ARTICLE 1  
Submitted by: Select Board

Article 20 of the November, 2000 Special Town Meeting requires that this be the first article at each Annual Town Meeting. It calls for the Select Board to appoint two Measurers of Wood and Bark.

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: Treasurer/Collector

This article authorizes the Town Treasurer to enter into Compensating Balance Agreements, which are agreements between a depositor and a bank in which the depositor agrees to maintain a specified level of non-interest bearing deposits in return for which the bank agrees to perform certain services for the depositor. In order to incorporate such compensating balance agreements into the local budget process, the Commonwealth passed a law in 1986 mandating that all such arrangements be authorized by Town Meeting on an annual basis.

ARTICLE 4  
Submitted by: Select Board

Section 2.1.4 of the Town's By-Laws requires that each Annual Town Meeting include a warrant article showing the status of all special appropriations.

ARTICLE 5  
Submitted by: Select Board

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 6
Submitted by: Board of Assessors

This article provides for an increase in the property tax exemptions for certain classes of individuals, including surviving spouses, the elderly, and the blind and disabled veterans. The proposed increases, which require annual reauthorizations, have been approved by Town Meeting continually since FY1989.

ARTICLE 7
Submitted by: Advisory Committee

This is the annual appropriations article for FY2019. Included in this omnibus budget article are operating budgets, special appropriations, enterprise funds, revolving funds, and conditions of appropriation. This is the culmination of work that officially began with the publication of the Town Administrator’s Financial Plan on February 13th. The proposed budget has since been reviewed by numerous sub-committees of the Advisory Committee, the full Advisory Committee, and the Select Board. The vote ultimately recommended to Town Meeting is offered by the Advisory Committee.

ARTICLE 8
Submitted by: Department of Public Works

BACKGROUND INFORMATION

The following overview is provided as background information for Warrant Articles 8-12 inclusive.

The Gateway East project has been in the planning stages for almost a decade. Initiated in response to the need to dramatically improve opportunities for pedestrians to cross Route 9/Boylston Street at the eastern section of town in place of the closed pedestrian bridge, the Gateway East project now consists of significant roadway and traffic signal improvements, pedestrian crossings, protected bicycle facilities, sidewalk improvements and landscape and streetscape amenities. The limit of work for the project area spans Route 9 from 160 Washington Street (former Brookline Bank building) to the Brookline/Boston municipal border in the vicinity of Olmsted Park and improves a portion of a number of local roads, including Walnut, High, Pearl and Juniper Streets and Brookline Avenue. Gateway East has been carefully coordinated with all other public and private improvements in the area, including the newly-created Emerald Necklace Crossing, Children’s Hospital’s redevelopment of 2-4 Brookline Place and the hotel development slated for 700 Brookline Avenue.

The Town and the Massachusetts Department of Transportation - Highway Division (MassDOT) are jointly undertaking the Gateway East project. Each government entity has specific obligations - all under the umbrella of the federal government. This project is formally part of the Boston Region Metropolitan Planning Organization’s (MPO’s) Federal Fiscal Year 2018 (FFY 18) Transportation Improvement Program (TIP). Accordingly, the MassDOT must put the project out to bid this fall in order to insure that federal funding remains available and is not potentially diverted to another TIP-eligible construction project in Massachusetts. The project is currently in the 75% design stage, with 100% design plans expected to be submitted to
MassDOT in mid-April, 2018. Assuming affirmative votes by Town Meeting on all five Warrant Articles, MassDOT will bid the project for construction in August or September, 2018. Project construction is expected to begin as early as calendar year 2018 and conclude in calendar year 2021.

Essentially, through the TIP process, the MPO will fund the majority of project construction costs with the exception of a one million dollar ($1,000,000) construction match to be provided by the Town of Brookline. Seven hundred fifty thousand dollars ($750,000) of this match has been provided by Children’s Hospital as part of mitigation payments from the redevelopment of 2-4 Brookline Place. Therefore, the Town must provide an additional two hundred and fifty thousand dollars ($250,000) toward the required match. The total remaining construction costs, currently estimated at greater than six million dollars, will be funded through the TIP with federal dollars.

Prior to securing funding for the Gateway East project on the TIP, the Town had to assume responsibility for design costs and has funded those costs with Community Development Block Grant (CDBG) funds and limited Town CIP dollars. In addition to design, the Town was required to deliver a “project ready” corridor, which included the removal of the closed pedestrian bridge. The Town used a combination of 2-4 Brookline Place mitigation dollars and CDBG funds to pay for the removal of the bridge at 10 Brookline Place in October 2015.

Finally, as expanded upon below, the Town is responsible for acquiring all necessary temporary and permanent easements in order for the State to fund and construct the improvements. The Town has amassed approximately $620,000 in CDBG dollars for right-of-way acquisition costs to be used for direct compensation to affected property owners. CDBG dollars have also been used to engage outside legal counsel, appraisers and the services a right-of-way agent to facilitate the acquisition process. Given that this significant infrastructure project will be largely funded with federal money that is programmed by the Boston Region MPO and administered by MassDOT, the Town is subject to a host of statutory and regulatory requirements regarding process, timing and funding. The following warrant articles have been drafted to insure compliance with the federal and state requirements as well as local by-laws.

ARTICLE 8 EXPLANATION

This Warrant Article seeks authorization from Town Meeting for the Select Board to acquire all permanent easements for use as public ways.

The Gateway East project will not be undertaken entirely within the Town of Brookline’s roadway and sidewalk layout. The project will require the Town to acquire seven (7) permanent easements, five (5) of which (E-1, E-2, E-4, E-6, and E-10) are being sought to allow for construction of new or the reconstruction of existing sidewalks in areas that abut the Town’s adjacent sidewalk layout. Acquisition of permanent sidewalk easements ensures that the Town is securing all needed rights for the Gateway East project and will allow for future reconstruction and maintenance.

An additional roadway easement, E-9, is being sought to allow for alteration and reconstruction of the sidewalk, pavement and drainage structures at the driveway of the Brook House, as well as for the location of a new traffic and pedestrian signals on Brook House property. Acquisition of a permanent roadway easement at the Brook House driveway ensures that the Town is securing
all needed rights for the Gateway East project and allows for future reconstruction and maintenance of sidewalks, pavement, drainage structures and traffic and pedestrian signals. It is MassDOT policy for federally funded roadway construction projects that municipalities obtain permanent easements to allow for the maintenance of traffic and pedestrian signals and other public facilities.

Finally, roadway easement E-8 is being sought from the Brookline Housing Authority (BHA). The Gateway East project calls for the relocation of Walnut Street to align with Pearl Street, forming a new intersection at Route 9 and Pearl Street that provides enhanced pedestrian crossings in the heart of Brookline Village. The Town has held discussions with BHA leadership about acquiring permanent easement E-8, which will allow the realigned Walnut Street to cross what is currently a BHA-owned parking lot. The realignment of Walnut Street will also allow for the creation of a new parcel that is contiguous to Brookline Fire Station #1. Among the proposed improvements on this new parcel are passive open space, hardscape and landscape plantings as well as a parking lot. The new parking lot is being created to accommodate the needs of Fire Station #1 personnel and BHA tenants who will no longer be able to use the existing BHA-owned parking as that land is included in the new roadway layout.

ARTICLE 9
Submitted by: Department of Public Works

Right-of-Way Acquisition

Since the Gateway East project is being constructed within a section of Route 9 and on other local roadways that are owned and maintained by the Town of Brookline, MassDOT’s project development process requires that the Town assume responsibility for securing the necessary rights-of-way required to complete the project while following the requirements of the Federal Uniform Act. There are eight (8) affected properties in the project area and the Town must acquire seven (7) permanent easements and eleven (11) temporary easements, as shown on the plans referenced in the warrant article and on file with the Town Clerk’s office. The first step in the acquisition process is to determine a value of each permanent and temporary easement needed; the cost is informed by an appraisal that is subject to a second review by a separate review appraiser. In keeping with the Federal Uniform Act, which governs the land acquisition process for public projects funded partially or wholly with federal TIP dollars, the Town and its representatives must follow a number of action steps, including:

- Notification to Affected Property Owners
- Provision of Appraisals
- Offers of Compensation

To date, the right-of-way agent engaged by the Town to insure compliance with Uniform Act requirements has initiated contact with all affected property owners via a direct mailing to the owners of record. Town staff and the Town’s agent continue to navigate the acquisition process through in-person meetings, e-mail and telephone discussions. All affected property owners have been apprised of their rights protected under the Federal Uniform Act, which includes having the Town undertake and share formal appraisals of their properties; accompanying the appraiser during the inspection of the impacted property; and receiving just compensation. Property owners have also been notified that they may donate their parcel interests to help
facilitate project construction; as such, owners may waive their rights to appraisals and just compensation if they wish to donate and sign Certificates of Donation stating that they waive their aforementioned rights. As of the filing of this Warrant Article, it is anticipated that a number of affected property owners will sign Certificates of Donation.

Related to right-of-way acquisition, this warrant article seeks Town Meeting approval to authorize the Select Board to acquire property interests by gift, purchase, eminent domain or otherwise, on behalf of the Town in order to facilitate the construction of the Gateway East project. All easements will be acquired via an Order of Taking executed at a later date by the Select Board following authorization by Town Meeting. An Order of Taking is a separate but required step in the acquisition of the needed easements.

Appropriation

As noted, negotiations with affected property owners are on-going; the total cost of permanent and temporary easements was not known in time for the close of Brookline’s Annual Town Meeting Warrant. The Town was given clearance by MassDOT in late December 2017 to move forward with right-of-way acquisition, which provided enough time to put together the needed Town Meeting Warrant Articles, with the expectation that as Town meeting draws near, actual sums will be identified as abutter negotiations conclude. Accordingly, this article contains language referring to “an appropriate a sum or sums of money” that will be better understood in the near future after the full extent of acquisition costs is known. Additional information will be provided in the Supplemental Mailing.

Town staff and the Town’s right-of-way agent are currently in communication with all affected property owners. Ongoing negotiations will determine the extent of easement costs, whether donations are likely or if eminent domain is required. Once an approach for each property is determined, an acquisition sum will be presented for the consideration of Town Meeting and included in the Town Meeting vote. It is possible that the appropriation vote being sought at Town Meeting will include a “worst case scenario” cost (i.e. the full extent of damages as identified by appraisals) for the easements that are still in negotiation at the time of the Town Meeting vote.

Assuming an affirmative appropriation vote by Town meeting, the language of this article will authorize the Select Board to enter into all agreements and take all related actions necessary or appropriate to carry out the right-of-way acquisitions needed for the Gateway East project.

ARTICLE 10
Submitted by: Department of Public Works

At a Special Town Meeting held by the Town of Brookline in October, 1972, Town Meeting voted to authorize the Select Board to acquire an easement for the purpose of constructing and connecting the northerly terminus of a pedestrian bridge that spanned over Washington Street and for the purpose of permitting the public to pass and repass over the land and in connection with the use of the bridge. The easement also allowed public access to the land for use a public transportation waiting station, and for the purpose of constructing, and from time to time maintaining and repairing, a surface water drain connection to a public water drain. The
easement was granted by the Combined Insurance Company of America, an Illinois corporation, for a nominal consideration.

As part of the preparation of the Gateway East project area for new construction, the pedestrian bridge that spanned Route 9 to form a connection with 10 Brookline Place was demolished in October 2015. This Warrant Article seeks Town Meeting approval to authorize the Select Board to execute any and all instruments to release and convey said easement for such consideration as deemed appropriate, to CLPF Brookline Place LLC, or its successor or assign. The only right that will be released is the Town’s right to place a pedestrian bridge in this location. All other underlying easement rights will be retained. This release of the bridge easement is considered “housekeeping”.

**ARTICLE 11**
Submitted by: Department of Public Works

As noted, the Town is in discussion with Brookline Housing Authority leadership about the acquisition of permanent roadway easement E-8, which will allow the realigned Walnut Street to cross what is currently a BHA-owned parking lot. The realignment of the road will allow for the creation of a new parcel that is contiguous to Brookline Fire Station #1. Among the proposed improvements on this newly-created parcel is a parking lot that would accommodate the parking needs of Fire Station #1 personnel as well as provide replacement parking for BHA Tenants who will no longer have access to the existing BHA parking lot.

To facilitate the discussion, the BHA provided Town Staff with a parking analysis which indicates that the BHA would need at least seven new/relocated parking spaces to make up for the loss of all 24 spaces at its existing parking lot. BHA staff have expressed that an acceptable solution would be for the Town to provide some or all of these spaces at the lot proposed to be created adjacent to Firehouse #1. The Town directed its project designer to explore all options for accommodating the BHA’s parking needs. After consideration of alternatives, it was determined that the best solution is to provide an exclusive easement within the newly-created parking lot to provide BHA residents with off street parking for their exclusive use.

This Warrant Article seeks authorization from Town Meeting for the Select Board to execute any and all need instruments to convey an exclusive use easement to the Brookline Housing Authority. The final number of parking spaces is to be determined as part of negotiations with BHA leadership. That number is not expected to greatly exceed the need demonstrated by the BHA’s parking analysis.

**ARTICLE 12**
Submitted by: Department of Planning and Community Development

A number of years ago, to increase the likelihood that the Gateway East project would be funded by the Boston Region Metropolitan Planning Organization’s (MPO’s) Transportation Improvement Program (TIP), the Town of Brookline pledged a $1.0 million dollar construction match that would be available to the project to offset total construction costs. At the time of inclusion of the Gateway East project on the TIP, negotiations were advancing with the developer of 2-4 Brookline place, and the Town was confident that a sum of money would be
made available for off-site improvements. Children’s Hospital ultimately agreed to provide mitigation funds in the amount of $750,000 for use by the Town for a Gateway East construction match. The mitigation funding has since been paid to the Town.

As the Gateway East project moves closer to construction in the coming calendar year, the need exists for an additional $250,000 to complete the Town’s construction match. The Town may consider the use of Chapter 90 funds, parking meter fund revenues, CDBG funds via a Section 108 Loan, or a combination of all Town-controlled sources to bridge the construction match gap.

A Section 108 loan, which had previously been authorized by Town Meeting, is a tool that can be used to undertake CDBG-eligible activities when a lump sum is needed to move a project forward. It allows communities to transform a small portion of their CDBG funds into federally guaranteed loans large enough to pursue physical and economic revitalization projects. While the Town is not certain if a Section 108 Loan authorization will ultimately be utilized, seeking authorization is the prudent course to take in case there is a timing or availability issue with other Town-controlled resources. Under a Section 108 loan, an entitlement community borrows against its future CDBG funds. Like a conventional loan, the Section 108 loan would have an amortization term, but instead of making payments, the Town's loan is paid back once per year off the top of the entitlement. The U.S. Department of Housing and Urban Development facilitates the Section 108 Loan Program and the Town would need to submit an application to be eligible for consideration.

**ARTICLE 13**
Submitted by: Children’s Hospital

In connection with the Brookline Place Redevelopment, Boston Children’s Hospital is seeking the Town’s approval to construct a canopy over the main entrance to the building located at 2-4 Brookline Place since the canopy will extend over the Pearl Street right of way. The proposed Article would allow the Select Board to grant, as necessary, permanent easements over and/or vertical discontinuances of certain portions of Pearl Street to permit the construction of the canopy.

**ARTICLE 14**
Submitted by: Commissioner of Public Works

The Brookline Department of Public Works has applied for a matching grant from the Massachusetts Historical Commission to perform masonry repair and restoration or replacement of windows and doors at the Brookline Reservoir Gatehouse. The Gatehouse is a significant historic landmark, listed in both the National and State Registers and designated as a National Historic Landmark. Constructed in 1848, it was a key component of Boston’s first public water supply system, and it contains what are probably the earliest extant examples of an iron plate roof, wrought iron roof trusses, and cast iron stairs intended for public use in the United States. The building has been vacant since the 1960s, and water infiltration has resulted in the loss of most interior finishes. The goal is to secure and stabilize the building envelope in preparation for future use by the DPW’s Division of Parks and Open Space. A requirement of the matching grant from the Massachusetts Historical Commission is to enter into a preservation restriction protecting the building and a twenty-foot buffer around the building in perpetuity. The
preservation restriction is meant to ensure that the characteristics which contribute to the architectural, archaeological, and historical integrity of the premises will be maintained, and that if major alterations are to be considered they can be made only after the Massachusetts Historical Commission has reviewed the proposed work and given its permission. What constitutes major changes is spelled out in an attachment to the Preservation Restriction titled “Restriction Guidelines”. Samples of these guidelines that could potentially be applicable to the projected work at the Gatehouse include:

- Replacement of doors and windows,
- Spot repointing of masonry,
- Altering or removing significant landscape features such as plantings, and
- Installing or upgrading mechanical systems which will result in major appearance changes.

Changes classified as major alterations are not necessarily unacceptable to the Massachusetts Historical Commission, and the intent is not to preclude future changes but to require review by the Massachusetts Historical Commission and assessment of their impact on the historic integrity of the Gatehouse.

**ARTICLE 15**
Submitted by: Commissioner of Public Works

**Introduction**
In the fall of 2016, reacting to numerous instances of developers and land owners removing mature or significant trees, and in recognition of the importance of trees to our community, Brookline Town Meeting requested that the Select Board create a committee to explore the possible use of by-laws or other measures to reasonably safeguard trees in our community.

The Select Board’s Tree Protection Committee introduces an amendment to Article 8.26 Stormwater Management. This amendment requires an Erosion and Sediment Control Plan when there is removal, as defined in the proposed amended by-law, of more than 32” in aggregate of “protected trees”, defined as trees greater than 8” diameter at breast height (DBH).

**Background**

The Select Board’s Committee on Tree Protection studied the possible benefits of incorporating tree protection measures into existing By-Laws. Mature trees have aesthetic appeal, contribute to the distinct character of the community, improve air quality, provide glare and heat protection, reduce noise aid in stabilization of soil, provide natural flood and climate control, and provide natural privacy for neighbors.

As a step towards improved protection for trees, the Committee proposed amendments to Article 8.26 Stormwater Management. The presence of trees on a parcel has a beneficial impact on water quality, primarily by reducing storm water runoff. Trees reduce runoff by intercepting rainfall, by releasing water into the atmosphere through evapotranspiration, and by infiltrating water through the soil and storing it in the ground. When trees are removed, there is no longer this this “sponge” effect and rain runs over the land, eroding the soil and sometimes picking up pollutants as it travels to the catch basins of Brookline. Trees provide additional water quality benefits by
absorbing pollutants from the atmosphere, soil and groundwater, and may contribute nutrients to surface waters through leaf litter.

The amendment defines protected trees and establishes tree removal criteria which trigger an Erosion and Sediment Control Plan. The amendment requires the submission of a plan showing existing tree locations and designating those to be removed and those to be saved. The amendment also adds a requirement to develop protective measures for remaining trees. This amendment to the existing Stormwater Management By-Law is a first step in efforts to formalize tree protection in Brookline.

Inasmuch as this Warrant Article is amending the Stormwater Management By-Law, Erosion and Sediment Control Section, this presented an opportune time to update and clarify portions of the Post Construction Stormwater Management Section.

**ARTICLE 16**  
Submitted by: Planning and Community Development Department, Contact: Trevor Johnson

This article is being submitted by the Planning and Community Development Department in an effort to further improve administration of Section 7.00 of the Town’s Zoning By-law pertaining to signs. In recent years, the Planning Board has seen an increase in Design Review applications for sign types that are not clearly defined in the Zoning By-law. Additionally, the mechanics of the current by-law unnecessarily complicate the Planning Board’s aesthetic review of signs, particularly on new and renovated buildings, because certain regulations are overly restrictive, and in some cases, it is unclear what is allowed in specific zoning districts. There have been several instances where applicants have proposed signs the Planning Board supports; however, the applicant must obtain one or more variances from the Zoning Board of Appeals in order to proceed with the Planning Board’s supported design. Lack of clear definitions and unclear regulations are confusing to applicants and makes it difficult for staff and the Planning Board to apply the regulations consistently to all Design Review applications. As a result, more staff time than should be necessary is required to administer the by-law and the Planning Board’s ability to facilitate the best possible design outcome is limited.

