TOWN OF BROOKLINE
MASSACHUSETTS

REPORTS OF SELECT BOARD AND ADVISORY COMMITTEE

on the

Articles in the Warrant

for the

ANNUAL TOWN MEETING

to be held in the High School Auditorium

Tuesday, May 22, 2018

at

7:00 P.M.

(Please retain this copy for use at the Town Meeting)

Town of Brookline

SELECT BOARD

Neil A. Wishinsky, Chair

Benjamin J. Franco **Nancy S. Heller**

Bernard W. Greene **Heather A. Hamilton**

Melvin A. Kleckner, Town Administrator

"The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operation of its programs, services or activities. Persons with disabilities who need auxiliary aids and services for effective communication in programs, services and activities of the Town of Brookline are invited to make their needs and preferences known to Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445, 730-2328 Voice, 730-2327 TDD, or email at lgellineau@brooklinema.gov."

MODERATOR

Edward N. Gadsby, Jr.

ADVISORY COMMITTEE

Sean M. Lynn-Jones, Chair, 53 Monmouth Street..... 738-6228
Carla Benka, Vice-Chair, 26 Circuit Road 277-6102
Benjamin Birnbaum, 15 Feneno Terrace, ... 276-5944
Clifford M. Brown, 9 Hyslop Road 232-5626
Carol Caro, 1264 Beacon Street, #2..... 739-9228
Lea Cohen, 1060 Beacon Street, #11..... 947-9713
John Doggett, 8 Penniman Place 739-7266
Dennis Doughty, 57 Perry Street…… .. 566-5474
Harry Friedman, 27 Clafin Road 232-0122
Janet Gelbart 216 St. Paul Street #601..... 566-5616
David-Marc Goldstein, 22 Osborne Road 232-1943
Neil Gordon, 87 Ivy Street.....(508)265-1362
Kelly Hardebeck, 18 Littell Road 277-2685
Amy Hummel, 226 Clark Road 731-0549
Angela Hyatt, 87 Walnut Street 734-3742
Alisa G. Jonas, 333 Russett Road 469-3927
Janice Kahn, 63 Craftsland Road..... 739-0606
Steve Kanes, 89 Carlton Street ..... ……232-2202
Bobbie M. Knable, 243 Mason Terrace..... 731-2096
David Lescohier, 50 Winchester Street 383-5935
Fred Levitan, 1731 Beacon Street..... 734-1986
Pamela Lodish, 195 Fisher Avenue 566-5533
Shaari S. Mittel, 309 Buckminster Road 277-0043
Mariah Nobrega, 33 Bowker Street 935-4985
Susan Roberts, 69 Green Street 566-0204
Michael Sandman, 115 Sewall Ave., No. 4 232-7125
Lee L. Selwyn, 285 Reservoir Road 277-3388
Kim Smith, 22 Brington Road 277-1606
Charles Swartz, 69 Centre Street 731-4399
Christine M. Westphal, 31 Hurd Road..... 738-7981

Lisa Portscher, Executive Assistant, Town Hall..... 730-2115

MAY 22, 2018
ANNUAL TOWN MEETING
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2018 ANNUAL TOWN MEETING WARRANT REPORT

The Select Board and Advisory Committee respectfully submit the following report on Articles in the Warrant to be acted upon at the 2018 Annual Town Meeting to be held on Tuesday, May, 22, 2018 at 7:00 p.m.

Note: The following pages of this report are numbered consecutively under each article.

ARTICLE 1

FIRST ARTICLE
Submitted by: Select Board

To see if the Town will establish that the number of Measurers of Wood and Bark be two, to be appointed by the Select Board, or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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.

SELECT BOARD'S RECOMMENDATION

The Select Board recommend FAVORABLE ACTION, by a vote of 5-0 taken on March 14, 2018, on the vote offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Warrant Article 1 seeks Town Meeting's approval to establish the number of Measurers of Wood and Bark at two and to permit the Select Board to appoint them.

In 2000, Town Meeting directed that the first Warrant Article of the Annual Town Meeting shall be the proposal to appoint one or more Measurers of Wood and Bark.

State law (Mass. Gen. Laws Ch. 94, §296) requires the Town to "annually choose one or more measurers of wood and bark," with the Select Board being able to appoint a person(s) to the position(s) after Town Meeting sets the number of measurers.

DISCUSSION:
This Article maintains a tradition reflecting Brookline's colonial past. This year, the Advisory Committee unanimously decided to continue this venerable tradition. Unfortunately, former Committee member Stanley Spiegel was not available to participate in our deliberations on Article 1. We all pined for him.

The positions do not draw a salary, stipend, or other remunerative benefit, and the Town incurs no current financial cost or future pension cost or liability for other post-employment benefits (OPEBs).

There has been at least one instance in recent memory in which a Measurer of Wood and Bark has been asked to resolve a dispute. The Measurers have their tape measures at the ready if they are called upon.

RECOMMENDATION:
The Advisory Committee by a vote of 18–0–0 recommends FAVORABLE ACTION on the following motion:

VOTED: That the Town establish that the number of Measurers of Wood and Bark be two, appointed by the Select Board.

XXX

ARTICLE 2

SECOND ARTICLE
Submitted by: Human Resources

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

PETITIONER'S ARTICLE DESCRIPTION

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.

SELECT BOARD'S RECOMMENDATION

As of the deadline for the combined reports are three Memorandum of Agreements that have been approved by the Board and ratified by the unions. Any additional MOAs approved will be voted by the Board under article 2 on May 15, 2018.

TOWN of BROOKLINE

Massachusetts

HUMAN RESOURCES OFFICE

Director
333 Washington Street
Brookline, MA 02445
(617) 730-2120
www.BrooklineMA.gov

Sandra A. DeBow-Huang,

Human Resources Office

January 22, 2018

To: Neil Wishinsky, Chair, Brookline Select Board
Melvin Kleckner, Town Administrator

From: Sandra DeBow-Huang, Director
Human Resources Office

Re: Approval for Fire Union Agreement, Settled

This is to notify you that we have entered into a Memorandum of Agreement with the Fire Union, contingent on the Select Board's approval. In July 2017, the Fire Union asked to begin negotiations with the Town regarding successor bargaining. This request was six-months earlier than typical successor bargaining (one full year prior to the contract expiration). However, we welcomed the opportunity to bargain with extra time in advance of the contract's expiration.

Attorney Liz Valerio suggested to the management bargaining team that, given the extra time, we should consider trying "Fast Track" bargaining. The Board approved this approach in early September 2017. On September 13, 2017, the Town met with the Fire Union to begin bargaining and proposed the idea of Fast Track bargaining.

Subsequently on October 13th the Parties entered into an agreement for Fast Track negotiations with an expiration date of December 31, 2017. At the December 13th session, the Parties agreed to extend the Fast Track bargaining to February 2, 2018 since both sides felt the sessions were productive. During January, the parties worked at the table and away from the table with Austin Faison, Asst. Town Administrator to explain the cost-outs which enabled the Union to better understand how the Town formulated its costs and the impact on the budget.

On January 26, 2017, after 8 bargaining sessions, the parties came to an agreement, with a cost out of approximately 7.4 % (attached). In summary, the provisions of the Agreement contained the following

Wages:	**EMT pay (additional comp)**
FY 2019 2%	from 6% to 6.5%
FY2020 2%	7.0%
FY2021 2.5%	7.5%

Provision re: guaranteed days off - Added language giving management better control of overtime.

Payroll Efficiencies – changed the pay day from Thursdays to Fridays.

The management bargaining team recommends that the Select Board approve the attached agreement which provides the Town and Fire Union with a fair agreement, improved labor relations and avoids regular, main table bargaining that would inevitably lead to the protracted JLMC process.

ITEM	FY19	FY20	FY21	TOTAL
7 1 2018 - 2%	265,463	265,463	265,463	796,388
7 1 2019 - 2%		270,772	270,772	541,544
7 1 2020 - 2.5%			345,234	345,234
EMT 6.5%	36,410	36,410	36,410	109,229
EMT 7%		39,211	39,211	78,421
EMT 7.5%			42,011	42,011
TOTAL ROLL-OUT COSTS OF 3-YEAR PERIOD	301,872	611,855	999,100	1,912,827
Each 1% =	132,731	135,386	138,771	
New Wages - $ =	301,872	309,982	387,245	
New Wages - % =	2.3%	2.3%	2.8%	7.4%

TOWN of BROOKLINE

Massachusetts

HUMAN RESOURCES OFFICE

Director
333 Washington Street
Brookline, MA 02445
(617) 730-2120
www.BrooklineMA.gov

Sandra A. DeBow-Huang,

Human Resources Office

March 30, 2018

To: Neil Wishinsky, Chair, Brookline Select Board
Melvin Kleckner, Town Administrator

From: Sandra DeBow-Huang, Director
Human Resources Office

Re: Approval for AFSCME (Main) Union Agreement, Settled

This is to notify you that we have entered into a Memorandum of Agreement with the AFSCME Local 1358, contingent on the Select Board's approval and the Union's ratification. We expect the Union to put the Agreement to vote on April 10, 2018.

Following the success of the "fast track" bargaining with Fire, we offered to engage in expedited bargaining with AFSCME, Local 1358 on March 28, 2018 and they agreed. To do so, we each put forth 3-4 issues and wages and duration and came to agreement within four hours.

Our primary interest was to obtain payroll efficiencies; to change the pay day from Thurs to Friday and to move to bi-weekly pay periods. The bi-weekly pay had been hotly debated during prior negotiations. To AFSCME's credit, they recognized this was an important initiative for us and worked with their membership to discuss the possibility of moving toward bi-weekly pay. We agreed to move them to biweekly pay only when all other unions agreed and to provide their members, some with the lowest per/hour wages, a one-time $350 bridge to transition through the first week from weekly to bi-weekly pay.

They also had an interest in increasing their clothing allowance which had not been increased since 2003. We also gave them the ability to collect dues from the first day of employment rather than 6 months, and created a new "Adverse Weather Day" which essentially will provide a compensatory day for DPW employees who work during snow storms when Town Hall and Town services are cancelled. The adverse weather day must be used within a short time frame and is earned at straight time .

Together we are exploring whether we can accomplish similar bargaining with AFSCME's Library and School Traffic Supervisors' bargaining unit.

COST OF PROPOSED COLLECTIVE BARGAINING PROPOSAL WITH AFSCME

ITEM	FY19	FY20	FY21	FY22	TOTAL	
7/1/18 - 2%	225,161	225,161	225,161		675,482	
7/1/19 - 2%		229,664	229,664		459,328	
7/1/20 - 2%			234,257		234,257	
9/1/2020 - 0.5%			44,802	14,934	59,736	
Clothing allowance	50,000	50,000	50,000		150,000	$200
					0	
TOTAL ROLL-OUT COSTS	**275,161**	**504,825**	**783,884**	**14,934**	**1,578,804**	
Each 1% =	112,580	114,832	117,129	119,919		
New Wages - $ =	275,161	229,664	279,059	14,934		
New Wages - % =	2.4%	2.0%	2.4%	0.1%	7.0%	
Wages on Base - $ =	225,161	229,664	279,059	14,934		
Wages on Base - % =	2.0%	2.0%	2.4%	0.1%	6.5%	

Similar to AFSCME Main, an agreement was also negotiated with the Brookline Engineering Division Associates (BEDA). There are two Memorandum of Agreements, one covering FY2018 and the second covering FY2019-2021. In summary, the provisions of the Agreement contained the following:

Wages:
FY 2018 2%

FY2019 2%
FY2020 2%
FY2021 7/1/20 2%, 1/1/21 0.5%

Longevity pay increases of $25 at each gate

An increase to the certification stipend $50 in FY2019 and $25 in FY20 and increasing the limit to four.

