article is to help get more people into electric vehicles and lower greenhouse gases, by increasing access to the infrastructure required to charge electric vehicles. Although inspired by the electric vehicle provisions of Ontario's wide-ranging climate change action plan, this article is a simple first step which does not require any expenditure of town funds. It ensures that future adopters of electric vehicles will have ready access to charging outlets in off-street parking facilities.

Massachusetts General Laws c. 40A § 3 restricts zoning by-laws from regulating "use of materials, or methods of construction of structures regulated by the state building code" or "the interior area of a single family residential building[...]; provided, however, that such land or structures may be subject to reasonable regulations concerning [...] parking and building coverage requirements." This by-law doesn't dictate use of materials or methods of construction, it simply dictates that the design of off-street parking facilities accommodate electric vehicle charging, in the same way that Brookline zoning by-law §6.05 accommodates bicycle parking.

Parking facilities are not required to install full-fledged charging stations; it is acceptable to simply install a higher-power electrical outlet (such as one might use for a dryer) in an appropriate location.

This would not create new charging facilities overnight, but as off-street parking facilities are constructed or renovated we would gradually create an infrastructure to support

²⁹ Commercial speech regulation is subject to a more relaxed legal standard.

electric vehicles in our town, and studies have shown that visible charging stations make people much more likely to consider buying a plug-in car for themselves.

ARTICLE 18

Submitted by: C. Scott Ananian

Greenhouse gas pollution from cars account for more emissions than from industries like iron, steel, cement and chemicals combined. The purpose of this article is to help get more people into electric vehicles and lower greenhouse gases, by increasing access to the infrastructure required to charge electric vehicles. Although inspired by the electric vehicle provisions of Ontario's wide-ranging climate change action plan, this article is a simple first step which does not require any expenditure of town funds. It ensures that future adopters of electric vehicles (EVs) will have ready access to charging outlets in their place of residence. Studies have shown that when charging stations are more visible, people become much more likely to consider buying a plug-in car. It is to be hoped that an EV-ready garages will also spur greater adoption of electric vehicles in our Town.

Building codes are state (not Town) laws, but M.G.L. c. 143 § 98 provides a means for the Board of Selectmen to petition for a more restrictive code to serve the Town's special interest in combating greenhouse emissions. Since the Massachusetts Electrical Code is incorporated into the building code by M.G.L. c. 143 § 96 it is subject to amendment by the state Board of Building Regulations and Standards, even though it is a specialized code delegated to the Board of Fire Prevention Regulations by M.G.L. c. 143 § 3L.

This resolution requests that the Selectmen make such a petition in order to require newly-permitted Brookline garages to contain appropriate electrical power for electric vehicles. A modest minimum power has been selected to ensure that the vehicles can charge at a rate faster than they consume charge; that is, after driving your car for an hour it shouldn't require more than an hour to recharge the amount depleted. New garages wouldn't necessarily be required to have electric vehicle chargers: it is acceptable to simply install an appropriate high-power electrical outlet (such as one might use for a dryer) in a location which would be suitable for a plug-in EV charger at a later time. This won't cause EV-ready garages to appear across Brookline overnight, but the hope is that the coming years will see a gradual increase in the number of homes ready to support an electric vehicle.

ARTICLE 19

Submitted by: Scott Englander

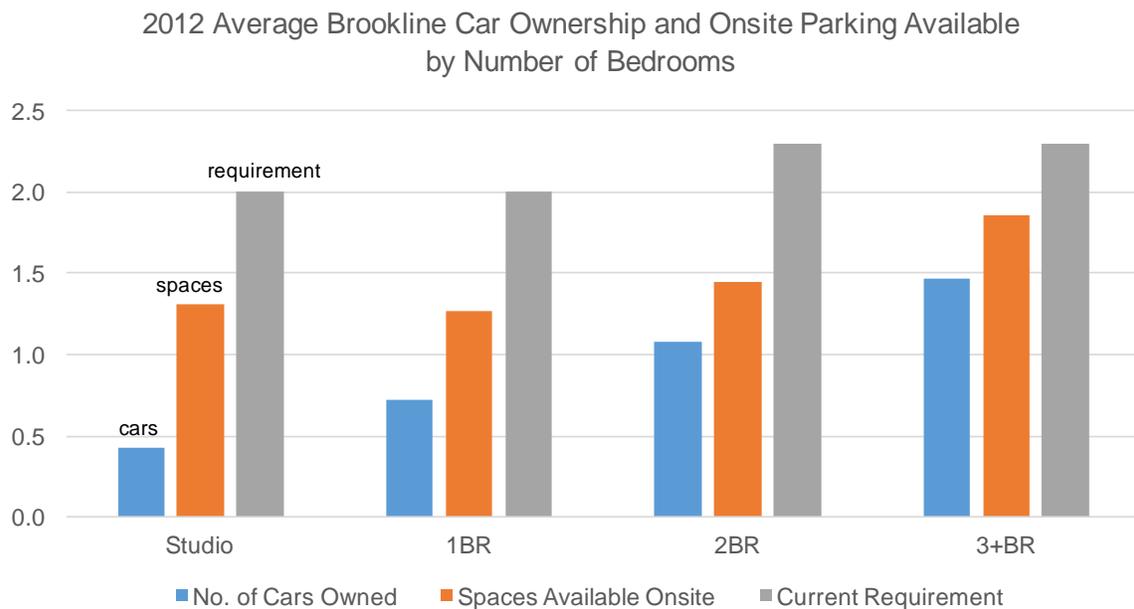
Overview

This article seeks to lower the minimum number of off-street parking spaces required for new residential development in areas of Brookline well-served by the MBTA Green Line. Residential parking requirements are applied whenever new dwelling units are created, including new construction or conversions of an existing building.

It is the ultimate goal of this article to set residential parking requirements that reflect, support and protect Brookline's patterns of land use, travel behavior and vehicle

ownership. The need to correct our current residential parking requirements became apparent after detailed analysis revealed that 1) our current residential parking requirements are too high, requiring more parking than residents need, and 2) requiring too much parking has serious negative consequences.

Various sources of data corroborate the fact that the amount of parking that Brookline residents currently require is considerably less than the amount available to them onsite, and the current requirements for new construction. The following figure, using data collected in a 2012 town survey,³⁰ illustrates the magnitude of this disparity—in this case, for respondent households in non-single-family homes, for neighborhoods with good access to the MBTA Green Line. The leftmost bars for each unit type show the average number of cars owned per household, compared to spaces available onsite and current requirements.



Source of car ownership and parking data: Town Survey; excludes single family; excludes the following three neighborhoods: Hammond St. / Woodland Rd., Country Club / Sargent Estates / Larz Anderson, Putterham Circle / Hancock Village.

Figure 1. Car ownership, parking spaces, and parking requirements.

Federal Census Bureau data show that town-wide, between 2010 and 2014, car ownership in Brookline declined, even as the number of households grew (Figure 2).³¹

³⁰ Survey conducted by Moderator’s Committee on Parking, with the assistance of the Town Clerk and Town Assessor, based on a survey questionnaire that was mailed out to all Town residents together with the 2012 Annual Town Census (“Town Survey”).

³¹ American Community Survey, U.S. Census Bureau, B08201: HOUSEHOLD SIZE BY VEHICLES AVAILABLE - Universe: Households, 2010 and 2014 five-year survey estimates for Brookline census tracts.

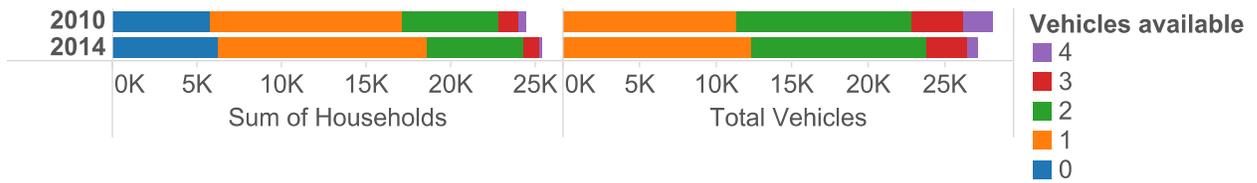


Figure 2. Total vehicle ownership and number of households in Brookline.

Indeed, these data show that over 28 percent of households in neighborhoods with good access to the MBTA Green Line are car-free, and that approximately 79 percent have no more than one car.³² In 2014, only 37 percent of Brookline residents commuting to work from those neighborhoods drove alone, compared to 51 percent who took transit or walked (Figure 3).³³

Journey to Work as Percent of Brookline Households, 2014

Excludes census tracts 4011-4012

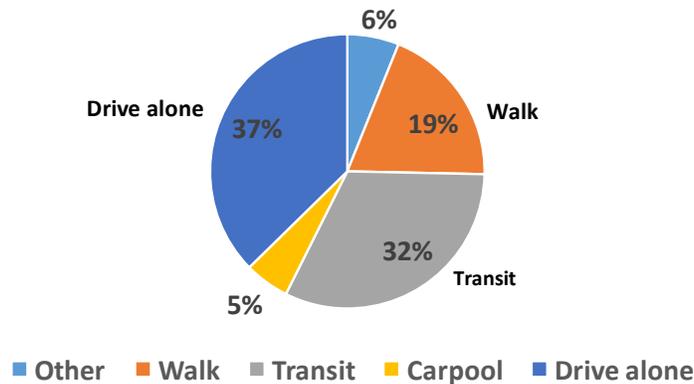


Figure 3. In 2014, 37 percent of Brookline residents commuting to work from TPOD neighborhoods drove alone, compared to 51 percent who took transit or walked

As national trends have indicated, more urban residents are forgoing driving and vehicle ownership in favor of more sustainable transportation options, such as walking, bicycling, and public transit. Despite these changes, parking requirements have generally remained stagnant over time. Parking requirements that are uniform across an entire municipality, regardless of development type or proximity to public transit and that are not responsive to changes in demographics can lead to the construction of excess parking. Today’s changing demographics reflect how Americans are relying less on cars and more on other options, such as public transit, micro-transit, walking, bicycling, carpooling, on-demand ride hailing, ride sharing, car sharing, telecommuting, online shopping, and delivery services. These trends are particularly evident among younger generations living in dense, urban, and transit-rich areas such as the greater Boston region.

³² Ibid., for 2014, excluding South Brookline census tracts 4011 and 4012.

³³ American Community Survey, U.S. Census Bureau, B08141: MEANS OF TRANSPORTATION TO WORK BY VEHICLES AVAILABLE - Universe: Workers 16 years and over in households. For 2014, excluding South Brookline census tracts 4011 and 4012.



Millennials in the greater Boston area, in a recent survey, rated the following as important in choosing where to live:³⁴

- 96% — access to public transit
- 95% — being able to walk to amenities
- 59% — safe bikeways

Parking, on the other hand, was ranked as a relatively unimportant factor when choosing a home or apartment.

Under Brookline’s current residential parking requirements, developers must provide at least two parking spaces per dwelling unit, no matter how small the unit, how high the cost, how small the benefit, and how negative the impacts. Minimum parking requirements raise the cost of development, creating a hidden tax that skews residential development toward larger and less-affordable multi-bedroom and luxury units. These requirements have effectively prohibited the development of more affordable studio and one-bedroom units in Brookline—units suitable for singles and couples. Moreover, they needlessly increase rents and prevent homebuyers from making rational home purchase decisions, disproportionately affecting lower-income community members. What if a prospective homebuyer could—instead of having to spend \$120,000 on two underground parking spaces—use it to purchase a home of greater value? Or have a mortgage that’s \$120,000 smaller—which could make the difference in being able to afford a home in Brookline?³⁵

When residential parking requirements were increased to their current levels, there was little thought given to the resulting spatial dilemmas. Developers in Brookline typically resolve those dilemmas by gaining relief to encroach on open space, decrease setbacks, or increase building height by putting parking on the first floor. The result? Poorly-designed and out-of-scale buildings, less open space, more paved surface, a degraded neighborhood streetscape, increased

³⁴ MassINC Polling: ULI Boston/New England, Survey of 660 Young Professionals in Greater Boston, October 2015. <http://boston.uli.org/news/millennials-want-results/>

³⁵ This value is illustrative of the cost of just the underground parking spaces. Foregoing ownership of one car and associated operating and carrying costs of \$7,000-\$8,000 per year could free up cash sufficient to support an additional \$100,000 mortgage.

traffic³⁶ and the noise, congestion, pollution and greenhouse gas emissions that come with it, and more competition for curbside parking spaces during the day. Indeed, if Brookline had been built with today's residential and commercial parking requirements, it would look and feel nothing like the town we love, and would have few of its charms.

Bundling the cost of required parking into housing prices creates a subsidy that skews travel choices toward private vehicles and away from public transit, cycling, and walking. Residents cannot or will not opt out of subsidized parking regardless of how they prefer to travel. Why consider arranging your household with one less vehicle if two spaces are bundled with your apartment rent? Why pay a transit fare if you can park free?

Brookline's minimum parking requirements, like those in other communities, have no scientific basis, but were first put in place because it was thought they would lessen congestion in the streets; ironically, they have had the opposite effect. Indeed, off-street parking requirements have been likened to "a fertility drug for cars."³⁷ If Brookline wants to discourage appropriate housing development and increase traffic congestion, taxing housing to subsidize parking is the perfect way to do it.

Excessive parking requirements have negative impacts on Brookline in addition to those listed above: They threaten historic structures, degrade neighborhood streetscapes, negate the ability of families to save on transportation costs by locating near public transit (disproportionately affecting lower-income households), exacerbate urban heat island effects, increase polluted stormwater runoff and reduce groundwater recharge, lead to lower physical activity—with consequences for public health—and can decrease the Town's property tax revenues for a given project for decades to come.