The proposed changes would:

1. Clearly define the various sign types the Planning Board most commonly regulates;
2. Update the mechanics of the By-law to make it clearer what is permitted in specific zoning districts;
3. Give the Planning Board more discretion with respect to sign locations, sizes and number of signs;
4. Shift zoning relief that directly relates to design from a Variance to a Special Permit that requires a positive recommendation from the Planning Board in order for the Zoning Board of Appeals to grant requested relief.
ARTICLE 1
Submitted by: Department of Planning and Community Development

1. Executive Summary/Background

In November 2016, Brookline residents voted (59.98% in favor) to legalize recreational Marijuana uses proposed by Question 4, including retail (sales to the ultimate consumer), manufacturing, cultivation, and lab testing uses. The new law as amended by the legislature in July 2017 is codified at Massachusetts General Laws Chapter 94G and 94I. It establishes a new State agency called the Cannabis Control Commission that is responsible for issuing State regulations and providing State oversight of Marijuana Establishments. The State law does not provide any cap on the number or type of Marijuana Establishments the Cannabis Control Commission may license in a particular community. In addition, it sets a strict timeline (90 days) for Cannabis Control Commission decision-making on applications, and it provides limited bases for Cannabis Control Commission application denials (a conflict with a local by-law being one such basis). The new law prohibits State licensing of operations within 500 feet of K-12 schools unless a local law reduces that distance. The Cannabis Control Commission’s draft regulations propose a default buffer zone (in the event no local one is established) of 500 feet from public or private schools, daycare centers, or any facility in which children commonly congregate. The new law permits communities to create their own caps and siting measures, and to otherwise regulate the time, place and manner of Marijuana Establishment operations, with some restrictions.

In November 2013, after the State legalized medical Marijuana, the Town enacted a General By-Law Select Board local licensing scheme for medical Marijuana treatment centers (known as “RMDs”) modeled after local licensing schemes for liquor, restaurants, hotels, etc. Town Meeting also passed at that time a Zoning By-Law governing the siting of RMDs and allowing them by special permit. Under the medical Marijuana law, as with the new recreational Marijuana law, the State (in that case, the Department of Public Health) licensed the facilities and provided State oversight. The State medical Marijuana law created certain caps on the numbers of such facilities around the State. The purpose of creating a medical Marijuana local licensing scheme in addition to the existing medical Marijuana State licensing scheme was to provide for a degree of local oversight over such business operations, analogous to that inherent in the liquor licensing process (which entails dual State and local licensing and oversight). With regard to implementation of the Town’s medical Marijuana local licensing scheme, in late 2015, the Select Board, after a public process and public hearing, issued a license to the New England Treatment Access, Inc. (“NETA”) that contained license conditions recommended by Town Departments that included Health, Police, and Transportation. It appears that the local licensing model established for medical Marijuana and implemented in the case of NETA has been successful and has possibly provided some initially concerned community members with a degree of confidence in the operation by virtue of a measure of local in addition to State oversight.

The Town currently has in effect a Table of Uses that provides for a moratorium on recreational Marijuana Establishments that ends the earlier of December 2018 or when the AGO approves amendments to the Table of Uses. However, the AGO has stated publicly that there may be a question as to whether the Cannabis Control Commission will honor moratoria in its applications decision-making. Moreover, it can take up to three (3) months or more for the AGO
to issue a decision on whether or not to approve a by-law. The Cannabis Control Commission license applications period opens on April 1, 2018, and the Cannabis Control Commission could begin issuing licenses as early as June 1, 2018. The applications of existing RMDs (Brookline has 1, NETA) that wish to also sell recreational Marijuana receive priority Cannabis Control Commission review. Due to the above timeline, Town Meeting should pass measures at the 2018 Annual Town Meeting if it wishes to have Town measures in place that will shape the Cannabis Control Commission’s license decision-making before the moratorium period concludes and the Cannabis Control Commission begins issuing licenses. Notably, Zoning By-Laws take effect on the date of Town Meeting’s vote, pursuant to M.G.L. c. 40A, § 5. General By-Laws do not take effect until satisfaction of the requirements of M.G.L. c. 40, § 32, including AGO approval.

The Select Board’s Licensing Review Committee (LRC), with input from the Planning Board (through Planning Department staff who attended the LRC meetings), Town residents who attended the LRC’s publicly noticed meetings, NETA (through its representatives in attendance at some of the LRC’s meetings), and Town Departments that included Planning, Building, Police, Fire, Health and Town Counsel’s Office, has worked to advance a number of proposals for this Town Meeting to provide for local regulation and oversight of Marijuana uses in time for the beginning of Cannabis Control Commission licensing. A detailed description of the LRC’s and Town Department’s process is set forth in Section 2 below. Section 3 below contains a more detailed description of the foregoing Warrant Article. Please refer to the Explanations to the other Warrant Articles that came out of the process (described below) for more detailed information about them.

The first proposal that came out of the process is this Warrant Article 17. It is proposed with goals similar to the RMD licensing scheme and related Zoning By-Law. It proposes to exercise a measure of local control over the siting, density, and number of Marijuana Establishments within the Town (analogously, the State liquor law, Chapter 138, provides for caps on the number of liquor licenses in the Town based on the census; the medical Marijuana law also had provided for certain caps). The proposed Zoning By-Law also proposes regulatory measures modeled after those contained in the NETA Select Board license conditions which are similarly the result of input from various Town Departments such as Health, Police, Fire, and Building. The zoning proposal contains regulatory measures for Marijuana Establishments such as a prohibition on sale of Marijuana to minors, compliance with requirements for use of hazardous materials in the extraction process, and other measures targeted toward the promotion of the public health and safety. It provides for a flexible special permit application process providing for Department input. It proposes a cap on the number of special permits issued to Storefront Marijuana Retailers that corresponds to the cap on the number of Select Board Marijuana Retailer licenses established by a General By-Law in effect (see the second item described below). It proposes “default” caps that roughly mirror the caps proposed in Warrant Article 18 (see the paragraph below) in the event a General By-Law cap is not in effect at the time of a special permit application (e.g., because the AGO has not yet approved the proposed General By-Law), since Zoning By-Laws take effect on the date of Town Meeting’s vote, and Cannabis Control Commission licensing could begin on June 1.

A second Marijuana-related Warrant Article 18 proposes a new Article to the Town’s General By-Laws entitled “Marijuana Establishments,” proposing a Select Board licensing scheme similar to that the Town established for RMDs in 2013 and to that which the State legislature wrote into the State liquor laws. To date, the AGO has not considered a by-law
proposal for a local licensing scheme under the new recreational Marijuana law, and has publicly stated that it has not yet determined whether or not it will be approving such proposals. On the other hand, the AGO has already approved special permit schemes established in other communities. Therefore, the above proposes a Zoning By-Law providing for siting by special permit (along the lines of what the AGO already approved in another community) as well as a general by-law providing for a Select Board local licensing process. It is contemplated that the Select Board Marijuana Establishment license will entail an annual renewal (unless the license states a different term, e.g., in the event the Cannabis Control Commission creates on-day licenses), while the special permit is not proposed to be time-limited (based on recent guidance from the State suggesting that local licensing schemes will be approved). The two contain much the same regulatory provisions in contemplation of the possibility that a majority less than 2/3 (the super-majority required to pass Zoning By-Laws) may be in favor of some or all of the language. In addition, there may be gray areas pertaining to whether certain types of regulatory measures are more appropriate for a Zoning By-Law versus a general by-law. Finally, having both a regulatory special permit scheme and a Select Board licensing scheme will assure strong local oversight over these businesses in partnership with the State. Therefore, a “boots and suspenders” approach is proposed, and the language is generally included in both.

With regard to the proposed caps set forth in this Warrant Article and in Warrant Article 18 pertaining to the various types of Marijuana Retailers, the Town Moderator has determined that he would consider motions at Town Meeting to increase or eliminate caps to be within the scope of the original article. He would not consider motions to decrease caps to be within the scope. Therefore, a third Warrant Article 19 for this Town Meeting proposes a Town Meeting motion to set lower caps for Marijuana Retailers than proposed by Warrant Article 18 (again, a ban is not proposed, given that 60% of Town voters approved Question 4 in November 2016).

A fourth Marijuana-related Warrant Article 20 for this Town Meeting proposes a new Article to the General By-Laws pertaining to general Marijuana- and Hemp-related conduct within the Town and on Town property that is entitled “Marijuana and Hemp, and Marijuana and Hemp Products.”

A fifth Marijuana-related Warrant Article 21 for this Town Meeting proposes amendments to certain sections of Article 10 of the Town’s By-Laws designating the Town Departments responsible for enforcement of the proposed new Marijuana-related Articles to the General By-Laws.

The sixth and final Marijuana-related Warrant Article 22 for this Town Meeting proposes to adopt the local option tax on recreational Marijuana sales.

2. **Work by Town Departments and the Select Board’s Licensing Review Committee (LRC) to Devise Proposed Local Regulatory Measures for the May 2018 Annual Town Meeting**

In the Fall/Winter of 2017-2018, the LRC (given its experience with the local regulation of medical Marijuana) worked with the various Town Departments (including Planning, Health, Police, Fire, Building and Legal) to propose a multi-pronged approach to local regulation of Marijuana regulations to be put before the May 2018 Annual Town Meeting, which approach is summarized in Section 1 above. There were few templates for the work that were available from other Massachusetts communities. It appears that to date, most local communities that have
passed by-laws under the new law have passed bans rather than regulatory by-laws. The few regulatory-type Zoning By-Laws that have been passed were more limited in nature than what the Town adopted with regard to medical Marijuana. No other community, to date, has implemented a recreational Marijuana local licensing scheme.

Research during this development period, beyond attempting to identify measures passed by other communities in Massachusetts, included a number of steps. For example, staff consulted the 2018 NFPA 1’s Chapter 38, which is guidance from the National Fire Prevention Association (“NFPA”) pertaining to Marijuana uses (a new NFPA 1 is issued every several years and is a basis for an updated 527 CMR by the Massachusetts Department of Fire Services). In addition, the conditions to NETA’s Town RMD license were viewed as templates.

On a different tack, in December 2017, the Planning Department conducted a limited online survey to preliminarily gauge community sensibilities pertaining to a number of policy decisions to be proposed by the drafts, including with regard to numerical caps on retailers and other questions. In total, 788 responses to the survey were received. A majority, 62.93%, of responses indicated a wish to not ban specific types of Marijuana Establishments from the Town; in addition, 55.67% of respondents indicated they would like to implement a cap on the number of Marijuana licenses issued by the town, with the most frequent response being a cap at the number that is 20% of package store licenses. Further, responses indicated a general consensus on establishing a 500’ buffer zone between Marijuana Establishments and K-12 schools (although subsequent comments received indicated interest in relaxing the buffer zone distance in the case of Marijuana Establishments other than Marijuana Retailers).

In addition to the online survey, members of the Planning Department conducted outreach with various community groups, including board members from the Brookline Neighborhood Association, visitors of the Senior Center, Economic Development Advisory Board members, Coolidge Corner Merchants Association members, and Brookline Chamber of Commerce Board members.

Guided site-visits were conducted with varying staff departments and committee board members to gain a better understanding of business and operational practices of businesses engaged in the Marijuana industry across the different processing, cultivation, lab testing, manufacturing, and retail aspects of Marijuana Establishments.

Office Hours were instituted beginning the month of February through the commencement of Town Meeting to field questions regarding the various proposed General and Zoning Bylaws. To promote the availability of Office Hours, postcards were sent to every Town Meeting Member and Advisory Committee Member as well as promoted on the Recreational Marijuana Website and shared verbally during other outreach events. As of March 1, 2018, Office Hours were utilized by a total of six individuals (both residents and business owners) during every session (four sessions were utilized out of four Mondays offered through then).

Feedback from the various outreach sessions were presented to various boards, including to the Licensing Review Committee, Planning Board, Economic Development Advisory Board, and Zoning By-Law Committee, after which action was taken by the Licensing Review Committee to either include or exclude the feedback based on discussion amongst Committee members and the public during the Licensing Review Committee meetings.
Drafts of the first four (4) Warrant Articles described in Section 1 above were the subject of a joint public hearing by the LRC and the Planning Board on January 24, 2018, and by a public hearing by the Advisory Council on Public Health on January 25, 2018. Written public comment was repeatedly invited in various ways, and some was received. Subsequent drafts created based in part on public input were vetted by the Town’s Zoning By-Law Committee and further vetted by the LRC and Planning Board.

3. Proposed Zoning By-Law Amendments Pertaining to Marijuana Establishments

Below is a more detailed description of the foregoing Marijuana-related Zoning By-Law amendment proposal for this Town Meeting.

A. Table of Uses

i. 20B. Medical Marijuana Treatment Centers. The amendments in the language regarding this use are proposed to conform to the new regulatory language contained in the Cannabis Control Commission’s draft regulations.

ii. 20C. Delivery-Only Marijuana Retailer or Marijuana Transporter. These establishments, as defined by the Cannabis Control Commission, exclude the ability to provide a retail location accessible to the public. To protect the vibrancy of our commercial areas for use by businesses open to the public, this use type is proposed to be included in the Office and Industrial Districts only.

iii. 29A. Storefront Marijuana Retailers and 29B. Social Consumption Marijuana Retailers. It is proposed that the retail use table for recreational Marijuana remain consistent with the size of other retail business in Brookline and along with the uses included in the Zoning Bylaw Use Table (Section 4.07), thereby designating these use-types to be included in the Local, General, and Industrial districts only. Marijuana Retailers are excluded from the Office District due to that District’s designation for medical offices, veterinarians, fitness and health clubs and other professional services. Manufacturing of Marijuana or Marijuana Products is excluded from any local or general business district in order to protect the vibrancy of Brookline’s commercial retail areas and in light of certain hazardous processes utilized in Marijuana manufacturing.

Section 4.07 Table of Use Regulations places a limit on store size as a strategy to create cohesive, intimate commercial districts. When considering any proposal in placing a limit on retail store size, the Planning Department analyzed the operational requirements by Fire, Police, Building, Planning, or other Town departments, as well as additional operational requirements imposed by the State through the Cannabis Control Commission. Combined, these restrictions will limit the available store size with which consumers will interact. For example, in order to enter the establishment, an employee of that establishment must check your ID to certify age compliance. We recommend considering what this might look like in practice: 1, the patron verification check point is located outside. This is neither favorable nor recommended as lines could begin to form outside and disrupt the vibrancy of our sidewalks and commercial areas; or 2, planning would suggest creating a queue system inside the establishment.
building, which will take space from the available gross floor area. Other options are possible.

Taking the additional operational requirements into consideration, the Planning Department continues to recommend a gross and total floor size restriction for Storefront Marijuana Retailers and Social Consumption Marijuana Retailers issued a primary use license in order to promote a diverse mix of retail establishments and protect our existing commercial areas, while simultaneously integrating this new industry use-type. After an analysis of the average and gross size of existing retail businesses within our commercial districts (1,648 square feet town-wide, 1,813 in Coolidge Corner, 1,658 square feet in Brookline Village, and 1,825 in Washington Square), the Planning Department proposes a maximum size of 5,000 square feet of total gross floor area. Further, a maximum store size for street-level marijuana retailers is limited to 3,500 square feet. The Town Moderator has determined that motions to increase the square footage limit for Marijuana Storefront Retailers and Social Consumption Marijuana Retailers issued a primary use license up to 5,000 (the limit for general retail uses in L Districts) would be permitted as within the scope of the original article, and that motions to decrease the square footage limit will be considered outside the scope.

ii. 36C. Marijuana Independent Testing Laboratory. To encourage this use type for the purpose of testing and research and development, independent testing laboratory uses is proposed to be allowed in all Districts.

iii. 38D. Marijuana Cultivators, including Craft Marijuana Cultivator Cooperatives engaged in the cultivation of Marijuana. As farming technology continues to improve and become more efficient, the industry can better adapt to constraints on large-scale available land. For example, vertical farming requires less land than standard farming, as is currently practiced in Coolidge Corner with Brookline Growers. This type of farming will allow the cultivation industry to integrate more seamlessly into our commercial areas. Therefore, it is proposed that this use be allowed in Local Business, General Business, Office, and Industrial Districts. This allowance excludes the manufacture of Marijuana or Marijuana Products.

iv. 46B. Marijuana Product Manufacturers. Given certain hazardous processes utilized in Marijuana manufacturing and extraction, manufacturing and extraction uses are designated for the Industrial District only.

v. 65A. Marijuana Manufacture Residential Use. The extraction of Marijuana oil from Marijuana plants may require certain hazardous processes that have been known to cause explosions in residential neighborhoods across the country when done by individuals in their homes. Brookline’s neighborhoods are dense and often mixed-use. Therefore, it is proposed to eliminate hazardous methods of extraction from residential and business districts.

B. Grandfathering of Scheme for Medical Marijuana Treatment Centers (Section 3). The new law contains certain grandfathering language stating, in relevant part, that “nothing in this
act shall affect any restrictions or limitations of medical Marijuana treatment centers … imposed by a municipality pursuant to chapter 39 of the acts of 2012 … as of July 1, 2017”. The language seems to permit the Town to maintain its local licensing scheme for medical Marijuana treatment centers. Therefore, Section 3 directs these businesses to the Zoning By-Law measures adopted under the 2012 law. Section 3 states that in the event that the Select Board discontinues RMD licensing (e.g., because the Select Board licensing scheme proposed by Warrant Article 18 is approved by both Town Meeting and the AGO, and RMD licensing is folded in), the scheme proposed by the warrant article will then apply. The language is included to leave the Town’s options open, in contemplation of a possible AGO disapproval of both the special permit scheme and the Select Board licensing scheme.

C. Cap on the Number of Marijuana Retailer Special Permits (Section 4). The section proposes that a cap on the number of special permits to be issued to Marijuana Retailers be set at the cap level established by a General By-Law in effect (see Warrant Article 18) on the number of Select Board Marijuana Establishment licenses issued to Marijuana Retailers; or, if there is no such General By-Law in effect (e.g., because Warrant Article 18 has not yet received AGO approval, or because of a challenge to the General By-Law formulation), then the section proposes “default” caps on Marijuana Retailers consisting of the number that is 20% of the number of package store licenses (the minimum permitted without triggering the Town-wide vote requirement) as to each category of Marijuana Retailer. The caps language voted by Town Meeting for the Zoning By-Law will take effect on the date of Town Meeting’s vote in the event the moratorium is not honored (see Mass. Gen. Laws Chapter 40A, Section 5), in time for Cannabis Control Commission licensing. The Planning rationales for including a cap are the same as those discussed in Section D below with regard to density guidelines, having to do with Colorado’s experience with rapid proliferation of retailers (due to the profitability of the business) and the crowding out of other retail uses, with deleterious impacts on the diversity of businesses within a community. Please see the Explanation to Warrant Article 18 for a more complete description of the rationales behind the caps, including public health-related rationales that seem pertinent at least initially.

Please refer to the Explanation following the accompanying Warrant Article 19 proposing lower Marijuana Retailer caps for a more detailed explanation of the following and of the contemplated order of votes and timing of submission of the articles to the Attorney General’s Office for approval.

D. General Requirements for Marijuana Establishments (Section 5). Standards of conduct are included in the Zoning By-Law (which are also included in the proposed General By-Law pertaining to Marijuana Establishments) to provide the Zoning Board of Appeals with criteria for decision-making pertaining to the issuance of special permits and to permit local enforcement of public safety-related measures. These provisions largely consist of the general performance standard-type provisions included in the NETA Select Board RMD License conditions, certain language from the Town’s Tobacco Control Bylaw (Article 8.23 of the General By-Laws), certain language from the Town’s lodging house regulations (e.g., pertaining to inspections), and certain language drawn directly from the new law and the Cannabis Control Commission’s draft regulations (935 CMR 500) posted on the Cannabis Control Commission’s website. Other provisions include a requirement that operations be conducted in a building or fixed structure (see Section 6(B)(1)), as the new law (unlike the medical Marijuana law) does not require vertical integration of the seed-to-sale process (a capital-intensive undertaking), and small outfits engaging in discrete components of the process (just cultivation, just extraction, etc.) could seek
to do business in Brookline. A requirement that operations be in a building and fixed structure also facilitate the implementation of adequate security measures in this dense community.