Pay day change from Thursday to Friday (bi-weekly has already been negotiated in a prior agreement). Language addressing id badges and Friday work and compensatory time.

ITEM	FY18	FY19	FY20	FY21	FY22	TOTAL	
7/1/2017 - 2%	18,879	18,879	18,879	18,879		**75,515**	
7/1/2018 - 2%		19,256	19,256	19,256		**57,769**	
7/1/2019 - 2%			19,641	19,641		**39,283**	
7/1/2020 - 2%				20,034		**20,034**	
1/1/2021 - 0.5%				2,554	2,554	**5,109**	
Certification Stipend		1,350	2,025	2,025		**5,400**	27 cert paid this FY incr by $50 FY19, addl $25 in FY20
Longevity			175	175		**350**	
						0	
TOTAL ROLL-OUT COSTS	**18,879**	**39,485**	**59,976**	**82,565**	**2,554**	**203,459**	
Each 1% =	9,439	9,628	9,821	10,017	10,268		
New Wages - $ =	18,879	20,606	20,491	22,589	2,554		
New Wages - % =	2.0%	2.1%	2.1%	2.3%	0.2%	**8.7%**	
Wages on Base - $ =	18,879	19,256	19,641	20,709	2,554		
Wages on Base - % =	2.0%	2.0%	2.0%	2.1%	0.2%	**8.3%**	

Article 2 asks Town Meeting to approve funding for three union contracts, one with Brookline Fire Union, Local 950, IAFF, AFL-CIO one with the AFSCME, Main and one with the Brookline Engineering Division Associates (BEDA). The report from the Human Resources Director above describes the provisions agreed to in each agreement.

The MOAs are attached to this warrant article report.

The Select Board thank the Town's negotiating team and the unions for reaching a fair and equitable settlement. The Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on May 1, 2018, on the following:

<u>BROOKLINE FIRE UNION</u>
To approve and fund by an appropriation, provided for in the FY2019 (Item 20) budget, for the cost items in the following collective bargaining agreement that commences on July 1, 2018- and expires on June 30, 2020:

Brookline Fire Union, Local 950, IAFF, AFL-CIO

all as set forth in the report of Sandra DeBow, Director of Human Resources, dated January 22, 2018 which report is incorporated herein by reference.

<u>AFSCME</u>

VOTED: To approve and fund by an appropriation, provided for in the FY2019, (Item 20) budget, for the cost items in the following collective bargaining agreement that commences on July 1, 2018- and expires on June 30, 2020:

AFSCME Council 93, Local 1358 AFL-CIO (AFSCME, Main contract)

all as set forth in the report of Sandra DeBow, Director of Human Resources, dated March 30, 2018, which report is incorporated herein by reference.

BROOKLINE ENGINEERS DIVISION ASSOCIATION

VOTED: To approve and fund by an appropriation, provided for in the FY2018, (Item #20) and FY2019 (Item #20) budgets, for the cost items in the following collective bargaining agreement that commences on July 1, 2017- and expires on June 30, 2020:

Brookline Engineers Division Association (BEDA)

all as set forth in the MOAs, dated April 26, 2018, which are incorporated herein by reference.

ADVISORY COMMITTEE'S RECOMMENDATION

RECOMMENDATION:
A report and recommendation by the Advisory Committee on Article 2 (Collective Bargaining Agreements) will be provided in the Supplemental Mailing.

XXX

MEMORANDUM OF AGREEMENT
Between
The Town of Brookline
And
Local 950, International Association of Firefighters, AFL-CIO

January 26, 2018

Except as modified by this Memorandum of Agreement, the Town of Brookline ("Town") and Local 950, International Association of Firefighters, AFL-CIO ("Union") agree to extend their July 1, 2017-June 30, 2018 collective bargaining agreement through June 30, 2021.

1. Article XXXXI Term of Agreement
   July 1, 2018 – June 30, 2021

2. Appendix B.1: Employee Salary Schedule
   Increase the employee salaries in Appendix B.1 as follows:

FY 2019	July 1, 2018	2%
FY 2020	July 1, 2019	2%
FY 2021	July 1, 2020	2.5%

2. Appendix B.8 EMT Pay
   A. The compensation for possessing certification as an Emergency Medical Technician shall be as follows:

Effective Date		Annual Additional Compensation
FY 2019	July 1, 2018	6.5%
FY 2020	July 1, 2019	7.0%
FY 2021	July 1, 2020	7.5%

   B. Effective Fiscal Year 2020, amend the last sentence in the first paragraph of Appendix B. 8 by replacing "five (5) EMTs each year" with "ten (10) EMTs each year."

3. Article X – Other Leave (pp. 9-10)
   Amend paragraph (j) – Scheduled Leave in Article X by:

   (A) Amending the first sentence by:

   (i) deleting "and union leave" and

   (ii) inserting the word "and" before "vacation time" (housekeeping).

   (b) Amending the last sentence by replacing "may use his/her white day or a vacation day, or an unearned personal day (pink day)" with "shall use his/her white day."

   (B) Adding the following to the end of paragraph (j): "All members shall provide a minimum of 48 hours' prior notice to use a vacation tour unless shorter notice does not incur overtime. This Section (j) shall not be applicable during all "Drawing Days". Drawing Days are Thanksgiving day, December 24 and December 25."

4. The Town has satisfied its bargaining obligations associated with changing the pay day for employees from Thursdays to Fridays; such change to be effective no earlier than 90 calendar days after this agreement becomes effective.

Housekeeping edit: Delete "Thursday" from the last sentence in the first paragraph of Article X (i).

This Memorandum of Agreement is subject to: (i) ratification by the Union membership, (ii) approval by the Board of Selectmen, and (iii) funding at the next regularly scheduled Town meeting.

Agreed to by the Parties' negotiating teams subject to the above

For the Town

Robert Ward, Chief

Keith Flaherty
Chief of Operations

Sandra DeBow
Human Resources Director

Marjie Lalli
Labor Relations Specialist

For 950 IAFF

Paul Trahon, President

Ned Stevens, Vice President

James Clinton
Secretary/Treasurer

Justin Robinson
Pension and Welfare

Stephen O'Connor
5th Man

MEMORANDUM OF AGREEMENT

BY AND BETWEEN

THE TOWN OF BROOKLINE

AND

LOCAL 1358, AMERICAN FEDERATION OF STATE, COUNTY

AND MUNICIPAL EMPLOYEES, AFL-CIO

April 2018

The Town of Brookline ("Town") and Local 1358, American Federation of State, County and Municipal Employees, AFL-CIO ("Union") agree to extent their July 1, 2015 - June 30, 2018 collective bargaining agreement through June 30, 2021 with the following changes:

1. Article XXXV - Term of Agreement
   Amend Article XXXV to reflect a duration of July 1, 2018 through June 30, 2021.

2. Article XIX a) Compensation and Appendix B: Pay Schedules
   A. Increase the hourly rates in the Pay Schedules in Appendix B as follows:

Fiscal Year	Effective Date	Increase
FY 2019	July 1, 2018	2.0%
FY 2020	July 1, 2019	2.0%
FY 2021	July 1, 2020	2.0%
	September 1, 2020	0.5%

   B. Add the following new sections d) and e) to the end of Article XIX:

   d) Pay Day: The Union agrees that the Town has satisfied all of its bargaining obligations associated with changing pay day from Thursday to Friday. The Town agrees to provide the Union with 30 calendar days' notice prior to implementing the change from Thursday pay day to Friday pay day.

   e) Bi-Weekly Pay: The Union agrees that the Town has satisfied all of its bargaining obligations associated with changing from weekly pay to bi-weekly pay. The Town agrees not to implement bi-weekly pay for employees represented by the Union until such time as it is implementing bi-weekly pay for all Town employees represented by other Town unions including the fire and police unions. The Town agrees that the first time

it implements bi-weekly pay for employees represented by the Union it shall pay such employees a one-time, lump sum transition payment of three hundred fifty dollars ($350.00), less regular and ordinary deductions for state and federal taxes and other withholdings required by law. Such payment shall be made during the week between the last weekly paycheck and the first bi-weekly pay check The Town agrees to provide the Union with 30 calendar days' notice prior to implementing the change to Bi-weekly pay schedule.

3. Article III - Check Off
   Amend Article III by adding the following to the end of the first sentence in a): ", upon the date of their authorization or date of hire, whichever occurs first."

4. Article IX – Rain Wear and Work Clothes
   Amend the second paragraph in Article IX by adding the following:
   Effective July 1, 2018, such annual allowance will be $600 per year.

   Amend the sixth paragraph in Article IX by adding the following:
   Effective July 1, 2018, such payment shall be increased to $550 per year.

5. Article XVII – Hours of Work and Overtime
   Amend Article XVII by adding the following new section c):

   c) Adverse Weather Compensatory Time
   When the Town declares a state of emergency because of adverse weather and the Town cancels all Town services and an employee represented by the Union is required to work during such day; the employee will receive adverse weather compensatory time in addition to pay to which the employee is otherwise entitled for working that day. The employee shall receive adverse weather compensatory time equal to the number of hours the employee actually works during the adverse weather day up to a maximum of 7.5 or 8 hours per day depending on the employee's work week. Such adverse weather compensatory time must be taken on or before the following May 1st. To use such adverse weather compensatory time, the employee must schedule the time off with the prior approval of the employee's supervisor.

This Memorandum of Agreement is subject to ratification by the Union membership, approval by the Select Board for the Town of Brookline, and funding by the Brookline Town Meeting.

Agreed to by the Town and the Union on the date(s) indicated below.

For the Town of Brookline

Sandra DeBow, Director
Human Resources Office

Andrew Pappestergion, Commissioner
Dept. of Public Works

Marjie Lalli, Labor Specialist
Human Resources Office

April 6, 2018
Date

For Local 1358 AFSCME, AFL-CIO

Michael Fallon, President

Ed Nastari, Asst. Field Services Dir
AFSCME, Council 93

Mona Saltalamacchia

Johnathan Erlandson

Date

FY2018

MEMORANDUM OF AGREEMENT

BETWEEN

THE TOWN OF BROOKLINE

AND

THE BROOKLINE ENGINEERING DIVISION ASSOCIATES (BEDA)

APRIL 26, 2018

The Town of Brookline (Town) and the Brookline Engineering Division Association (BEDA) agree to extend their July 1, 2015-June 30, 2017 collective bargaining agreement through June 30, 2018 with the following change:

1. Appendix A – Engineering Classifications – Salary Schedule
   Effective July 1, 2017 increase the hourly rates in the salary schedule in Appendix A by 2%.