The negative impacts of minimum parking requirements are certainly not unique to Brookline; they have been studied extensively in communities around the U.S. As renowned urban planner and Brookline resident Jeff Speck notes in his book *Walkable City*, a number of communities over the years have begun to abandon minimum parking requirements with good results, especially when parking challenges are tackled holistically: "Communities can only be their best if on-street parking, off-street parking, parking permits, and parking regulations are all managed collectively."³⁸ This is advice Brookline should take to heart.

Rather than regulating the number of spaces, zoning regulations on parking would better serve Brookline by focusing on quality rather than quantity—curb cuts, landscaping, layout, location, pedestrian access, provisions for the handicapped, setback, signage, stormwater runoff, and visual impact.

This Warrant Article seeks not to eliminate residential parking requirements, but rather to tailor them to be better suited to specific contexts within Brookline. The reduced residential parking requirements proposed here would apply only within a Transit Parking Overlay District (TPOD), created for this purpose. The TPOD includes all parcels within one-half mile of a MBTA Green Line station.

³⁶ "The Strongest Case Yet That Excessive Parking Causes More Driving," Eric Jaffe, January 12 2016, CityLab, <http://www.citylab.com/commute/2016/01/the-strongest-case-yet-that-excessive-parking-causes-more-driving/423663/>

³⁷ Donald Shoup, *The High Cost of Free Parking*, 2011, American Planning Association, p. 8.

³⁸ Jeff Speck, *Walkable City: How Downtown Can Save America, One Step at a Time*. North Point Press, 2012.

The proposed TPOD parking requirements are developed based on analysis of car ownership data (cars per household) from the Town Survey for households within the group of survey neighborhoods that closely correspond to the parts of Brookline within the TPOD. Those ratios were calculated separately for single-family and all other residence types, and separately for four unit types (studio, 1, 2, and 3+ bedrooms). A margin of 10 percent was added to provide for parking for visitors and tradespeople,³⁹ and the results were rounded to the nearest tenth to yield the proposed requirements. Further detail on this calculation is provided in the sections below. Note that the proposed TPOD parking requirements are still minimums; housing developers are free to provide quantities exceeding these levels in response to market demand, just as they do with respect to any other amenities.

When considering the application of a fractional parking requirement, such as 1.5 spaces per unit, to a multi-unit development project, it helps to remember that the total number of spaces would simply be the sum of the requirements by unit, rounded to the nearest whole number of parking spaces.⁴⁰ For example, in a ten-unit building with 15 parking spaces (1.5 spaces per unit), five units might have access to two parking spaces each and the other five would have access to one each.

History of Parking Requirements in Brookline⁴¹

Brookline must have been one of the first communities in the country to adopt an off-street parking requirement. Our 1922 Zoning By-Law required multi-family residential properties to provide 1 off-street parking space for every unit, “In order to lessen congestion in the streets.” In 1962 a parking requirement of 1 for single-family districts and 0.8 to 1.2 for multi-family areas was adopted. A 1977 change raised the rates to 2 for single-family and 1.0 to 1.3 (the higher rate applying to areas with 0.5 – 1.0 FAR) spaces per dwelling for multi-family.

A big change was made in 1987 when the parking requirements were raised to 1.6/1.8 per dwelling unit in 0.5 – 1.0 FAR areas, and 1.5/1.7 in 1.5 – 2.5 FAR areas. The higher value applies when the unit has more than 2 bedrooms. Separate provision of visitor spaces (10%) was also added at this time. A residential mail-back parking survey was performed by the Planning Department prior to the proposed change. The survey results reported that the overall mean vehicle to household ratio was 1.1. Studio and 1-bedroom households reported a value of 0.9 vehicles per household, two bedroom units, 1.3 vehicles per household and three bedroom units, 1.6. The total respondent sample size was 731, (only 83 of those being 3 bedroom units). Despite these findings the Planning Department recommended higher rates to “account for future growth, the need for visitor parking and the increased parking demand generated by larger units.”

2000 Parking Requirement Increase

Fall 2000 Town Meeting voted to raise residential parking requirements again. All dwelling units are now required to have a minimum of 2, and sometimes 2.3 off-street parking spaces. Having ten years worth of experience enforcing the new higher requirements has given staff, volunteer boards, citizens and Town Meeting Members a significant record of experience with in which to assess the impacts of this change.

³⁹ The Zoning By-Law requires that 10 percent of required parking spaces be set aside for such purposes in certain districts.

⁴⁰ Brookline Zoning By-Law, section 6.02.1(a).

⁴¹ This history is excerpted from work by Linda Olson Pehlke, prepared in 2013.

Table 1. Brookline Parking Requirements, Past and Present

| Land Use | 1922 | 1962 | 1977 | 1987 | 2000 |
|-------------------------------|-------------|-------------|-------------|-------------|-------------|
| Single-Family Residential (S) | N/A | 1 | 2 | 2 | 2 |
| Two & Three Family (T) (F) | 1 | 1.0 - 1.2 | 1.3 | 1.6/1.8* | 2/2.3* |
| Multi-Family Studio & 1 brm | 1 | 0.8 - 1.0 | 1.0 - 1.2 | 1.5/1.7* | 2 |
| Multi-Family Bedroom + | Two 1 | 0.8 - 1.0 | 1.0 - 1.2 | 1.5/1.7* | 2/2.3* |

*The higher rate applies to dwelling units with more than 2 bedrooms

Despite opposition from the Selectmen, Advisory Committee and Planning Board, Town Meeting passed the warrant article. The rationale for this change was based on several fundamental assumptions, which were: 1) That there was a shortage of overnight residential parking especially in the denser, multi-family housing areas of Brookline, 2) That new housing developments were being built with an insufficient amount of parking (current parking rates were therefore too low) and that occupants of those buildings were arriving with additional vehicles that needed to be parked off-site, thereby competing with current residents in a tight rental parking market and driving up price and reducing availability. And 3) That by increasing the parking requirement for new buildings adequate on-site parking would be provided and any additional excess parking would be added to the rental parking market, thus easing the shortage and relieving the upward pressure on prices.

Secondarily to these primary arguments, proponents cited 1) increasing auto ownership statistics, and 2) a loss of overnight parking spaces due to new development replacing existing surface parking lots.

Research done by the Parking Committee did not confirm the assumptions cited by the proponents of the 2000 rate increase. Instead, it found that:

- 1) Field surveys of multi-family parking lots revealed an average 25% vacancy. Significant vacancies exist for town owned overnight rental parking. (No shortage of parking).
- 2) The increase in rental parking prices is consistent with cost of living increases over time. (Increased demand from additional vehicles brought by occupants of buildings with deficient parking is not necessarily driving prices up). Property owners continue to advertise existing and new parking areas for rent to off-site residents, indicating a surplus in parking supply.
- 3) Many new buildings with excess parking do not allow off-site residents to rent and may not be located near enough to potential renters of that parking. (Excess parking in new buildings would not alleviate perceived parking shortage).
- 4) Total Vehicle ownership has in fact declined slightly town-wide between 1998 and 2008. Registry of Motor Vehicles town-wide total: 1998 = 33,330, 2008 = 32,897. (Vehicle ownership has not increased while Zipcar usage has).

Consistent Vehicle Ownership in Brookline Over Time

There has actually been a remarkable consistency in the average number of vehicles per household owned in Brookline. The 1990 Census revealed an average of 1.14 vehicles per household in Brookline. The historical record of special permit change requests at Dexter Park reveal a consistent history of parking utilization at that building ranging from 0.9 (a request was made in 1977 to reduce their parking requirement from 1.2 spaces per unit to 0.9) to today's 0.7 spaces per unit. As noted earlier, the survey in 1987 found a mean value of 1.1 vehicles per multi-family dwelling unit. The recent [2013] parking utilization study done as part of the preliminary site analysis at Hancock Village revealed a parking demand of 1.1 per dwelling unit. If anything, this data suggests that today's vehicle per household ownership rate has remained relatively consistent over the last 20 years.

Moderator's Committee on Parking

November 2010 Special Town Meeting voted to refer the subject matter of Article 10, which proposed reducing the minimum off-street parking requirement, to a Moderator's Committee on Parking (the "Committee") to study the issue and prepare a report.⁴²

In response to the charge from Town Meeting, the Committee held 26 meetings beginning on January 5, 2011 through August 16, 2013.

The Committee heard from proponents and opponents of Article 10, real estate developers, real estate agents, municipal planning officials (from Brookline, Cambridge and Newton) and interested residents of the Town.

In addition, the members of the Committee also conducted numerous interviews with Town officials (including from the Planning Department and the Assessor's Office) to gather additional data for its study. The input provided by the aforementioned individuals was helpful, but also demonstrated the conflicting arguments for and against a change to the Zoning By-Laws. As a result, the Committee decided early on that, to the extent possible, its deliberations needed to be informed by quantitative data – although it was mindful that getting the "perfect dataset" would be an unrealistic endeavor.

Initially, the Committee began by looking at the data submitted both by proponents and opponents in connection with Article 10. The Committee additionally analyzed several datasets provided by the Town's Assessor's Office, including automobile excise tax information that had originated with the Massachusetts Registry of Motor Vehicles. The Committee used this historical data to try and assess whether and to what extent changes to the Town's minimum off-street parking Zoning By-Law had on construction of residential developments.

Additionally, the Committee, with the assistance of the Town Clerk and Town Assessor, developed a survey questionnaire ("Town Survey") that was mailed out to all Town residents together with the 2012 Annual Town Census. The survey identified 14 specific "parking neighborhoods" and asked respondents various questions about their off-street parking situation. Approximately 50% of Brookline households responded to the survey. The Committee analyzed the survey responses and was able to draw conclusions that included the following:

⁴² "The Minimum Off-Street Parking Requirements in Brookline's Zoning By-Law, Analysis and Recommendations for Modification," Moderator's Committee on Parking, August 30, 2013.

- 1) Regardless of the size of the dwelling the average number of cars per household is well below the current off-street parking requirements, although from household to household there are wide variations around the averages
- 2) The differential between the average cars per household and the spaces allotted was greatest for studio and one bedroom apartments, and less so for 2 and 3+ bedroom apartments in multi-unit buildings

The survey findings on the average number of cars per household were found to be largely consistent with similar data for Brookline census tracts available through the U.S. Census Bureau's American Community Survey (ACS).

After collecting and analyzing the various qualitative and quantitative data that the Committee reviewed, it recommended that Town Meeting should revise the minimum off-street parking requirements town-wide, and its recommendations served as the basis for Article 10 of November 2013 Special Town Meeting. Given the Committee's finding that the discrepancies between measured parking usage and the current minimums were most pronounced in studio and one-bedroom units, the Committee chose to focus its proposed changes on the requirements for those unit types. It did not recommend changing the minimums for 3+ bedroom units. Finally, among other recommendations, the Committee encouraged Town Meeting to consider other changes to the Zoning By-Law, which could tie allowing developers to lower their parking requirements in exchange for offering certain specified benefits to residents, such as providing parking spaces for car sharing services such as Zipcar, bicycle racks, or other transportation (such as a shuttle bus).

The minimums proposed by the Committee, nevertheless, were considerably higher than those supported by the Committee's analysis of the Town Survey and other data for units in each of the four size categories for which minimums were proposed. The proposed minimums were not adopted.

Where Did the Proposed Rates Come From?

The proposed rates in this Warrant Article derive principally from Brookline-specific vehicle ownership data. The Town Survey (2012) was the primary source, with additional reasonableness checks in the form of five-year ACS data (2010 and 2014), and adjustments based on the Town Assessor's database to correct for survey self-selection bias (with reasonableness checks on those from ACS data). The resulting rates are consistent with the findings of a review performed by Linda Olson Pehlke of field survey data, MassGIS Registry of Motor Vehicle geocoded data, examples of parking utilization at existing Brookline buildings, and data on recently built housing projects in the Boston region, in support of Article 10 of November 2010 Special Town Meeting. Additionally, the rates proposed here include a 10% margin to account for parking by tradespeople and visitors, consistent with Zoning By-Law section 6.02, paragraph 2.f.

The Town Survey conducted by the Moderator's Committee on Parking yielded a very high response rate—50 percent of Brookline households. Although the data are robust, the responses indicated an underrepresentation of households that rent (vs. own), based on comparisons to both

ACS and the Assessor's Database. To account for this self-selection bias, the Town Survey car ownership ratios were adjusted using occupancy type ratios from the Town Survey and the Assessor's Database.

Table 2 shows the calculation used for the proposed TPOD parking requirements for zoning districts defined by a maximum floor area ratio (FAR) of 0.5 or more, and is based on data for use types excluding single family. The first column shows the unweighted car ownership ratios for all units. The starting points for the calculation are the Town Survey car ownership data in columns a and b, taken by occupancy type for the group of survey neighborhoods corresponding most closely to the TPOD. An analysis of residential exemptions in the Assessor’s Database as of August 2016 yielded the shares of units by unit type that are owner-occupied, for the set of neighborhoods corresponding most closely to the TPOD. The calculation shown produces the weights used (e and f) to adjust the Town Survey car ownership ratios so that owner- and non-owner-occupied units are represented in the same ratios as those in the Assessor’s database, resulting in weighted ratios (g). The weighted ratios are generally close to the original unweighted ratios, and a similar exercise using ACS occupancy type shares did not yield materially different results. The ratios are increased by 10% (h) and rounded off to yield the final ratios.