The Planning Department recommends different standards for adopting the State’s default statutory buffer zone of 500 feet of a K-12 school based on the business and license type (see Section 5(E)(4)). The buffer zone standards included in this proposal are based on feedback gained during public outreach sessions in which members voiced concern in protecting our children from interacting with the businesses. Therefore, businesses that do not interact with the public (i.e., cultivators and standard research facilities) should not subject to the 500 foot buffer. The facility-related requirements in this Section adopt the State’s default statutory buffer zone prohibiting the siting of Marijuana Establishments issued a Storefront Marijuana Retailer license or Social Consumption Marijuana Retailers issued a primary use license within 500 feet of a K-12 school (see Section 6(E)(a)); provide that other Marijuana Establishments shall be located more than 200 feet from any school that serves any of the grades Kindergarten through 12th grade, public or private; and exempts Independent Testing Laboratories, Marijuana Standards Laboratories, and Marijuana Research facilities that do not hold a Marijuana Retailer license.

The statute and Cannabis Control Commission regulations state that the Cannabis Control Commission will honor a municipality’s reduction of this amount; the Town’s medical Marijuana Zoning By-Law’s prohibition on siting in a building that contains a daycare center (see Section 5(E)(1)); and the 2018 National Fire Prevention Association’s NFPA 1’s recommendation that Marijuana extraction not occur in buildings containing certain uses including residential, educational and certain other sensitive uses (see Section 5(E)(2)). The Town Moderator has determined that motions to decrease or eliminate the buffer zone will be deemed within the scope of the original article; motions to increase the size of the buffer zone will be deemed outside the scope.

In addition to the buffer zones, the Planning Department proposal provides for a 200 foot distance between ground floor retail establishments as a siting guidance (in addition to the Table of Uses) to regulate density (see Section 5(E)(5)). The proposal is made to support and protect vibrant streetscapes in Brookline’s retail and commercial districts by preserving and encouraging a diversity of businesses. Research in other communities (including in Colorado) has shown density guidelines have been put in place where previously excluded due to the quick proliferation of Marijuana Establishments (due to their profitability) and their impact on commercial areas, including increased rent and scarcity of retail space. The diversity of our commercial areas is what attracts people from outside of Brookline to shop or dine in our local restaurants and generate additional meals tax revenue. A recent report from the Planning Departments supports the importance of maintaining vibrant commercial areas for three key reasons: 1) the independent retail nature of these commercial areas defines the character of the Town as a whole; 2) the vacancy rates and economic health of commercial properties have a direct impact on surrounding property values; and 3) the stores and services in a close proximity to residents provide residents with a high quality of life (Vibrancy Study, 2014). The ground floor density guideline applies only to those Marijuana Establishments issued a Storefront Marijuana Retailers and Social Consumption Marijuana Retailer issued a primary use license.

Based on an analysis of the average store size in Brookline’s commercial areas (in square feet: 1,648 town-wide average; 1,813 in Coolidge Corner; 1,658 in Brookline Village; and 1,825 in Washington Square), the Planning Department recommends store size limitations on Marijuana Establishments not exceed a total gross floor area larger than 5,000 square feet and ground-floor of 3,500 square feet (as applicable in Section 5(E)(6)). A larger gross floor area is
recommended as floor plans will likely include storage, security, and patron verification, as well as several operational requirements in place for Marijuana Establishments which dictate or further restrict the available floor size area. For example, you must have your ID checked at the door in order to enter. The Planning Department recommends being mindful of what this might look like in practice: 1, the patron verification check point is located outside. This is neither favorable nor recommended as lines could begin to form outside and disrupt the vibrancy of our sidewalks and commercial areas; or 2, the Planning Department suggests creating a queue system inside the building, which will take space from the total gross floor area. Other options are possible.

Taking the additional operational requirements into consideration, the Planning Department continues to recommend putting in place a store size limitation in order to protect our commercial areas. Placing a limit on the total gross floor area of a store size can help to sustain the vitality of small-scale, pedestrian-oriented business districts, which in turn nurture local business development. They also prevent the many negative impacts of larger developments, such as increased traffic congestion and over-burdened public infrastructure, and they protect the character of the community by ensuring that new establishments are at a scale in keeping with the traditional existing environment and surrounding landscape. One goal of this proposal is to restrict a Marijuana Establishment from leasing multiple spaces next to one another and merging them to create one large store that does not fit in with our commercial areas because as these smaller, more locally-owned businesses close, residents are left with fewer choices and less competition. Store size limitations are not discriminatory. They do not ban retailers of a larger size. Rather, they require those companies to build stores that are an appropriate size for the community. When faced with a store size limitations ordinance, any retailer that typically builds larger stores will either opt not to build or will design a smaller store footprint that fits within the proposed cap (example: Target along Commonwealth Avenue). Through our land use zoning ordinances, we have long had the power to control the scale of developments by, for example, limiting building heights or setting minimum house lot sizes. Store size limitations are a recent and effective variation on these types of regulations.

With regard to Social Consumption Marijuana Retailers (businesses that sell Marijuana and Marijuana Products for on-site consumption either as a primary use (e.g., businesses operating primarily as a Marijuana Retailer, such as Marijuana cafes) or as a mixed use (e.g., a businesses operating primarily as a yoga studio or massage parlor or for some other purpose), Section 5(B)(13) does not ban on-site consumption. Rather, it makes issuance of a special permit for such establishments contingent on the Town’s acceptance of on-premises consumption establishments pursuant to and in the manner specified by M.G.L. c. 94G, § 3(b) (which requires municipal approval in a manner different than by-law adoption by Town Meeting). Section 3(b) states:

The city council of a city and the board of selectmen of a town shall, upon the filing with the city or town clerk of a petition (i) signed by not fewer than 10 per cent of the number of voters of such city or town voting at the state election preceding the filing of the petition and (ii) conforming to the provisions of the General Laws relating to initiative petitions at the municipal level, request that the question of whether to allow, in such city or town, the sale of Marijuana and Marijuana Products for consumption on the premises where sold be submitted to the voters of such city or town at the next biennial state election. If a majority of the votes cast in the city or town are not in favor of allowing the consumption of
Marijuana or Marijuana Products on the premises where sold, such city or town shall be taken to have not authorized the consumption of Marijuana and Marijuana Products on the premises where sold.

This section details that patrons of Storefront Marijuana Retailers and Delivery-Only Marijuana Retailers must present a valid ID proving that they are at least 21 years old prior to entry. This is consistent with language in the draft Cannabis Control Commission regulations.

The same provisions have been included in the warrant articles proposing a General By-Law pertaining to Marijuana Establishments (including a Select Board licensing scheme, see Warrant Article 18) in the event that a majority of Town Meeting that is less than a 2/3 majority is in favor of such provisions, and in order to create standards applicable in the Select Board licensing context. As stated, they were included here as well to provide standards for implementation of the special permit scheme.

E. Site Plan Review for Marijuana Establishments and Special Permit Procedures (Section 6 and 7, respectively). The proposal provides for a site plan review process that will provide the opportunity for the Planning Department to seek input from the various relevant departments about a special permit applicant.

F. Submittal requirements prior to issuance of a Certificate of Occupancy (Section 8).

G. Enforcement (Section 9). The proposal permits the Building Commissioner to designate a different person or department to assist with enforcement of this section of the Zoning By-Law to the extent consistent with law, in recognition that some types of special permit violations could be outside the traditional scope of the Building Commissioner (e.g., of Health-related provisions, or of Police-related provisions, or of Fire-related provisions, etc.).

ARTICLE 18
Submitted by: Select Board

A. Background. In 2012, Massachusetts voters approved a referendum to legalize medical Marijuana, including medical Marijuana dispensed by “Medical Marijuana Treatment Centers”, in a law codified as Chapter 369 of the Acts of 2012, “An Act for the Humanitarian Medical Use of Marijuana”. The law established the Massachusetts Department of Public Health (“DPH”) as the licensing and oversight authority. DPH issued regulations permitting any local regulation of Registered Marijuana Dispensaries (“RMDs”, the term used by DPH for Medical Marijuana Treatment Centers) that did not conflict with the DPH regulations found at 105 CMR. The November 2013 Special Town Meeting approved Article 8.34 of the General By-Laws, establishing a Select Board local licensing scheme for RMDs. The Attorney General’s Office approved Article 8.34 in April 2014. Also passed and approved at that time were Zoning By-Law measures providing for permissible siting of RMDs in certain districts by special permit. Over the ensuing months, the Select Board passed regulations governing RMDs, and the Licensing Review Committee worked with various Town Departments, including Health and Police, to propose license conditions to further regulate the sole applicant for a Town RMD
license, New England Treatment Access (“NETA”). The conditions were the subject of robust input by various Departments (including Police, Health, and DPW/Transportation) and by NETA. After multiple public hearings and opportunities for community input, the Select Board approved a final version of the conditions and NETA’s Town RMD license in December 2015. NETA continues to operate today at 160 Washington St. (in the former Brookline Bank building) at the corner of Washington St. and Route 9.

In November 2016, Brookline residents voted (60% in favor) to legalize recreational Marijuana uses proposed by Question 4, including retail (sales to the ultimate consumer), manufacturing, cultivation, and lab testing uses. The successful statewide referendum created a new state agency known as the Cannabis Control Commission responsible for licensing and oversight of the various categories of Marijuana Establishments (e.g., retailers, manufacturers, cultivators and lab testers, and such other categories of licensee as the Cannabis Control Commission shall establish by regulation). In July 2017, the legislature made certain amendments to the law, which has been codified at Massachusetts General Laws Chapter 94G. That legislation also created a new Chapter 94I pertaining to medical Marijuana that contemplates transfer of the licensing and oversight of medical Marijuana treatment centers from DPH to the Cannabis Control Commission.

Under the law, the Cannabis Control Commission may begin to issue licenses for the various categories of Marijuana Establishments beginning on June 1, 2018. A basis for the Cannabis Control Commission to reject a license application is notice from a community that the proposed licensee is not in compliance with local law that was properly adopted by the community in the manner set forth in the law. Given the foregoing, there is time-sensitivity for the Town to establish any desired local regulatory scheme of the type and in the manner permitted by the law if it wishes to have measures in place for when the Cannabis Control Commission begins to issue licenses (which, again, could be very shortly after the Town’s May 2018 Annual Town Meeting). The Town has in effect a Zoning By-Law Table of Uses that provides for a moratorium on Marijuana Establishments that ends the earlier of December 2018 or when the AGO approves amendments to the Table of uses, and Marijuana-related Zoning By-Law Amendments are also proposed for this Town Meeting (see Warrant Article 17). However, the Attorney General’s Office has stated publicly that there may be a question of whether the Cannabis Control Commission will honor moratoria in its applications decision-making.

The Select Board’s Licensing Review Committee (LRC), with input from the Planning Board (through Planning Department staff who attended the LRC meetings), Town residents who attended the LRC’s publicly-noticed meetings, NETA (through its representatives in attendance at some of the LRC’s meetings), and Town Departments that included Planning, Building, Police, Fire, Health and Town Counsel’s Office, has worked to advance a number of proposals for this Town Meeting to provide for local regulation and oversight of Marijuana uses in time for the beginning of Cannabis Control Commission licensing. For consideration by this Town Meeting are six Marijuana-related Warrant Articles (1) the foregoing proposed Warrant Article 18 proposing a Select Board local licensing scheme for Marijuana Establishments; (2) proposed amendments to the Town’s Zoning-By-Law (see Warrant Article 17), (3) a motion proposing a lower cap on the number of Marijuana Retailers than the number proposed by this proposed By-Law (to avoid scope issues, see the Explanation that follows Warrant Article 19 and below), (4) a proposed new Article to the Town’s General By-Laws entitled “Marijuana and Hemp, and Marijuana and Hemp Products”, pertaining to general Marijuana-related conduct
within the Town and on Town property (see Warrant Article 20; (5) proposed amendments to Article 10 of the Town’s By-Laws designating the Town Departments responsible for enforcement of the proposed new Marijuana-related Articles to the General By-Laws (see Warrant Article 21); and (6) proposed adoption of the local option tax on recreational Marijuana sales (see Warrant Article 22).

Please refer to the Explanation to the proposed amendments to the Zoning By-Law for a more detailed description of the public process that resulted in these proposals and for additional information pertinent to this Warrant Article. Please refer to the Explanations that follow each of the Warrant Articles for more detailed information about each of the proposals.

B. **Select Board Licensing Scheme (in addition to Zoning Board of Appeals Special Permit Scheme).** As stated in the Explanation section to the proposed Zoning By-Law amendments (Warrant Article 17), the Attorney General’s Office to date has approved Zoning By-Laws from communities establishing a special permit scheme. That Office has stated publicly that it has not yet determined whether or not it will approve local licensing schemes under the new recreational Marijuana law.

In light of a level of uncertainty and the Town’s successful experience with Select Board licensing and Zoning Board of Appeals special permitting of RMD’s, both the foregoing licensing scheme to be administered by the Select Board and a special permit scheme to be administered by the Zoning Board of Appeals (Warrant Article 17) are proposed. The Select Board licensing scheme is a familiar oversight tool used in Select Board licensing for liquor sales, restaurants, food vendors, and others, in addition to the RMD context.

The above General By-Law proposal for Marijuana Establishments and the separately proposed Zoning By-Law Proposal (see Warrant Article 17) contain language that is much the same. This is in contemplation of the possibility that a majority less than 2/3 (the super-majority required to pass Zoning By-Laws) may be in favor of some or all of the language. In addition, there may be gray areas pertaining to whether certain types of regulatory measures are more appropriate for a Zoning By-Law versus a General By-Law. Finally, having both a regulatory special permit scheme and a Select Board licensing scheme will assure strong local oversight over these businesses in partnership with the State. Therefore, a “boots and suspenders” approach is proposed, and the language is generally included in both. The two approaches together also serve to ensure robust local oversight.

The contemplated term of the license is one (1) year unless the license states otherwise. This flexible language contemplates Select Board licensing of special /temporary events, in the event that the Cannabis Control Commission creates this as a new license category. (This would be an analogous type of license to the special/temporary liquor license created by Massachusetts General Laws Chapter 138, Section 14.)

Please refer to the Explanation section to the proposed Zoning By-Law Amendments (Warrant Article 17) for information about the regulatory provisions proposed in Article 8.37.5 of this Warrant Article other than the cap on the number of marijuana retailer licenses.

With regard to the proposed cap on the number of marijuana retailer licenses, Warrant Article 18 proposes a limitation on the number of various types of Marijuana Retailers that tracks
certain language in the new Massachusetts recreational Marijuana law, codified at Chapter 94G, Section 3. Section 3(a)(2) of the law states that if a Town that voted in favor of Question 4 to the November 2016 ballot (such as Brookline) wishes to reduce the number of marijuana retailers to a number below the number that is 20% of its package store licenses or reduce the number of retailers (or any other type of commercial Marijuana Establishment) to below the number of medical Marijuana Establishments (the Town has 1, New England Treatment Access, Inc., or “NETA”), it must put the by-law language itself to BOTH a Town Meeting vote AND a Town-wide vote utilizing the procedure described in Section 3(e) of the law. The Town currently has 19 package store licenses outstanding (20% is 3.8, or 4 when rounded up) but could issue up to 24 package store licenses (20% is 4.8, or 5 when rounded up) pursuant to Massachusetts state law, based on the most recent U.S. decennial census.

At present, there seem to be differing interpretations as to whether the municipality-wide vote requirement is triggered under the new Marijuana statute by setting a cap below the 20% figure with regard to the OVERALL, TOTAL number of Marijuana Retailers (e.g., the total of Storefront, Deliver-Only, Social Consumption Marijuana Retailers) or with regard to each of these sub-classes of Marijuana Retailers. Accordingly, the cap language is written conservatively to state a limit of the 20% figure in each sub-class of Marijuana Retailer. The number of package store licenses the Town has authority to issue is set every ten (10) years by the State following a new U.S. Decennial Census. In addition, the number of package store licenses fluctuates as new businesses open and existing businesses close. The use of a percentage in the cap formulations will assure that, given such fluctuations, the Town will not impose a cap that could be deemed invalid due to a lack of Town-wide approval.

In addition, Licensing Review Committee members felt that capping the number of Social Consumption Marijuana Retailers is appropriate in light of, on the one hand, apparent interest within the community in having these types of establishments in operation, and on the other hand, various public health concerns that have been articulated. The public health concerns identified have included concerns about youth consumption and health. They have also concerned the possibility of impaired drivers on the Town’s roads who may be driving home from restaurants in Town. There was discussion by the LRC of comments received by the Cannabis Control Commission in connection with its draft regulations to the effect that, at present, there may be limited knowledge and training available for restaurant servers on marijuana “safe service” procedures analogous to the knowledge and training available to alcohol servers to prevent alcohol over-service. There was also discussion of other comments to the Cannabis Control Commission to the effect that at present, there may be limited science and tools available to law enforcement officers for enforcing “operating under the influence” laws in the marijuana context. The LRC felt that it is appropriate for the Town to phase in these types of operations gradually.

See the Explanation to Warrant Article 19 explaining how Town Meeting’s votes could be phrased and should be ordered in the event it wishes to decrease the cap.

**ARTICLE 19**

Submitted by: Select Board

Please see the accompanying Warrant Article 18 proposing a new Article 8.37 to the Town’s General By-Laws entitled “Marijuana Establishments” and the Explanation section that follows
it. Warrant Article 18 proposes a limitation on the number of various types of marijuana retailers that tracks certain language in the the new Massachusetts recreational marijuana law, codified at Chapter 94G, Section 3. Section 3(a)(2) of the law states that if a Town that voted in favor of Question 4 to the November 2016 ballot (such as Brookline) wishes to reduce the number of marijuana retailers to a number that is below the number that is 20% of its package store licenses or reduce the number of retailers (or any other type of commercial marijuana establishment) to below the number of medical marijuana establishments (the Town has 1, New England Treatment Access, Inc., or “NETA”), it must put the language of the by-law itself to BOTH a Town Meeting vote AND a Town-wide vote utilizing the procedure described in Section 3(e) of the law. The Town currently has 19 package store licenses outstanding (20% is 3.8, or 4 when rounded up) but could issue up to 24 package store licenses (20% is 4.8, or 5 when rounded up) pursuant to Massachusetts state law, based on the most recent U.S. decennial census.

The Town Moderator has determined that motions to amend Section 8.37.4 of Warrant Article 18 to increase or eliminate caps are within the scope of the original language of Section 8.37.4, so that any such amendments would be allowable under Warrant Article 18.

The Town Moderator has determined that motions to amend Section 8.37.4 to decrease the caps are not within the scope of Warrant Article 18 and could only be entertained through inclusion in the Warrant of a separate article. Therefore, the reason for including this Warrant Article 19 in the Warrant is simply to provide Town Meeting and the Town at large with the opportunity to lower the caps proposed in Warrant Article 18 if desired.

For example, Town Meeting could approve a motion under this Warrant Article 19 to amend the language of Article 8.37.4 as follows, even setting a separate limitation as to each category of Marijuana Retailer (additions are in bold underlined text, deletions are in bold stricken text):

The Select Board shall not issue more Marijuana Establishment licenses to [Storefront Marijuana Retailers/Delivery-Only Marijuana Retailers/Social Consumption Marijuana Retailers] pursuant to Section 8.37.6 than **[1, 2 or 3, to be determined by Town Meeting]**. a number that is between a) 1 and b) 19% of the number of liquor licenses for off-premises consumption that have been issued by the Select Board pursuant to section 15 of chapter 138, as rounded up to the nearest whole number in the event the number is a fraction.