This Memorandum of Agreement is subject to: (i) ratification by the BEDA membership, (ii) approval by the Select Board of the Town of Brookline, and (iii) funding by the Brookline Town meeting.

Subject to the conditions stated above, this Memorandum of agreement is agreed to on the date(s) indicated below:

For the Town of Brookline

Neil Wishinsky, Chair
Date:_____

Melvin Kleckner
Town Administrator

Andrew Pappastergion
Commissioner

Peter Ditto, Director

Marjie Lalli, Labor Relations Specialist

For the Brookline Engineering Division Associates

Jay Hersey, President
Date: 4/26/18

Bill Smith, Treasurer

Mark Mansfield, Negotiating Team Member

FY2019, 2020, 2021

MEMORANDUM OF AGREEMENT

BETWEEN

THE TOWN OF BROOKLINE

AND

THE BROOKLINE ENGINEERING DIVISION ASSOCIATES (BEDA)

APRIL 26, 2018

The Town of Brookline (Town) and the Brookline Engineering Division Association (BEDA) agree to extend their July 1, 2017-June 30, 2018 collective bargaining agreement through June 30, 2021 with the following changes:

1. A. Appendix A – Engineering Classifications – Salary Schedule
Amend the salary schedule in Appendix A as follows:

Effective Date	Increase
July 1, 2018	2.0%
July 1, 2019	2.0%
July 1, 2020	2.0%
January 1, 2021	0.5%

B. Amend Article XVI, Compensation, Section (a) by replacing Section (a) with the following:

"(a) Wages and Step Increases: Compensation for all classifications shall be in accordance with Appendix A."

2. Article XVI, Section (c) Longevity.
Effective July 1, 2019, increase each longevity payment in section (c) by $25.00

3. Article XVI, Section (f) Certifications.
Effective July 1, 2018, amend section (f) of Article XVI by replacing "$125 certification stipend" with "$150 certification stipend" in the first sentence and by replacing the second sentence in its entirety with the following: "No employee shall receive more than four (4) certification stipends per fiscal year."

Effective July 1, 2019, amend section (f) of Article XVI by replacing "$150 certification stipend" with "$175 certification stipend" in the first sentence.

4. Change in pay day
The Union agrees that the Town has satisfied its bargaining obligations with respect to changing pay day from Thursday to Friday.

5. Identification Badges/Equipment
The Town has satisfied its bargaining obligations regarding and related to requiring employees to wear identification badges or other equipment provided by the Town and to use such badges/equipment to access town buildings and to record time worked.

6. Article XIV(a) and Appendix B
   A. Amend section (a) of Article XIV by replacing the last sentence in the first paragraph with the following: "Such employee(s), if working the modified work schedule provided in Appendix B of this agreement shall receive compensatory time off in accordance with Appendix B."

   B. Appendix B
      Replace the second and third paragraphs in Appendix B with the following:
      "To permit the revised schedule, the Brookline Engineering Division Associates agree that the daily shift of employees shall be Monday through Thursday 8 ¼ hours per day, exclusive of a 45-minute lunch break, and Friday 4 ½ hours per day exclusive of a 45-minute lunch break for a total of 37 ½ hours per week. At least one employee shall work Friday from 12:30 p.m. to 5:00 p.m. and shall receive compensatory time off ("Friday Earned") to be taken on a subsequent Friday morning as "Friday Taken". Compensatory time off shall be taken at a time agreed to by the Division Head and the employee ("Friday Taken"); however, generally such compensatory time shall be taken within eight weeks of the date it was earned. No overtime pay liability shall be incurred by the Town until the hours actually worked in any day exceed the above except that an employee working Friday afternoon shall receive compensatory time in lieu of overtime.

      Reasonable effort shall be made to offer opportunities to work Friday afternoons evenly among employees represented by the bargaining unit. Absent volunteers to work Friday afternoons, the Division Head shall assign one or more employees to work Friday afternoons."

This Memorandum of Agreement is subject to: (i) ratification by the BEDA membership, (ii) approval by the Select Board of the Town of Brookline, and (iii) funding by the Brookline Town meeting.

Subject to the conditions stated above, this Memorandum of agreement is agreed to on the date(s) indicated below:

For the Town of Brookline

Neil Wishinsky, Chair
Date:_____

Melvin Kleckner, Town Administrator

Andrew Pappastergion, Commissioner

Peter Ditto, Director

Marjie Lalli, Labor Relations Specialist

For the Brookline Engineering Division Associates

Jay Hersey, President
Date: 4/20/10

Bill Smith, Treasurer

Mark Mansfield, Negotiating Team Member

ARTICLE 2

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

In addition to the contracts presented in the Combined Reports the Board was able to approve an MOAs with AFSCME Library, School Traffic Supervisors and the Teamsters, (911 Dispatchers). These contracts have similar provisions provided to AFSCME Main and other groups. The MOAs are attached to this report.

AFSCME Library:
Wages:
FY2018 2%
FY2019 2%
FY2020 2%
FY2021 7/1/20 2%, 9/1/20 0.5%

Similar provisions regarding changing the payday from Thursday to Friday, bi-weekly pay and the clothing allowance were also included in the MOA.

ITEM	FY19	FY20	FY21	FY22	**TOTAL**
7/1/18 - 2%	38,967	38,967	38,967		**116,900**
7/1/19 - 2%		39,746	39,746		**79,492**
7/1/20 - 2%			40,541		**40,541**
9/1/20 -0.5%			8,580	1,758	**10,338**
Clothing allowance	7,000	7,000	7,000		**21,000**
TOTAL ROLL-OUT COSTS	**45,967**	**85,712**	**134,834**	**1,758**	**268,270**

Each 1% =	19,483	19,873	20,270	20,777	
New Wages - $ =	45,967	39,746	49,121	1,758	
New Wages - % =	2.4%	2.0%	2.4%	0.1%	**6.9%**
Wages on Base - $ =	38,967	39,746	49,121	1,758	
Wages on Base - % =	2.0%	2.0%	2.4%	0.1%	**6.5%**

School Traffic Supervisors:
Wages:
FY2018 2%
FY2019 2%
FY2020 2%
FY2021 7/1/20 2%, 9/1/20 0.5%

Similar provisions regarding changing the payday from Thursday to Friday, bi-weekly pay and the clothing allowance were also included in the MOA.

ITEM	FY19	FY20	FY21	FY22	**TOTAL**
7/1/18 - 2%	13,195	13,195	13,195		**39,584**
7/1/19 - 2%		13,458	13,458		**26,917**
7/1/20 - 2%			13,728		**13,728**
9/1/20 - 0.5%			2,905	443	**3,348**
Uniform allowance	2,200	2,200	2,200		**6,600**
TOTAL ROLL-OUT COSTS	**15,395**	**28,853**	**45,486**	**443**	**90,176**
Each 1% =	6,597	6,729	6,998	7,173	
New Wages - $ =	15,395	13,458	16,633	443	
New Wages - % =	2.3%	2.0%	2.4%	0.1%	**6.7%**
Wages on Base - $ =	13,195	13,458	16,633	443	
Wages on Base - % =	2.0%	2.0%	2.4%	0.1%	**6.4%**

Teamsters:
Wages:
FY2018 2%
FY2019 2%
FY2020 2%
FY2021 7/1/20 2%, 9/1/20 0.5%

Similar provisions regarding changing the payday from Thursday to Friday, and the clothing allowance were also included in the MOA. (Bi-weekly pay had been negotiated in a prior contract.) There were also modifications to the senior step rate and an increase in the night differential and an increase to the rate for a Communications Training Officer.

Teamsters CBA					
ITEM	FY19	FY20	FY21	FY22	**TOTAL**
7/1/2018 - 2%	17,515	17,515	17,515		**52,546**
7/1/2019 - 2%		17,866	17,866		**35,731**
7/1/2020 - 2%			18,269		**18,269**
9/1/2020 - 0.5%			3,485	1,162	**4,647**
Senior Step Increase		826	2,279		**3,106**
Night Shift Diff		1,579	1,579		**3,158**
CTO	240	480	720		**1,440**
TOTAL ROLL-OUT COSTS OF 3-YEAR PERIOD	**17,755**	**38,266**	**61,713**	**1,162**	**118,896**
Each 1% =	8,758	8,933	9,111	9,157	
New Wages - $ =	17,755	20,511	23,447	1,162	
New Wages - % =	2.0%	2.3%	2.6%	0.1%	**7.0%**

The Select Board thank the Town's negotiating team and the unions for reaching a fair and equitable settlement. The Board recommends FAVORABLE ACTION, by a vote of 5-0 on the additional contracts as referenced below and described in the attached MOAs. For ease of voting, all the contract votes are presented below.

<u>BROOKLINE FIRE UNION</u>
VOTED: To approve and fund by an appropriation, provided for in the FY2019 (Item 20) budget, for the cost items in the following collective bargaining agreement that commences on July 1, 2018- and expires on June 30, 2021:

Brookline Fire Union, Local 950, IAFF, AFL-CIO

all as set forth in the report of Sandra DeBow, Director of Human Resources, dated January 22, 2018 which report is incorporated herein by reference.

<u>AFSCME-Main</u>
VOTED: To approve and fund by an appropriation, provided for in the FY2019, (Item 20) budget, for the cost items in the following collective bargaining agreement that commences on July 1, 2018- and expires on June 30, 2021:

AFSCME Council 93, Local 1358 AFL-CIO (AFSCME, Main contract)

all as set forth in the report of Sandra DeBow, Director of Human Resources, dated March 30, 2018, which report is incorporated herein by reference.

BROOKLINE ENGINEERS DIVISION ASSOCIATION

VOTED: To approve and fund by an appropriation, provided for in the FY2018, (Item #20) and FY2019 (Item #20) budgets, for the cost items in the following collective bargaining agreement that commences on July 1, 2017- and expires on June 30, 2021:

Brookline Engineers Division Association (BEDA)

all as set forth in the MOAs, dated April 26, 2018, which are incorporated herein by reference.

AFSCME-Library

VOTED: To approve and fund by an appropriation, provided for in the FY2019, (Item 20) budget, for the cost items in the following collective bargaining agreement that commences on July 1, 2018- and expires on June 30, 2021:

AFSCME, Local 1358, Staff Association of the Public Libraries

all as set forth in the MOAs, dated April, 2018, which are incorporated herein by reference.