Table 2. Calculation of Weighted Ratios, Excluding Single Family

| | a | b | c | d | | e = d/c | f = (1-d)/(1-c) | g = a*e/(e+f) + b*f/(e+f) | | h = 1.1*g | |
|-----------|--|------|------|--|------------------|-------------------|-----------------|---------------------------|-------------|-------------------------------------|-------------------------|
| | Town Survey, neighborhoods 1-10 and 12 | | | Assessor's database, neighborhoods excl. 101, 102, 103, 204, 301, and CH | | Resulting Weights | | Weighted Ratios | | Add 10% for visitors / tradespeople | Final Ratios |
| | Cars/household | | | Owner Occupied % | | Own | Rent | Cars/Unit | Spaces/Unit | Unit Type | Parking Spaces per Unit |
| Unit Type | All | Own | Rent | Owner Occupied % | Owner Occupied % | Own | Rent | Cars/Unit | Spaces/Unit | Unit Type | Unit |
| Studio | 0.43 | 0.77 | 0.36 | 17% | 4% | 0.22 | 1.16 | 0.43 | 0.47 | Studio | 0.5 |
| 1BR | 0.72 | 0.90 | 0.62 | 36% | 20% | 0.56 | 1.25 | 0.71 | 0.78 | 1BR | 0.8 |
| 2BR | 1.08 | 1.15 | 0.98 | 60% | 37% | 0.61 | 1.59 | 1.03 | 1.13 | 2BR | 1.2 |
| 3+BR | 1.47 | 1.53 | 1.31 | 85% | 45% | 0.53 | 3.64 | 1.34 | 1.47 | 3+BR | 1.5 |

A similar exercise was performed for single family units to determine whether the requirements should be different for zoning districts with FAR less than 0.5 (Table 3), where all housing is single family. The calculation yielded the same final ratios for one- and two-bedroom units. For three-plus bedroom units, the final ratio was significantly higher (1.9 vs. 1.5). For that reason, only the parking requirement for three-plus bedroom units is proposed to be differentiated by zoning district: 1.9 in zoning districts with FAR less than 0.5 (solely single-family uses), and 1.5 for all other districts. There were insufficient data on single-family studio units, so the ratio of 0.5 for studio units is proposed—just as for one- and two-bedroom units—to be undifferentiated by zoning district.

Table 3. Calculation of Weighted Ratios, Single Family Only

| Unit Type | Town Survey, neighborhoods 1-10 and 12 | | | Assessor's database, neighborhoods excl. 101, 102, 103, 204, 301, and CH | | Resulting Weights | | Weighted Ratios | Add 10% for visitors / tradespeople | Final Ratios | |
|-----------|--|------|------|--|------------------|-------------------|------|-----------------|-------------------------------------|--------------|------|
| | All | Own | Rent | Owner Occupied % | Owner Occupied % | Own | Rent | Cars/Unit | Spaces/Unit | Unit Type | Unit |
| 1BR | 0.73 | 0.85 | 0.67 | 34% | 0% | - | 1.52 | 0.67 | 0.74 | 1BR | 0.8 |
| 2BR | 1.18 | 1.28 | 0.85 | 76% | 60% | 0.78 | 1.68 | 0.99 | 1.09 | 2BR | 1.1 |
| 3+BR | 1.94 | 1.95 | 1.71 | 97% | 83% | 0.85 | 6.70 | 1.74 | 1.91 | 3+BR | 1.9 |

ARTICLE 20

Submitted by: Department of Planning & Community Development

In May 2010, the Board of Selectmen established the Town's Committee on Bicycle Sharing. The next year, following the Committee's recommendation that Brookline join the recently-launched Hubway bicycle share system, the Board voted affirmatively for the Town to join the program. In summer of 2012, Brookline launched three Hubway stations, joining the cities of Cambridge and Somerville as new entrants into the regional bike share system. Brookline's equipment purchases (bicycles and stations) were funded by federal CAM and FTA funds, along with one-time private contributions from Boston Children's Hospital and Partner's Health Care. Post-launch, federal and private dollars and shared net profit have subsidized Brookline's operations fees since 2012.

The Hubway system has grown exponentially since launching in Boston in 2011 with 61 stations and 610 bicycles. After Brookline, Cambridge and Somerville joined Hubway, the system has continued to grow yearly, reaching its current 169 stations and 1,600+ bicycles as of spring 2016. After launching with three stations in 2012 and after adding a fourth in 2013, Brookline's portion of the system has not added any new bicycles or stations. Operational analyses by staff, informed by data provided by the operator, show that Brookline's approach to funding costs associated with the Hubway program may not be sustainable. Revenues attributed to Brookline under the current model, if supplemented by additional sponsorship and advertising revenues, could cover operations expenses for existing stations. However, this model is not sufficient to fund capital expenses such as additional bicycles or stations and does not allow for desired expansion now or in the future.

The other participating municipalities have been able to expand their networks due in large part to private/institutional station sponsorships, linkage fees from new development, advertising dollars derived from the station kiosks, investment of municipal dollars into the system and title sponsorship funds from New Balance, which infused a total of \$1,050,000 into the system over three years. Brookline's share of the New Balance sponsorship was \$32,000, which has been used to partially subsidize operations expenses. The need to direct limited private and public funding to subsidize operations fees has made it impossible to add bikes and/or stations in Brookline over the past three

years. Meanwhile, there is a desire to add stations in Brookline as a means of increasing and enhancing multi-modal transportation options available to residents and to enhance the interoperability of the regional Hubway network.

Over the past two years, the current system operator has gone through an organizational transition. Alta Bicycle Share, Inc., who also operated other notable bike share systems, including CitiBike in New York, Capital Bike Share in Washington, D.C. and Bay Area Bike Share in San Francisco, was acquired by Motivate International, Inc. in the winter of 2014. Following the acquisition, several new staff members were hired, including a new CEO with extensive worldwide transportation systems experience. Additionally, the company's headquarters were relocated from Portland, Oregon to Brooklyn, New York and Hubway's general manager was reassigned to San Francisco to oversee a large public/private expansion effort not unlike the current model being pursued by the Hubway communities.

During the transition, all of the Hubway communities experienced a decline in service, including routine operational issues such as station rebalancing and in bigger picture tasks such as timely delivery of new bicycles and stations to fuel continued system growth. At that time, it became clear that the system's financial and operational models needed to be overhauled both for Brookline and the system as a whole, in order for the system remain viable and so that the that operator has the resources needed to deliver a service that maximizes user satisfaction and that meets each community's expansion goals.

With Brookline and Motivate's current contract expiring in April of 2017, and in anticipation of changes necessary for the system to continue, the Selectmen appointed the Brookline Hubway Advisory Committee (BHAC) in April of 2015 to analyze current operations and possible expansion opportunities for the Town as part of its continued participation in the Hubway Bicycle Share system. The BHAC met four times between April 2015 and February 2016 to review the financial mechanisms that support the existing program and to explore funding opportunities that could assist the Town in fostering a more financially and operationally sustainable bicycle share system compatible with the regional Hubway network. Additionally, over that same time frame, staff from Brookline and the other participating communities, including Boston, Cambridge and Somerville, met to discuss many of these same issues at a regional level.

Both the BHAC and participating communities analyzed and discussed a number of items including:

- Current operations and the existing financial and operational models
- Opportunities for increased membership and awareness of Hubway within Brookline
- Prospective new locations for additional stations and/or docks
- Private, public and/or non-profit partnerships, and
- Funding sources that will provide continued financial stability and enhance the operations of the overall network with respect to connectivity and user experience

After reviewing the system at the local and regional level, the BHAC and the participating communities determined that several changes are necessary in order for Brookline to sustain its involvement in the system as well as for the system as a whole to remain viable. As the participating communities were preparing to issue a Request for Proposals (RFP) through the Metropolitan Area Planning Council (MAPC) for a new system operator, the BHAC made a series of recommendations focused on enabling Brookline to strengthen its financial position and to expand the number of Hubway stations in town in a responsible and equitable manner, while improving the day-to-day operations of the regional system. Many of the recommendations were ultimately woven into the RFP, which largely focuses on soliciting proposals under a revenue sharing financial model that incentivizes the operator to provide a high level of service to users and where a title sponsorship funds system operations and expansion.

Responses to the RFP are due by Friday, September 16th, after which a Selection Committee comprised of representatives from each of the participating communities will review qualified proposals, interview respondents and ultimately select a vendor. It is expected that the Selection Committee will choose an operator with the experience and the capacity to implement financial and operational systems and to manage the entire system, including day-to-day operations, fundraising and marketing. Following the selection process, each participating municipality will have the opportunity to execute a contract with the selected operator.

Bicycle sharing provides a number of benefits for the Town of Brookline. It provides access to services, social activities and transit for people who might otherwise drive. Bicycle sharing also has positive effects on public health by encouraging active transportation and reducing our carbon footprint. In addition, by reducing demand for parking and roadway capacity, bicycle sharing benefits those who drive as well.

In order to ensure the continued success of the next iteration of the Hubway system, the participating communities have collectively established specific parameters that will enable each municipality to expand their network of stations in a manner that shifts most of -- and in the case of Brookline, all of -- the financial risk on to the operator. Under the relevant provisions of Massachusetts General Laws Chapter 30B, s. 12, the approval of Town Meeting is required to authorize the Town to enter into a contract of this nature for a period of greater than three years. If passed by Town Meeting, this article will authorize the Selectmen to enter into a longer-term contract with the operator, thereby allowing to operator to procure a long-term title sponsorship on behalf of the Hubway municipalities. In general, the greatest financial benefit from sponsorships is obtained when long-term relationships are forged; a contract term greater than three years will enhance the selected operator's efforts to maximize resources and achieve all of the outcomes envisioned in the RFP.

ARTICLE 21

Submitted by: Department of Planning & Community Development

Presently, aircraft landing areas are not a permitted use under the Town's Zoning By-law. However, the Massachusetts Appeals Court recently decided that "[a]ny part of a town zoning bylaw purporting to regulate the use and operation of aircraft on an airport or restricted landing area could not take effect until submitted to and approved by the

aeronautics division of the Department of Transportation.” Hanlon v. Town of Sheffield, 89 Mass. App. Ct. 392 (2016). Consequently, this Warrant Article is submitted in an effort to address this decision, meet the goals of the Town’s Zoning By-law, and ensure public safety.

ARTICLE 22

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

Introduction. This article emerges from the work of the Moderator’s Committee on Zoning FAR. The Committee had the following charge:

The Moderator’s Committee on Zoning-FAR was created in response to Warrant Article 12 at the November 2015 Town Meeting. Article 12 sought to modify the definition of “habitable space” in the Zoning By-Law to restrict the construction of out-sized homes. The potential impact of the proposed change on existing homes was noted and alternative approaches were suggested. Town Meeting voted that “the subject matter of Article 12 be referred to a Moderator’s Committee with the request that a preliminary report be presented at [the] Spring 2016 Town Meeting with the goal that a new Warrant Article be presented to the Fall 2016 Town Meeting.”

The Committee members are Richard Benka (former Selectman, former chair Selectmen’s Zoning By-Law Committee (“ZBLC”)), chair; Jesse Geller (Chair, Zoning Board of Appeals; ZBLC); Linda Hamlin (Chair, Planning Board; ZBLC); Marian Lazar (Conservation Commission; ZBLC); M.K. Merelice (TMM Pct. 6; ZBLC); and Lee Selwyn (TMM Pct. 13 and the Article 12 petitioner). The Committee has received particularly useful assistance from Michael Yanovitch, Deputy Building Commissioner; Gary McCabe, Chief Assessor; Jed Fehrenbach, GIS Administrator/Developer; and Lara Curtis Hayes, former Senior Planner.

This warrant article contains two types of potential amendments to the Zoning By-Law. There are, first of all, **recommendations** by the Committee that are designed to address potential abuses of the Zoning By-Law identified by Article 12 in November, 2015, without creating zoning nonconformities for existing homes. The Committee also presents and discusses further **options** for By-Law amendments favored by some but not all members of the Committee.

The Problems Being Addressed. As explained more fully in the Committee’s report to the Spring 2016 Town Meeting (copy attached as Appendix A), one of the tools used in the Brookline Zoning By-Law to control the bulk of structures is “**Floor Area Ratio**” or “**FAR**.” The permissible Floor Area Ratio of a structure is essentially defined as the “**Gross Floor Area**” or “**GFA**” (in square feet) of a building divided by the square footage of a lot. The base FAR limits for structures in the various zoning districts of the Town are set forth in Table 5.01 of the Zoning By-Law.

Under Brookline’s Zoning By-Law, **Gross Floor Area** excludes spaces in “cellars, basements, attics, [and] penthouses,” if they are “not habitable.” “**Habitable Space**,” in turn, is currently defined as “[s]pace in a structure for living, sleeping, eating, or cooking; otherwise used for human occupancy; **or finished or built out** and meeting the State

Building Code requirements for height, light, ventilation and egress for human habitation or occupancy.”

As a result of this series of definitions, **“unfinished” basement or attic space (unlike first or second floor space) has not been counted when calculating GFA, even if it meets all State Building Code requirements for habitability and adds substantially to the bulk of a building.**

Section 5.22 of the Zoning By-Law contains **exemptions** that allow residences in certain zoning districts to **exceed the otherwise-allowable base FAR set forth in Table 5.01**. These exemptions were designed to “allow a limited increase in floor area in order to accommodate families who need additional space in an existing dwelling unit or house” and thus “promot[e] the stabilization of residential neighborhoods in the Town.”