If Town Meeting wishes to eliminate the cap altogether it should vote language for Section 8.37.4 saying so, since such language will guide the Zoning Board of Appeals in its issuance of special permits pursuant to Section 4 of Warrant Article 17. For example, a motion could propose the following amended language to Section 8.37.4 lifting the cap altogether:

The Select Board shall not establish a cap on the number of - issue more Marijuana Establishment licenses **issued** to Marijuana Retailers pursuant to Section 8.37.6 below-**than the number that is 20% of the number of liquor licenses for off-premises alcohol consumption that have been issued by the Select Board pursuant to M.G.L. c. 138, § 15, as rounded up to the nearest whole number in the event the number is a fraction.
It is proposed that Town Meeting take up the question of whether or not to limit the number of marijuana retailer Select Board licenses below thresholds that could trigger a Town-wide vote – which at the earliest could not occur until November 2018 - and not at the Town Meeting after a possible November Town-wide vote (i.e., in May 2019) in order to have caps in place for the possible June 1, 2019, start of Massachusetts Cannabis Control Commission licensing. In the event that the moratorium is not honored, the proposed Zoning By-Law Section 4.13 in Warrant Article 17 has a “default” cap consisting of the 20% figure (the minimum that can be set without triggering the Town-wide vote requirement) as to each category of Marijuana Retailer, and the “default” cap would take effect on the date of Town Meeting’s vote in any event. See M.G.L. c. 40A, § 5. (Note that the moratorium, if honored, sunsets the earlier of the Attorney General’s Office’s approval of the Zoning By-Law Amendment or December 31, 2018.)

A second reason why Town Meeting should take up the question of lower caps before any November 2018 Town-wide vote is to assure consistency in language between the language voted by Town Meeting after debate and the language put on the ballot in November, given the requirement to have TWO consistent votes (Town Meeting and Town-wide) on actual by-law language in order to set a cap below the 20% number. On January 9, 2018, the Attorney General’s Office issued a decision pertaining to a Milford by-law to the effect that the by-law language itself of a type requiring a Town-wide vote must be presented in the same phrasing both to Town Meeting in the Warrant and on the ballot for the Town-wide vote. Milford undertook the Town-wide vote first, and then submitted that language to Town Meeting, which tinkered with it. Because the language put to Milford voters in the Town-wide vote and subsequently voted by the Milford Town Meeting differed, the Attorney General’s Office decided that Milford’s by-law had no effect unless and until Milford voters approved it in a second Town-wide vote.

It is anticipated that there will be two Town Meeting votes pertaining to the proposed General By-Law retailer caps as follows:

The first would be a vote on Warrant Article 18. Even Town Meeting members favoring lower caps should vote in favor Warrant Article 18 with the proposed cap language so that action under Warrant Article 18 can be immediately sent to the Attorney General’s Office for approval without need to await the result of any November Town-wide vote.

Then there will be a vote on the motion(s) offered under this Warrant Article 19. In the event that Town Meeting votes caps that trigger a Town-wide vote, the new cap language will be placed on the November ballot for Town-wide approval. If there is Town-wide approval in November, the new cap(s) will then be submitted to the Attorney General’s Office for approval.

This approach has been vetted by both the Town Moderator and the Attorney General’s Office’s Municipal Law Division and appears to be an acceptable method for the Town to entertain a range of retailer cap options as expeditiously as possible.

**ARTICLE 20**
Submitted by: Select Board
This Warrant Article 20 proposes to create a General By-Law pertaining to Marijuana and Hemp uses by persons other than Marijuana Establishments, in order to minimize nuisances and dangers that could be posed to the community by personal cultivation, processing and testing of Marijuana and Hemp and Marijuana and Hemp Products. A goal of the proposal otherwise is to provide a local enforcement mechanism for prohibitions that already exist in the new State law, such as the ban on public consumption of Marijuana and on open containers of Marijuana.

Section 8.38.2 proposes to create prohibitions on the consumption of Marijuana and Marijuana Products in public and on Town property, on open containers of Marijuana and Marijuana Products, and on smoking Marijuana where smoking is otherwise prohibited that are analogous to by-laws the Town has in place pertaining to alcoholic beverages and tobacco, based in part on language drawn from the new recreational Marijuana law and draft Massachusetts Cannabis Control Commission regulations. See General By-Laws, Articles 6.2 (“Alcoholic Beverages on Public Property”), 7.1 (“Alcoholic Beverages”), 8.1 (“Alcoholic Beverages”), 8.23 (“Tobacco Control”); M.G.L. c. 94G, §§ 13(a), (c), (d); draft 935 CMR 500 (available at www.mass.gov/service-details/cannabis-control-commission).

Section 8.38.3 proposes to regulate personal Marijuana and Hemp cultivation and manufacturing along lines similar to local regulations found in a number of Colorado ordinances. Section 8.38.3(1) prohibits hazardous methods of Marijuana and Hemp extraction in light of residential explosions reported around the country. According to guidance from Colorado, Hemp extraction may pose similar hazards as Marijuana extraction, and thus the proposal is directed at Hemp extraction as well. See Marijuana Facility Guidance, Colorado Fire Marshall’s Special Task Group (4/27/2016) (“Colorado Guidance”) at 4 (available at https://fmac-co.wildapricot.org/resources/Pictures/Marijuana_Guidance_Document_v.1_2016%2003%2016.pdf). Section 8.38.3(1) does not prohibit personal Marijuana extraction using non-hazardous extraction methods such as water- and food-based methods. See Colorado Guidance at 15. Section 8.38.3(2) is modeled after language found in a number of ordinances from Colorado (e.g., Boulder, Breckenridge, Denver). Section 8.38.3(3) prohibits the use of supplemental carbon dioxide and/or ozone (sometimes used to promote plant growth), as they can be toxic. Section 8.38.3(4) requires the inside cultivation, processing and testing of Hemp in addition to Marijuana because the two plants are closely related and can be very difficult or impossible to distinguish from one another.

This General By-Law, if passed, would provide a means of local assessment of civil fines for offenders who willfully violate the by-law. With regard to the prohibitions against public consumption and open containers, the by-law would allow the Police Department the ability to enforce violations in a consistent fashion similar to its enforcement of analogous alcohol use violations. The Police Department states that it will track citations issued in order to ensure officers are adhering to fair and impartial enforcement. The purpose is to provide a local mechanism for the Police Department to address what will hopefully be rare instances of violations that could adversely affect the quality of life in the community.

ARTICLE 21
Submitted by: Select Board

This Warrant Article 21 proposes the Departments that will be responsible for enforcing the new General By-Laws proposed by Warrant Article 18 (proposing an addition to the General By-
Laws of a new Article 8.37, “Marijuana Establishments”) and Warrant Article 20 (proposing an addition to the General By-Laws of a new Article 8.38, “Marijuana and Hemp, and Marijuana and Hemp Products”). Please see the Explanation sections that follow Warrant Articles 17, 18 and 19 for detailed background information about the Town’s proposals for the local regulation of recreational marijuana permitted by favorable action on Question 4 to the 2016 State ballot. As reflected in those Explanation sections, local oversight of marijuana establishments is proposed to be done across multiple code-enforcement Town departments, consistent with oversight over other licensees such as restaurants, lodging houses, and hotels. The Fire Department is added to the list of enforcement authorities in Article 10.2 of the General By-Laws in recognition that the THC extraction process can involve hazardous materials and processes utilizing combustible, explosive materials.

**ARTICLE 22**
**Submitted by:** Select Board

In November, 2016, voters of the Commonwealth approved a law legalizing and regulating the cultivation, manufacture, processing, distribution, sale, possession, testing and use of recreational marijuana, which was amended by the legislature in July 2017. The referendum as amended added Chapter 64, Section 3, to the Massachusetts General Laws. That provision is a local adoption statute that permits a municipality to impose a sales tax of up to 3% on local sales of marijuana and marijuana products by marijuana retailers operating within the community. Under Brookline’s form of government, the statute is adopted by favorable vote of Town Meeting.

The May 2017 Annual Town Meeting approved a moratorium on Recreational Marijuana Establishments pending the Town’s efforts to implement a substantive zoning measure to regulate these establishments. The Planning and Community Development Department has filed a substantive zoning proposal for this Town Meeting (see Warrant Article 17).¹ The May 2017 moratorium will sunset upon the earlier of the Attorney General’s approval of a Recreational Marijuana Establishments zoning by-law or December 31, 2018.

Brookline now has an operating licensed medical marijuana facility, which with the passage of the referendum may seek a license from the State to sell recreational marijuana. With the expectation that there will be at least one recreational marijuana sales outlet in Town, the Select Board ask Town Meeting to adopt G.L. c. 64N, s. 3 by taking favorable action on this Warrant Article 22.

**ARTICLE 23**
**Submitted by:** Deborah Brown, Anne Greenwald

This Article calls for changing the name of a popular public school named after a slaveholder, Edward Devotion. Holding a slaveholder up as a beacon of virtue to young people sends the wrong message to our youth, people of color, allies and the broader Brookline community.

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¹ Other warrant articles filed for this Town Meeting seek to add certain articles to the Town’s general by-laws to assure that Recreational Marijuana Establishments operate responsibly within the community.
Brookline cannot claim to be taking the moral high ground and also be comfortable having a school named after a slaveholder.

By way of background, in 1744, Edward Devotion, Brookline resident and slave-owner, bequeathed property to the Town for the building of a new school. Over two centuries passed when some residents had an interest in establishing the role that slavery played in the Town’s development. In response to such interests, in 2006, the Hidden Brookline Committee was established by the Town to bring to light the history of slavery in Brookline. In the ensuing years, the Committee performed a great deal of research which resulted in 2012 a warrant article. In it, the Town acknowledged the history and pledged “vigilance against all practices and institutions that dehumanize and discriminate against people.” It was the first time in Town Meeting that slavery in Brookline had been discussed since the 18th century.

On May 24, 2012, the Town passed the resolution called “A Resolution Regarding Slavery in Brookline.” The Town has continued its commitment to inclusion. In 2017, the Town entered into a compact with the Government Alliance on Race and Equity (GARE), agreeing to implement racial equity, eliminate implicit and explicit bias, and eradicate individual, institutional, and structural racism. Signs around Town celebrate the Town’s commitment to diversity and inclusion.

Despite some best efforts to support diversity and inclusion, few knew that Edward Devotion was a slaveholder. In August 2017, the Brookline School Committee received multiple requests, in writing, to discuss changing the name of the Edward Devotion School to something more compatible with 21st century values. Despite multiple attempts by residents to get the School Committee’s attention, the request went without a substantive reply until a February 2017 article appeared in the Brookline TAB. Deborah Brown published an open letter to the community pressing that the School’s name be changed. A subsequent editorial appeared two weeks later in the Boston Globe expressing a similar sentiment. The communication in the papers and direct communications with the School Committee provide actual and apparent notice of our intent to have the School’s name changed. Following the Brookline TAB article, residents formed an organization to advocate for the name change. In March 2017, the School Committee agreed to discuss a renaming the Edward Devotion School.

Retaining the Edward Devotion’s name on a school or a protracted debate creates a variety of issues for the Town. Beyond the social issues it has brought to light, there are potentially economic repercussions. While there are few Towns as livable as Brookline, people may choose to live elsewhere. In a competitive job market, people may actually elect to work elsewhere. Businesses may have concerns about whether people will want to travel to Brookline to do business. Finally, protracted debate may draw a heinous and horrific element to the community.

We believe that we have described why it is in the best interest of the Town to change the name of the Edward Devotion School to a more appropriate name.

ARTICLE 24
Submitted by: David Lescohier, TMM11

The Brookline Land Bank (BLB): Finances the purchase of suitable, for sale property when it becomes available to address intensifying development pressure and growing insufficiency of
public-owned land in Brookline for schools, athletic fields, parks, conservation areas, affordable housing, and economic development.

**Powers:** Levy a real estate transfer tax; purchase and own land; borrow through notes and bonds; hire staff, accept gifts and grants; transfer funds to Housing Advisory Board and the Conservation Commission accounts; write regulations; and set policies; etc.

**Revenue Source:** A real estate transfer tax with the rate determined by BLB commissioners, but not more than 1.0%, on all (non-exempt) real estate transactions in Brookline, paid to Town treasurer – cannot register title at Norfolk registry until paid.

**Exemptions:** Residential exemption (determined by BLB commissioners, but at least $500,000), non-profit buyer & house of worship, affordable housing, transfers of convenience, up/down sizing within Brookline, and others.

**Allocation of Funds:** BLB Commissioners may recommend to Town Meeting to appropriate a portion of BLB revolving account funds for Brookline Public Schools educational purpose land acquisition, the Housing Advisory Board for affordable housing land acquisition; the Conservation Commission for the purchase of land for open and recreational space purposes; a portion for economic development land acquisition; and any remainder may be appropriated into a reserve account. The appropriations shall benefit the overall best interest of the Town, as circumstance may require, based on analysis of the available comprehensive, housing production, and open space plans and reports, and after a public hearing.

**Land Bank Commissioners:** Members of the Selectboard.

**Subject to Town Meeting Vote:** The Brookline Land Bank appropriations and any borrowing must be approved by Town Meeting vote.

**Path to Approval:** This warrant article is a home rule petition resolution. It will be submitted for the May 2018 Town Meeting. Should the Article be voted favorable action, the Select Board will be authorized to request a General Court representative to file this petition for a special law, which will then be assigned to committees, voted in the House and Senate, and signed by the Governor. Final acceptance would require a majority vote on a referendum placed on the ballot of the next Town or State election.

**DISCUSSION**

**Executive Summary of the Main Points and Conclusions**

- There is evidence that Brookline’s 2010 population will increase 12% – 17% by 2030.

- Brookline land devoted to:
  - (1) schools,
  - (2) parks, open space, recreational facilities, conservation areas, and
  - (3) affordable housing
is already insufficient to meet Brookline’s current needs. Brookline is missing opportunities to acquire land for economic development. Currently available public land will face growing demands as a result of further population growth.

- In order to meet the growing need for public facilities, amenities, and economic development, Brookline should acquire, through purchases, additional land for municipal purposes.

- In view of limits on Brookline revenue growth, there is likely no funding from existing sources available for land purchase after meeting the Town’s existing operational and infrastructure maintenance commitments.

- The Real Estate Transfer Tax, as recommended, to fund the Brookline Land Bank is equitable, very low impact, and inexpensive to administer. This type of tax is appropriate to fund these selected, specific, clearly defined, non-recurring purposes.

- A Brookline Land Bank, funded with a Real Estate Transfer Tax, is a preferable alternative to proposition 2 ½ overrides or the Community Preservation Act.

- The Brookline Land Bank is well suited to operate within the Town’s organizational structure and financial policies, and is specifically adapted to and compatible with the unique combination of long established urban and suburban neighborhoods and commercial districts in Brookline.

**Keeping Brookline Green and Affordable**

Because Brookline is situated in a dynamic metropolitan area, affected by and benefiting from the emerging global knowledge and service-based economy, the Town faces a decade of substantially increasing population. MAPC forecasts that by 2030, Brookline’s population may be between 65,951 and 69,110, a growth of between 7,219 and 10,378 since 2010. This is an average annual growth rate of between 0.58% and 0.82%. By the same token, Boston may have a population of 709,000 by the year 2030. (Boston 2030 2018)

Our challenge is to manage this growth while balancing, preserving, and protecting Brookline’s values. Unfortunately, it seems unavoidable that in future years the consequences for schools, open space, affordable housing, and commercial development Brookline is already struggling to manage, will intensify. (MAPC 2017)

**Table 1. Population Growth and Housing Unit Production Forecast 2010 – 2030 (MAPC Status Quo Model - Strong Model).**

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2030 (Status Quo – Strong Model)</th>
<th>Average Annual Growth Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population</td>
<td>58,732</td>
<td>65,951 – 69,110</td>
<td>0.58% - 0.82%</td>
</tr>
<tr>
<td>Housing Units</td>
<td>26,448</td>
<td>28,974 – 30,238</td>
<td>0.46% - 0.68%</td>
</tr>
</tbody>
</table>


Is it possible that Brookline’s population could grow this much?
This depends on how many young workers will choose to locate in Brookline, where new families will want to settle, and whether seniors will want to down-size or age in-place? Further, it depends on birth, death, migration, average household size, and housing occupancy rate and density trends. If Brookline continues to attract more young adults and younger households, more inclined to urban living rather than suburban single-family homes, while retaining senior-headed households choosing to downsize from single family homes to apartments or condominiums, then this would indicate a continuing period of increasing population density in Brookline. (Pehlke 2013)

In fact, at present more young people are moving to Brookline and fewer are moving out once they reach 30. They are attracted by the job proximity, transit access, vibrancy, walkability, and cultural assets as well as the excellent schools. Seniors are choosing to remain in Brookline for many of the same reasons. There is evidence that Brookline is a quintessential example of this shift in culture and lifestyle. (Brookline Community Foundation 2012)

The Brookline Planning Board, Subcommittee for Strategic Asset Plan & Major Parcel Study retained consultants to catalog and classify major public and private parcels. The consultants sought to understand the intent of current owners and envision these parcels’ potential, based on zoning, market, and community preferences. At a community forum in December 2017, the firms reported that Brookline is growing and becoming more diverse, new mixed-use and commercial development is appropriate, new and expanded community facilities are needed, additional space for municipal functions including additional active and passive recreational space is needed. (Hensold 2017) These firms reviewed Brookline’s parcels and found that under existing zoning, an additional 5771 residential units would be allowable, in the S, SC, T, F, and M (single, two, three, and multifamily) residential districts. Thus, in theory, it is possible, without changing current policies, that there is sufficient potential housing development capacity in Brookline to accommodate the forecasted population growth. (This capacity may or may not actually come to full fruition by 2030, however.)

In addition to the existing allowable increase in the number of housing units under Brookline’s current zoning, there is significant additional housing production potential through the Anti-Snob Zoning Act, Chapter 774 of Acts of 1969; The Comprehensive Permit Statute. (Witten 2008)

Considering the year 2030 population forecast, using lower ‘status quo’ and higher ‘strong’ MAPC models, a housing unit increase between 2,561 and 3,825, an annual average growth rate between 0.46% and 0.68%, seems plausible. Already, by 2016, the net number of housing units has grown by 392 from 26,448 in 2010 to 26,840. In addition, the Brookline planning department currently lists possible, expected construction of 1,249 units only among “potential large development projects” currently known and possibly occupied between now and 2021. (Brookline Public Schools 2017) Without including any potential net growth in T and F districts or possible smaller projects, Brookline is already more than half way to the ‘strong’ model and almost 2/3 of the way to the ‘status quo’ 2030 model forecasts.

Comparing rates, it may be the case that actual population growth could be constrained due to limited, actual, realized additional housing production. Growing housing demand, an inadequate housing unit supply, especially if average household size trends downward, as forecast, could lead to overwhelming pressures, including on affordability. Many in Brookline are rightly concerned about these trends and wonder how Brookline can protect its quality of life, environment, values, and standards? How can we balance the private
with the public domain in Brookline? Protecting Brookline’s values will require substantial, planned, proactive, balanced expansion of the public domain infrastructure, including schools, recreational facilities, affordable housing, commercial development, and transportation.

(However, even if Brookline’s population miraculously remains stable and less than expected of the forecasted growth materializes, there is presently, nevertheless, insufficient affordable housing, recreational facilities, open space, school capacity, and the need for additional commercial development. Therefore, regardless, there is an obvious, urgent need to increase investment in Brookline, exceeding the Town’s limited, available fiscal capacity.)

**Investing in Brookline’s Public Domain**
A Brookline Land Bank, proposed by this warrant article, while not a cure all, offers compelling advantages, as a possible addition to the Brookline portfolio of financial resources that could be earmarked for selected public investment purposes. A land bank, deployed as a flexible, targeted financing tool, may mitigate the frequency and magnitude of future overrides.

A Land Bank aims to maximize compatibility with and minimize disruption of established committees and Town financial policies and processes. The Bank can act quickly when the Town becomes aware of market opportunities.

The Bank is designed to be able to respond to opportunities and trends. It will increase the Town’s capacity to adjust its priorities and manage its resources, as circumstances require. The aim of this warrant article is to introduce a new model into the mix of Brookline’s means and methods for protection, creation, and preservation of Brookline’s values.

Many in Brookline are understandably concerned about the impact of increasing our tax burden. The BLB is not an override and will not increase property tax levy. It will not increase the automobile excise tax, the meals tax, the hotel occupancy tax, or other recurring taxes. It will not increase fees or fines. The BLB revenue would come from a real estate transfer tax (RETT) after exemptions have been deducted. Administratively the BLB tax would be paid by the buyer.