AFSCME-School Traffic Supervisors

VOTED: To approve and fund by an appropriation, provided for in the FY2019, (Item 20) budget, for the cost items in the following collective bargaining agreement that commences on July 1, 2018- and expires on June 30, 2021:

AFSCME, Local 1358, School Traffic Supervisors

all as set forth in the MOAs, dated April, 2018, which are incorporated herein by reference

TEAMSTERS (Emergency Telecommunications Dispatchers)

VOTED: To approve and fund by an appropriation, provided for in the FY2019, (Item 20) budget, for the cost items in the following collective bargaining agreement that commences on July 1, 2018- and expires on June 30, 2021:

The International Brotherhood of Teamsters, Local 25 (Emergency Telecommunications Dispatchers)

all as set forth in the MOA, dated May 4, 2018, which is incorporated herein by reference.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:
The Town has negotiated new agreements with six of its collective bargaining units: Local 950 of the International Association of Firefighters; AFSCME Local 1358 (Main); Brookline Engineering Division Associates (BEDA); the Staff Association of the Public Library of Brookline, Council 93, AFSCME; School Traffic Supervisors, Local 1358, Council 93, AFSCME; and the Teamsters. The Advisory Committee has reviewed five of these agreements and recommends that the necessary funds be appropriated. It will review and report on the sixth, the agreement with the Teamsters, prior to Town Meeting.

These agreements were negotiated on a fast-track basis, which limits the number of issues to be discussed. In addition to wage increases, the negotiations covered a change in pay day from Thursday to Friday, the transition to a bi-weekly pay period, and beginning the deduction for union dues at date of hire. The Town has asked for changes to the payroll system to achieve efficiencies. Changing the pay day allows more time for processing payroll which should reduce the number of errors; reducing the number of payrolls processed is more cost-effective. The bargaining units benefit from improved cash flow if dues can be deducted upon hire instead of after the six-month introductory employment period.

The agreement with the Firefighters covers the three-year period from July 1, 2018 through June 30, 2021 for a total cost of $1,912,827, or 7.4%. Wages will increase by 2% on July 1, 2018, and July 1, 2019, and by 2.5% on July 1, 2020. Additional compensation for Emergency Medical Technician (EMT) certification will increase by 0.5% on July 1 of each year covered by the contract. By a vote of 22–0–1, the Advisory Committee recommends FAVORABLE ACTION to appropriate the sums of money required to fund the cost items in the agreement between the Town and Local 950 of the International Association of Firefighters.

The agreement with AFSCME Local 1358 (Main) calls for a 2% annual wage increase effective July 1 in each year covered by the contract and an additional 0.5% increase effective September 1, 2020. Total cost over the three-year period is approximately $1,578,804, or 7.0%. By a vote of 22–0–1, the Advisory Committee recommends FAVORABLE ACTION to appropriate the sums of money required to fund the cost items in the agreement between the Town and AFSCME Local 1358 (Main).

Two agreements were reached with Brookline Engineering Division Associates (BEDA). The first extends the existing contract from June 30, 2017, to June 30, 2018, with a salary increase of 2% effective July 1, 2017. The second covers a three-year period from July 1, 2018, through June 30, 2021, and calls for a 2% wage increase effective July 1 in each

year, with an additional 0.5% increase effective January 1, 2021. Total cost of the two agreements is approximately $203,459, or 8.7%. By a vote of 23–0–0, the Advisory Committee recommends FAVORABLE ACTION to appropriate the sums of money required to fund the cost items in the agreement between the Town and Brookline Engineering Division Associates.

The agreement with the Staff Association of the Public Library of Brookline covers a three-year period from July 1, 2018, through June 30, 2021. The agreement calls for a 2% annual wage increase effective July 1 in each year of the contract, plus a 0.5% increase effective September 1, 2020. Total cost over the three year period is approximately $268,270, or 6.9%. By a vote of 23–0–0, the Advisory Committee recommends FAVORABLE ACTION to appropriate the sums of money required to fund the cost items in the agreement between the Town and Staff Association of the Public Library of Brookline.

The agreement with the School Traffic Supervisors covers the period July 1, 2018, through June 30, 2021. The agreement calls for a 2% annual wage increase effective July 1 in each year of the contract, with an additional 0.5% increase effective September 1, 2020. Total cost over the three year period is approximately $90,176, or 6.7%. By a vote of 23–0–0, the Advisory Committee recommends FAVORABLE ACTION to appropriate the sums of money required to fund the cost items in the agreement between the Town and the School Traffic Supervisors.

The agreement between the Town and the Teamsters had not been approved in time for the Advisory Committee to consider the requested appropriation. A supplemental report on this agreement will be circulated at Town Meeting.

DISCUSSION:
All of the agreements were negotiated on a fast-track basis, which limits the number of issues to be discussed. In addition to wage increases, the negotiations covered a change in pay day from Thursday to Friday, the transition to a bi-weekly pay period, and beginning the deduction for union dues at date of hire. The Town has asked for changes to the payroll system to achieve efficiencies. Changing the pay day allows more time for processing payroll which should reduce the number of errors; reducing the number of payrolls processed is more cost-effective. The bargaining units benefit from improved cash flow if dues can be deducted upon hire instead of after the six-month introductory employment period.

Firefighters

The Town of Brookline and the International Association of Firefighters executed a memorandum of agreement on January 26, 2018, covering the period July 1, 2018, through June 30, 2021. The agreement was ratified by the bargaining unit on March 9, 2018, and approved by the Select Board on May 1, 2018. The agreement calls for a 2% annual wage increase effective July 1, 2018, and July 1, 2019 and a 2.5% increase

effective July 1, 2020. Additional compensation for EMT pay will increase by 0.5% on July 1 of each year covered by the contract. Total cost over the three year period is approximately $1,912,827 or 7.4% as shown below and does not exceed the level of funds available within the collective bargaining reserve.

ITEM	FY19	FY20	FY21	**TOTAL**
7/1/2018 - 2%	265,463	265,463	265,463	**796,388**
7/1/2019 - 2%		270,772	270,772	**541,544**
7/1/2020 - 2.5%			345,234	**345,234**
EMT 6.5%	36,410	36,410	36,410	**109,229**
EMT 7%		39,211	39,211	**78,421**
EMT 7.5%			42,011	**42,011**
TOTAL ROLL-OUT COSTS OF 3-YEAR PERIOD	**301,872**	**611,855**	**999,100**	**1,912,827**

Each 1% =	132,731	135,386	138,771	
New Wages - $ =	301,872	309,982	387,245	
New Wages - % =	2.3%	2.3%	2.8%	**7.4%**

The number of firefighters who can take EMT training each year increases from five to ten, and the additional compensation for being certified, currently at 6% of base pay, increases by 0.5% on July 1 of each year of the contract. Most firefighters currently have their certification.

The new agreement requires 48-hour notification before taking vacation and includes language giving management better control of overtime. While the Town was able to secure agreement to change the pay day to Friday with 30 days' advance notification, the transition to bi-weekly pay was not successfully negotiated.

AFSCME (Main Bargaining Unit)

The Town of Brookline and AFSCME (American Federation of State, Country, and Municipal Employees) Local 1358 (AFSCME Main) executed a memorandum of agreement in March covering the period July 1, 2018, through June 30, 2021. The agreement was approved by the Select Board on April 4, 2018, and ratified by the bargaining unit on April 12, 2018. It calls for a 2% annual wage increase effective July 1, in each year covered by the contract and an additional 0.5% increase effective September 1, 2020. Total cost over the three year period is approximately $1,578,804, an increase of 7.0% as show below.

ITEM	FY19	FY20	FY21	FY22	TOTAL
7/1/18 - 2%	225,161	225,161	225,161		**675,482**
7/1/19 - 2%		229,664	229,664		**459,328**
7/1/20 - 2%			234,257		**234,257**
9/1/2020 - 0.5%			44,802	14,934	**59,736**
Clothing allowance	50,000	50,000	50,000		**150,000**
					0
TOTAL ROLL-OUT COSTS	**275,161**	**504,825**	**783,884**	**14,934**	**1,578,804**

Each 1% =	112,580	114,832	117,129	119,919	
New Wages - $ =	275,161	229,664	279,059	14,934	
New Wages - % =	2.4%	2.0%	2.4%	0.1%	**7.0%**
Wages on Base - $ =	225,161	229,664	279,059	14,934	
Wages on Base - % =	2.0%	2.0%	2.4%	0.1%	**6.5%**

In addition to the wage increase, the clothing allowance, which had not changed since 2003, will increase from $200 to $600 per year. DPW employees who work when other Town services are suspended due to storms will be granted compensatory time off of up to 7.5 or 8 hours depending on the employee's regularly scheduled work week. The "Adverse Weather Day" must be taken by May 1 of the following year.

The bargaining unit did agree to a change in pay day from Thursday to Friday with 30 days' advance notification. Also agreed is the transition to a bi-weekly pay period once all other bargaining units accept the change. Upon implementation of the new pay period, union members will receive a one-time $350 bridge payment. Union dues will be deducted upon commencement of employment instead of at the conclusion of the six-month introductory employment period.

Brookline Engineering Division Associates (BEDA)

The Town of Brookline and Brookline Engineering Division Associates (BEDA) executed two memorandums of agreement on April 26, 2018. The first extends the existing contract from June 30, 2017, to June 30, 2018, with a salary increase of 2% effective July 1, 2017. The second covers a three-year period from July 1, 2018, through June 30, 2021 and calls for a 2% wage increase effective July 1 of each year plus an additional 0.5% increase effective January 1, 2021. Total cost of the two agreements is

approximately $203,459, or 8.7% as shown below. The agreements were ratified by the bargaining unit on April 26, 2018, and approved by the Select Board on May 1, 2018.

ITEM	FY18	FY19	FY20	FY21	FY22	**TOTAL**
7/1/2017 - 2%	18,879	18,879	18,879	18,879		**75,515**
7/1/2018 - 2%		19,256	19,256	19,256		**57,769**
7/1/2019 - 2%			19,641	19,641		**39,283**
7/1/2020 - 2%				20,034		**20,034**
1/1/2021 - 0.5%				2,554	2,554	**5,109**
Certification Stipend		1,350	2,025	2,025		**5,400**
Longevity			175	175		**350**
						0
TOTAL ROLL-OUT COSTS	**18,879**	**39,485**	**59,976**	**82,565**	**2,554**	**203,459**

Each 1% =	9,439	9,628	9,821	10,017	10,268	
New Wages - $ =	18,879	20,606	20,491	22,589	2,554	
New Wages - % =	2.0%	2.1%	2.1%	2.3%	0.2%	**8.7%**
Wages on Base - $ =	18,879	19,256	19,641	20,709	2,554	
Wages on Base - % =	2.0%	2.0%	2.0%	2.1%	0.2%	**8.3%**

Longevity pay for the 11 employees in this bargaining unit has not increased since 2014 and lags behind other AFSCME bargaining units. Beginning on July 1, 2019, longevity pay for each longevity gate will increase by $25.

To encourage staff to become certified so that inspections can be done within the department instead of by outside contractors, the stipend for each certificate was raised from $125 to $150 effective July 1, 2018, and to $175 effective July 1, 2019. No individual will be reimbursed for more than four certificates in one year.

BEDA staff normally work 8 ½ hours per day, Monday–Thursday, and 4 ½ hours on Friday. The bargaining unit agreed that at least one employee will work Fridays from 12:30 to 5:00 p.m. and shall receive compensatory time off to be taken on a subsequent Friday morning. Pay day will change from Thursday to Friday upon 30 days' notice from the Town.