Section 5.22.3 allows FAR to rise to 130% of the otherwise-allowable FAR through exterior additions or interior conversions; this section requires a **special permit** and thus requires **both notice to abutters and approval by the Zoning Board of Appeals**. Among other provisions, the special permit process requires that “the impact ... on abutting properties” be considered, that additional GFA be “located and designed so as to minimize the adverse impact on abutting properties and ways,” and that the ZBA find that the “specific site is an appropriate location for such a ... structure” and that the “use as developed will not adversely affect the neighborhood.” *See* Zoning By-Law §§ 5.22, 9.05.

However, **Section 5.22.2** (added in 2002) provides special rules for the conversion of **basement and attic space** for single- and two-family homes. Section 5.22.2 allows such space to be converted **“as-of-right,”** that is, **without a special permit** and thus without **notice to abutters** or **findings of no adverse impact on the neighborhood**. Moreover, the provision allows the otherwise-allowable FAR to be exceeded by **50%**, rather than just 30%.

The potential impact of Section 5.22.2 is exacerbated by the fact that a “basement” under the Brookline Zoning By-Law, contrary to the State Building Code, is defined as any “portion of a building which is partly or completely below grade.” Zoning By-Law § 2.02.1.⁴³ Thus, even if the vast majority of the “basement” is well above grade with windows and ground level access, it is still considered a “basement.” In addition, there is no limit on the bulk of an “attic,” which is simply defined as the “[s]pace between the ceiling beams, or similar structural elements, of the top story of a building and the roof rafters.” *Id.* § 2.01.3. Thus, an “attic” or “basement” under the Zoning By-Law could have such elements as eight-foot ceiling heights, full

⁴³ In contrast, the State Building Code states that a basement is considered a “story above grade plane” if, for example, the floor above the “basement” is more than 6 feet above “grade plane” (basically, the average finished ground level adjoining the building’s exterior walls), more than 12 feet above the finished ground level at any point, or more than 6 feet above the finished ground level for more than 50% of the building perimeter. *See* International Building Code Sec. 202; 780 CMR 202 (“Story Above Grade Plane”). The relaxed “basement” definition in Brookline’s Zoning By-Law follows an outdated definition of “basement” and has not been updated to conform to changes in the International Building Code or the State Building Code.

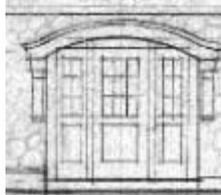
windows, full stairway access, and, in the case of a “basement,” ground level access. Examples of the potential for abuse are discussed below.

The addition of Section 5.22.2 in 2002 opened the door to “gaming” of the Zoning By-Law. Because unfinished basement and attic spaces are excluded from the calculation of GFA, new single- and two-family residences could be constructed as-of-right with no limit on the bulk of such “unfinished” spaces. They could then be “finished,” again as-of-right, under Section 5.22.2 with no notice to abutters or review by the Board of Appeals. This would, in essence, permit the construction of houses 50% larger than otherwise allowed under the By-Law.

In an effort to deal with this potential “McMansion loophole,” Section 5.22 as initially adopted in 2002 originally included language that limited the basement-and-attic exemption to existing properties. That language was, unfortunately, struck down by the Attorney General as violating the “uniformity” provision of Ch. 40A, §4 of the General Laws by impermissibly distinguishing between new and existing structures. In 2005, Town Meeting responded by adding a provision allowing FAR exemptions only when ten years had elapsed since the issuance of the original Certificate of Occupancy for a property. It was thought that if attic or basement space exceeding the allowable FAR had to be left vacant for ten years, there would be no incentive for developers of new homes to overbuild additional space. This 10-year waiting period was approved by the Attorney General.

Unfortunately, **the 10-year waiting period has not proven to be the disincentive that was intended.** It has failed to close the “McMansion loophole” or otherwise achieve its stated goals of preventing the demolition of smaller, affordable homes or the construction of new out-of-scale homes that are ready for interior buildouts. “Square footage sells,” and the Deputy Building Commissioner estimates that about 90% of new one- and two-family homes are therefore built with unfinished “attic” and/or “basement” spaces that could take advantage of the 50% basement/attic expansion, either legally after 10 years or illegally prior to that time. Because the space is shown on plans as “unfinished” and thus excluded from the calculation of GFA, **abutters are not able to challenge** the inclusion of the space or the resulting bulk of the building, **or, indeed, even notified** of the plans at the time of initial construction.

A number of new houses were identified that were advertised with square footage exceeding the allowable FAR, including one where the developer told Town Meeting Members looking at the property that he would “finish” the attic immediately after the house was sold, and another where a new house was originally designed with “unfinished” space in the “basement” identified as “storage” space, despite the fact that it was largely above grade, had a formal doorway exiting to grade (see illustration), a fireplace, and full-height double windows, and where there was an 1800 square foot “unfinished” “attic” with eleven full-height double windows and 8-foot ceiling clearance.



The Committee's Recommendation. The Committee was thus faced with the task of finding a path that satisfied several goals: precluding “gaming” of the Zoning By-Law; discouraging construction of “McMansions” that are out-of-scale with the existing neighborhood fabric; preserving more affordable and modest existing structures that are consistent with the scale of our neighborhoods; avoiding the creation of zoning nonconformities for existing buildings; continuing to facilitate the ability of residents to remain in their homes by allowing the conversion of non-habitable space within existing structures into habitable space; and, finally, complying with state law provisions potentially precluding distinctions between existing and new structures within a zoning district. The problem of “McMansions” could theoretically be addressed by limiting the definition of “basement” to conform to state law and by broadening the definition of “habitable space” to include even basement and attic space that was unfinished, but this would create zoning nonconformities for existing homes that are legal under the existing By-Law. Moreover, the Committee has noted that there can be cases where larger homes do not happen to be out-of-scale with abutting properties or the neighborhood.

The Committee thus recommends amending Section 5.22.2 (the basement and attic conversion subsection) so that it is more consistent with the rest of Section 5.22. Section 5.22.2 now requires only “façade and sign design review” for basement and attic conversions and then only for exterior modifications. Under this reduced level of “façade” review even for exterior modifications, no notice is given to abutters, abutters have no opportunity to comment, and the Zoning Board of Appeals is not required to make findings that protect abutters or the neighborhood.

The warrant article **would require a special permit for basement and attic conversions when exterior modifications are involved.** The special permit process already applies to other conversions. Unlike the “façade” review process, it will result in abutter notice and Board of Appeals review with standards designed to protect abutters and the existing neighborhood. Members of the Committee could see no justification for requiring special permits and abutter notification for some conversions but not others, at least where exterior modifications were involved. These changes are accomplished in the amendments in Sections D (references to design review and special permit sections); E (deletion of “as of right” in the introductory paragraph to Section 5.22.2; changes in Section 5.22.2.a) and H (deletion of reference to façade review for basement and attic conversions) of the warrant article.

Moreover, given the reality of illegal conversions of basements and attics prior to the expiration of the 10-year waiting period, the Committee believes it is critical to “catch” oversized unfinished “basements” and “attics” at the time they are constructed. Ironically, the Zoning By-Law now requires a special permit for the conversion of interior space to habitable space under Section 5.22.3, but **requires no design review at all** for the construction of **an entire new home** with an oversized “attic” or for the addition of an entire oversized “attic” to an existing home, as long as the attic is identified as “unfinished.” Such unfinished space not only adds to the bulk of a building, but also is ripe for illegal conversion.

The Committee thus recommends **that a special permit be required for the construction of unfinished basement and attic space** that substantially meets State Building Code standards for habitability and **that, if finished or converted to habitable**

space, would cause the space to exceed the otherwise permissible FAR for the building. If an “unfinished” space would, for example, merely require the addition of windows or doors to become habitable in excess of FAR limits, it would require a special permit at the time of original construction, since even without windows or doors the original construction would create oversized bulk. The proposed test of whether the State Building Code would “substantially” be met is designed to preclude, for example, the ploy used in the past of constructing attic or basement spaces which, though able to be used for occupancy, are 6 feet 11 inches in height rather than 7 feet as set forth in the Building Code. There would necessarily have to be some judgment exercised by the Building Department, Planning Board and Board of Appeals. The article also contemplates that an applicant for a special permit be held to representations about the amount of “unfinished” space that will ultimately be converted to finished, habitable space. Boards should be guided by the intent of §5.22 to stabilize neighborhoods by accommodating families who find that they need additional space, rather than destabilizing neighborhoods by creating incentives for teardowns. Because, under Ch. 40A, §11, Board of Appeals special permit decisions must be recorded before a Certificate of Occupancy is issued, any conditions imposed by the Board would be in the chain of title and provide notice to subsequent purchasers. These changes are found in Paragraph A of the warrant article, in proposed §5.09.2.n of the Zoning By-Law.

The warrant article also includes provisions clarifying existing language and explicitly incorporating Building Department policies. The term “modifications” and references to design review and special permit provisions of the Zoning By-Law are added in various locations, to track terminology used in §5.22. precluding the use of the exemptions in Section 5.22 to increase the number of units in a structure and making clear that the exemptions of Section 5.22 do not immediately apply where a preexisting building has been substantially demolished or the number of units increased, with the 10-year waiting period running from the time of such demolition or unit increase. The proposed provision substantially incorporates a definition of “demolition” currently contained in the Town’s Demolition Delay By-Law, Section 5.3.2(h) of the General By-Laws, and therefore would not require any additional calculations by the Building Department to determine whether the provision applies. These changes appear in Paragraph D (Sections 5.22.1.a, 5.22.1.c) of the warrant article.

The warrant article also includes a provision that anticipates the possible passage of state legislation authorizing “accessory dwelling units” on a statewide basis. Senate Bill 2311, passed by the Senate but not the House in the most recent legislative session, would invalidate local ordinances prohibiting or requiring special permits for “accessory dwelling units” in single-family districts. That bill, however, allows “reasonable regulations concerning dimensional setbacks and **the bulk** and height of structures.” Because Section 5.22 of our Zoning By-Law regulates bulk, it would hopefully be found consistent with a statute such as Senate Bill 2311. But if the long-standing limitation in Section 5.22 on the creation of additional units in connection with FAR exemptions were somehow invalidated, the provision that appears in Paragraph D (final sentence of Section 5.22.1.a) of the warrant article would foreclose use of the FAR exemptions contained in Section 5.22. The FAR limits on bulk contained in Table 5.01 of the Zoning By-Law would apply. Thus, in accordance with state law, accessory dwelling units could be created in zoning-compliant buildings, but developers would not have license to exceed the Town’s FAR (bulk) limitations in creating such units. The Town would

thereafter be able to further consider and refine its desired approach to issues of density and bulk.

Recent court decisions interpreting Chapter 40A, section 6 of the General Laws have also allowed the expansion of zoning nonconformities in single-family and two-family homes where the expansion is not “substantially more detrimental” to the neighborhood. Insofar as Section 5.22 provides FAR exemptions subject to considered limitations and standards designed to protect neighborhoods, the proposed language in Paragraph D (final sentence of Section 5.22.1.b) expresses the intent that the Board of Appeals be guided by those limitations and standards in applying Chapter 40A, Section 6.

It must be emphasized that the Committee’s proposed special permit requirements would not make construction of unfinished attic and basement space illegal, nor would they include such unfinished space within the calculation of FAR and thus create zoning nonconformities for existing homes. In consonance with state law, the article does not discriminate between existing and new buildings: the requirements would be applicable to both new buildings (e.g., the construction of a new house with an oversized “attic”) and existing buildings (e.g., the addition of an oversized “attic”). Finally, the proposal would not add significantly to the workload of Town boards, since there have been fewer than 25 new single- and two-family homes constructed each year and since Section 5.22.2 already requires some design review of exterior modifications needed to convert basements or attics of existing homes, albeit review that gives no rights to abutters. The critical difference under the Committee’s recommendation is that abutters would be provided with notice and an opportunity to comment on proposed construction, and standards protecting abutters and the neighborhood would be explicit and incorporated in written decisions.

Further Options Offered by the Committee. The Committee was divided about the pros and cons of other changes, and therefore decided to present these changes as Options for consideration by other Boards and Commissions and by Town Meeting, rather than as recommendations of a unanimous Committee. By including these changes in the warrant article, the Committee has provided Town Meeting with the option of either accepting them or maintaining the status quo by rejecting them; either result would be within the “scope of the article.” Committee members look forward to consideration by other boards and commissions (e.g., the Planning Board, the Zoning By-Law Committee, the Selectmen and the Advisory Committee, including its Planning and Regulation subcommittee).

1. The first change, initially proposed by the Department of Planning and Economic Development, would limit the bulk of single-family and two-family houses after basement and attic conversions under Section 5.22.2 to 130% of allowable FAR (rather than its current 150%). On the one hand, the change to 130% would conform to the 130% allowed for other interior conversions under Section 5.22.3. Moreover, some members of the Committee believed that this change would restrain the bulk of new construction, since developers and potential buyers would know that any “unfinished” space over 130% of FAR could not legally be converted to habitable space. On the other hand, other members were concerned about the change potentially creating zoning nonconformities for existing houses.

Unfortunately, the data does not provide a definitive answer, which led to the differing views of Committee members. The Committee, as described in its report to the Spring 2016 Town Meeting, has analyzed properties in the Town by combining information in the Assessor's database with zoning district information. Although measurements in the Assessor's database can differ somewhat from actual survey and architectural measurements done at the time of application for a building permit, the database does provide a useful picture of the impacts of potential zoning changes.