Any additional land and improvements the Town is able to acquire for open space or educational purposes with BLB financing (but excluding leases with taxable entities and affordable housing) would become exempt from property tax. The impact of this loss in taxable property would be redistributed to the remaining property taxpayers. For each $10 million the BLB finances for open space or schools, the impact on the equalized value would be on the order of a $0.06% increase in the property tax rate approximately $0.01 per $1,000 of assessed value. (McCabe 2018)

This would be in the context of about $200 million per year in new construction added to a tax base of more than $20 billion. Any BLB acquisitions for commercial development would contribute to the growth of the tax base, possibly offsetting acquisitions that decrease the tax base. Since assessed property values in Brookline have recently increased consistently at rates of up to 7 - 10% per year (Table 2), virtually every Brookline seller has surely realized a gain, often reaching hundreds of thousand dollars. In effect, even if the BLB reduces the sale price a small fraction of 1%, the sellers still reap a very substantial benefit from having property located in a community with excellent schools, parks, services, infrastructure, walkability, and transportation. By the same token, to the extent a small burden is falling on buyers, this is the price of admission.
or a down payment on the value of their property attributable to Brookline’s qualities. ([http://buildings.aboutbrookline.com/assessment](http://buildings.aboutbrookline.com/assessment)) (See “A Brookline Example”, below)

Table 2. Brookline Real Estate Trends

<table>
<thead>
<tr>
<th>Median Sales Price – Single-Family Properties</th>
<th>Median Sales Price – Condominium Properties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rolling 12-Month Calculation</td>
<td>Rolling 12-Month Calculation</td>
</tr>
</tbody>
</table>

Therefore, it seems fair and appropriate for sellers and buyers to return a small portion of their change in property value to support the infrastructure from which they have, or will, benefit. The RETT payment, like impact fees often employed in other parts of the country in areas experiencing rapid development (Been 2005), represents partial compensation for the Town’s contribution to increasing property value. (Bahl 2010)

The Land Bank Model

Over the past four decades, localities and municipalities have employed many kinds of land banks to address uneven urban development with numerous goals and limited powers. Due to the recent Great Recession, land banks such as the Genesee County Land Bank Authority in Flint (Michigan) and the Cuyahoga County (Ohio) Land Revitalization Corporation have become more common, especially in distressed communities.

“Approximately 70 percent of land banks of the approximately 170 land banks that currently exist in the United States were created pursuant to comprehensive state-enabling statutes that authorize local governments throughout a state to create land banks. As of August 2015, the following eleven states have passed comprehensive state-enabling land bank legislation:

- Ohio (2009)
- New York (2011)
- Georgia (2012)
- Tennessee (2012)
- Missouri (2012)
- Pennsylvania (2012)
- Nebraska (2013)
- Alabama (2013)
- West Virginia (2014)
- Delaware (2015)
“Powers provided to land banks through state enabling statutes include the ability to acquire real property through the delinquent tax enforcement process, hold real property tax-exempt, and to dispose of property for other than monetary consideration according to the direction of the land bank board of directors and land bank jurisdiction.

“Such land banks are suitable when there are:

- Large inventories of vacant and abandoned property,
- Properties with little to no market value,
- Properties with delinquent taxes in excess of fair market value,
- Properties with title problems,
- Inflexible policies that dictate the disposition of public property, denying local governments the chance to be strategic and nimble,
- The speculation and uncertainty inherent in the auction sale of tax-foreclosed properties.”

(Center for Community Progress 2018, slightly edited)

The Detroit Future Implementation Office is an example of this type of land bank. (Lewinski et al. 2015) Brookline does not have distressed properties. However, these examples are, nevertheless, relevant to Brookline as examples of use of the ability to acquire and own land as tool to spearhead commercial economic development through Town negotiated land trust agreement mechanisms, in a manner whereby the resulting benefits that accrue from the increase in the value of the land and its improvements are more equitably distributed between the Town and the developer.

**The New England Land Bank Model**

Another model for land banks, unique to Southern New England, New York, and a few other localities, aims to preserve and protect open space, agricultural land, and affordable housing. (Graves 2013)

The Nantucket Land Bank, claiming to be the first in the nation, at least of its type, derives its funds from a real estate transfer tax. Real estate transfer taxes have been imposed widely, beginning in Virginia in 1922. Currently transfer taxes, of one form or another, are collected by 38 state and local governments, including Connecticut, Maine, Massachusetts, New Hampshire, and Vermont. Massachusetts imposes a tax of 0.456% (lower in Dukes, Nantucket, and Barnstable Counties) that amounted to $246 million in 2004, shared between the state and the respective counties. Among the 38 jurisdictions nationwide, the rates range from 0.1% to up to 4%. (Sexton 2010)

When 15 Cape Cod Communities sought to establish a land bank, following the example of Nantucket, wider interest in granting communities, statewide, the power to create land banks emerged. This led to years of controversy due to opposition of the National Association of Realtors. (National Association of Realtors 2003)

**The Community Preservation Act**

After years of struggle about land bank legislation, the General Court passed a compromise, the Community Preservation Act (CPA) in 2000. The Act abandoned initially proposed real estate transfer tax funding, replacing it with a registry of deeds filing surcharge, a less robust revenue source. (The proceeds of the surcharge go into a Community Preservation Act Trust Fund, not subject to legislative appropriation.) Because the revenue capacity of this surcharge is limited, in
order to extend the CPA’s impact, the Act requires participating communities to ask the voters to approve a local property tax override, as a match for the registry surcharge CPA trust funds.

Table 3. Statewide CPA Trust Fund - Distribution History

<table>
<thead>
<tr>
<th>Date of Distribution</th>
<th>Number of Communities Receiving Distribution</th>
<th>Total Amount Distributed (in millions)</th>
<th>Base Trust Fund Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>10/15/2002</td>
<td>34</td>
<td>$17.80</td>
<td>100.00%</td>
</tr>
<tr>
<td>10/15/2003</td>
<td>54</td>
<td>$27.10</td>
<td>100.00%</td>
</tr>
<tr>
<td>10/15/2004</td>
<td>61</td>
<td>$30.80</td>
<td>100.00%</td>
</tr>
<tr>
<td>10/15/2005</td>
<td>82</td>
<td>$46.30</td>
<td>100.00%</td>
</tr>
<tr>
<td>10/15/2006</td>
<td>102</td>
<td>$58.70</td>
<td>100.00%</td>
</tr>
<tr>
<td>10/15/2007</td>
<td>113</td>
<td>$68.10</td>
<td>100.00%</td>
</tr>
<tr>
<td>10/15/2008</td>
<td>127</td>
<td>$54.60</td>
<td>67.62%</td>
</tr>
<tr>
<td>10/15/2009</td>
<td>135</td>
<td>$31.60</td>
<td>34.81%</td>
</tr>
<tr>
<td>10/15/2010</td>
<td>142</td>
<td>$25.90</td>
<td>27.20%</td>
</tr>
<tr>
<td>10/15/2011</td>
<td>143</td>
<td>$26.20</td>
<td>26.64%</td>
</tr>
<tr>
<td>10/15/2012</td>
<td>148</td>
<td>$27.70</td>
<td>26.83%</td>
</tr>
<tr>
<td>11/15/2013</td>
<td>148</td>
<td>$54.89</td>
<td>52.23%</td>
</tr>
<tr>
<td>11/15/2014</td>
<td>155</td>
<td>$36.14</td>
<td>31.46%</td>
</tr>
<tr>
<td>11/15/2015</td>
<td>156</td>
<td>$36.29</td>
<td>29.67%</td>
</tr>
<tr>
<td>11/15/2016</td>
<td>157</td>
<td>$26.72</td>
<td>20.58%</td>
</tr>
<tr>
<td>11/15/2017</td>
<td>162</td>
<td>$24.05</td>
<td>17.20%</td>
</tr>
</tbody>
</table>

http://communitypreservation.org/content/trustfund

The amount raised and distributed between 2002 and 2017 has varied from $18.8 million to $68.1 million. However, the match has declined from 100% to 17.2% and is likely, under the State’s distribution formula, to decline further as there are 14 additional communities coming online in 2018, including Boston. Boston alone will qualify for a substantial share of the future trust fund match because the Boston property tax levy is $1.8 billion. The match will thus clearly continue to diminish as it is shared by a growing number of participating communities, now numbering 172.

Brookline’s CPA Deliberations
Seeking to avoid a repeat of Brookline voters’ decision not to approve the Community Preservation Act question on the November 7, 2006 ballot, here is a summary of Town Meeting’s prior CPA deliberations.

For Brookline to accept the Community Preservation Act, Town Meeting must approve a resolution authorizing the Select Board to place a referendum question on the ballot: Whether to allow the Town to impose a surcharge on the property tax levy (an override) earmarked for creation of affordable housing, preservation and acquisition of open space, creation and preservation of land for recreation, and historic preservation.
The CPA enables communities to establish a surcharge on real property of not more than 3% of the annual real estate property tax levy. Three potential exemptions are available: Property owners who qualify as low-income households or low- and moderate-income senior households, certain commercial and industrial properties, and for the first $100,000 of the value of residential property.

If the referendum question had been approved by Brookline voters, at least 10% of the resulting funds must be allocated for open space, 10% for historic resources, and 10% for housing, with the remaining 70% eligible for one or more of the permitted uses. Not more than 5% can be expended for administration. The CPA funds may not be utilized to replace operating funds. A Community Preservation Fund (CPF) must be established and managed by the Treasurer. Expenditures are reviewed and recommended by a 5 to 9-member Community Preservation Committee (CPC) established by Town by-law, to be approved by Town Meeting. The recommendations of the Committee, including any borrowing, must also be approved by Town Meeting, as are all other expenditures through the Town Financial Plan. Acceptance of the CPA would enable the Town to annually seek State matching funds resulting from a $20.00/ $10.00 surcharge on filings at the Registry of Deeds, collected and paid into a state CPA trust fund. Brookline Town Meeting first considered CPA participation at the 2002 Annual Town Meeting. Judging by the Combined Reports, the hope at that time was that the CPA could provide additional state aid to offset and thereby reduce the Brookline property tax levy. Cambridge had accomplished this. Unfortunately, Brookline, unlike some cities such as Cambridge, does not have a large commercial base which often keeps Cambridge below the Proposition 2 ½ levy limit and permits substantial appropriations for affordable housing.

Both the Select Board and the Advisory Committee recommended no action. Their reports cited the following concerns which remain valid: The CPA could conflict with Brookline’s sound fiscal policies, lead to disruption of the established Capital Improvement Program (CIP) processes, interfere with the control over portions of the Town’s budget, lock in the Town to the CPA in a manner that could pose fiscal problems in the future. There were doubts about the sustainability of the initial 100% match, doubts about compatibility between CPA priorities and Brookline’s CIP aims, and concerns about the risks of problematic coordination between the required Community Preservation Committee (CPC) and established Town housing, preservation, open space, and recreation committees. (Brookline Town Meeting Combined Reports, May 2002)

In view of these concerns, Town meeting also voted no action. Again in 2005, Brookline Special Town Meeting returned to the question of accepting the CPA. Town Meeting voted favorable action on a resolution to create a Community Preservation Study Committee for the general purpose of studying the potential financial and other consequences of accepting the Massachusetts CPA. The charge of the committee was to study:

- The administration and use of the CPA in neighboring or comparable municipalities that have adopted it;
- Alternatives to CPA for financing the affordable housing, open space, recreation and historic preservation objectives of the Town;
- The ways in which the CPA could be used to further Town objectives identified in the Comprehensive Plan or other Town plans;
- Opportunities to use CPA revenues to fund projects that would otherwise be funded with general Town revenues and thereby “free up” those general revenues for other purposes including potentially reducing the tax rate;
Projects eligible for funding with CPA revenues, including an inventory of school/town buildings that constitute “historic resources” under the CPA;

Alternatives for the administration of the CPA, including the composition of the Community Preservation Committee that would be required under the CPA;

Projected surcharge tax revenues if the Town adopted the CPA at different surcharge rates and with or without different exemptions from the surcharge, and the projected impacts on taxpayers;

Projected state matching fund revenues that would be available to the Town if the Town adopted the CPA at different surcharge rates and with or without different exemptions from the surcharge; and

The implications of adopting the CPA for the Town’s established financial policies.

(Brookline Town Meeting Combined Reports, November 2005)

The Community Preservation Study Committee filed two warrant articles at the Brookline Annual Town Meeting in 2006. The first was a resolution authorizing the Select Board to place a referendum question on the ballot proposing acceptance of the CPA and imposing a surcharge on the real property tax levy. The second warrant article proposed a bylaw to create a Brookline Community Preservation Committee to implement the CPA for Brookline.

The Advisory Committee minority issued a separate report. The minority was concerned that the CPA would alter capital spending priorities in favor of certain earmarked areas outside the Town’s established process, appropriating funds on non-critical areas when the Town is facing a shortfall in the operating and Capital Improvement Program (CIP) budgets. The minority was concerned that CPA implementation in other communities had proven contentious. They were concerned that:

- Accepting the CPA could undermine the voter’s support for more critical, subsequent overrides;
- The CPA would add to homeowner tax burden;
- The recommendations of the Community Preservation Committee (CPC) may not align with the Town’s pressing priorities; and
- Requiring elderly, longtime residents to disclose their tax returns at Town Hall in order to qualify for the low-income exemption would be a burden all around.

The Advisory Committee majority opined that the CPA would help meet some of the fiscal challenges Brookline faces. The CPA funds may provide part of the solution to projected operating and capital shortfalls, particularly regarding the CIP. The majority pointed out that the Town’s Comprehensive Plan calls for the creation of 25 affordable housing units per year and that the Brookline Housing Authority had a $20 Million capital shortfall. Also, the Open Space Plan identified the need for 35 – 60 acres of additional open space.

The majority believed the CPA matching would extend the impact of limited Town capacity to meet these priorities. The Advisory Committee report estimated the match from 2007 to 2012 would be between 100% in 2007 to 41% in 2012. (Looking back, we now know he actual matches for these years were in every case less. For example, the estimates for 2010 - 2012 were 41%. The actual matches for these years were 27%. For the most recent period, 2017, the match is down to 17% and likely will continue downward, substantially.) (See Table 3 above)
The Advisory Committee majority disputed the claim that voter approval of a CPA surcharge would diminish the chances for future overrides and speculated that the CPA could forestall future overrides.

The Select Board was also divided. The majority viewed the CPA as an opportunity to take on projects that would otherwise be unaffordable unless the Town chose to realign priorities and forego other projects. The Select Board majority viewed the potential cost to Brookline taxpayers as modest and acceptable. A minority, on the other hand, were less sanguine about the additional burden on taxpayers. The minority emphasized their concern about rising energy, health insurance premiums, contributions to the pension system, and the growing cost of special education. All acknowledged the validity of concerns about the Town’s fiscal prospects.

The 2006 deliberation, judging by the combined reports record, was contentious. The Select Board and Advisory Committee recommendations differed. The Select Board recommended a 2% surcharge, low income exemption, and no $100,000 residential exemption (3-2-0). The Advisory Committee recommended a 2% surcharge, low income exemption, and a $100,000 residential exemption (11-10-0). Town Meeting voted to place a question on the ballot recommending a 3% surcharge, no low-income exemption, and a $100,000 residential exemption (128-101-17-2). (Brookline Town Meeting Combined Reports, May 2006) & (Brookline Town Clerk Election Results)

The result of the Town ballot question vote on the Community Preservation Act question on November 7, 2006 was 8,431 in favor, 10,732 opposed, and 1,339 blank ballots.

**The Brookline Land Bank is a Better Pathway**

On the one hand, the CPA offers a ready-made solution. On the other, Brookline concluded that the CPA would risk undermining fiscal policies and introducing problematic layers of coordination. The barrier to entrance for the CPA is a ballot question, a property tax override.

The Brookline Land Bank, modeled after the Nantucket Land Bank and contemporary land banks in other parts of the country, is an alternative that is more flexible and compatible for Brookline. The barrier to entrance is a home rule petition special law and a possible ballot question, as Nantucket and Martha’s Vineyard have done, as well as communities in Rhode Island, New York, and Washington.

In many cases the towns with land banks are islands surrounded by water and therefore acutely aware of the limits of their natural resources. The recent effort to identify a site to construct a ninth elementary school has raised consciousness about how the limits Brookline’s resources are making it more and more challenging to balance respect for our environment with social and economic values and the need to broaden the Town’s tax base. The consequence is that various groups and constituencies are fighting over parcels that, for one reason or another; don’t offer fully satisfactory, available solutions to Brookline’s pressing needs. This is a symptom of an underlying malady. The CPA is inadequate because it may lack the ability to move quickly when market opportunities appear. The BLB, on the other hand, has a greater fiscal and operational capacity, when it comes to being in the market, and is more focused and flexible in its approach. When necessary, the BLB can quickly raise the capital required for action. If a suitable parcel becomes available, the BLB can promptly issue a note to borrow from the Town’s cash reserves, while a bond is being negotiated to pay back this note.
Here is a comparison table that lists the advantages of the BLB over the CPA. The CPA is a one size fits all, statewide solution, whereas the BLB is more tailored fit to Brookline’s situation. (Rows with ‘n/a’ in a cell indicate a diametric difference. More typical, however, are rows with substantive differences.)

**Table 4. A Comparison Table: Community Preservation Act and the Brookline Land Bank**

<table>
<thead>
<tr>
<th>4.1 Governance</th>
<th>Community Preservation Act</th>
<th>Brookline Land Bank</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Not less than 5, nor more than 9: Conservation Commission, Historical Commission, Planning Board, Housing Authority, Park and Recreation, and up to 4 additional as determined by by-law.</td>
<td>The Select Board</td>
</tr>
</tbody>
</table>

| 4.2 Open Space | Land to protect existing and future well fields, aquifers and recharge areas, watershed land, agricultural land, grasslands, fields, forest land, fresh and salt water marshes and other wetlands, ocean, river, stream, lake and pond frontage, beaches, dunes and other coastal lands, lands to protect scenic vistas, land for wildlife or nature preserve. (Acquisition, Creation, Preservation, Rehabilitation, & Restoration) | Pond frontage; land for future aquifer recharge areas; agricultural purposes; stream banks and adjoining land; preservation as scenic landscapes or unique environments; wildlife habitat. (Acquisition, Creation, Preservation, Rehabilitation & Restoration) |

| 4.3 Recreational Land | Active or passive recreational use including community gardens, trails, non-commercial youth and adult sports; and use as a park, playground or athletic field but not for horse or dog racing or for a stadium, gymnasium or similar structure. (Acquisition, Creation, Preservation, Rehabilitation, & Restoration) | Land for pedestrian paths; future public recreational and athletic facilities and use; recreation space to protect existing wetlands; future park facilities and use; passive recreational use. (Acquisition, Creation, Preservation, Rehabilitation & Restoration) |

<p>| 4.4 Community Housing | Housing for individuals and households with low and moderate incomes, including housing for seniors. (Acquisition, Creation, Preservation, Support, Rehabilitation, &amp; Restoration) | Land for use by a governmental body for an affordable housing municipal purpose. Compatible with purchase of land placed into land trusts to enable non-profits and developers to increase affordable housing for non-family households, families, and seniors on terms in the best interest of Brookline’s low-income residents and the Town. (Semuels 2015 and <a href="https://community-wealth.org/strategies/panel/clts/index.html">https://community-wealth.org/strategies/panel/clts/index.html</a>) (Acquisition &amp; Creation) |</p>
<table>
<thead>
<tr>
<th>4.5 Public Schools and Commercial Development</th>
<th>n/a</th>
<th>Land for use by a governmental body for a municipal educational purpose or to foster economic development using public land trust, etc. (Acquisition &amp; Creation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.6 Historic Resources</td>
<td>Building, structure, vessel, real property, document or artifact that is listed or eligible for listing on the state register of historic places or has been determined by the local historic preservation commission to be significant in the history, archeology, architecture or culture of a city or town. (Acquisition, Preservation, Rehabilitation, &amp; Restoration)</td>
<td>n/a</td>
</tr>
<tr>
<td>4.7 Taxation</td>
<td>Up to 3% surcharge on property tax levy, optionally supplemented with excise, sale of municipal property, inclusionary zoning payments, parking fines allocations, and other sources. (A surcharge rate change requires town-wide ballot question approval.)</td>
<td>Up to 1% tax on the transfer of real property, after any eligible exemptions. The BLB Commissioners can adjust the rate, as circumstances warrant, after a public hearing.</td>
</tr>
<tr>
<td>4.8 State Matching Funds</td>
<td>The Community Preservation Trust Fund administered by the Massachusetts Department of Revenue collects a $20/$10 surcharge on registry of deeds filings. The proceeds are allocated to communities that have accepted the CPA. As more communities have accepted the CPA, this has reduced the match. Last year it was 17% of 80% of the surcharge amount (first round formula). This match is expected to decline further unless the law changes to increase support for this trust fund.</td>
<td>n/a</td>
</tr>
<tr>
<td>4.9 Exemptions</td>
<td>Optional surcharge exemptions: Seniors, Blind, and Veterans who apply and qualify under MGL Ch. 59; resident who occupy or are qualified for low income housing subsidies; commercial and industrial properties; first $100,000 of assessed value.</td>
<td>First $500,000 of purchase price; gifts without consideration; transfers to trustees of a trust with no change in beneficial interest; bankruptcies, inheritance; transfers without a change in beneficial interest; partitions of land; transfers to a charity or religious organization; foreclosures; transfers to corporation/stockholder or partnership without any change in beneficial interest; division of marital assets; affordable housing; when</td>
</tr>
</tbody>
</table>
The purchaser is a Brookline resident selling and buying within Brookline. The BLB Commissioners, after a public hearing, may increase the $500,000 residential exemption as circumstances warrant. The BLB Commissioners have the power to set up policies, such as indexing the exemption amount.