Staff Association of the Public Library of Brookline

The Town of Brookline and the Staff Association of the Public Library of Brookline entered into a memorandum of agreement in April, 2018 covering the period July 1, 2018 through June 30, 2021. The agreement calls for a 2% annual wage increase effective July 1 in each year of the contract, with an additional .5% increase effective September 1, 2020. Total cost over the three year period is approximately $268,270 or 6.9% as detailed below:

ITEM	FY19	FY20	FY21	FY22	**TOTAL**
7/1/18 - 2%	38,967	38,967	38,967		**116,900**
7/1/19 - 2%		39,746	39,746		**79,492**
7/1/20 - 2%			40,541		**40,541**
9/1/20 -0.5%			8,580	1,758	**10,338**
Clothing allowance	7,000	7,000	7,000		**21,000**
TOTAL ROLL-OUT COSTS	**45,967**	**85,712**	**134,834**	**1,758**	**268,270**

Each 1% =	19,483	19,873	20,270	20,777	
New Wages - $ =	45,967	39,746	49,121	1,758	
New Wages - % =	2.4%	2.0%	2.4%	0.1%	**6.9%**
Wages on Base - $ =	38,967	39,746	49,121	1,758	
Wages on Base - % =	2.0%	2.0%	2.4%	0.1%	**6.5%**

The clothing allowance will increase from $350 to $550 per year, prorated for part-time employees. All libraries will be closed on the days that Town Hall is closed for inclement weather. The monitor position at the Coolidge Corner branch has been eliminated.

Pay day will change from Thursday to Friday upon 30 days' notice from the Town. The transition to bi-weekly pay will occur at such time that all other bargaining units have agreed to the change. Members will receive 30 days' advance notice of the change and a $350 bridge payment to ease the transition. The deduction for union dues will begin upon date of hire or the date of the employee's signed authorization, whichever comes first.

School Traffic Supervisors

The Town of Brookline and the School Traffic Supervisors entered into a memorandum of agreement in April, 2018 covering the period July 1, 2018 through June 30, 2021. The agreement calls for a 2% annual wage increase effective July 1 of each year, plus a 0.5%

increase effective September 1, 2020. Total cost over the three year period is approximately $90, 176 or 6.7% as detailed below:

ITEM	FY19	FY20	FY21	FY22	**TOTAL**
7/1/18 - 2%	13,195	13,195	13,195		**39,584**
7/1/19 - 2%		13,458	13,458		**26,917**
7/1/20 - 2%			13,728		**13,728**
9/1/20 - 0.5%			2,905	443	**3,348**
Uniform allowance	2,200	2,200	2,200		**6,600**
TOTAL ROLL-OUT COSTS	**15,395**	**28,853**	**45,486**	**443**	**90,176**

Each 1% =	6,597	6,729	6,998	7,173	
New Wages - $ =	15,395	13,458	16,633	443	
New Wages - % =	2.3%	2.0%	2.4%	0.1%	**6.7%**
Wages on Base - $ =	13,195	13,458	16,633	443	
Wages on Base - % =	2.0%	2.0%	2.4%	0.1%	**6.4%**

Employees in Groups 1 and 4 who are scheduled to work for the full year will receive a uniform allowance of $585 on or about the start of the school year. The allowance will be prorated for Group 3 employees.

Upon 30 days' notice from the Town, pay day will change from Thursday to Friday. The bargaining unit also agreed to transition to bi-weekly pay at such time that all other bargaining units have agreed to the change. Members will receive 30 days' advance notice and a $350 bridge payment to ease the transition. The deduction for union dues will begin upon date of hire or the date of the employee's signed authorization, whichever comes first.

RECOMMENDATION

The Advisory Committee recommends FAVORABLE ACTION on all five agreements, as follows.

By a vote of 22–0–1, the Advisory Committee recommends FAVORABLE ACTION to appropriate the sums of money required to fund the cost items in the agreement between the Town and Local 950 of the International Association of Firefighters.

By a vote of 22–0–1, the Advisory Committee recommends favorable action to appropriate the sums of money required to fund the cost items in the agreement between the Town and AFSCME Local 1358 (Main).

By a vote of 23–0–0 the Advisory Committee recommends favorable action to appropriate the sums of money required to fund the cost items in the agreement between the Town and Brookline Engineering Division Associates.

By a vote of 23–0–0 the Advisory Committee recommends favorable action to appropriate the sums of money required to fund the cost items in the agreement between the Town and the Staff Association of the Public Library of Brookline.

By a vote of 23–0–0 the Advisory Committee recommends favorable action to appropriate the sums of money required to fund the cost items in the agreement between the Town and School Traffic Supervisors.

Memorandum of Agreement
By and Between
The Town of Brookline
And
The Staff Association of the Public Library of Brookline
Council 93, AFSCME, AFL-CIO
April 2018

The Town of Brookline ("Town") and the Staff Association of the Public Library of Brookline, Council 93, AFSCME, AFL-CIO ("Union") agree to extend their July 1, 2015 – June 30, 2018 collective bargaining agreement through June 30, 3021 with the following changes:

1. Article XXIX – Duration
   Amend Article XXIX to reflect a duration of July 1, 2018 through June 30, 2021.

2. Article V – Compensation and Appendix A – Library Salary Schedule
   A. Increase the hourly rates in the pay schedules in Appendix A as follows:

Fiscal Year	Effective Date	Increase
FY2019	July 1, 2018	2.0%
FY2020	July 1, 2019	2.0%
FY2021	July 1, 2020	2.0%
	September 1, 2020	0.5%

   B. Amend Article V, section d) by replacing the existing language with the following:

   d) Clothing Allowance. The Town shall make an annual [clothing allowance] payment of one hundred dollars ($100.00) on or before August 1 to each full-time employee represented by the Union. Effective July 1, 2003, the annual clothing allowance shall be increased from $100 per year to $200 per year for full-time employees represented by the Union. Effective July 1, 2004, the annual clothing allowance shall be increased to $250.00. Effective September 1, 2004, part-time employees who are regularly scheduled to work 20 or more hours per week, shall be eligible for prorated clothing allowance. Effective July 1, 2008, the annual clothing allowance shall be increased to $350.00. Effective July 1, 2018, such annual allowance will be $550 per year. Such benefits shall be prorated based on the relationship between the employee's regularly scheduled hours per week to that of a full-time employee. For example, if an employee is regularly scheduled to work 21 hours per week, she would

be eligible for 21/37ths of the annual clothing allowance.

C. Add the following new sections e) and f) to the end of Article V:

e) Pay Day. The Union agrees that the Town has satisfied all of its bargaining obligations associated with changing pay day from Thursday to Friday. The Town agrees to provide the Union with 30 calendar days' notice prior to implementing the change from Thursday pay day to Friday pay day.

f) Bi-Weekly Pay. The Union agrees that the Town has satisfied all of its bargaining obligations associated with changing from weekly pay to bi-weekly pay. The Town agrees not to implement bi-weekly pay for employees represented by the Union until such time as it is implementing bi-weekly pay for all Town employees represented by other Town unions including the fire and police unions. The Town agrees that the first time it implements bi-weekly pay for employees represented by the Union it shall pay such employees a one-time, lump sum transition payment of three hundred fifty dollars ($350.00), less regular and ordinary deductions for state and federal taxes and other withholdings required by law. Such payment shall be made during the week between the last weekly paycheck and the first bi-weekly pay check. The Town agrees to provide the Union with 30 calendar days' notice prior to implementing the change to bi-weekly pay schedule.

3. Article XXIV – Dues, Agency Service Fee and Check Off
Amend Article XXIV by adding the following to the end of the first sentence in 2): ", upon the date of their authorization or date of hire, whichever occurs first."

4. Article VI – Hours of Work and Overtime
Amend Article VI, section f) to read: "Since July 1, 2002 all accrual of compensatory time has been eliminated., section g) by replacing the existing language with the following: "This section g) intentionally left blank."

5. Article XXVI – Miscellaneous Working Conditions
   A. The parties agree that the Town has satisfied its bargaining obligations with respect to the elimination of the monitor position at the Coolidge Corner branch.

   B. Amend Article XXVI, section 8) a. by replacing the existing language with the following: "This section 8) a. intentionally left blank."
   C. Add subsection 13) If Town Hall closes due to adverse weather, all locations of the Library will also close.

This Memorandum of Agreement is subject to ratification by the Union membership, approval by the Select Board for the Town of Brookline, and funding by the Brookline Town Meeting.

Agreed to by the Town and the Union on the date(s) indicated.

For the Town of Brookline:

Mel Kleckner
Town Administrator

Sara Slymon
Library Director

Anne Reed
Assistant Library Director

Marjie Lalli
Labor Relations Specialist

For the Staff Association of the Public Library of Brookline Council 93, AFSCME AFL-CIO:

Michael Fallon
President, Local 1358

Ed Nastari
Business Agent, AFSCME Council 93

Colin Wilkins

MEMORANDUM OF AGREEMENT

BY AND BETWEEN

THE TOWN OF BROOKLINE

AND

SCHOOL TRAFFIC SUPERVISORS, LOCAL 1358
COUNCIL 93, AFSCME, AFL-CIO

April 2018

The Town of Brookline ("Town") and the School Traffic Supervisors, Local 1358, Council 93, AFSCME, AFL-CIO ("Union") agree to extend their July 1, 2015 – June 30, 2018 collective bargaining agreement through June 30, 3021 with the following changes:

1. Article XXI – Term of Agreement
   Amend Article XXI to reflect a duration of July 1, 2018 through June 30, 2021.

2. Article VII – Compensation and Appendix A – Pay Schedule
   A. Increase the hourly rates in the pay schedules in Appendix A as follows:

Fiscal Year	Effective Date	Increase
FY2019	July 1, 2018	2.0%
FY2020	July 1, 2019	2.0%
FY2021	July 1, 2020	2.0%
	September 1, 2020	0.5%

   B. Add the following new sections 9) and 10) to the end of Article VII:

   9) Pay Day. The Union agrees that the Town has satisfied all of its bargaining obligations associated with changing pay day from Thursday to Friday. The Town agrees to provide the Union with 30 calendar days' notice prior to implementing the change from Thursday pay day to Friday pay day.

   10) Bi-Weekly Pay. The Union agrees that the Town has satisfied all of its bargaining obligations associated with changing from weekly pay to bi-weekly pay. The Town agrees not to implement bi-weekly pay for employees represented by the Union until such time as it is implementing bi-weekly pay for all Town employees represented by other Town unions including the fire and police unions. The Town agrees that the first time it implements bi-weekly pay for employees represented by the Union it shall

pay such employees a one-time, lump sum transition payment of three hundred fifty dollars ($350.00), less regular and ordinary deductions for state and federal taxes and other withholdings required by law. Such payment shall be made during the week between the last weekly paycheck and the first bi-weekly pay check. The Town agrees to provide the Union with 30 calendar days' notice prior to implementing the change to bi-weekly pay schedule.