As shown on the following table, reducing the basement/attic exemption from 150% to 130% could potentially make up to about 313 out of 5066 single- and two-family houses in S, SC and T districts nonconforming, or about 6% of those houses. However, this is the **maximum** number of houses in the listed districts that could be affected, since the change would not have any effect on houses where the excess square footage was not created by the conversion of an attic or basement (e.g., where the excess square footage is on the first and second floors). Those houses (in unknown numbers) would already be nonconforming regardless of the change in Section 5.22.2, so the readily available data is not definitive.

| Zone | Type | FAR (By-Law Table 5.01) | Total | Over 100% Of FAR | Over 130% Of FAR | Over 150 % Of FAR | Between 130% And 150% Of FAR |
|---------------|-------------|--------------------------------|--------------|-------------------------|-------------------------|--------------------------|-------------------------------------|
| S-7 | 1-Fam | 0.35 | 1436 | 643 | 237 | 107 | 130 |
| S-10 | 1-Fam | 0.30 | 1032 | 488 | 189 | 108 | 81 |
| S-15 | 1-Fam | 0.25 | 570 | 169 | 52 | 18 | 34 |
| S-25 | 1-Fam | 0.20 | 138 | 51 | 25 | 14 | 11 |
| S-40 | 1-Fam | 0.15 | 205 | 53 | 13 | 2 | 11 |
| SC-7 | 1-Fam | 0.35 | 101 | 64 | 38 | 23 | 15 |
| SC-7 | 2-Fam | 0.50* | 26 | 14 | 7 | 3 | 4 |
| SC-10 | 1-Fam | 0.35 | 27 | 11 | 5 | 3 | 2 |
| SC-10 | 2-Fam | 0.50* | 1 | 0 | 0 | 0 | 0 |
| T-5 | 1-Fam | 1.00 | 697 | 65 | 24 | 11 | 13 |
| T-5 | 2-Fam | 1.00 | 482 | 30 | 8 | 4 | 4 |
| T-6 | 1-Fam | 0.75 | 159 | 22 | 6 | 0 | 6 |
| T-6 | 2-Fam | 0.75 | 192 | 23 | 2 | 0 | 2 |
| Totals | | | 5066 | 1633 | 606 | 293 | 313 |

*FAR for Converted 1-family detached dwellings

If Town Meeting chooses to reduce the allowable basement/attic exemption from 150% to 130%, the necessary change is set forth in the last paragraph of Section E of the warrant article.

2. The second change deals with another issue noted in the Committee's report to the Spring 2016 Town Meeting: the potential for doubling or tripling the density in T Districts in the Town, particularly when the potential for expansion of FAR under Section 5.22 is included. These T Districts exist in 15 of the Town's 16 precincts, and have already triggered concerns about inappropriate development.

As noted in the Committee's Spring 2016 report, there are hundreds of single-family houses in these zones that could potentially become two-family buildings, either by conversion or by replacement. There is also very substantial potential for additional bulk to be added to buildings now or in the future. As seen in the preceding table, the base T-District FAR (1.0 in T-5 Districts, 0.75 in T-6 Districts) is significantly higher than the

allowable density in other single- and two-family zoning districts in the Town, and most existing dwellings are well under the allowable base FAR. Moreover, the exemptions in Section 5.22 of the Zoning By-Law raise the allowable FAR substantially higher than the base FAR of Zoning By-Law Table 5.01.

Some members of the Committee therefore believe that potential overbuilding in T Districts (and F and M districts, which also have high base FARs) could be restrained by making Section 5.22 applicable only in S and SC districts. The option for Town Meeting to make these changes appears in Paragraphs E (reference to S and SC Districts in Section 5.22.2 introductory paragraph), F (Section 5.22.3.a.1 changes) and G (elimination of Section 5.22.3.b.2) of the warrant article. Other members of the Committee note that this change could create nonconformities and, moreover, would only address cases where an applicant was seeking to exceed the base FAR limits. In the view of these members, the fundamental problem is the fact that the base FAR limits in T Districts are so high, and the Town should grapple with that fundamental issue.

Summary. The goal of the recommended zoning amendments is to close loopholes and anomalies that have emerged in our Zoning By-Law, primarily by requiring a further level of review before the construction of oversized, though unfinished, basement and attic spaces that could be converted to habitable space, either legally or illegally. The Committee recognizes that in some cases these spaces may be architecturally appropriate, and not have an adverse impact on, or be out-of-scale with, abutting properties or the neighborhood fabric, in which case a special permit would be appropriate. In other cases the converse would be the case and it would be necessary for the Town boards to act to prevent circumvention of the letter and spirit of the Zoning By-Law, either by denying a special permit or by imposing conditions to protect abutters and the neighborhood.

ARTICLE 23

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

Background The November 2015 Special Town Meeting considered Warrant Article 10 ("Article 10"), which proposed banning operation of all leaf blowers in Brookline. The subject matter of Article 10 was referred to a Moderator's Committee, which was organized in December 2015, adopting the following charge:

"To review and evaluate the provisions of the Town's By-laws, Article 8.15 – Noise Control (with respect to Leaf Blowers), and Article 8.31 - Leaf Blowers. The Committee will consider the Selectman's Noise By-Law Committee report, leaf blower abuses, inappropriate uses, best practices, provisions used in other towns, property owners' responsibilities, landscaping service provider responsibilities, Town responsibilities, enforcement issues, and other relevant matters."

The Committee has, to date, met 16 times and:

2. Reviewed the Selectman's Leaf Blower By-law Committee's report and findings; Reviewed current noise control and leaf blower regulations (i.e. Articles 8.15 and 8.31);
3. Held a public hearing on the subject matter of Article 10, current Noise and leaf blower by-laws, and related matters; Examined leaf blower complaint data and

- complaint “hot spots”;
4. Conducted and reviewed the results of an online survey, with some 1,300 responses and over 3,600 comments;
 5. Discussed the leaf blower regulations of more than 20 other municipalities;
 6. Evaluated noise levels and leaf clearing efficiency of different machines (both gas and electric) in a live trial conducted by the Parks & Recreation Department;
 7. Learned about future technology developments for noise and battery improvements from a manufacturer; Met with various Town departmental officials to discuss leaf blower operations, enforcement, health issues related to leaf blower operations, and the legal aspects of current and proposed regulations; Considered a variety of solutions for leaf blower noise mitigation;
 8. Prepared two warrant articles (i.e., By-Law amendment and a resolution related to mitigation and enforcement) for Town Meeting consideration.

Committee Findings

The Committee determined that Brookline has two significant leaf blower related issues: Huge leaf drops in the Fall, with residual debris in the Spring, which many consider require the use of leaf blowers for adequate cleaning. (The Committee found that the majority of towns that severely restrict leaf blower usage are primarily in California, where leaf conditions are considerably different from those in Brookline);

1. Noise from leaf blowers, which many consider disruptive to the quality of life in Brookline.

Harmful emissions from leaf blowers was found to be negligible compared to other sources of similar emissions. Both the Town’s Public Health Department and the Advisory Committee on Public Health, informed the Committee that there was no compelling public health threat from leaf blower use.

The Brookline Police Department provided the Committee with statistics of leaf blower complaints as well as a map showing the distribution of complaints around town and 10 particular “hot spots” which accounted for over 50% of such complaints. The Police Department informed the Committee that leaf blower complaints are currently placed on a “Priority” response footing.

As a result of its research and significant public input, the Committee concluded that the most prudent approach was to seek practical solutions that would help reduce leaf blower noise overall in Brookline. The Committee concluded that a “one size by-law that fits the whole town” would be difficult to draft and promulgate due to the variations in lot sizes, tree and building density in various neighborhoods, and that a system that encourages more local solutions, often needed at the “street level,” would give residents greater noise relief.

The Committee, in this Warrant Article and its companion Resolution Warrant Article, seeks to advance solutions that: increase awareness of the noise problem, educate landscapers (and other users) of leaf blower “best practices,” involve homeowners (property owners) in assisting with compliance with regulations, and enable constructive dialog for localized solutions to decrease noise (e.g. through negotiations with neighbors).

Proposed Changes

There currently are two by-laws that govern leaf blower usage, Article 8.15, Noise Control, and Article 8.31, Leaf Blowers. The Committee recommends putting all leaf blower regulation in Article 8.31, and, accordingly, removing leaf blower regulation from Article 8.15. The proposed language of both Article 8.15 and Article 8.31 reflect this change.

The most significant recommended change is to make homeowner/property owners responsible for by-law compliance, and hold them responsible for violations committed by their agents or contractors.

This change will, the Committee believes, increase homeowner/property owners' awareness to the noise concerns of neighbors and encourage homeowner dialog with landscape contractors to reduce noise.

Another significant change is contained in the Committee's companion Warrant Article, a Resolution urging the Board of Selectmen to appoint a civilian Leaf Blower Code Enforcement Officer who is not part of the Police Department. The Code Enforcement Officer would play an important role, working with property owners, landscape contractors and complainants (see further discussion in the Resolution explanation).

Article 8.31, as proposed, would make the homeowner/property owner liable for by-law violations by their agent or contractor, and would provide for warnings and fines on the property owner. A mandatory first warning is recommended, with subsequent violation fines increased, from \$50, \$100, and \$200 for subsequent offenses, to \$100, \$200 and \$300 for subsequent offenses.

The other changes to Article 8.31 that the Committee proposes are:

1. Change the gasoline powered Fall usage period, currently September 15th to December 15th, to October 1st to December 31st;
2. Change the weekend and holiday time period for permitted operation currently, 9am to 8pm, to 9am to 6pm;
3. Add the exemption process currently included in the Noise Control by-law;
4. Exempt leaf blower use on land parcels with open space greater than 2 acres;
5. Limit simultaneous operation of leaf blowers, to 2, on parcels of 7,500 sq. ft. or less (including abutting sidewalks and roadways)
6. Complainants will be required to provide their names and contact information as well as the address of the alleged violation.

The change in the Fall dates gives two more weeks of "quiet time" when leaves have generally not yet fallen. Moving the end date to December 31st allows for a more thorough clean up (weather permitting) that lessens the need for spring clean-up. The change in time on weekends and holidays also facilitates more "quiet time".

The Committee believes that the Town should retain its exemption from the by-law due to the considerable area of parks, open spaces, school campuses, public ways, and the

like, that need to be cleaned. An exemption process, already in the noise by-law, has been carried over for any resident to request an exemption from leaf blower regulations. The two acre open space exemption is designed to take into account golf courses, private schools and other entities that have a significant open space to clean, without a need to identify such properties specifically. In order to facilitate the proposed Code Enforcement Officer's role and effectiveness, the Committee felt it important to require that complainants give their name and contact information, and address of the alleged violation. Note, that the Committee felt that the current permitted noise level in Article 8.15 for gas and electric machines should remain at 67 dBA going forward and as is now found in Article 8.31.

The Committee believes that these changes, smaller in scope than its key significant recommendations, will help to reduce overall noise from leaf blowers.

Submitted by the Moderator's Committee on Leaf Blowers:

John Doggett, Chair, TMM P13
Dennis Doughty, Secretary, TMM P3
Jonathan Margolis TMM P7
Maura Toomey, TMM P8
Benedict Hallowell TMM P15
Neil Gordon, TMM P1
Faith Michaels, TMM P5

ARTICLE 24

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

Background

The Moderator's Committee on Leaf Blowers has simultaneously submitted a Warrant Article to address changes in the current noise and leaf blower By-laws, and reference is made to the Petitioners' explanation which accompanies that Warrant Article. This Resolution is intended to assist the Town in reducing noise associated with leaf blower usage.

Committee Approach

The Committee has determined the current policy of using the Police to warn and fine violators, primarily landscape contractors, has had limited effectiveness.

The Committee has received numerous comments that residents do not complain to the Town about leaf blower noise, as they believe the Police should be dealing with public safety issues, first and foremost. Judging that leaf blower By-law violations do not constitute a public safety issue, many residents do not report leaf blower violations. Also, the Committee believes that awareness, education and dialog are key elements that are missing in the current approach to noise reduction.

The Committee believes that by appointing a civilian Code Enforcement Officer to enforce the new by-law, that the Officer can be more pro-active and promote negotiation among neighbors and landscape service providers for specific solutions to local

situations. Nonetheless, all the tools of warnings and fines would remain available, if deemed appropriate.

This Officer would have significant leverage, alongside the proposed change making the property owners responsible for By-Law compliance, to produce changes in behavior to reduce noise levels, by working with all parties, complainant, neighbors and landscape providers, to improve compliance, negotiate, and implement local solutions, particularly that of excessive use.

By being able to focus on noise issues and resolutions, residents and landscape service providers alike will come to use this Officer resource to manage and solve problems that until now, have been elusive and contentious. The requirement to report to the Selectmen periodically will also provide an incentive to drive improvements.

Submitted by the Moderator's Committee on Leaf Blowers:

John Doggett, Chair, TMM P13
Dennis Doughty, Secretary, TMM P3
Jonathan Margolis TMM P7
Maura Toomey, TMM P8
Benedict Hallowell TMM P15
Neil Gordon, TMM P1
Faith Michaels, TMM P5

ARTICLE 25

Submitted by: Harry Friedman, TMM12

The Town has stated that it plans to initiate a “Pay-As-You-Throw” (PAYT) system commencing in spring 2017. The issue of changing the way in which the town charges for collection of residential refuse, from one in which all residents pay the same flat fee, to a PAYT system, whereby one pays more for disposing of more waste, has been studied by town committees and been before Town Meeting a number of times over the years. Currently, the power to change the way in which the town collects refuse lies with the Board of Selectmen. The proponents of this warrant article feel that the ultimate decision on such a basic municipal function should be made by Town Meeting.