<table>
<thead>
<tr>
<th>4.10 Funding Allocation Limits</th>
<th>At least 10% must be allocated respectively to affordable housing, preservation, and open space. Administration is capped at 5%. Rehabilitation and restoration restricted to projects created with CPA funds (open space &amp; housing). Transfers to affordable housing trust are allowable. Maintenance is not allowable. Consultation with other Town bodies is mandated by Chapter 44B, Section 5(b)1.</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.11 Project Approval Processes</td>
<td>CPC solicits and considers project proposals in coordination with the relevant departments &amp; committees. Project review processes incorporate the recommendations of relevant committees and departments, existing processes, priorities, practices, and roles will not change. The BLB Commissioners’ role is to recommend a balanced financing allocation in view of the overall best interest of the Town, without interfering with the Town’s existing fiscal policies and control of the Town’s budget.</td>
</tr>
<tr>
<td>4.12 Hearings</td>
<td>The CPC must hold a public informational hearing as part of its study of community needs. The BLB Commissioners must hold public hearing(s) regarding the fund allocation recommendations, the recommended tax rate, and the recommended residential exemption. Hearings regarding disputes with aggrieved parties are required.</td>
</tr>
<tr>
<td>4.13 Potential Relief for the Brookline Capital Improvement Program (CIP)</td>
<td>The Advisory Committee review of the CPA warrant articles analyzed the CPA to determine the extent of possible relief on fiscal pressures by using CPA funding for certain existing CIP items, thereby hoping The BLB purpose is to acquire and manage land for open space, recreation, housing, economic development, and educational purposes. Therefore, the overlap, if any, with CIP is likely to be limited to specific areas.</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>Budget</td>
<td>to free up resources for other CIP projects. It is not clear that this is in keeping with the intent of the CPA and therefore a feasible approach to the CPA.</td>
</tr>
<tr>
<td>4.14 Impact on Property Tax Overrides</td>
<td>The views among Selectboard and Advisory Committee were mixed. There was a weak consensus reflected in the votes and minority reports. The CPA ballot question was rejected. There is likely very little impact, particularly if the land bank is able to achieve a balance between land lost to the tax base with offsetting land and improvements with increased value as a result of commercial and economic development.</td>
</tr>
<tr>
<td>4.15 Financial Impact</td>
<td>The CPA has a broad but modest, ongoing impact on quarterly tax bills because it is a surcharge on the property tax levy with possible exemptions for low income, low income seniors, and affordable housing recipients. The BLB will not raise or impact Brookline’s property tax levy or other recurring taxes. The burden falls on a very small subset: A possible slight, less than 1%, reduction in the net proceeds from the sale of real estate affecting newly resident buyers (and possibly sellers to varying degrees) (See Table 6, below.)</td>
</tr>
<tr>
<td>4.16 Final Acceptance</td>
<td>Voters rejected the CPA on November 7, 2006. As a home rule petition it requires House and Senate passage with a 2/3 majority vote. This is likely to be lengthy and challenging. This petition is the opening gambit, subject to change as it moves through legislative committees. The resulting legislation may materially differ from the original petition. If the legislature approves and the Governor signs it into the law, it will come back to Town. Town voters must vote a ballot question to accept the final version of the BLB law.</td>
</tr>
<tr>
<td>4.17 Termination Requirements</td>
<td>The CPA has lock-in features. Reducing the surcharge or withdrawing from CPA requires ballot question approval from voters. Any outstanding obligations after withdrawal remain on tax bills until satisfied. A wind-down of the BLB would be in the hands of the BLB Commissioners and Town Meeting. Ceasing any further additional land acquisitions would be the first step. Managing outstanding obligations and how to satisfy them would be up to Town Meeting.</td>
</tr>
<tr>
<td>4.18 Administration</td>
<td>Administration limited to 5%. Town meeting approves appropriation for BLB administration. Initially the BLB would likely employ a staff of two, estimated to initially cost up to $300,000. The Commissioners recommend the staffing level and personnel expenditure through the Town’s budget process, subject to appropriation by Town</td>
</tr>
</tbody>
</table>
### 4.19 BLB Financial Policies and Fund Flow

<table>
<thead>
<tr>
<th>Year</th>
<th>Revenue Estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>$3.2 m</td>
</tr>
<tr>
<td>2008</td>
<td>$6.5 m</td>
</tr>
<tr>
<td>2009</td>
<td>$6.0 m</td>
</tr>
<tr>
<td>2010</td>
<td>$5.0 m</td>
</tr>
<tr>
<td>2011</td>
<td>$5.3 m</td>
</tr>
<tr>
<td>2012</td>
<td>$5.5 m</td>
</tr>
<tr>
<td>2013</td>
<td>$1.6 m</td>
</tr>
</tbody>
</table>

(1) RETT revenue deposited into BLB revolving fund account.
(2) Town Meeting votes separate appropriations to acquire land for open space, affordable housing, schools, and economic development, as well as transfers to AHTF and CC accounts.
(3) Town Meeting appropriates other recurring expenditures such as personnel, supplies, consultants, and debt repayment.
(4) Town Meeting may appropriate funds into a reserve account. The BLB may make unanticipated expenditures as reserve fund transfers, subject to Advisory Committee review.

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### 4.20 Revenue Estimates

<table>
<thead>
<tr>
<th>Year</th>
<th>Revenue Estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>$3.8 m</td>
</tr>
<tr>
<td>2008</td>
<td>$2.3 m</td>
</tr>
<tr>
<td>2009</td>
<td>$4.2 m</td>
</tr>
<tr>
<td>2010</td>
<td>$3.6 m</td>
</tr>
<tr>
<td>2011</td>
<td>$2.8 m</td>
</tr>
<tr>
<td>2012</td>
<td>$4.5 M</td>
</tr>
<tr>
<td>2013</td>
<td>$5.7 m</td>
</tr>
<tr>
<td>2014</td>
<td>$5.8 m</td>
</tr>
<tr>
<td>2015</td>
<td>$7.2 m</td>
</tr>
<tr>
<td>2016</td>
<td>$7.0 m</td>
</tr>
</tbody>
</table>

(Totals for CPA include state matching.)

Assumes a 3% surcharge, $100,000 exemption, low income exemption.

(Brookline Town Meeting Combined Reports, May 2006)

Assumes a 1% RETT rate, $500,000 exemption.

(Personal communication, Gary McCabe, Assessor 2017)

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The Impact of a Real Estate Transfer Tax on the Brookline Residential Real Estate Market: Sales Volume, Price, Economic Burden, Distribution

In general, initial objections to a new tax earmarked for purposes such as land banks have been common. This reaction typically changes after implementation. New Jersey’s Green Acres Planning Initiative gained popularity, once the benefits became known and apparent, and now enjoys widespread support. Maryland went through the same process. As time passes, public support and gratitude for a Land Bank type of program grows and outweighs public concern about the tax and the cost. (Zieper 2010)

Comment from Split Rock Real Estate, Martha’s Vineyard regarding the transfer tax:

“It could be worse; you could buy a property on Nantucket and pay 4% of the purchase price. It could be even worse than that if Joni Mitchell’s words came true and ‘they paved paradise and
put up a parking lot’. This is precisely why the Land Bank came into existence in 1986 during a notorious unbridled building boom – to preserve as much of the pastoral and seaside beauty of Martha’s Vineyard as possible.” (Split Rock Real Estate 2017)

While the realtor association in Massachusetts managed to derail a proposed land bank which voters in 15 Cape Cod communities had voted overwhelmingly to approve, a similar controversy in Rhode Island ended in favor of a land bank for Block Island. “Instead of opposing the tax, realtors recognized that preserving open space and the Island’s history would enhance the value of property and ultimately their profits. In response to criticism that the tax might be a significant barrier to first-time home buyers, these buyers were granted an exemption of the first $75,000 of the purchase of a primary residence.” (Sexton 2010)

The National Association of Realtors (NAR) has taken a position in opposition to RETT. “…Realtors should oppose the establishment of transfer taxes and fees. However, where they currently exist, we urge their repeal; opposition to any increases; and/or the redirection of this revenue source to be used for one-time capital acquisitions that are related to housing or commercial property improvements (e.g. infrastructure).” (National Association of Realtors 2003)

The first column in Table 5 lists the NAR claimed RETT impacts. The NAR based its findings on a review of the impacts for statewide jurisdictions. The second column explains why these claims may or may not apply to the specifics of the Brookline Land Bank proposed RETT, in the context of keeping Brookline affordable and green, with excellent educational opportunities, parks, open space, and affordable housing and a robust base of commercial development.

**Table 5. National Association of Realtors; Potential Impacts of Increases in Real Estate Transfer Taxes**

<table>
<thead>
<tr>
<th>National Association of Realtors</th>
<th>Brookline Land Bank</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1 The RETT is regressive.</td>
<td>BLB shifts the RETT burden to more expensive properties, making it more progressive because it exempts at least the first $500,000 of the sale price. Furthermore, lower income owners tend to stay put while more affluent owners move more frequently. (Sexton 2010) Also, the BLB exempts buyers who buy another property within Brookline.</td>
</tr>
<tr>
<td>5.2 The RETT is discriminatory because it is assessed against one asset, real estate, not other assets.</td>
<td>For investors and developers in the business of owning, managing, and trading in properties, real estate is an asset. However, residential, owner-occupied real estate with the benefits of household occupancy is, first and foremost, a home that, in the Brookline market, happens to be very likely to appreciate and may reap tax advantages. When a home appreciates, the growth in value is generally viewed as at least partially due to the schools, the high quality public domain, a robust commercial sector, and the desirability of the location. It happens that the real estate appreciation in Brookline overwhelmingly offsets the property tax and RETT burdens. In this way, the RETT is a mechanism to return a small portion of this net change for sellers and buyers to the Town as fair compensation for services and</td>
</tr>
</tbody>
</table>
Table 5.1: Key Points about the Brookline Land Bank RETT

| **5.3 Frequent movers pay more, violating the principle that those who are equal should pay similar taxes.** | The configuration of the Brookline Land Bank RETT intentionally shifts the burden in the progressive direction. (See 1 above.) |
| **5.4 The burden hits a small share of the population.** | Not all taxes are broad-based. (Capital Gains, gift, and Inheritance are examples.) Equitable taxation depends on a mix of broad-based as well as some narrower, more targeted taxes. The targeting of the RETT is equitable within a broad context, as explained above, as long as it does not constitute too great a proportion of the overall tax burden. The rate ceiling and exemption floor minimize any risk that the RETT will be excessive or cause significant deadweight losses (market distortion). |
| **5.5 Transfer taxes are volatile.** | The volatility of RETT makes it more appropriate for one-time capital acquisition purposes as opposed to supporting operating expenses, as long as the BLB is managed skillfully, avoiding excessively committing to recurring expense. (Bahl 2010) |
| **5.6 The RETT is a burden to buyers and sellers. It will reduce sales and ability of new and current home buyers to purchase a home.** | There is little evidence that this is the case. (Sexton 2010) “Specifically, the empirical case studies presented indicate that there is no statistically significant impact of transfer tax rates on either home price or sales at the local level. This actually makes sense in a more rudimentary framework as well. Given that commissions, fees, closing costs, inspections, and other fees can run as high as 8% of the sales price of a property, the 0.45% increase in transfer rates on the most expensive homes is a proverbial drop in the bucket.” (Thornberg 2012) |
| **5.7 The RETT is an arbitrary levy not related to ability to pay or benefits received.** | It is usually the case that a particular tax doesn’t perfectly match a taxpayer’s ability to pay. Equitable taxation generally depends on a mix of taxes so that inequity in some taxes is off-set by features of others. We all support the schools, services for the elderly, and veterans through our taxes, even though a minority of households in Brookline have school age children, and many others are not elderly, or veterans, and therefore may not benefit directly from various specific services their taxes support. (See 5.4 above.) |

**The Relationship between RETT and Real Estate Prices, Sales Volume, and the Economic Burden**

It is possible to frame the study of relationships between RETT and real estate prices, sales volume, and the economic burden in many ways. Therefore, identifying consensus among scholars in this field is challenging. The contexts are dramatically diverse among London, Toronto, Philadelphia, Los Angeles, Washington DC, etc. The quality and availability of
empirical data is often problematic. Understanding the dynamics for real estate market is fraught and complicated. There are so many moving parts to this market. (Chart 1)
While substituting property taxes with a RETT is not recommended, it seems that the very modest, targeted Brookline Land Bank RETT may play a useful role as a limited component within the portfolio of Brookline taxation. “Terri Sexton’s careful review and analysis of the use or the property transfer tax shows that it exerts some offsetting and some reinforcing effects compared to the annual property tax.” (Bahl 2010)

In theory, the legal incidence of the tax and the economic incidence may not coincide. “The economic burden of the tax, however, has nothing to do with who is statutorily obligated to pay the tax. The division of burden of the transfer tax between buyer and seller is determined in the same way as any commodity tax, by the elasticities of demand and supply. Elasticity measures responsiveness to a change in price and those that are least responsive will bear the bulk of the burden. Using residential property as an example, if the supply of housing is relatively inelastic, as in the case of a fixed (perfectly inelastic) supply, housing prices will be driven down by the amount of the tax. In this case the tax is said to be fully capitalized into lower property values, and property owners at the time the tax is imposed will bear the burden. If instead demand is relatively inelastic, buyers will bear a larger burden.” (Sexton 2010)

How the burden affects buyers and sellers depends on the circumstances in the market, which may change from time to time. While demand may be inelastic, the supply in Boston has been shown to be inelastic, which may carry over to Brookline, theoretically leading to a higher likelihood of sellers sharing in at least part of the buyer’s burden of the total cost. (Green 2005).

However, the extent to which these economic theories are born out is not clear or established. “The lack of property tax base elasticity studies makes it impossible to measure the overall extent of how property tax influences choices. Data issues and lack of focus probably also explain this omission.” (Deskins 2010)

Furthermore, it is well documented in the behavioral economics literature that the format of the forms such as the required ALTA (American Land Title Association) settlement form shapes choices and outcomes. In the same way that a supermarket store manager can manipulate which products sell well by selecting which products are placed on shelves at eye level, the format of
the ALTA form will lead to the buyer/borrower typically bearing the burden of the RETT. This is the case because the ALTA form is designed, intentionally or not, to assure that there is no possibility that there can be any other outcome. This is called *choice architecture* in the behavioral economics literature. (Thaler 2009)

Whether RETT may be having a progressive or regressive impact depends on circumstances, particularly the frequency of moves for higher as opposed to lower income households. The $500,000 exemption shifts the BLB RETT toward progressive. There is a claim that the RETT discourages home ownership. However, after having examined data from 38 jurisdictions, Sexton found that the correlation between the incidence of RETT and home ownership is not statistically significant. (Sexton 2010) Another claim is that the RETT tends to lock in home owners. (Bahl 2010) The intra Brookline moves exemption would address this objection.

**A Brookline Example**
The approximate median sale price in Brookline for residential real estate (assessor ‘use codes’ 101, 102, 104, 105, 106, 109, 111, and 112); is nearly $900,000, according to recent assessor’s data. Table 5 portrays a simplified representation of such a transaction on the required ALTA settlement disclosure form.

To make it clear how the RETT would impact the settlement, many other line items have been omitted. Here, the buyer and the seller do not have mortgages. This is an all cash transaction. Other obligations such as adjustments for property taxes, the water bill, association fees, etc. that usually need to be reconciled as of the day of closing are all zero. As a practical matter, because of the ALTA settlement form’s *choice architecture*, there is not really a way to shift the tax burden from the borrower/buyer to the seller. Hypothetically, assuming, nevertheless, that the borrower/buyer and seller are fully informed and rational, as is assumed by classic economic theory and not affected by the format of the form or insufficient information, (which may not be the actual case in the real world) the seller, would pay a realtor a 5% commission, $45,000, a recording fee of $75, the Massachusetts transfer tax of $4,105, and the attorney $650, a total of $49,830 of seller closing expenses. Assuming the BLB commissioners recommend a full 1% rate and a residential exemption of $500,000, and if the seller absorbs the Land Bank RETT, the seller would receive $4,000 less, $756,170, a total with the deposit of $90,000, of $846,170 instead of $850,170. The amount due to borrower/buyer for closing costs in this example would $4,000 less, $4,996, not $8,996. The $4,000 to pay the RETT would, in this example, increase the seller’s closing costs by 8%, and reduce the net take away for selling the property, in this example, by 0.44% of the selling price.

However, if in practice, the cost of the BLB transfer tax remains with the borrower/buyer, then the seller would realize the full $850,170 and the borrower/buyer closing cost would be $8,996. Regardless of how the transaction actually works out, it is very much in line with the observation in the literature review for the City Council of Los Angeles by Beacon Economics, “…a proverbial drop in the bucket.” (Thornberg 2012)

**Administration**
The cost of administering the RETT is minimal. The agent who is handling the recording of a Brookline property purchase transaction at the registry of deeds will be required to fill out a two-page land bank form plus a one-page eligibility application for each of 16 possible exemptions. The land bank will provide a tax assessment voucher indicating the amount of tax due, if any. The agent will either electronically transfer the funds to the Town or deliver a check to the Town
Whether paid by electronic transfer or by check, the treasurer will stamp the voucher ‘paid’. The Norfolk registry will require a stamped voucher as well as the other required paperwork in order to register the deed.