3. Article III – Check-Off and Agency Service Fee
   Amend Article III by adding the following to the end of the first sentence in section 1.a.: ", upon the date of their authorization or date of hire, whichever occurs first."

4. Article XV – Uniforms
   Amend Article XV by adding the following paragraph to the end of section 4):

   "Effective July 1, 2018, employees in Groups 1 and 4 who are scheduled to work for the full year shall receive a five hundred eighty-five dollar ($585.00) maintenance allowance on or about the start of the school year. Group 3 employees shall receive a prorated maintenance allowance."

This Memorandum of Agreement is subject to ratification by the Union membership, approval by the Select Board for the Town of Brookline, and funding by the Brookline Town Meeting.

Agreed to by the Town and the Union on the date(s) indicated below.

For the Town of Brookline

Melvin Kleckner
Town Administrator

Myles Murphy
Police Deputy Superintendent

For the School Traffic Supervisors, Local 1358, Council 93, AFSCME, AFL-CIO

Michael Fallon, President

Ed Nastari, AFCME Business Agent

Marjie Lalli

Marjie Lalli
Human Resources

4/27/2018

Date

Jacqueline Joy

4-27-2018

Date

MEMORANDUM OF AGREEMENT

BETWEEN THE TOWN OF BROOKLINE

AND

THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 25

(EMERGENCY TELECOMMUNICATIONS DISPATCHERS)

May 4, 2018

This Memorandum of Agreement ("Agreement") is made between the Town of Brookline ("Town") and the International Brotherhood of Teamsters, Local 25 ("Union"), collectively referred to as the "Parties". Except as specifically modified by this Agreement, the terms and provisions of the Parties' July 1, 2015 – June 30, 2018 shall continue in full force and effect. The Parties agree to the following modifications:

1. Article 25 Duration
   July 1, 2018 – June 30, 2021

2. Article II and Appendix B Wages

   A. Increase the hourly rates for all Steps in accordance with the following schedule:

Effective Date	Increase All Steps
July 1, 2018	2.0%
July 1, 2019	2.0%
July 1, 2020	2.0%
September 1, 2020	0.5%

   After the above increases have been applied increase the current senior step as follows:

Effective Date	Increase
July 1, 2019	$0.05
July 1, 2020	$0.10

   B. Article 11 Wages
   Amend Article 11 by adding the following new section:

   Pay day: The Union agrees that the Town has satisfied its bargaining obligations with respect to changing pay day from Thursdays to Fridays.

3. Article 13 Uniform Allowance
   Amend Section 3 (Modified Uniform Allowance) of Article 13 as follows:
   A. Replace the phrase: "through June 30, 2018" in the first sentence with "through June 30, 2020";
   B. Replace the phrase "re-instituted effective July 1, 2018" with "re-instituted effective July 1, 2020" in the second sentence.

4. Article 23 Communications Training Officer
   Amend subparagraph iv of Section 2 in Article 23 by inserting the following after the second sentence: "Effective July 1, 2018, the rate shall be $1.75 per hour when such ETD is assigned and performs the work of a Communications Training Officer. Effective July 1, 2019, the rate shall be $2.00 per hour when such ETD is assigned and performs the work of a Communications Training Officer. Effective July 1, 2020, the rate shall be $2.25 per hour when such ETD is assigned and performs the work of a Communications Training Officer."

5. Appendix B. II. Night Differential
   Amend Appendix B.II (Night Differential) by adding the following sentence to the end of Section II: "Effective with the start of the first full week in Fiscal Year 2020 the night differential shall be increased by $5.00 per week to $50 per week."

This Memorandum of Agreement is the result of Fast Track negotiations and shall remain off the record for purposes of bargaining history until it is ratified by the Union membership and approved by the Select Board.

This Memorandum of Agreement is subject to ratification by the Union membership before May 15, 2018, approval by the Select Board and funding by Town meeting at the next regularly scheduled Town meeting. Subject to the above conditions, Memorandum of Agreement is agreed to on this 4th day of May:

Town of Brookline

Deputy Superintendent Andrew Lipson

Austin Faison, Assistant Town Administrator

Marjie Lalli, Labor Relations Specialist

Kevin Lessard, Chief ETD

International Brotherhood of Teamsters Local 25

Joan Corey, Teamsters Local 25

Elizabeth Williams

Jaclyn Carroll

ARTICLE 2

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:

The Town of Brookline and the Emergency Telecommunications Dispatchers, International Brotherhood of Teamsters Local 25, entered into a memorandum of agreement on May 4, 2018 covering the period July 1, 2018 through June 30, 2021 for a total cost of $$118,896. The agreement was ratified by the union on May 7 and approved by the Select Board on May 15. By a vote of 18–0–3, the Advisory Committee recommends FAVORABLE ACTION to appropriate the sums of money required to fund the cost items in the agreement between the Town and the Emergency Telecommunications Dispatchers, Teamsters Local 25.

DISCUSSION:

The agreement calls for a 2% annual wage increase effective July 1 in each year of the contract, plus a .5% increase effective September 1, 2020. Total cost over the three year period is approximately $118,896 or 7.0%, as shown below, and is consistent with other collective bargaining agreements concluded this year.

ITEM	FY19	FY20	FY21	FY22	**TOTAL**
7/1/2018 - 2%	17,515	17,515	17,515		**52,546**
7/1/2019 - 2%		17,866	17,866		**35,731**
7/1/2020 - 2%			18,269		**18,269**
9/1/2020 - 0.5%			3,485	1,162	**4,647**
Senior Step Increase		826	2,279		**3,106**
Night Shift Diff		1,579	1,579		**3,158**
CTO	240	480	720		**1,440**
TOTAL ROLL-OUT COSTS OF 3-YEAR PERIOD	**17,755**	**38,266**	**61,713**	**1,162**	**118,896**

Each 1% =	8,758	8,933	9,111	9,157	
New Wages - $ =	17,755	20,511	23,447	1,162	
New Wages - % =	2.0%	2.3%	2.6%	0.1%	**7.0%**

In addition, the current senior step will increase by $0.05 on July 1, 2019 and by $0.10 on July 1, 2020. Experienced dispatchers assigned to train new hires receive an additional hourly rate while performing those duties. Under the terms of the agreement, the rate increases from $1.50 to $1.75 per hour on July 1, 2018; to $2.00 on July 1, 2019, and to

$2.25 on July 1, 2020. The night differential increases by $5 to $50 per week effective the first full week of Fiscal Year 2020.

Currently, the dispatchers receive an annual stipend to cover the cost of uniforms costs. In order to give a new chief the option to bargain mid-term, this section of the contract will expire on June 30, 2020, and revert back to a quartermaster system on July 1, 2020.

In their previous contract, the Teamsters had agreed to transition to a bi-weekly payroll at such time as all other bargaining units accepted the change. To date, all bargaining units except for police and fire have consented to the new pay period. Under the new contract, the Teamsters will transition to a Friday pay day, leaving the police as the only outlier.

RECOMMENDATION:
By a vote of 18–0–3 taken on May 22, 2018, the Advisory Committee recommends FAVORABLE ACTION to appropriate the sums of money required to fund the cost items in the agreement between the Town and the Emergency Telecommunications Dispatchers, Teamster Local 25.

ARTICLE 3

THIRD ARTICLE
Submitted by: Treasurer/Collector

To see if the Town will authorize the Town Treasurer, with the approval of the Select Board, to enter into Compensating Balance Agreement(s) for FY2019 in accordance with General Laws Chapter 44, Section 53F, or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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.

SELECT BOARD'S RECOMMENDATION

Compensating balances 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.

Funds have been included in the Treasurer's FY2019 budget to pay for these banking services directly. This authorization, however, will give the Treasurer the flexibility to enter into such agreements if it should be in the best interest of the Town.

The Select Board recommend FAVORABLE ACTION, by a vote of 5-0 taken March 14, 2018, on the following vote:

VOTED: That the Town authorize the Town Treasurer, with the approval of the Selectmen, to enter into Compensating Balance Agreement(s) for FY2019 in accordance with General Laws Chapter 44, Section 53F.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Favorable Action on Article 3 would authorize the Town Treasurer, with the approval of the Select Board, to enter into compensating balance agreements for FY2018 in accordance with Massachusetts General Laws Chapter 44, Section 53F. These agreements would allow the Town to maintain specified amounts of deposits, which may or may not be interest bearing, in exchange for the reduction or elimination of cash payments for bank services.

DISCUSSION:
The proposed Town budget generally assumes that the Town's available funds are invested in interest-bearing accounts, and that banking services are paid for in the ordinary course. This authorization gives the Treasurer the authority to negotiate a reduction or elimination of fees for services, in exchange for deposits or Town funds in non-interest-bearing accounts. Compensating balance agreements add value when the savings in fees more than offsets the loss of interest income, or when services can be bargained for among competing banks. They are a valuable cash management and services procurement tool. Town Meeting has authorized these arrangements since the mid-1980s.

RECOMMENDATION:
By a vote of 15–0–0, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Select Board.

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ARTICLE 4

FOURTH ARTICLE
Submitted by: Select Board

To see if the Town will authorize the Comptroller to close out either all or a portion of the unexpended balances in certain Special Appropriations and return said sums to the Surplus Revenue accounts, or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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.

SELECT BOARD'S RECOMMENDATION

This is an annual article required by Section 2.1.4 of the Town's By-Laws. The tables that appear on the following pages detail the status of capital projects and special appropriations broken out by those that are debt financed and those that are funded with current revenues.

Under state statutes, any revenue funds declared surplus must be closed out to free cash at the end of the fiscal year. No action by Town Meeting is required. Surplus funds from bond-financed projects may be appropriated by Town Meeting for any purpose for which a loan may be taken only under a warrant article calling for an appropriation that meets these requirements.

The Select Board recommend NO ACTION, by a vote of 5-0 taken on April 3, 2018.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
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, and to ensure that surplus funds, if any, are managed in a timely fashion;
- identifying the unused portion of borrowing authorization that require rescission.

Under State statutes, surplus funds for revenue-financed capital projects are transferred to free cash at the end of the respective fiscal year. Surplus funds from bond-financed capital

projects are also transferred to free-cash, unless they are appropriated under a Warrant Article by Town Meeting for a purpose similar to the original borrowing.

DISCUSSION:
This Warrant Article is basically informational as the Town's Comptroller has the statutory authority and power to close out the accounts without Town Meeting authorization. There are no accounts or bonded items with funds remaining that need to be closed out.

RECOMMENDATION:
By a vote of 21–0–0, the Advisory Committee recommends NO ACTION.