A brief chronology of the issue follows:

- 1921—Town starts to collect solid waste, paid for by property taxes.
- 1989—after the town incinerator closed, refuse disposal costs went from \$18 per ton to \$75 per ton. This led to the institution of an annual refuse fee of \$150 per household, which was meant to cover 70% of collection and disposal costs.
- 1992—Advisory Committee urges the Board of Selectmen to adopt a system where the fee charged would reflect usage, i.e. how much trash one put out.
- Early 1990s—a proposal before Town Meeting to move to a PAYT system was defeated. (Source: page 26-5, *Combined Reports* Spring 2009.)
- 2007—refuse fee increased to \$200.
- June 2008—Board of Selectmen establish an 11-member committee to study ways in which to reduce solid waste and increase recycling.
- January 2009—the committee recommends a bag-based PAYT system.

- May 2009—article 26 comes before Town Meeting. It is a resolution calling on the Board of Selectmen to adopt a PAYT model. The Advisory Committee recommends No Action. The Board of Selectmen recommends referral to a new Selectmen’s Committee to further study the issue. The Advisory Committee reconsiders, and recommends referral to a Moderator’s Committee. Town Meeting votes referral to a Moderator’s Committee, with a report due by November 2010.
- May 2013—the Moderator’s Committee issues its final report, recommending adoption of a PAYT model.
- May 2015—the DPW announces it will go to a PAYT model. Town meeting passes a resolution, by a vote of 192 to 7, urging the town to come up with an exemption or exception system for those residents for whom the use of Toter carts would present a burden.

Despite recent actions, the issue of whether or not to initiate or recommend a PAYT system has never come back to Town Meeting for its approval.

Whether or not one favors a PAYT system, the issue is important and affects many of the Town’s residents. It concerns a basic municipal service for which residents of the town pay. The decision to make such a major change should not be made by the Town administration or the Board of Selectmen alone. The decision needs to be made by Town Meeting, especially given that it was Town Meeting that in the past was the body asked to make the decision. This bylaw amendment seeks to formally make Town Meeting the body that makes the decision regarding PAYT.

A marked-up version of Article 8.16, the bylaw regarding collection of waste, follows.

**ARTICLE 8.16
COLLECTION AND RECYCLING OF WASTE MATERIALS**

SECTION 8.16.1 PURPOSE

Article 8.16 is enacted to maintain and expand the Town’s solid waste collection and recycling programs under its Home Rule powers, its police powers to protect the health, safety and welfare of its inhabitants and General Laws, Chapter 40, Section 21; Chapter 21A, Sections 2 and 8; Chapter 111, Sections 31, 31A and 31B and to comply with the Massachusetts Waste Ban, 310 CMR 19.

SECTION 8.16.2 SCOPE

This By-Law and the regulations adopted hereunder shall govern and control all aspects of the collection, storage, transportation and removal of solid waste and recyclable materials in the Town. The requirements in 8.16, and in the regulations adopted hereunder, are applicable to all owners and occupants of all property in the Town, including,

without limiting the foregoing, owners and occupants of all residential units whose waste is collected as a Town service or by a permitted private hauler; all property managers acting on behalf of owners or occupants of residential units; all owners and occupants of commercial facilities whose waste is collected as a Town service or by a permitted private hauler*; and all haulers permitted to collect municipal waste and recyclables in the Town.

SECTION 8.16.3 RULES AND REGULATIONS

(a) The Board of Selectmen may adopt regulations governing the collection, storage, transportation and removal of solid waste and shall adopt regulations to implement a recycling program in the Town. The regulations adopted by the Board may be amended, from time to time, and may add other categories of waste materials to be separated and recycled, as the Town develops programs and the capacity to collect and recycle new categories of waste materials. Regulations may also include temporary waiver provisions for cause.* Prior to the adoption or amendment of any such regulations the Board of Selectmen shall hold a public hearing thereon, notice of the time, place and subject matter of which, sufficient for identification, shall be given by publishing such notice in a newspaper of general circulation in the town once in each of two successive weeks the first publication to be not less than fourteen days prior to the date set for such hearing or by the posting of such notice on the town's bulletin board in the Town Hall not less than fourteen days prior to the date set for such hearing.

(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.

SECTION 8.16.4 SEPARATION OF WASTE MATERIALS

In order to implement recycling in conjunction with the Town's solid waste collection programs, owners, residents, and occupants of every household, residential unit, commercial facility or other building, whose waste is collected as a Town service or by a permitted hauler, shall separate for collection, in the manner set forth in this By-Law and the regulations adopted hereunder, the

categories of waste materials defined as Recyclable Materials in the Town of Brookline Solid Waste Regulations.

SECTION 8.16.5 MANDATORY SYSTEMS FOR COLLECTION, STORAGE AND REMOVAL OF RECYCLABLES IN RESIDENTIAL AND COMMERCIAL* BUILDINGS

All owners, landlords and property managers of residential and commercial* buildings shall set up systems for the collection, storage, and removal of recyclables generated by the occupants and residents in their buildings, in accordance with the regulations adopted hereunder.

SECTION 8.16.6 PERMITTED HAULERS TO COMPLY WITH ALL REGULATIONS AND TO PROVIDE RECYCLING REMOVAL SERVICES FOR RESIDENTIAL AND COMMERCIAL* PROPERTIES

Every permitted solid waste hauler, as a precondition to receiving a permit to collect solid waste within the Town of Brookline, shall be required to comply with Article 8.16, and the regulations adopted hereunder, and all Department of Public Works and Brookline Health Department regulations for the storage, collection and removal of solid waste and recyclables. Every permitted hauler shall be required to provide its residential and commercial* customers with the services of collecting and properly disposing of recyclables.

SECTION 8.16.7 UN-SEPARATED WASTE MATERIAL

If solid waste (a) is not separated for recycling as required herein and in the regulations promulgated hereunder; or (b) is not separated for recycling, as described in (a) above, and is put out for waste collection; or (c) is not separated for recycling, as described in (a) above, is put out for waste collection and is not collected by the town or a permitted hauler, the owner, manager and occupants of the property (the Property) shall be individually and collectively responsible for removing that solid waste from on or about the public or private way, within twelve (12) hours after the scheduled collection time for such solid waste, and storing it on the Property in a sanitary and safe manner, until it is separated for recycling and removed by the town or a permitted hauler. The owner, manager or occupants of the Property responsible for any one or more of the conditions described in (a) or (b) or (c) above, shall be subject to the enforcement provisions in Article 10.2 and the noncriminal disposition provisions in Article 10.3. Each

day any one the conditions described in (a) or (b) or (c) continues shall constitute a separate violation.

NOTE: All references to permitted private haulers, temporary waiver provisions for cause, and commercial buildings, as noted by an asterisk (*), become effective November 1, 2015.

ARTICLE 26

Submitted by: Harry Friedman, TMM12

The Town currently requires those on town refuse service to put all recyclables into 35-gallon or 65-gallon wheeled containers, commonly called Toters or Toter carts. Starting in the spring of 2017, due to the introduction of mechanized pickup, and in conjunction with the introduction of "Pay-As-You-Throw" (PAYT), regular trash will also be required to be put into Toters, although the Town has said that the options will vary from 18-gallon to 95-gallon containers.

This issue came up in the Spring 2016 Town Meeting. A resolution was introduced regarding trash pickup. It pointed out that these Toters were heavy and unwieldy, and that some households lacked sufficient space to store additional Toters, or lacked space other than in front of the buildings. The resolution asked that criteria be developed to determine which residences would be exempt from using Toters for trash and that official town plastic bags be made an option for those residents granted an exemption. The resolution passed 192 to 7.

To date, no such exemption system has been instituted. In light of that, and in light of the fact that Town Meeting is not scheduled to meet again prior to the introduction of PAYT and mechanization, this article amends the current bylaw to give residents on town trash service the option of using containers other than Toters for both trash and recycling. Recycling Toters are included here because the same characteristics that make trash Toters a hardship for some residents equally apply to the recycling Toters. However, unlike trash, recycling collection is currently under contract to a private hauler. The current contract was based on the fact that Toters would be used for recycling. Therefore, the provisions of the warrant article regarding recycling Toters would not take effect until the earlier of two years or the end of the current contract with the private hauler.

A marked-up version of Article 8.16, the bylaw regarding collection of waste, follows.

ARTICLE 8.16 COLLECTION AND RECYCLING OF WASTE MATERIALS

SECTION 8.16.1 PURPOSE

Article 8.16 is enacted to maintain and expand the Town's solid waste collection and recycling programs under its Home Rule powers, its police powers to protect the health,

safety and welfare of its inhabitants and General Laws, Chapter 40, Section 21; Chapter 21A, Sections 2 and 8; Chapter 111, Sections 31, 31A and 31B and to comply with the Massachusetts Waste Ban, 310 CMR 19.

SECTION 8.16.2 SCOPE

This By-Law and the regulations adopted hereunder shall govern and control all aspects of the collection, storage, transportation and removal of solid waste and recyclable materials in the Town. The requirements in 8.16, and in the regulations adopted hereunder, are applicable to all owners and occupants of all property in the Town, including, without limiting the foregoing, owners and occupants of all residential units whose waste is collected as a Town service or by a permitted private hauler; all property managers acting on behalf of owners or occupants of residential units; all owners and occupants of commercial facilities whose waste is collected as a Town service or by a permitted private hauler*; and all haulers permitted to collect municipal waste and recyclables in the Town.

SECTION 8.16.3 RULES AND REGULATIONS

(a) The Board of Selectmen may adopt regulations governing the collection, storage, transportation and removal of solid waste and shall adopt regulations to implement a recycling program in the Town. The regulations adopted by the Board may be amended, from time to time, and may add other categories of waste materials to be separated and recycled, as the Town develops programs and the capacity to collect and recycle new categories of waste materials. Regulations may also include temporary waiver provisions for cause.* Prior to the adoption or amendment of any such regulations the Board of Selectmen shall hold a public hearing thereon, notice of the time, place and subject matter of which, sufficient for identification, shall be given by publishing such notice in a newspaper of general circulation in the town once in each of two successive weeks the first publication to be not less than fourteen days prior to the date set for such hearing or by the posting of such notice on the town's bulletin board in the Town Hall not less than fourteen days prior to the date set for such hearing.

(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.

SECTION 8.16.4 SEPARATION OF WASTE MATERIALS

In order to implement recycling in conjunction with the Town's solid waste collection programs, owners, residents, and occupants of every household, residential unit, commercial facility or other building, whose waste is collected as a Town service or by a permitted hauler, shall separate for collection, in the manner set forth in this By-Law and the regulations adopted hereunder, the categories of waste materials defined as Recyclable Materials in the Town of Brookline Solid Waste Regulations.

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SECTION 8.16.7 UN-SEPARATED WASTE MATERIAL

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hereunder; or (b) is not separated for recycling, as described in (a) above, and is put out for waste collection; or (c) is not separated for recycling, as described in (a) above, is put out for waste collection and is not collected by the town or a permitted hauler, the owner, manager and occupants of the property (the Property) shall be individually and collectively responsible for removing that solid waste from on or about the public or private way, within twelve (12) hours after the scheduled collection time for such solid waste, and storing it on the Property in a sanitary and safe manner, until it is separated for recycling and removed by the town or a permitted hauler. The owner, manager or occupants of the Property responsible for any one or more of the conditions described in (a) or (b) or (c) above, shall be subject to the enforcement provisions in Article 10.2 and the noncriminal disposition provisions in Article 10.3. Each day any one the conditions described in (a) or (b) or (c) continues shall constitute a separate violation.

NOTE: All references to permitted private haulers, temporary waiver provisions for cause, and commercial buildings, as noted by an asterisk (*), become effective November 1, 2015.

ARTICLE 27

Submitted by: Fred Lebow on behalf of the Naming Committee

On August 16, 2016, the Naming Committee voted unanimously to recommend to Town Meeting that World War II veteran Walter F. Brookings be honored with the naming of a square near 126 Cypress St, the site of his former home.

Lt. Brookings was born and raised in Brookline and graduated with the Class of 1939 from Brookline High School. He joined the United States Army in 1942, was part of the 8th Army Airforce, earned the rank of 2nd Lieutenant, and served in the 384th Bomb Group as co-pilot in numerous B-17 bombers. He died on March 19, 1944 when his B-17, "Lovell's Hovel," shot down by flak, crashed north of St Pol-sur-Tenoise, France. Lt. Brookings was awarded the Air Medal with Oak Leaf Clusters and the Purple Heart.

Lt. Brookings's family has requested this recognition, which is supported by the Town's Veterans' Director. The Naming Committee agrees that Lt. Brookings fits the Committee's criteria and unanimously supports honoring him in this manner.

ARTICLE 28

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

Warrant Article 10 of the 2014 Annual Town Meeting created the Diversity, Inclusion and Community Relations Department and Commission through a complete rewrite of Article 3.14 of the Town By-laws. It was noted by many departments and individuals reviewing that 2014 Warrant Article that Article 5.5, the Fair Housing By-law, and perhaps others would also need to be revised. This Warrant Article is intended to meet that need.

It is not intended to change how the Commission and Department has been functioning since its establishment, or to change the way that other departments have related to these entities since they were formed by the rewrite of Article 3.14. However some hearing procedures that were permitted under Section 5.5.7 (summons of witnesses, testimony under oath, right to counsel) were eliminated since they were inconsistent with the more limited procedures allowed under Article 3.14 as it was revised in 2014. This Warrant Article is intended to bring these two Articles of our Town By-laws into alignment.

Excepting this significant correction, the changes referenced in this Warrant Article are not intended to change the existing Town By-laws in any material respect.