### Table 6. Pro Forma Settlement Statement for $900,000 Residential Transaction (A simplified Example)

<table>
<thead>
<tr>
<th>Debit/ Credit</th>
<th>Description</th>
<th>Borrower/Buyer</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Debit</strong></td>
<td></td>
<td><strong>Debit</strong></td>
</tr>
<tr>
<td>900,000.00</td>
<td>Sales Price of Property</td>
<td>900,000.00</td>
</tr>
<tr>
<td>90,000.00</td>
<td>Deposit including earnest money</td>
<td>90,000.00</td>
</tr>
<tr>
<td></td>
<td>Personal Property</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Loan Amount</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Existing Loan(s) Assumed or Taken Subject to</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Seller Credit</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Excess Deposit</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cash Payment of Balance Due for Purchase</td>
<td>810,000.00</td>
</tr>
<tr>
<td><strong>Credit</strong></td>
<td></td>
<td><strong>Credit</strong></td>
</tr>
<tr>
<td></td>
<td>Prorations/Adjustments</td>
<td></td>
</tr>
<tr>
<td></td>
<td>School Taxes from (date) to (date)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>County Taxes from (date) to (date)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>HOA dues from (date) to (date)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Seller Credit</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Loan Charges to (lender co.)</td>
<td></td>
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<tr>
<td></td>
<td>Points</td>
<td>400.00</td>
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<tr>
<td>Fee Type</td>
<td>Amount</td>
<td></td>
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<tr>
<td>------------------------------------------------------</td>
<td>--------</td>
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</tr>
<tr>
<td>Origination Fee</td>
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<tr>
<td>Underwriting Fee</td>
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<tr>
<td>Mortgage Insurance Premium</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prepaid Interest</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Other Loan Charges</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appraisal Fee to________</td>
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<tr>
<td>Credit Report Fee to________</td>
<td>$100.00</td>
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<tr>
<td>Flood Determination Fee to______</td>
<td>$9.00</td>
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<tr>
<td>Flood Monitoring Fee to______</td>
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<td></td>
</tr>
<tr>
<td>Tax Monitoring Fee to_______</td>
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<tr>
<td>Tax Status Research Fee to______</td>
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<td><strong>Impounds</strong></td>
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<td></td>
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<tr>
<td>Homeowner's Insurance mo @ $_____/mo</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mortgage Insurance mo @ $_____/mo</td>
<td>$86.00</td>
<td></td>
</tr>
<tr>
<td>City/town taxes mo @ $_____/mo</td>
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<td></td>
</tr>
<tr>
<td>County Taxes mo @ $_____/mo</td>
<td></td>
<td></td>
</tr>
<tr>
<td>School Taxes mo @ $_____/mo</td>
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<tr>
<td>Aggregate Adjustment</td>
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<td><strong>Title Charges &amp; Escrow / Settlement Charges</strong></td>
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<td>Owner's Policy Endorsement(s)____</td>
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<td></td>
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<tr>
<td>Loan Policy of Title Insurance ($ amount) to_</td>
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<tr>
<td>Loan Policy Endorsement(s)____</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Title Search to________</td>
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<td>Insurance Binder to________</td>
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<td></td>
</tr>
<tr>
<td>Escrow / Settlement Fee to____</td>
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<td></td>
</tr>
<tr>
<td>Notary Fee to____</td>
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</tr>
<tr>
<td>Signing Fee to____</td>
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<tr>
<td><strong>Commission</strong></td>
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<td>Real Estate Commission to____</td>
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<td>Other</td>
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<td><strong>Government Recording and Transfer Charges</strong></td>
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<td>$75.00</td>
<td>$250.00</td>
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<td>Recording Fees (Mortgage/Deed of Trust) to_</td>
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<td>Description</td>
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<tr>
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<td>---------</td>
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<td>$0</td>
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<tr>
<td>Interest on Payoff Loan</td>
<td>$900,000.00</td>
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</tr>
<tr>
<td>Additional Payoff fees/Reconveyance Fee/Recording Fee/Wire Fee</td>
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</tr>
<tr>
<td>Transfer Tax to Land Bank</td>
<td>$4,000.00</td>
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<tr>
<td>Transfer Tax to State Tax</td>
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<td>Payoff(s)</td>
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</tr>
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<td>Lender: Payoff Lender Co.</td>
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<tr>
<td>Principal Balance</td>
<td>$139,830.00</td>
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</tr>
<tr>
<td>Interest on Payoff Loan</td>
<td>$900,000.00</td>
<td></td>
</tr>
<tr>
<td>Additional Payoff fees/Reconveyance Fee/Recording Fee/Wire Fee</td>
<td>$4,105.00</td>
<td></td>
</tr>
<tr>
<td>Miscellaneous</td>
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<td>Pest Inspection Fee</td>
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<td></td>
</tr>
<tr>
<td>Survey Fee</td>
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<td></td>
</tr>
<tr>
<td>Homeowner's insurance premium</td>
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<td></td>
</tr>
<tr>
<td>Home Inspection Fee</td>
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<td></td>
</tr>
<tr>
<td>Home Warranty Fee</td>
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<td></td>
</tr>
<tr>
<td>HOA dues</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>Transfer fee to Management Co.</td>
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<td></td>
</tr>
<tr>
<td>Special Hazard Disclosure</td>
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</tr>
<tr>
<td>[Utility] Payment</td>
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<tr>
<td>Assessments</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>School Taxes</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>City/town taxes</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>County Taxes/County Property taxes</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>Buyer Attorney fees</td>
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</tr>
<tr>
<td>Seller Attorney fees</td>
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<td></td>
</tr>
<tr>
<td>Subtotals</td>
<td>$900,000.00</td>
<td>$908,996.00</td>
</tr>
<tr>
<td>Due From/To Borrower</td>
<td>$8,996.00</td>
<td></td>
</tr>
</tbody>
</table>

**Notes:**
- Debit and Credit columns indicate the transaction direction.
- Subtotals reflect the net effect of all transactions.
- The Due From/To Borrower amount represents the final settlement due to the borrower.
Acknowledgement
We/I have carefully reviewed the ALTA Settlement Statement and find it to be a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction and further certify that I have received a copy of the ALTA Settlement Statement. We/I authorize_ title company name_ to cause the funds to be disbursed in accordance with this statement.

Buyer

Buyer

Seller

---

Escrow Officer

---

Table 7. Brookline Land Bank Petition Index

<table>
<thead>
<tr>
<th>Section 1</th>
<th>Definitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 2</td>
<td>Land Bank purposes</td>
</tr>
<tr>
<td>Section 3</td>
<td>Land Bank commission membership and governance</td>
</tr>
<tr>
<td>Section 4</td>
<td>Power and authority</td>
</tr>
<tr>
<td>Section 4A</td>
<td>Appropriation of funds, repay notes, incur debt</td>
</tr>
<tr>
<td>Section 4B</td>
<td>Issuance of bonds, reserves for debt repayment, loan agreements, and trust agreements, costs of issuance</td>
</tr>
<tr>
<td>Section 4C</td>
<td>Full faith and credit of the Town, repaying the Town</td>
</tr>
<tr>
<td>Section 4D</td>
<td>Bonds as authorized by law</td>
</tr>
<tr>
<td>Section 4E</td>
<td>Bonds are investment securities</td>
</tr>
<tr>
<td>Section 4F</td>
<td>Bonds require two-thirds vote of Town Meeting</td>
</tr>
<tr>
<td>Section 4G</td>
<td>Bonds are tax exempt</td>
</tr>
<tr>
<td>Section 5</td>
<td>Types of land</td>
</tr>
<tr>
<td>Section 6</td>
<td>Uses of land</td>
</tr>
<tr>
<td>Section 7</td>
<td>Annual report requirement</td>
</tr>
<tr>
<td>Section 8</td>
<td>Sources of Land Bank funds and assets</td>
</tr>
<tr>
<td>Section 9</td>
<td>Record keeping requirements</td>
</tr>
<tr>
<td>Section 10</td>
<td>Authorization to impose a real estate transfer tax and allocation of revenue to Town accounts</td>
</tr>
<tr>
<td>-----------</td>
<td>-----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Section 11</td>
<td>Refunds of tax payments</td>
</tr>
<tr>
<td>Section 12</td>
<td>Tax exemptions</td>
</tr>
<tr>
<td>Section 13</td>
<td>Penalties for non-payment</td>
</tr>
<tr>
<td>Section 14</td>
<td>Notification of purchaser of penalty</td>
</tr>
<tr>
<td>Section 14A</td>
<td>Dissolution of the Bank</td>
</tr>
<tr>
<td>Section 14B</td>
<td>Construing the Act</td>
</tr>
<tr>
<td>Section 14C</td>
<td>Severability</td>
</tr>
<tr>
<td>Section 14D</td>
<td>Burden of proof in the event of evasion</td>
</tr>
<tr>
<td>Section 15</td>
<td>Town Meeting vote to make the Act effective</td>
</tr>
</tbody>
</table>

References


Brookline Town Meeting Combined Reports: May 2002, November 2005


McCabe G. 2017, 2018. Estimated Transfer Tax Revenue @ 1% Rate and estimated property tax rate redistribution impact. Personal Communication.

**ARTICLE 25**
Submitted by: Susan Granoff, TMM7

This warrant article directly addresses the problem that a growing number of Brookline homeowners aged 65 and older with low or modest incomes are no longer able to qualify for the Massachusetts Circuit Breaker Income Tax Credit (“CB”) that was expressly enacted to provide an annual tax credit (currently up to $1,080) to qualifying senior homeowners with low or modest incomes whose Massachusetts property taxes (plus half the cost of their water and sewer fees) exceed 10% of their total gross income. These Brookline senior homeowners are no longer eligible for the CB – no matter how low their income – solely because the assessed valuation of their Brookline residence exceeds the statutory qualification cap, which is based on a statewide average of the assessed values of all single-family residences in the commonwealth.

While Brookline's residential real estate values have been increasing 5-10% each year during the past decade, residential real estate values in other parts of the state have plummeted, and, as a result, the CB assessed valuation qualification amount is now lower than what it was 10 years ago. As a result, fewer and fewer Brookline seniors have been filing CB claims since 2009, even though Brookline's senior population has increased by 28% during the same period. Brookline's rapidly escalating property tax burden due to recent and likely future tax overrides will create an even greater hardship for Brookline senior homeowners with low or modest incomes who would have otherwise qualified for the CB tax credit.
The proposed program would work as follows: If a Brookline senior homeowner meets all the requirements and qualifications of the CB (see below for an itemized list) except that their principal residence, which they must own and which must be located in Brookline, has an assessed valuation that is greater than the CB qualifying amount – and that principal residence has an assessed valuation of not more than the average of all Brookline single-family residences plus 10% (the same formula used by the CB on a statewide basis) – then the Town will grant to the senior an exemption from their Brookline residence's property tax assessment in the amount of the CB credit for which they would otherwise qualify if their Brookline residence had an assessed valuation at or below the CB's qualifying amount.

This proposed warrant article would correct a serious unfairness to these Brookline seniors, would provide a helping hand to a number of needy Brookline senior homeowners who will be facing substantial increases in their property tax bills due to override costs, and would be relatively simple to implement (the applicant would only need to provide a copy of their federal and state tax returns and a completed CB worksheet). I estimate that about 25-50 Brookline seniors might qualify, and that it would probably cost the Town no more than about $55,000.

EXPLANATION

BACKGROUND

The Massachusetts Circuit Breaker Income Tax Credit (“CB”) was created in 1999 (Chapter 62, section 6k) to help provide real estate tax relief to senior homeowners and renters with low or modest incomes. Its stated goal was to reduce the property tax burden (plus half the cost of annual water and sewer fees) of qualified senior homeowners to no more than 10% of their total gross income. It currently provides an annual state income tax credit of up to $1,080.

Currently, to qualify for the CB credit on your Massachusetts income taxes for 2017:

- You must be a Massachusetts resident or part-year resident.
- You must be 65 or older by December 31.
- You must file a Massachusetts personal income tax return.
- You must own or rent residential property in Massachusetts and occupy it as your primary residence.
- You must not be a dependent of another taxpayer.
- For tax year 2017, your total Massachusetts income may not have exceeded $57,000 for a single individual, $72,000 for a head of household, or $86,000 for married couples filing a joint return. For purposes of the CB credit, all income must be included, even income that would not be taxable under Massachusetts law (such as total Social Security benefits and partnership/trust/S corporation income, all long-term capital gains or capital gain distributions, all bank interest, all pensions/annuities/IRA/Keogh distributions, and other miscellaneous income, including cash public assistance). You are not eligible if you are married and file a separate return.
- If you are a homeowner, your Massachusetts property tax payments, together with half of your water and sewer charges, must exceed 10% of your total Massachusetts income for the tax year. You must subtract the amount of any real estate tax abatement, including senior work off program, or exemption received in 2017 if not already reflected in your tax bill.
• If you are a renter, 25% of your annual Massachusetts rent must exceed 10% of your total Massachusetts income for the tax year. You are not eligible if you receive a federal and/or state rent subsidy or you rent from a tax-exempt entity.
• If you are a homeowner, the assessed value of your principal residence may not exceed $747,000 for tax year 2017.

The specific assessed value qualifying amount cap is based on the average assessed value of all single-family residences throughout Massachusetts, as defined in paragraph 1 of Chapter 62, Section 6(k). In 2008, at its peak, this amount was $793,000. By 2015, this cap had decreased to $693,000. This decrease was largely due to the declining residential real estate values in the western part of Massachusetts. The CB assessed property value cap decreased 6 years in a row between 2009 and 2014 and in 2017 was still nearly $50,000 below what it was in 2008.

Because Brookline's residential real estate values have increased by about 5-10% each year in the past decade, many Brookline seniors with low or modest incomes no longer qualify for the CB tax credit that they once qualified for, or would have qualified for in years past – no matter how low their current income.

Since 2009, fewer and fewer Brookline seniors are actually filing CB tax credit claims. In 2006, at peak usage, 360 Brookline seniors claimed the CB tax credit. In 2015, there were only 328 (32 fewer, representing a drop of nearly 9%).2 The drop in the number of Brookline senior homeowners (vs. renters) filing CB tax credit claims during this period may be even steeper, but the Massachusetts Department of Revenue has not made those figures available to the public.

Based on demographics alone, we would have expected the number of Brookline seniors claiming the CB tax credit to have increased rather than fallen between the years 2009 and 2015. During those years, Brookline's senior population aged 65 and above grew by 28% (from 6,961 in 2009 to 8,915 in 2015), reflecting the large baby boomer cohort that began reaching retirement age.3 This makes the decrease in the number of Brookline CB claim filers even more significant.

---

See the following table for a year-by-year breakdown of the use of the CB Tax Credit by Brookline seniors:

### Brookline Use of Massachusetts Senior Circuit Breaker (CB) Income Tax Credit

#### TY 2001-2015

<table>
<thead>
<tr>
<th>TAX YEAR</th>
<th># BROOKLINE CLAIM FILERS</th>
<th>TOTAL $ CLAIMED</th>
<th>AV. AMOUNT $ PER CLAIM ( ) = max allowed</th>
<th>CB PROP.ERTY VALUE LIMITS (Single)</th>
<th>CB INCOME LIMITS (Joint)</th>
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<tr>
<td>2001</td>
<td>162</td>
<td>$ 56,704</td>
<td>$350 (385)</td>
<td>$412,000</td>
<td>$41,000</td>
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<tr>
<td></td>
<td></td>
<td>$61,000</td>
<td></td>
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<tr>
<td>2002</td>
<td>206</td>
<td>132,502</td>
<td>$425,000</td>
<td>$42,000</td>
<td>$42,000</td>
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<td></td>
<td></td>
<td>$63,000</td>
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<td>2003</td>
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<td></td>
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<td>$64,000</td>
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<tr>
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<td></td>
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<tr>
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<td></td>
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<td>2006</td>
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<td>2008</td>
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<td></td>
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<td>$74,000</td>
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<tr>
<td>2009</td>
<td>360 (peak)</td>
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<td>819 (960)</td>
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<td>2010</td>
<td>349</td>
<td>298,921</td>
<td>857 (970)</td>
<td>$764,000</td>
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<td>346</td>
<td>296503</td>
<td>857 (980)</td>
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<td>335</td>
<td>296,313</td>
<td>885 (1,000)</td>
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<td>305,455</td>
<td>891 (1,030)</td>
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<td>2014</td>
<td>335</td>
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<td>902 (1,050)</td>
<td>$691,000</td>
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<td>$84,000</td>
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<td>2015</td>
<td>328</td>
<td>304,195</td>
<td>927 (1,070)</td>
<td>$693,000</td>
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<td>$85,000</td>
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Sources: “Senior Circuit Breaker Usage Report by Town,” 2001-2015, Massachusetts Department of Revenue (2017); “Schedule CB Circuit Breaker Credit” forms for tax years 2001-2015, Massachusetts Department of Revenue.

**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 and economic 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, the Brookline Community Aging Network, and the Senior Center have worked to provide programs that make it easier 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 real estate taxes and water/sewer fees. Many purchased their homes or condos decades ago, when they were employed full-time and their household incomes were much higher (and Brookline real estate taxes and fees were much lower). They love Brookline and the neighborhoods where they live and don't want to sell the residences they love and in which they have lived for decades.

The Brookline senior homeowners most in need and most likely to benefit from this warrant article proposal are seniors living alone. In Brookline in 2016, median household income was $96,600, median family income was $144,900, and median family income of couples with dependent children was $197,600, while the median income of a senior woman living alone was $32,500.4

This is often a hidden problem. Some of our senior neighbors may already be struggling with paying Brookline's rising real estate taxes and water/sewer fees, and yet they are too embarrassed to discuss this openly. To pay for these expenses, they may have been putting off needed home repairs or medical care or living very bare-boned lives. However, the problems they face are real and will only get worse if, as it appears likely, Brookline voters approve two or more additional tax overrides and debt exclusions during the next few years to meet the educational needs of our expanding school-age population.

The exemption proposed in this warrant article is a modest program but it would correct a serious unfairness to a number of Brookline senior homeowners with low or modest incomes who would otherwise qualify for the state CB tax credit and would provide welcome assistance to them at a time when they are facing substantial increases in their property tax bills. It has the potential of providing property tax assistance to nearly as many Brookline seniors as are currently participating in all of Brookline's current tax assistance programs combined.

**ARTICLE 26**  
Submitted by: Yolanda M. Rodriguez, Rhoda S. Goodwin

According to the Elder Economic Security Standard Index, Massachusetts has the second most widespread elder economic insecurity in the U.S., second only to Mississippi. Norfolk County has the second greatest concentration of elder economic insecurity of all MA counties.

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Brookline is one of the wealthiest municipalities in MA, with median household income of $96,600. Families, and especially families with dependent children, have the highest median income in Brookline. Median income for Brookline families is $144,900 and for Brookline families with dependent children, $197,600.

By contrast, the median income among Brookline senior women living alone is $32,500. The Town of Brookline, the Brookline Senior Center and other services offer programs designed to help low- and moderate-income seniors, including several means-tested tax relief programs. This warrant article is designed to address the needs of some of those seniors who are 65 years of age or older, and who do not qualify for the existing means-tested town programs, and are struggling to maintain their homes while also paying for services they may need to stay at home. Eligible seniors would continue to pay property taxes and the annual increase allowed by Prop. 2 1/2, but be exempted from future overrides and debt exclusions.

FY2018 Income limits for HUD programs, including BETS and Tax Abatement, give three income limits for a household size of one:

- Extremely Low Income: $21,700
- Very Low Income: $36,200
- Low Income: $54,750

The Federal low-income designation for programs is based on national averages for cost of living. The true cost of living in Brookline, where taxes, housing/rental and energy costs are way above the national average, means that, de facto, a higher percentage of our seniors are in need.

Some seniors affected by this request have lived in Brookline for many years. It is their home, where some of them grew up, raised children, worked, paid taxes, and found life-long friends. Some of them have served in Town Meeting, and continue to be active in our age-friendly community. Over time, their houses have been assessed higher and higher, and the costs of repairing and maintaining them continue to rise. With rapidly increasing property taxes and school overrides a reality for the future, it becomes more difficult to feel secure in their homes.

In December, 2012, Brookline received “Age-Friendly” status, and joined the World Health Organization’s “Age-Friendly” network, the first municipality to be so designated in New England, and the ninth municipality in the United States. Such a town should support those who have lived here for many years and who want to “age in place” in their own homes.

**ARTICLE 27**
Submitted by: Patricia Connors, TMM3

The living wage rate as of July 1, 2017 is $13.98 per hour for town employees. As of January 1, 2017, the minimum wage rate for town employees is $12.00 per hour. Section 4.8.3 of the Living Wage By-Law provides that the minimum wage for town employees shall be one dollar more than the state minimum wage. Town employees who are exempted from the living wage rate shall earn at least the town minimum wage rate.

See http://www.brooklinema.gov/DocumentCenter/View/9794
At the May, 2015 Town Meeting, the town’s Recreation Department sought to exempt entry-level workers from getting not only the living wage but also the minimum wage rate for town employees. While successful with disqualifying junior, part time employees from the living wage, the Recreation Department failed to get the votes it needed to deny these employees the town’s minimum wage.

The amendment proposed under this Warrant Article would require the Town to set forth in its annual financial plan the position titles and salary ranges of those town employees who are exempted from the living wage. Presently some departments provide this information and others, including the Recreation Department, do not. This requirement is intended to obtain uniformity in the way the Town reports its lowest paid wages and transparency for the general public as to whether the Town is in compliance with the Living Wage By-Law.