XXX

Available Budget Report - Special Warrant Articles (Revenue-Financed) for Fiscal Year 2018 as of 3/16/18

Account	Account Name	Revised Budget	YTD Expended	YTD Encumbered	Available Balance	Comment
K017	TOWN FURNITURE UPGRADES	58,715	26,816	0	31,899	Ongoing furniture replacement, chairs, tables, workstations. Most funds will be encumbered by end of FY.
K018	SCHOOL FURNITURE UPGRADES	167,016	107,695	2,904	56,417	Ongoing school furniture replacement program. Most funds will be encumbered by end of FY.
Sub-Total Finance Dept		**225,731**	**134,511**	**2,904**	**88,316**	
K084	GATEWAY EAST PROJECT	8,881	0	8,881	0	This is active project still in design stage.
K100	COMMERCIAL AREA IMPROVEMENTS	29,165	8,625	8,625	11,915	installation of Wayfinding Signs--summer of 2018
K122	RIVERWAY BIKE/PED PATH	40,000	0	0	40,000	transfer to Parks/DPW for Riverway Bike Path
K133	STRATEGIC ASSET PLAN	75,000	75,000	0	0	Complete
K134	CENTRE ST PARKING STUDY	100,000	0	0	100,000	re-appropriated in FY2018 (will drop off report next year)
K138	MAJOR PARCEL STUDY	100,000	82,725	17,275	0	Complete
Sub-Total Dept of Planning & Community Development		**353,046**	**166,350**	**34,781**	**151,915**	
K016	IT HARDWARE-SOFTWARE	229,631	98,013	44,740	86,878	On-going projects.
K126	SCHOOL TECHNOLOGY PROJECTS	2,612	2,409	0	203	
K132	DATAROOM UPGRADES	120,000	72,950	11,500	35,550	Project underway
Sub-Total Information Technology Dept		**352,243**	**173,372**	**56,240**	**122,631**	
K095	FIRE APPARATUS REFURBISHMENT	57,411	28,995	0	28,416	Under review by new Chief
K095	FIRE ENGINE 6 REPLACEMENT	625,000	139,993	482,147	2,860	Under review by new Chief
Sub-Total Fire Dept		**682,411**	**168,988**	**482,147**	**31,276**	
K002	ENERGY CONSERVATION	196,982	184,145	4,284	8,553	Ongoing projects
K010	ENERGY MANAGEMENT SYSTEMS	133,911	83,535	43,102	7,274	Ongoing projects
K022	TOWN-SCHOOL SECURITY-LIFE SAFETY	348,091	269,085	79,006	0	Ongoing projects
K032	RESERVOIR GATEHOUSE	104,868	104,633	225	10	Complete
K038	PIERCE SCHOOL ELECTRICAL SYSTEM	48,708	392	40,476	7,840	To be completed by July, 2018
K042	CLASSROOM CAPACITY EXPANSION	1,160,191	939,021	182,136	39,034	Ongoing projects
K046	TOWN HALL/MAIN LIBRARY GARAGE IMPROVEMENTS	288,200	0	0	288,200	On hold until phase 5 budget is approved.
K050	ADA RENOVATIONS	85,742	36,910	21,773	27,059	Ongoing projects
K098	FIRE STATION RENOVATIONS	1,091,029	6,055	401,254	683,720	Ongoing projects
K109	TOWN/SCHOOL BUILDINGS ELEVATOR	911,785	332,816	442,540	136,429	Projects underway
K110	TOWN/SCHOOL BUILDINGS ENVELOPE REPAIRS	1,769	1,769	0	0	Complete
K119	DEVOTION SCHOOL RENOVATION	340,765	282,724	57,500	541	Complete
K121	GARAGE FLOOR SEALANTS	150,000	0	0	150,000	To be combined with phase 5
K123	DEVOTION HOUSE / PUTTERHAM SCHOOL	62,000	0	0	62,000	Ongoing projects
K128	COOLIDGE CORNER LIBRARY	646,500	10,737	42,963	592,800	Ongoing projects
K131	DRISCOLL SCHOOL HVAC	400,000	10,013	362,113	27,874	Ongoing projects
K146	SCHOOL EXPANSION STUDIES	102,186	83,660	5,095	13,431	Ongoing projects
K147	OLD LINCOLN SCHOOL	28,131	28,131	0	0	Complete
K148	TOWN REHAB/UPGRADE	50,000	32,908	0	17,092	Ongoing projects
K153	SCHOOL REHAB/UPGRADE	100,000	28,467	0	71,533	Ongoing projects
K154	9th SCHOOL	1,500,000	75,115	163,400	1,261,485	Up to $1M approved for new studies and new feasibility
Sub-Total Building Dept		**7,750,858**	**2,510,116**	**1,845,867**	**3,394,875**	
K051	TREE MANAGEMENT	286,069	90,619	90,109	105,341	In progress
K052	BICYCLE ACCESS IMPROVEMENTS	89,148	10,539	9,061	69,548	In progress
K054	STREET LIGHTING REPLACEMENT	193,974	138,270	635	55,069	In progress. Last area of the Town is being installed now and then we will conduct census for any missed lights.
K055	CARLTON STREET FOOTBRIDGE	85,186	0	0	85,186	Preparing 100% PS & E to submit to the State. Project funded in FFY19
K056	SIDEWALK IMPROVEMENTS	325,068	400	320,917	3,751	On going project. Balance to be applied to FY18 contract
K058	STREET REHABILITATION	2,974,587	1,060,331	567,438	1,346,818	On going project. Balance to be applied to FY18 contract
K062	DANE PARK	24,051	24,051	0	0	Complete
K065	RIVERWAY PARK IMPROVEMENT	86,369	0	0	86,369	On Hold due to Muddy River Restoration Project
K066	PLAYGROUND,FENCE,FIELD, EQUIPMENT	540,490	208,619	219,019	112,852	In progress
K069	TENNIS/BASKETBALL COURT REHAB	193,385	0	5,000	188,385	Awaiting FY20 funding to move into construction
K070	LARZ ANDERSON PARK	652,911	0	62,500	590,411	On hold for coordination with upcoming funding cycle.
K071	LOST POND CONSERVATION AREA	23,812	23,812	0	0	Complete
K073	TOWN-SCHOOL GROUNDS REHAB	169,413	87,779	34,448	47,186	In progress
K078	MUDDY RIVER REMEDIATION	1,318,495	0	0	1,318,495	Phase II Portion of the Project in Design/Engineering Phase
K083	TRAFFIC CALMING	105,621	65,265	23,321	17,035	In progress
K088	MOUNTFORT ST TRAFFIC SIGNAL	410,101	0	0	410,101	Waiting on MADOT to reconst. St. Mary's St. bridge.
K090	PEDESTRIAN ACCESS IMPROVEMENTS	45,000	0	45,000	0	Part of Gateway East project
K096	PARKING METERS	170,200	159,988	0	10,212	On going project.
K097	LANDFILL SETTLEMENTS	226,483	87,550	0	138,933	All claims settled. Preparing final paper work to closeout project
K101	MUNICIPAL SERVICE CENTER REPAIRS	785,204	521,619	220,826	42,759	Project 95% complete. Portion of remaining balance used to install perimeter fence.

Available Budget Report - Special Warrant Articles (Revenue-Financed) for Fiscal Year 2018 as of 3/16/18

Account	Account Name	Revised Budget	YTD Expended	YTD Encumbered	Available Balance	Comment
K102	BILLY WARD PLAYGROUND	10,445	2,222	0	8,223	Will be closed out after final irrigation work
K115	OLD BURIAL GROUNDS	94,377	0	0	94,377	Waiting for construction bid documents
K120	PARK COMFORT STATIONS	46,977	0	0	46,977	In progress
K124	WOODLAND RD / HAMMOND ST CROSSING STUDY	20,805	0	5,205	15,600	Conceptual Design complete and going through Transportation Board approval process
K125	BROOKLINE AVE PLAYGROUND	817,315	434,195	280,006	103,114	Construction underway
K129	MBTA TRAFFIC SIGNALIZATION	50,000	0	0	50,000	In progress. MBTA engaging contractor and once contract is awarded Town match will be expended.
K136	COREY HILL PLAYGROUND	11,588	9,100	0	2,488	In progress
K137	EMERSON GARDEN PLAYGROUND	800,971	540,604	183,845	76,522	Construction underway
K141	DEAN RD/CHESTNUT HILL AVE TRAF SIGNAL	260,000	0	0	260,000	Filed work complete. 25% design plans being developed
K142	WINTHROP PATH REHABILITATION	65,000	0	0	65,000	Repair work to be done in summer 2018
K143	BROOKLINE RESERVOIR PARK	120,878	19,180	2,390	99,308	Design, construction bid documents and construction underway
K144	HARRY DOWNES FIELD & PLAYGROUND RENOVATION	80,000	12,700	54,300	13,000	Design development underway
K150	DAVIS PATH FOOTBRIDGE	40,000	0	0	40,000	Preparing RFP for structural analysis of bridge
K151	MURPHY PLAYGROUND	70,000	0	0	70,000	On hold as construction funding is in out years
K152	STORMWATER IMPROVEMENTS	300,000	9,998	0	290,002	First phase complete. Waiting for contract from consultant for second phase
Sub-Total DPW		**11,493,922**	**3,506,841**	**2,124,020**	**5,863,061**	
K139	LIBRARY FURNISHINGS	15,374	11,102	4,272	0	On going project.
K140	LIBRARY INTERIOR PAINTING	67,425	17,450	49,975	0	On going project.
Sub-Total Library		**82,799**	**28,552**	**54,247**	**0**	
K106	Swimming Pool Showers/Repointing	377,862	339,666	38,196	0	Project will be complete at the end of the FY.
Sub-Total Recreation		**377,862**	**339,666**	**38,196**	**0**	
	TOTAL	**21,318,872**	**7,028,396**	**4,638,402**	**9,652,074**	

Available Budget Report - Capital Funds (Bond funded) for Fiscal Year 2018 as of 3/14/18