The proposed language changes in Articles 3.14, 3.15, 5.5 and 10.2 are to address the following:

1. Change all mentions of 'Human Relations-Youth Resources Commission' to 'Commission for Diversity, Inclusion and Community Relations'.
2. Incorporate the following definition of “Brookline Protected Classes,” which appears in Article 3.14:

[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”)],

into numerous paragraphs of Article 5.5 to improve readability.

3. Revise Article 3.14 to remove obsolete establishing language for the Commission regarding the term limits of the members appointed in the first two years of its existence, and to remove the likewise obsolete section explaining conflicts between the prior and current Commission names.
4. Rewrite Section 5.5.7 - Functions, Powers and Duties of the Commission - to incorporate the procedures developed by the Commission’s Complaint Process Working Group and approved by the full Commission.
5. Address typographical and grammatical errors, improve clarity and modify language felt not to be politically correct.

ARTICLE 29

Submitted by: Gary Jones

There has been a recent dangerous and violent dog incident in our neighborhood where the responding police officer did not secure the dangerous dog and did not take responsibility, but rather left it to us the public to secure the dog.

ARTICLE 30

Submitted by: Gary Jones

Now the news media like the Brookline Tab are given some police reports by the Brookline Police Department but not all. There are many delays when incidents are under investigations before the full report is available and then they are never reported. This article ensures a timely disclosure of Brookline incidents. It more accurately portrays the full situation.

ARTICLE 31

Submitted by: Regina Millette Frawley, TMM16

The Open Meeting Law was revised in 2010. Whilst proclaimed as “new and improved”, like a laundry detergent ad, many observers view the current law as regressive, as discussed below.

All Law consists of written language, regarded as **primary** in interpreting and applying law. However, where not coherently and explicitly-worded, either intentionally or by accident, law is subject only **secondarily** to “interpretation”. Thus, the current Attorney General wrote in her office’s 2015 “Guidelines”, that, since:

“Town Meetings...are not governed by the Open Meeting Law. See, e.g. G.L. c. 39, ss.9-10 (establishing procedures for Town Meeting)...” (This is explicit language).

However, she continued,

“We have received several inquiries about the exemption for Town Meeting and whether it applies to meetings outside of a Town Meeting session by Town Meeting members or Town Meeting committees or to deliberation by members of a public body - such as a board of selectmen – during a session of Town Meeting. **The Attorney General interprets this exemption to mean that the Open Meeting Law does not reach any aspect of Town Meeting. Therefore, the Attorney General will not investigate complaints alleging violations in these situations. Note, however, that this is a matter of interpretation and future Attorneys General may choose to apply the law in such situations.**” (Bolding, underlining and italics are those of the petitioner.)

This “auto-interpretation” by the Attorney General constitutes an “interpretation gap” in the OML. This proposed Bylaw intends to narrow, if not close, that gap.

This “interpretation” did not exist prior to the revised 2010 OML. While the law was never, and is not now, perfect, and the legislature then as now excluded itself from public scrutiny, a local Brookline version of Woodrow Wilson’s “Open Covenants, Openly Arrived At” became expected transparency and accountability in Brookline.

The current interpretation of the OML does not reflect what some have called, “the Brookline Way”. Town Meeting should, take pride in leading on public process. The 2005 Mandatory Training was *the first Bylaw in Massachusetts to require such training.* Now, as many know, it is required state-wide. Town Meeting “saw the writing on the wall” and acted to protect its constituents’ rights. This latest AG “interpretation” presents yet another opportunity for Town Meeting to use its own deliberations and due diligence to ensure continued transparency and accountability of **all** its committees and member officials. Brookline televises Town Meeting, and increasingly votes to have “recorded votes” so our residents can observe our votes, behavior, deliberations in public, all whilst not being required by the OML!! ***That IS the Brookline Way!!!!***

While the state legislature consistently exempts itself from the OML requirements, that does not mean Brookline’s “legislature” should exempt itself. We have the powers to hold us accountable to the OML. Let’s use them. What are those powers that even the AG acknowledges?

The AG’s reasoning is as follows: Town Meeting is the town’s “legislature” and, since the OML exempts the states’ legislature, Town Meeting is also thus not subject to the OML. While this was once **not** interpreted as exempting Town Meeting-created committees, and as the AG acknowledges, may not be deemed an exemption by a future Attorney General (and thus, potentially re-interpreted *ad infinitum*), it is Town Meeting’s continued duty to protect the right of the public to witness deliberations by **all** its elected or appointed committees and officials when deliberating on a matter before its committee, and when not exempted by rules governing Executive Sessions.

As the AG has written, Town Meeting IS a legislature. By logical consequence, Town Meeting can thus write a Bylaw closing the “interpretation gap”.

Town Meetings have consistently protected public process, a fact I proudly and publicly proclaim even to those who might want Brookline to become a city. This is not only a time for “no exceptions” to the OML. Indeed, failure to close this “interpretation gap” will likely result in violations, which in turn, do not represent democracy as we understand it, and at times will result in decisions for the benefit of a few and not the many. It is yet another opportunity for Town Meeting Members to demonstrate how seriously they consider open public process.

With the passage of this Bylaw, Town Meeting Members will ensure the consistent transparency and accountability we imagined ourselves to enjoy, but which, as America’s Founders have stated, have to be diligently protected and asserted. At times, RE-asserted. This is such a moment. As towns across Massachusetts have used our Mandatory Training Bylaw’s language to enact their own Bylaws, I believe this proposed Bylaw will also generate such an effect. Note, the residents of more than 300 towns in Massachusetts are no longer able to seek remedies for violations of the Open Meeting Law concerning Town Meeting-created committees. More than 300! While this obviously lifts the work load of the Attorney General’s office, the Petitioner maintains this is a failure to protect the publics of those towns.

Let us not wait for a future Attorney General’s re-interpretation of the OML. This proposed Warrant Article will not compromise any future interpretations of the state’s OML, and is in fact consistent with all pre-2010 understandings, interpretations and enforcements and will offer a “seamless flow” should any state or county office either

through revised OML law or neo-interpretation of the existing law, deem TM-created committees as a function of its office.

In conclusion, if the state Legislature is deemed capable, and entitled, to exempt itself from the OML, and since Town Meeting is deemed by the AG as Brookline's legislature, then, *ipso facto*, we as legislators are empowered to write our own OML. We should. And it should reflect that all Town committees, however constituted, should be held accountable under the OML, and thus to all the people of Brookline.

ARTICLE 32

Submitted by: Harriet Rosenstein, Chuck Swartz, and Derek Chiang

Over time, the Town has sponsored a range of initiatives for affordable housing. Here is the current landscape of affordable housing in Brookline:

1. The Brookline Housing Authority now owns and operates 12 housing developments containing 955 apartments
2. In the last 15 years, 311 affordable housing units were created through Inclusionary Zoning and Housing Trust funds, as well as by grants and loans totaling over \$15 million
3. The affordability provisions of 392 housing units were extended by tax agreements.
4. The Massachusetts Subsidized Housing Inventory (SHI) tracks each Town's progress in affordable housing.⁴⁴ On September 1, 2016, 9.2% of the 26,201 housing units in Brookline are now listed on the Massachusetts SHI.
5. If less than 10% of a municipality's affordable housing units are listed on the SHI, M.G.L. chapter 408 enables a developer to apply for a Comprehensive Permit that requests specific waivers from local zoning by-laws. These waivers include building height, setbacks from the lot lines, Floor Area Ratios, parking ratios, and design.
6. In Brookline, the developers multiply and they work fast. Since April of this year, they have proposed building a total of 621 housing units. That number constitutes 2.4% of Brookline's total housing inventory, and is unprecedented in scale. We believe that these developers intend to exploit chapter 408 before the Town reaches its regulatory safe harbor of 10% SHI:

⁴⁴ Refer to Citizens' Housing and Planning Association: Chapter 40B Fact Sheet for inclusion criteria on the SHI. In brief, SHI housing units must be: (1) subsidized; (2) restricted to households earning <50% or <80% of the Area Median Income; (3) subject to a regulatory agreement; (4) affirmatively marketed

| Address | ZBA filing date | Height (#stories) | Floor Area Ratio | # Housing Units | Parking Spaces |
|-------------------|-----------------|-------------------|------------------|-----------------|----------------|
| Puddingstone 1180 | 4/11/2016 | 77 feet (6) | 1.3 | 226 | 350 |
| Boylston | 5/11/2016 | 70 feet (6) | 4.5 | 45 | 80 |
| 40 Centre | 4/26/2016 | 67 feet (6) | 4.1 | 45 | 17 |
| 420 Harvard | 5/31/2016 | 64 feet (6) | 3.8 | 36 | 38 |
| 111 Cypress | Pending | 70 feet (7) | 2.6 | 99 | 106 |
| 384 Harvard | Pending | 67 feet (6) | 3.4 | 62 | 14 |
| 1299 Beacon | Pending | 165 feet (14) | 8.2 | 108 | 183 |

These proposals were filed almost simultaneously with the Zoning Board of Appeals (ZBA). Their proposed scale is almost identical, both in size and implicit contempt for the neighborhoods that they would overwhelm. Taken together, these proposals would do irreparable harm to the character and fabric of the Town. Consider a 2-story family house - a house with small grassy yards front and back, a couple of trees and adequate side setbacks - beside a 45-unit building of 6 or 7 stories with all setbacks 3 feet from its lot lines. What happens to the house and the street and the neighborhood once that building goes up? Here's what the architectural peer reviewer wrote about one of these projects:

"The new building's massing and scale are radically and abruptly at variance with the surrounding context, both along Harvard and Fuller Streets. It is likely that the building if constructed as currently proposed would be the tallest structure anywhere on Harvard Street, all along its run through Brookline. It is the opinion of this reviewer that the height of the building (almost 64 feet to the main roof), as well as its unbroken length along Fuller Street, combined with zero front and side setbacks, puts it significantly outside of existing development patterns over the entire distance along Harvard Street/Avenue from Brookline Village to Cambridge Street in Boston.

While the site is arguably generally appropriate for residential development, the scale, massing, setbacks (and perhaps facade design) create a typology wholly outside of existing fabric. The impact of the streetscape will be significant, as will the degradation of privacy and access to natural light to the immediate neighbor on Fuller Street."

- Cliff Boehmer, Davis Square Architects in August 29, 2016 report to the ZBA

The Zoning Board of Appeals (ZBA) only has 180 days to solicit feedback from Town boards and departments on Local Concerns: health, public safety, environment, design, planning and open space. Similar concerns have been raised on all of these proposals: exorbitant building massing, incompatibility with the surrounding context and lack of greenspace, unrealistic parking plans, and unconsidered traffic impacts. Despite intense criticism by Town Boards and peer reviewers, developers have barely modified their original proposals. Rather than confront the substantive issues of building massing and swollen unit numbers, they have altered trivial design details.

Developers seem intent on running out the clock in this 180-day review process or choosing to appeal ZBA decisions to the Massachusetts Housing Appeals Committee

(HAC) or to appeals courts. The HAC has established major precedents: it has, for example, defined the nature of Local Concerns such as fire truck access⁴⁵ vehicular “stopping sight” distances⁴⁶, parking⁴⁷, and master planning⁴⁸. Notably, the litigation process has often been more successful at extracting concessions from developers. A 2008 study by Citizens' Housing and Planning Association examined 22 appeals filed between 2000 and 2007:

“In 10 of the 22 cases, developers agreed to reduce the size of their project, with the reductions ranging from 1 to 90 units (1% to 50%) and an average reduction of 19%. In five of these cases, developers agreed to these reductions even though the lower courts had upheld the zoning approval.”⁴⁹

M.G.L. Chapter 408 grants developers 20 days to file their appeals of a ZBA decision to the Massachusetts Housing Appeals Committee. Thus, the Town could confront as many as four lawsuits in December 2016 and January 2017. Does Town Counsel have sufficient resources to defend the ZBA's decisions in simultaneous lawsuits on so many fronts?

With a manageable focus, Town Counsel has been able to do its proper job. It has fought to preserve open space in Hancock Village. It has fought to defend the ZBA's position on building height at 45 Marion Street. In this case, Town Counsel appealed to Superior Court, which preserved three conditions in the ZBA's initial Comprehensive Permit: a construction management plan, an erosion control plan, and the timely completion of the project's infrastructure. Such legal successes demonstrate the Town's crucial role in defending planning interests from ZBA decisions.

We urge the town vigorously to press its position on each and every condition the ZBA imposed on all Comprehensive Permits. This is a big order: perhaps too big for Town Counsel, as presently resourced, to undertake. Town Meeting urges the Town to provide concrete help and resources to Town Counsel.

ARTICLE 33

Submitted by: Susan Granoff, TMM7

Brookline homeowners aged 65 and older with modest incomes (\$57,000 or below) are facing a rapidly growing property tax burden due to recent and likely future tax overrides intended to finance the school construction needs of Brookline's growing school population, at the same time that many of Brookline's senior homeowners with modest incomes are no longer able to qualify for the Massachusetts Circuit Breaker Income Tax Credit that they were able to qualify for in the past. This “double whammy” is likely to cause increased hardships among Brookline's senior homeowners with modest incomes unless the Town acts now to establish a committee to study and make policy

⁴⁵ Simon Hill, LLC v Norwell Zoning Board of Appeals, HAC No. 09-07, p. 16-22

⁴⁶ White Barn Lane, LLC v Norwell Zoning Board of Appeals, HAC No. 08-05, p. 30-31

⁴⁷ 100 Burrill Street, LLC v Swampscott Zoning Board of Appeals, HAC No. 05-21, p. 9-13

⁴⁸ 28 Clay Street Middleborough, LLC v Middleborough Zoning Board of Appeals, HAC No 08-06, p. 14-21

⁴⁹ Citizens' Housing and Planning Association (2008). *Zoning Litigation and Affordable Housing Production in Massachusetts*, page 14. https://www.chapa.org/sites/default/files/qaert_11.pdf

recommendations, including proposed warrant articles, concerning additional property tax relief assistance by the Town to senior homeowners with modest incomes.