**ARTICLE 28**  
Submitted by: C. Scott Ananian, TMM 10

An increasing range of surveillance technologies and military equipment is being made available to local police across America. Even where towns like Brookline do not immediately adopt these technologies, Brookline residents are affected when they are used in neighboring communities and the results shared with federal or local police forces through the Boston Regional Information Center (BRIC), or state or federal criminal intelligence systems.

Since early 2009, the Brookline Police Department has operated and maintained a fixed video camera monitoring system as part of the Critical Infrastructure Monitoring System (CIMS) of the Metro-Boston Homeland Security Region (MBHSR). The CIMS program is comprised of similar systems operated and maintained by the nine (9) municipalities within the MBHSR (in addition to Brookline, these are Boston, Cambridge, Chelsea, Everett, Quincy, Revere, Somerville, and Winthrop). When these cameras were installed, the CIMS Camera Oversight Committee was established to provide accountability.

The CIMS Camera Oversight Committee was a promising start, but it has maintained a narrow focus on camera oversight. There are many other surveillance technologies being made available -- drones, body cameras, cameras in police cruisers, social media monitoring software -- and more to come in the future. The present warrant article seeks to establish a firm ground to confront and address these new technologies, embrace those whose value proves itself, and maintain a watchful eye over the effects the adopted technologies may have on our most vulnerable communities. With the changing leadership of our police force, a renewal of our approach to surveillance technologies seems especially timely.

The warrant article draws much of its language from the ACLU’S Community Control over Police Surveillance and Militarization (CCOPS+M) effort, which was launched on September 21, 2016. The ACLU’s principal objective is to pass laws that ensure residents, through local city and town government, are empowered to decide if and how surveillance technologies are used, through a process that maximizes the public’s influence over those decisions.

The CCOPS effort gained additional urgency given the current administration’s efforts to identify and deport millions of undocumented immigrants, track Muslims, and even more aggressively police communities of color. To effectuate these policies, especially with respect to
pursuing undocumented persons in sanctuary cities, the administration requires local police to provide access to their surveillance technologies. In 2017 Brookline passed a sanctuary city policy; this warrant article would create the oversight framework to ensure our local policing efforts do not collect information that could be used to jeopardize protected Brookline residents.

On August 28, 2017, an executive order was signed allowing for the greater transfer of U.S. military equipment to local police departments. Now, just as with surveillance technologies, local police forces were being empowered to acquire military equipment without any public knowledge or consent. Oversight of these technologies is included in this warrant article as well.

CCOPS laws have been passed in Seattle, Nashville, Somerville, MA, and Santa Clara County, CA. Nineteen other cities have CCOPS bills in the works, including New York, St. Louis, and Oakland, CA, while Maine and California have taken up statewide CCOPS measures.

Three warrant articles on CCOPS have been prepared for Brookline Town Meeting, adapting the ACLU’s model framework to the unique needs and bylaws of our Town. This first article comprises the main meat of the by-law: it establishes a reporting structure and process to evaluate surveillance and military technologies before they are adopted, and an annual review process for continued oversight. The process may seem heavyweight, but remember that the number of these technologies adopted in town is expected to be low, and their use relatively rare. It is expected that the new process will replace the existing CIMS committee, and the annual reports generated for this warrant article will be comparable to the annual CIMS reports which we are currently preparing (http://www.brooklinepolice.com/167/CIMS-Cameras). The new process however is more general and scalable to future needs.

A second warrant article establishes a Community Advisory Committee on Military and Surveillance Equipment. This is part of the ACLU’s model CCOPS+M bill, but I’ve elected to present it separately for Town Meeting. The Community Advisory Committee will consist of Brookline citizens able to assist the Select Board in the oversight role which CCOPS assigns to them. It is worth establishing even if the main CCOPS warrant article does not pass or is referred; in which case the Community Advisory Committee would be able to help in revising the main article to bring back to Town Meeting.

A third warrant article is in the form of a non-binding resolution. Passage of this resolution may be more appropriate if Town Meeting supports the general goals of CCOPS+M but refers the binding articles to committee or determines that an ad hoc committee appointed by the Select Board is a more appropriate implementation mechanism.

**ARTICLE 29**
**Submitted by:** C. Scott Ananian, TMM 10

The petitioner’s intent is that this new Committee can take over the oversight role currently performed by the Critical Infrastructure Monitoring System (CIMS) Program Oversight Committee, while broadening its mission to include surveillance and militarization in general. Unlike the existing CIMS oversight committee, the Community Advisory Committee on Military and Surveillance Equipment can be forward-looking, anticipating upcoming technologies instead of only reacting to existing deployed technologies. Restrictions on majority membership are intended to ensure the committee has the independence necessary to perform proper oversight of
This warrant article is complementary to the main CCOPS+M warrant article, but has been separated so that it can promptly replace and continue the work of the CIMS Oversight Committee, and so the new committee can advise on revisions to the main CCOPS+M warrant article if that article is not immediately adopted.

Much of the boilerplate for establishing a new town committee was adapted from the by-laws establishing the Town’s Commission on Disability. As this new Committee will take a special interest in the effects that surveillance and military equipment will have on disadvantaged communities, it was felt that staff support from the Office of Diversity, Inclusion, and Community Relations (ODICR) was appropriate, tying in with the ODICR’s recent work on Sanctuary.

The definitions section of this warrant article (3.24.2) is a subset of the definitions section of the CCOPS+M warrant article (4.10.13). If both are adopted at Town Meeting, it is expected an amendment motion will be proposed which replaces section 3.24.2 with a reference to 4.10.13.

ARTICLE 30
Submitted by: C. Scott Ananian, TMM 10

This article expresses the key goals of the preceding two articles (Community Advisory Committee on Military and Surveillance Equipment and Community Control of Police Surveillance and Militarization) as a non-binding resolution. The petitioner hopes that even if technical issues with the specific language of the new by-laws are found, Town Meeting will be able to express its support of the overall goal via adopting this resolution. The resolution will provide broad guidance to the town if the specific implementing bylaws are perhaps referred to committee or amended.

ARTICLE 31
Submitted by: Solid Waste Advisory Committee, contact Clint Richmond

Summary:

Polystyrene foam is a highly unsustainable form of packaging and food service ware. In 1987, this was the first type of plastic to be restricted at the local level. To date, twenty-five Massachusetts communities have successfully banned foam and other forms of polystyrene, including Brookline in 2012. This article proposes to eliminate some polystyrene exemptions in our existing bylaw as has been done in other Massachusetts towns and cities. This article will also extend the bylaw to a broader range of harmful petrochemical plastics. The goal is to make local packaging more sustainable and healthful.

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 progress in reducing plastic demand through education and legislation, global plastic production is slated to increase nearly six fold over the coming decades.

2. **Solid waste problems**

The enormous volume of plastic packaging makes it difficult for consumers to manage. Even if only a small percentage of the volume becomes litter, this causes a large amount of visual blight and animal harm. Litter control costs the town money. 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).

Plastic suffers from low recycling rates compared to valuable natural materials like paper or aluminum. Plastics are light, but bulky, and so occupy disproportionate space in recycling trucks and landfills. Plastics cannot be sustainably recycled because they are usually turned into other products that are difficult to recycle. Utensils, straws, stirrers and foam are being consumed in large volumes, yet they cannot be recycled curbside. These products cost the town money because trash is more expensive to dispose of than recycling.

All these problems are compounded because plastics do not biodegrade and can persist for 1000 years as litter or in landfills.

3. **Plastic containers are bad for human health**

Satisfying the increasing 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.

Plastics such as polystyrene (PS #6), polyethylene terephthalate (PETE #1), and polyvinyl chloride (PVC #3) are much more harmful than others, and create greater potential occupational and environmental hazards (including accidental releases of industrial chemicals). The first two are widely used in food service ware.

PS, PETE and the chemical additives in these plastics can migrate from the container into the food. The industry is not required to list additives to plastics, many of which are toxic. These can include:

- Phthalates - a class of plasticizer added to increase flexibility, which is also a hormone 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).

Plastics fragment, and can directly enter our human food chain, especially via marine animals.
Sustainable Packaging

The most sustainable packaging uses natural materials such as paper and aluminum. Compostable plastics made from plant sources are another alternative. Such materials are biodegradable, compostable, or recyclable. We also want to encourage the use of re-usable solutions. This by-law will transition to more sustainable products.

Why revisit the polystyrene by-law?

The existing 2012 bylaw provides an exemption for polystyrene straws, stirrers and utensils. We want to follow more recent laws such as those in Cambridge, Natick and Wayland that include these items in their scope. This bylaw will also ban plastic straws, stirrers and utensils made of polypropylene (PP #5) because they are not recyclable.

We also want to further limit unsustainable petrochemical plastics that have health risks, PETE and PVC, while still allowing popular, much less toxic polypropylene containers, in addition to natural products. Since 2012, alternatives have become more widely available, and their costs are more competitive. We expect this trend to continue.

Summary
This proposed bylaw is based on successful ordinances in places such as Oakland in sustainable packaging, and San Francisco in the retail sale of polystyrene. Locally, Nantucket, Williamstown and Wellfleet have similar by-laws.

The bylaw takes four steps starting on Jan. 1, 2019:
1. Allows only sustainable food packaging (recyclable, compostable, biodegradable or reusable).
2. Restricts additional plastics that are the most harmful to human health. This is divided into two phases:
   Phase one bans two of the most harmful starting in 2019: all PVC food service ware; and polystyrene utensils, straws, stirrers (other polystyrene products are covered under the current law).
   Phase two restricts PETE food service ware over a much longer period effective Jan. 1, 2020.
3. Prohibits the sale of polystyrene foam food ware (cups and dinnerware) in Town.
4. Prohibits the sale of polystyrene foam packaging in Town such as peanuts and single-use coolers.

This article maintains exemptions for hardship or lack of alternative products.

This bylaw better protects human and environmental health, and demonstrates leadership on this highly visible issue within the state.

ARTICLE 32
Submitted by: Brookline Justice League Mariela Ames, Scot Huggins, Brooks Ames

This article would bar the Select Board from using various legal devices (e.g. gag orders, non-disclosure agreements, confidentiality agreements) to prevent people from speaking publicly about discrimination, retaliation, and harassment claims against the Town. The article would
require the Town to promptly publicize the settlement of any discrimination, retaliation, or harassment claim.

**ARTICLE 33**
Submitted by: John Doggett, TMM13, Neil GordonTMM1, Dennis Doughty, TMM3

Electronic communications including e-mail, instant messaging, the World Wide Web, Twitter, Skype, Facetime, Facebook etc. are in widespread, almost ubiquitous use by residents and the Town. These electronic services offer considerable potential for increased, more effective and timely communications, available to all, as well as decreasing costs for the Town over the uses of non-electronic communication, namely those of printing and mailing.

The Petitioners believe that it is time to do a comprehensive review of the Town's existing use of non-electronic communications with the goal of identifying potential cost savings by eliminating or reducing historical printing and mailing communications to take advantage of existing electronic capabilities and to recommend new electronic services that can reduce cost and/or enable efficient and timely communication with residents.

The creation of a timely and efficient electronic messaging system to communicate urgent and emergency situations locally or town-wide, such as a "shelter in place" advisory, missing child, property break-in, hit-and-run accident etc., would be of benefit to residents and the Town.

**ARTICLE 34**
Submitted by: Neil Gordon, TMM1

“To those who knew them, these men and women are more than simply names on a plaque, or on a wall.” Neil Gordon, speaking at Brookline Memorial Day ceremonies, on May 30, 2016.

The following are taken from the *Proceedings of the Brookline Historical Society, at its annual meeting on January 30, 1919*:

“At our meeting last January the result seemed very doubtful; the Germans apparently were masters of the situation and their drive soon after in March carried dismay to those who could not know the actual condition of affairs so far away. But in July the tide turned, thanks largely to our American boys, and we all know the result.”

“Our town has been largely represented in the army and navy, 1,841 young men, either enlisted or drafted, being enrolled in the honor records. Our population is estimated at 37,000, so the above number is about one twentieth, or five percent, of the total.”

“We are and have been living in such strenuous times and dealing with such momentous events, it may be interesting to look back a hundred years and read what was happening then to occupy the minds of our forbears… but to the citizen living fifty or a hundred years hence, what a wonderful history the war and its possible results will make”
We ask Town Meeting to take pause and remember all of those who served, and all of those who suffered, and especially the sixty-two “Boys of Brookline,” who died one hundred years ago in service to their country.

*http://www.brooklinehistoricalsociety.org/history/proceedings/1919/1919.html*

**ARTICLE 35**  
Submitted by: Cornelia van der Ziel, TMM15, Edward Loechler, TMM8

The two gravest existential threats facing humanity are climate change and the dangers posed by nuclear weapons. While the threat of climate change is real and grave, it’s impact will play out in slow motion over many years. In contrast, the threat posed by nuclear weapons could play out virtually overnight. Furthermore, while the effect of climate change could be dramatically transformative, the threat of nuclear weapons, and their use could cause the annihilation of all life on earth.

The threat of nuclear annihilation has been with us since the invention of nuclear weapons and their first use in 1945. While some argue that nuclear weapons act as a welcome deterrence against their use by others, there is little evidence to support such a hope.

We have long been aware of the threats of accidental firing of nuclear weapons and the misreading of early warning systems, not to mention potential accidents at nuclear weapons facilities. The number of near misses in the past 70 years has been staggering. Though to date we have avoided the catastrophic impacts of nuclear weapons, we cannot continue to rely on dumb luck to keep us from an error that could destroy the planet and humanity as we know it. Recently, the nuclear threat has been steadily increasing.

**What is the urgency?**

It has always been urgent to address the proliferation and use of nuclear weapons. Over the years, there has been progress toward the elimination of nuclear weapons. A START treaty was signed in 1991 after almost a decade of negotiation between the U.S. and the U.S.S.R. START II was signed in 2010. Under these agreements, the total world arsenal of nuclear weapons has been declining. In 1986, there were more than 60,000 operational nuclear warheads. Today there are ~15,000 in existence. Most of these weapons are in the hands of the U. S. and Russia, while the remainder are in the hands of Great Britain, France, China, Israel, India, Pakistan and most recently North Korea.

In the past few years, saber rattling has been growing between the nuclear armed countries India and Pakistan. And now, nuclear taunts are being regularly exchanged by the leaders of the U.S. and North Korea—taunts that are more reminiscent of the exchanges of schoolyard bullies than those of stable, sane people of wisdom.

Furthermore, tragically, the treaty that is keeping a tenth country, Iran, from acquiring nuclear weapon capabilities is under threat by the current administration in Washington, D.C.

Alarming, the current President of the United States has reportedly said that if we have nuclear weapons, why can't we use them. This is especially alarming given that many of these weapons are in hair trigger alert and that the President can deploy nuclear weapons without Congressional approval. Former Director of Central Intelligence and ex-National Security Agency Director
Michael Hayden—in response to a question about how quickly nuclear weapons could be deployed if a president were to give approval—has stated, "It's scenario dependent, but the system is designed for speed and decisiveness. It's not designed to debate the decision". Furthermore, the recently leaked Nuclear Posture Review adds to the alarm, as our current President seems determined to make nuclear weapons more “usable” and to blur the gap between nuclear and conventional weapons. This effort would be part of the proposed modernization of the U.S. nuclear arms inventory at a cost of $1.2-2 trillion, which was first proposed by the Obama administration and is now a mainstay for Trump as well.

The modernization of the U.S. arsenal is purported to be needed not only to address aging weapons but also to give the President more “nuclear options”. This bolsters the view that he believes a “limited” nuclear war is possible, which is, of course, folly, given there will be retaliatory strikes. The aftermath of any such exchange will cause the immediate incineration of many and lead to the slow death of many more. Such an exchange most assuredly will be followed by a nuclear winter, with its destruction of most food crops and the inevitable starvation of untold billions. Even Ronald Reagan recognized that there is no such thing as a “limited” nuclear war and successfully presided over the beginning of the elimination of some nuclear weapons.

The cooling relations between the U.S. and Russia with no sustained progress toward elimination, or even an attempt to decrease, the total stores of nuclear weapons should concern us all.

Today’s weapons are much more powerful than those dropped on Japan in 1945. For perspective, “Little Boy” killed about 120,000 in Hiroshima, while “Fat Man” killed about 50,000 more in Nagasaki. As devastating as these bombs were, more recent versions have been as much as 3,000 times more powerful (e.g., Tsar Bomba), and, with technological improvements, less powerful weapons have the potential to be even more destructive.

We are all aware of the disruptions caused by climate change, with droughts, famine, mass migration and an increase in armed conflicts, all of which could make the use of nuclear weapons more attractive to some leaders.

How bad is it? We defer to the experts who assiduously study the threat from nuclear weapons—in particular, the experts at The Bulletin of Atomic Scientists. They recently moved the hands of their “Doomsday Clock” to 2 minutes to midnight. What does that imply? It’s bad. That is the closest to midnight that the “clock” has been since its inception in 1947. And just what does “midnight” represent? Nuclear annihilation.

What are the hopeful signs for progress in the elimination of nuclear weapons?
There is growing world-wide interest in confronting the challenge of abolishing nuclear weapons. The U.N. Treaty on the Prohibition of Nuclear Weapons was promulgated by 122 nations in July, 2017. It outlaws the use and possession of nuclear weapons and has been signed by more than 50 nations to date. Though none of the nuclear armed states participated in this effort, the moral force of such an agreement is not to be minimized.

Last December, the Nobel Peace Prize was awarded to the International Campaign for the Abolition of Nuclear Weapons (ICAN). International Physicians for the Prevention of Nuclear War (IPPNW) received the same prize in 1985 for their efforts to unite physicians and leaders in
the U.S.S.R. and the U. S. to work together to begin to reduce the total number of nuclear arms in the world. We can be proud that a number of members of these two groups reside in Massachusetts, and, in fact, Physicians for Social Responsibility (PSR), which was founded in Cambridge in the 1960s, was instrumental in founding IPPNW.

It is time for individuals, groups, communities and states to follow the lead of these pioneering groups and speak up about the threat of nuclear weapons. Multiple organizations, across a wide spectrum of interests, including the Union of Concerned Scientists, American Friends Service Committee, Peace Action, PSR, IPPNW, ICAN, the International Red Cross, Amnesty International, to name just a few, have joined the chorus endorsing the abolition of nuclear weapons.

It is time for Brookline to lend its voice as well.

**ARTICLE 36**
Submitted by: Craig Bolon, TMM8

National trends of heightened partisanship have led, among other directions, to reconsiderations of longstanding social tensions. The greatest of these was the tragic history of slaveholding, the devastating Civil War of 1861-1865 that abolished it and long struggles around Reconstruction, Jim Crow repression, school segregation, the Civil Rights movement, anti-discrimination in education, employment and housing, and the goals of Equal Opportunity that still engage us.

Over time, we learned that some of our historical icons had backgrounds in the Era of Slavery, including our first President and subsequent Presidents. During the seventeenth century, several residents of land that later became Brookline owned slaves who worked on their farms and in their households. There have been efforts to expunge some of the relics from the Era of Slavery, including statues of Confederate officeholders and soldiers and names given to streets, buildings and other public features.

This Article poses to Town Meeting, and should it pass will pose to our Naming Committee, the question of whether one of Brookline’s most prominent streets should continue to carry the name of a major slaveholder. Washington Street threads through Village Square and past Brookline’s Town Hall, main library, courthouse, police station and fire headquarters, then heads northwest toward Brighton Center and through Oak Square into Newton.

As John Rhodenhamel recounts in his illustrated biography [1998, Yale University Press], our nation’s first President, George Washington, was born into a Virginia family of slaveholders in 1732. He acquired much more property and many more slaves through his wife, Martha. Slavery is an inseparable part of his life history. In the economy of his place and his time, he could not otherwise have sustained such a large, agrarian enterprise as the one he managed.

There is evidence in Washington’s personal correspondence that he had turned against slavery before he became President, but he did not carry such a view into his public life. The will that he left when he died in 1799 freed all 125 slaves he then owned and provided a substantial share of his estate toward their education and support. Brookline should review Washington’s history more thoroughly than an explanatory note such as this one can do and should consider whether maintaining the naming of Washington Street reflects community values.
ARTICLE 37
Any reports from Town Officers and Committees are included under this article in the Combined Reports. Town Meeting action is not required on any of the reports.