EXPLANATION

BACKGROUND

The Massachusetts Circuit Breaker Income Tax Credit (“CB Tax Credit”) was created in 1999 (Chapter 62, section 6k) to help provide property tax relief to senior homeowners with modest incomes. Its goal was to reduce the property tax burden of qualified seniors to 10% of their total income. It currently provides an annual income tax credit of up to \$1,070. To qualify, seniors 65 and older must meet two basic means test qualifications. First, their income (including all forms of income, both taxable and nontaxable) must be below a certain amount, which in 2015 was \$57,000 for someone filing as “single” and \$85,000 for a couple filing as “married filing jointly.” Second, the assessed value of their principal residence must not be greater than a specific amount (which is based on the average assessed value of all single-family residences throughout Massachusetts). In 2015, this amount was \$693,000. Significantly, this property valuation qualification ceiling decreased each year from 2008-2014 and is currently \$100,000 lower than what it was in 2008 when the qualifying valuation ceiling was \$793,000. This is because the statewide average on which it is based has been less each year (largely due to the declining real estate values in the western part of Massachusetts, where, for example, a house purchased in 1989 is currently assessed at the same value as its 1989 purchase price).

Because Brookline's residential real estate values have been increasing by about 5-10% each year in recent years while the CB Tax Credit assessed property valuation ceiling has decreased each year, many Brookline seniors with modest incomes no longer qualify for the CB Tax Credit that they qualified for, or would have qualified for, in years past – no matter how low their current income is. As a result, since 2009, fewer and fewer Brookline seniors are actually using the CB Tax Credit. In 2009, at peak usage, 360 Brookline residents claimed the CB Tax Credit, when the assessed value ceiling was \$788,000. In 2014, 335 Brookline residents claimed the CB Tax Credit, when the assessed value ceiling was \$691,000. Because of the growth in the number of Brookline residents aged 65 and above as the large baby boomer cohort is now reaching retirement age,⁵⁰ one would have expected the number of Brookline seniors using the CB Tax Credit to have increased since 2009; instead, it has decreased by about 7% since 2009. See the following table for a year-by-year breakdown of the use of the CB Tax Credit by Brookline seniors:

⁵⁰The Federal Census shows that the number of Brookline persons 65 years and over increased by 5.43% between the years 2000 and 2010. In 2010 there were 7,494 Brookline residents aged 65 or older, making up 12.76% of Brookline's total population. Further, in 2010 there were 6,688 Brookline residents aged 55-64 (11.39% of Brookline's total population), many of whom will have aged into Brookline's senior population since 2010. See “Understanding Brookline: Emerging Trends and Changing Needs,” The Brookline Community Foundation (2013), pp. 4-5.

**Brookline Use of Massachusetts Senior Circuit Breaker (CB) Income Tax Credit
TY 2001-2014**

| TAX YEAR | # BROOKLINE CLAIM FILERS | TOTAL \$ CLAIMED | AMOUNT \$ PER CLAIM () = max | CB PROPERTY VALUE LIMITS | CB INCOME LIMITS (Single) (Joint) |
|------------------|--------------------------|------------------|-------------------------------|--------------------------|-----------------------------------|
| 2001 \$61,000 | 162 | \$ 56,704 | \$ 350 (385) | \$412,000 | \$41,000 |
| 2002 \$63,000 | 206 | 132,502 | 643 (790) | \$425,000 | \$42,000 |
| 2003 \$64,000 | 232 | 158,532 | 683 (810) | \$432,000 | \$43,000 |
| 2004 \$66,000 | 218 | 152,277 | 699 (820) | \$441,000 | \$44,000 |
| 2005 \$67,000 | 241 | 170,857 | 709 (840) | \$600,000 | \$45,000 |
| 2006 \$70,000 | 240 | 177,038 | 738 (870) | \$684,000 | \$46,000 |
| 2007 \$72,000 | 276 | 210,164 | 761 (900) | \$772,000 | \$48,000 |
| 2008 \$74,000 | 310 | 252,030 | 813 (930) | \$793,000 (peak) | \$49,000 |
| 2009 \$77,000 | 360 (peak) | 294,853 | 819 (960) | \$788,000 | \$51,000 |
| 2010 \$77,000 | 349 | 298,921 | 857 (970) | \$764,000 | \$51,000 |
| 2011 \$78,000 | 346 | 296,503 | 857 (980) | \$729,000 | \$52,000 |
| 2012 \$80,000 | 335 | 296,313 | 885 (1000) | \$705,000 | \$53,000 |
| 2013 \$82,000 | 343 | 305,455 | 891 (1030) | \$700,000 | \$55,000 |
| 2014 \$84,000 | 335 | 302,206 | 902 (1050) | \$691,000 | \$56,000 |
| 2015 \$85,000 | | | | \$693,000 | \$57,000 |

Sources: *Statistics of Income*, "Senior Circuit Breaker Credit," 2001-2014, Massachusetts Department of Revenue; "Schedule CB Circuit Breaker Credit" forms for tax years 2001-2015, Massachusetts Department of Revenue.

Other neighboring communities in recent years have sought to provide additional help to their senior homeowners with modest incomes to supplement the CB Tax Credit. Sudbury, in particular, has come up with an innovative and successful program called the "Means Tested Senior Tax Exemption." It was approved by the Massachusetts State Legislature in 2012 and implemented for a three-year trial period starting in 2014. On March 28, 2016, Sudbury's residents voted in favor of extending the program by a vote of

1,517 yes to 321 no.

The Sudbury plan works as follows: In general, no senior homeowner who qualifies for the program has to pay property taxes greater than 10% of their total income, both taxable and nontaxable (which was the stated goal of the act creating the Massachusetts CB Tax Credit). The town grants an exemption equal to the 10% amount minus any other exemptions or credits (such as the CB Tax Credit) that the senior homeowner qualifies for; however, in no event will property taxes be reduced by more than 50%. The exemption applies to both single-family homes and condos. Significantly, the assessed property value qualifier is based on a town-wide average of single-family residences, and not on a state-wide average.

To qualify, a homeowner must:

- be 65 or older at close of previous year with any joint owner at least 60 years of age
- have lived at least 10 consecutive years in Sudbury
- have a total income that would qualify for the CB Tax Credit
- own and occupy a Sudbury home with a maximum assessed value no more than the prior year's average assessed value of all of Sudbury's single-family residences plus 10%
- have no excessive assets that place the senior outside intended recipients (currently \$850,000 plus value of domicile)
- get board of assessors approval

The program is revenue neutral. It is funded by a surcharge set annually by its Board of Selectmen of from 0.5% to 1% of the town's total residential tax levy, which is added to everyone's tax bill. Thus, a person who pays \$6,000 in taxes would pay an additional \$30 to \$60. If the amount needed exceeds the surcharge, the benefits are reduced either pro-rata or by raising qualifications.

According to two published progress reports, Sudbury's program, which began in 2014, has been generally successful, and in March 2016 the town's residents voted overwhelmingly to extend the program past its initial three-year trial period. In its first year, 118 Sudbury seniors were granted an exemption. The average benefit was \$2,450 and ranged from \$17 to \$6,100. The median age of the recipient was 80+ (ranging from 66 to 95), the median years lived in Sudbury was 30+, and the median qualifying income was \$37,200. In its second year, 124 seniors were approved. The average benefit was \$2,664 and ranged from \$23 to \$6,140. The average annual residential tax increase to fund this program was \$45 in the first year and \$60 in the second year.

Newton is another community which has been providing more generous property tax relief to its senior homeowners than Brookline currently does. Both Brookline and Newton offer tax deferral programs to seniors, but Brookline charges an interest rate of 5.0%, while Newton, which ties its rate to the Federal Reserve Discount Rate, has charged its seniors 0.75% for the past few years. For fiscal year 2017, this rate will increase to 1%. Newton's income qualifier ceiling for participation in this program is less than \$60,000 a year, while Brookline's is less than \$55,000 a year. Newton currently has 56 seniors participating in this program, whereas Brookline currently has only 7. Additionally, in order to participate in a tax deferral program, which requires that the

town place a first tax lien on the senior's home, any current mortgage company that has a mortgage on the home must agree to subordinate its loan to the town's; if their current mortgage lender doesn't agree, a senior is unable to participate in a tax deferral program. Finally, it is unknown to what extent having a municipal tax lien agreement on a home negatively impacts a senior's credit score or the senior's ability to get further credit.

Newton also has a more generous water/sewer fee senior exemption than does Brookline. Under Newton's program, a 30% discount is granted to qualified seniors who have a total income of less than \$60,000. A total of 334 Newton homeowners qualified for and received reductions to their water/sewer bills in FY2016. In Brookline, which offers only a 20% discount, a qualified senior, if single, cannot have gross income in excess of \$21,637, excluding social security, or own assets (excluding domicile) in excess of \$43,274 (if married, gross income cannot exceed \$32,455, excluding social security, or assets in excess of \$59,502, excluding domicile). Further, because many Brookline senior homeowners live in condos that do not have separate water meters, they are currently ineligible to qualify for Brookline's water/sewer fee exemption, which requires that the senior's name be the named payer on their water/sewer bill.

Newton's above programs are in addition to a Senior Property Tax Work-off Program, which had 32 participants last year, and which is similar to Brookline's program, which has up to 30 participants a year.

DISCUSSION

One of the many qualities that makes Brookline so special is that we as a community value diversity in all of its many forms, including age diversity. We pride ourselves on being a community that values its senior residents, many of whom have contributed enormously to Brookline during the decades that they have lived here and many of whom continue to make invaluable contributions to our community, through their hundreds of hours of volunteer activities and the historical memory that our long-term Brookline residents provide. For this reason, the Town and various organizations such as Brookline's Council on Aging and the Brookline Community Aging Network have worked to provide programs that make it more feasible for our senior residents to age in place. These are some of the reasons that Brookline has been designated as an internationally recognized "age-friendly" community.

But, even in a generally affluent town such as Brookline, there are hundreds of seniors who are having increasing difficulty paying their property taxes. Many purchased their homes or condos decades ago, when they were employed full-time and their incomes were much higher (and Brookline property taxes were much lower). They love Brookline and the neighborhoods where they live and don't want to sell the homes they love and in which they have lived for decades.

This is often a hidden problem. Many of our senior neighbors may already be struggling with paying Brookline's rising property taxes, and yet they are too embarrassed to discuss this openly. To pay for this growing expense, they may have been putting off needed home repairs or living very bare-boned lives. However, the problems they face are real and will only get worse if, as it appears likely, Brookline votes in favor of two to three additional tax overrides during the next ten years to meet the educational needs of our

expanding school-age population. Other Massachusetts towns have already begun addressing property tax payment concerns related to their senior homeowners with modest incomes, but, because of past and likely future overrides, the problem that Brookline faces is perhaps even more urgent.

It is time for the Town to act now to establish a Selectmen's Committee to study this problem rationally, to learn from the experiences of other Massachusetts communities that have developed programs to assist senior homeowners with modest incomes, and to make concrete policy recommendations (including proposed warrant articles) concerning additional property tax relief by the Town to struggling senior homeowners with modest incomes. Other innovative ideas may also emerge from this committee's work. This resolution is providing the proposed committee with nearly nine months in which to do its work so that it will have ample time to study this problem and come up with excellent solutions for Brookline.

ARTICLE 34

Submitted by: Henry Winkelman, Kenneth Goldstein

This Article is a resolution requesting the Board of Selectmen, the Planning Board and the Housing Advisory Board initiate the required steps to pursue on behalf of the Town an appropriate development of affordable or mixed-income senior housing. This development will utilize the available air rights over the existing Town-owned Kent-Station Street parking lot. The development will front onto Kent Street and Station Streets, opposite the Brookline Village MBTA station.

In 2012, Brookline made a multi-year commitment to becoming a more age-friendly community by joining the World Health Organization's Age-Friendly City initiative. Brookline was the first municipality in New England to join the initiative.

As set forth in the Resolution's preamble, the growing number of 'baby-boomer' retirees in Brookline is increasing an already-acute need for senior housing in Brookline. Aging baby boomers are the most rapidly growing segment of Brookline's population. According to analysis of U.S. Census data by the Brookline Community Foundation, the cohort between 55 and 65 years of age grew in numbers by 40 percent in the past decade. The need for affordable housing for seniors of low and moderate incomes is particularly acute. According to the Brookline Community Foundation's analysis of U.S. Census data, a majority of senior renters (over 60 percent) are rated as housing cost-burdened because they pay more than 30 percent of their income for housing. (Half of Brookline seniors are renters.) There are approximately 1,200 senior-headed rental households in Brookline that are housing cost-burdened.

An extensive process of public engagement between Town officials and citizens in the first half of 2016 acknowledged the Town's need for more age-restricted senior housing as well as the suitability of Town-owned parking lots near commercial areas for potential creation of senior housing using air rights above the existing parking facilities.

The Kent-Station Street location, with its proximity to public transit, shopping, eating facilities, and Town government offices was identified as a good example of locations

having a positive potential for the creation of more age-restricted housing, including affordable rental housing units.