		Revised Budget	YTD Expended	YTD Encumbered	Available	Status
C192	FIRE ENGINE TOWER #1 REPLACEME	534,000	525,293	0	8,707	
C193	FLEET MAINT FACILITY & TRAINING	4,344,996	208,894	4,136,102	(0)	In Progress
	FIRE CAPITAL	4,878,996	734,187	4,136,102	8,707	
C199	ACQUISITION OF 111 CYPRESS ST	16,400,000	28,588	32,710	16,338,702	Ongoing project
C171	REP/REN UNIFIED ARTS BUILDING	28,781	2,820	89	25,872	Ongoing project, to be completed October, 2018
C175	ROOF REPAIRS AND REPLACEMENT	37,649	24,409	13,240	0	Ongoing projects
C185	DEVOTION SCHOOL RENOVATION	80,020,972	36,745,748	32,263,255	11,011,969	To be completed September , 2018
C189	ENVELOPE FENESTRATION	332,407	307,278	25,129	0	Ongoing projects
C190	ROOF REPAIRS AND REPLACEMENT	1,179,692	21,757	22,821	1,135,114	Ongoing projects
C191	OLD LINCOLN SCHOOL MODIFICATIONS	5,895	5,215	245	435	Complete
C195	ENVELOPE FENESTRATION	2,100,000	138,497	536,657	1,424,846	Ongoing projects
C197	HIGH SCHOOL SCHEMATIC DESIGN	1,850,000	982,060	776,247	91,693	Ongoing projects
	BUILDING CAPITAL	101,955,396	38,256,372	33,670,393	30,028,631	
C150	MUDDY RIVER RESTORATION	745,000	0	0	745,000	Muddy River Project in Construction Bid Documents for Phase II.
C157	NEWTON ST LANDFILL	17,184	8,702	8,393	89	Legal Counsel working on closing out remaining claims related to landfill
C158	WASTEWATER SYSTEM IMP	1,674,452	577,932	162,542	933,978	Consultant preforming investigation for construction contract bid in spring
C160	RESERVOIR AT FISHER HILL PURCH	9,361	0	9,361	0	Closing out this fiscal year
C166	CARLTON ST FOOTBRIDGE RESTORAT	1,117,319	20,090	75,293	1,021,936	Preparing 100% PS&E for submission to State. Funded in FFY 2019
C169	STORM DRAIN IMPROVEMENTS	17,356	6,080	2,217	9,059	Ongoing projects
C170	WATER MAIN IMPROVEMENTS	5,076	0	0	5,076	Ongoing projects
C172	WALDSTEIN PLAYG/WARREN FIELD/P	16,051	6,000	10,051	0	Final Park Punch list and Signage
C179	NEWTON ST LANDFILL CLOSE	4,461,408	1,733,141	2,154,760	573,507	Rear landfill closure under construction. Anticipate summer 2018 completion
C180	VILLAGE SQUARE IMPROVEMENTS	1,200,000	0	0	1,200,000	Preparing 100% PS&E for submission to State. Bidding project Sept. 2018.
C181	SINGLETREE TANK IMPROVEMENTS	340,000	0	0	340,000	Ongoing projects
C182	SINGLETREE GATEHOUSE IMPROVEMENTS	320,000	0	0	320,000	Ongoing projects
C186	PIERCE PLAYGROUND	56,501	54,132	2,369	0	Closing out this fiscal year
C187	WASTEWATER SYSTEM IMP	3,000,000	0	0	3,000,000	Staff putting contract together for next phase of I/I removal
C194	COREY HILL PLAYGROUND	628,570	529,159	42,365	57,046	Project nearing completion
C196	WATER SYSTEM IMPROVEMENTS	300,000	0	9,999	290,001	Ongoing projects
C198	BROOKLINE RESERVOIR PARK	2,200,000	0	0	2,200,000	Construction bid documents nearing completion and moving into permitting
	DPW CAPITAL	16,108,278	2,935,236	2,477,350	10,695,692	
C188	GOLF COURSE IMPROVEMENTS	765,000	0	0	765,000	For on-going work including drainage, bunkers, and cart paths.
	RECREATION CAPITAL	765,000	0	0	765,000	

ARTICLE 5

FIFTH ARTICLE
Submitted by: Select Board

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

PETITIONER'S ARTICLE DESCRIPTION

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.

SELECT BOARD'S RECOMMENDATION

State statutes provide that unpaid bills from previous fiscal years may not be paid from the current year's appropriations without the specific approval of Town Meeting. As of the writing of this Recommendation, there are no unpaid bills from a previous fiscal year. Therefore, the Board recommends NO ACTION, by a vote of 5-0 taken on March 14, 2018, on Article 5.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Massachusetts General Laws, Chapter 44, Section 64, requires the specific appropriation of funds for the payment of bills from a prior fiscal year.

DISCUSSION:
The Town has not identified any unpaid bills from a prior fiscal year.

RECOMMENDATION:
By a vote of 15–0–0, the Advisory Committee recommends NO ACTION.

XXX

ARTICLE 6

SIXTH ARTICLE
Submitted by: Board of Assessors

To see if the Town will elect to establish an additional property tax exemption for fiscal year 2019 which shall be uniform for all exemptions, in accordance with Section 4 of Chapter 73 of the Acts of 1986, as amended by Chapter 126 of the Acts of 1988, and accept said Section 4, as amended, or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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.

SELECT BOARD'S RECOMMENDATION

This article provides for an increase in the property tax exemption amounts for certain classes of individuals, including surviving spouses, the elderly, the blind and disabled veterans. The proposed increases, which require annual reauthorizations, have been approved annually since FY1989. The estimated cost for FY2019 is approximately $55,000 and is funded from the tax abatement overlay reserve account. The law allows the Town to increase the exemptions by up to 100% as indicated on the following schedule, which are recommended by the Board of Assessors:

Description	Ch.59, Sec.5 Clause	FY2017 #Granted	Basic Amount Exempted	Proposed Amount Exempted
Surviving Spouse	17D	5	$175	$350
Veteran (10% Disability)	22	46	$400	$800
Veteran (loss of one hand, foot or eye)	22A	0	$750	$1,500
Veteran (loss of two hands, feet or eyes)	22B	0	$1,250	$2,500
Veteran (special housing)	22C	0	$1,500	$3,000
Veteran (certain widows of soldiers)	22D	0	$250	$500
Veteran (100% disability, cannot work)	22E	10	$1,000	$2,000
Blind	37A	37	$500	$1,000
Elderly	41C	11	$500	$1,000

The Select Board recommend FAVORABLE ACTION, by a vote of 5-0 taken on March 27, 2018, on the following vote:

That the Town elect to establish an additional property tax exemption for fiscal year 2019 which shall be uniform for all exemptions, in accordance with Section 4 of Chapter 73 of the Acts of 1986, as amended by Chapter 126 of the Acts of 1988, and accept said Section 4, as amended.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 6 is an annual Warrant Article to increase a state-mandated local property tax exemption for certain classes of individuals. The Advisory Committee unanimously recommends Favorable Action.

BACKGROUND:
Property tax exemptions, in their base amounts are mandated by state law. This Article provides for an increase in the property tax exemptions for certain classes of individuals, including surviving spouses, the elderly, the blind, and disabled veterans. State law provides for a local, optional increase in the mandated exemptions, of up to 100%. The proposed increases, which require annual reauthorizations, have been approved annually since FY1989.

DISCUSSION:
The estimated annual cost of the increased property tax exemptions is approximately $55,000, an amount which is fairly stable year to year. The Assessor has noted that only about 107 Brookline residents benefit from this program. He also noted, for the Tax Deferral program which recently had a new 2.33% interest rate (tied to the variable ten-year Treasury rate), only 8 individuals participated. The increased property tax exemptions are funded from the tax abatement overlay reserve account. Consequently, there is no impact on the Budget and no appropriation required by Town Meeting, only the granting of approval for the Board of Assessors.

The table below shows, by category, the basic amount exempted under Massachusetts law and the proposed exemption amount which is the maximum permitted by State law:

Description	Ch.59, Sec.5 Clause	FY2017 #Granted	Basic Amount Exempted	Proposed Amount Exempted
Surviving Spouse	17D	5	$175	$350
Veteran (10% Disability)	22	46	$400	$800
Veteran (loss of one hand, foot or eye)	22A	0	$750	$1,500
Veteran (loss of two hands, feet or eyes)	22B	0	$1,250	$2,500
Veteran (special housing)	22C	0	$1,500	$3,000
Veteran (certain widows of soldiers)	22D	0	$250	$500
Veteran (100% disability, cannot work)	22E	10	$1,000	$2,000
Blind	37A	37	$500	$1,000
Elderly	41C	11	$500	$1,000

RECOMMENDATION:
By a vote of 24–0–0, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Select Board.

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ARTICLE 7

SEVENTH ARTICLE

Submitted by: Advisory Committee

To see if the Town will:

A.) Fiscal Year 2019 Budget

Appropriate the sums requested or proposed by the Select Board or by any other officer, board or committee, or any other sum or sums, for the fiscal year 2019 budget; without limiting the foregoing, appropriate the sums necessary for all town expenses, including the snow and ice budget, debt and interest, and operating expenses; fix the salaries of all elected officers as provided for in General Laws, Chapter 41, Section 108; authorize the leasing, leasing with an option to purchase or installment purchase of equipment; appropriate to a stabilization fund as provided for in General Laws Chapter 40, Section 5B; authorize the continuation of all revolving funds in accordance with General Laws, Chapter 44, Section 53E½ and all Enterprise Funds in accordance with General Laws, Chapter 44, Section 53F½; allocate available free cash; provide for a reserve fund; and establish the requirements for transfers among appropriations, interfund transfers, transfers for the purposes of salary adjustments, filling vacant positions and budgetary reporting.

B.) Fiscal Year 2019 Special Appropriations

Appropriate sums of money for the following special purposes:

1. Appropriate $50,000, or any other sum, to be expended under the direction of the Chief Procurement Officer for town furniture upgrades.

2. Appropriate $125,000, or any other sum, to be expended under the direction of the Building Commissioner, with any necessary contracts over $100,000 to be approved by the Select Board, for public safety building HVAC improvements.

3. Appropriate $50,000, or any other sum, to be expended under the direction of the Building Commissioner for the rehabilitation of Town buildings.

4. Appropriate $200,000, or any other sum, to be expended under the direction of the Building Commissioner and Planning and Community Development Director, with any necessary contracts over $100,000 to be approved by the Select Board, for a study to reorganize the zoning by-law.

5. Appropriate $200,000, or any other sum, to be expended under the direction of the Police Chief, with any necessary contracts over $100,000 to be approved by the Select Board, for upgrades to the Computer Aided Dispatch (CAD) system.

6. Appropriate $385,000, or any other sum, to be expended under the direction of the Building Commission, with any necessary contracts over $100,000 to be approved by the Select Board, for making extraordinary repairs to Fire Stations.

7. Appropriate $150,000, or any other sum, to be expended under the direction of the Building Commission, with any necessary contracts over $100,000 to be approved by the Select Board, for bathroom renovations at the Putterham Library.

8. Appropriate $85,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with the approval of the Select Board, for traffic calming studies and improvements; provided that the Department of Public Works and Transportation Board provide status reports to the Select Board on a semi-annual basis.

9. Appropriate $176,775, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for bicycle access improvements.

10. Appropriate $1,710,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the rehabilitation of streets.

11. Appropriate $320,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the rehabilitation of sidewalks.

12. Appropriate $265,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for water meter transmission unit (MTU) replacements.

13. Appropriate $3,000,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for wastewater system improvements.

14. Appropriate $150,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for improvements to the Netherland's Road facility.

15. Appropriate $240,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the design of the renovation of Cypress Field.

16. Appropriate $425,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for improvements at Larz Anderson Park.

17. Appropriate $305,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be

approved by the Select Board, for the renovation of playground equipment, fields, and fencing.

18. Appropriate $155,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the rehabilitation of Town and School grounds.

19. Appropriate $230,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board and the Tree Planting Committee, for the removal and replacement of trees.

20. Appropriate $225,000, or any other sum, to be expended under the direction of the Director of Recreation, with any necessary contracts over $100,000 to be approved by the Select Board, for the replacement of the Aquatics Center pool filter.

21. Appropriate $100,000, or any other sum, to be expended under the direction of the Chief Procurement Officer for school furniture upgrades.

22. Appropriate $150,000, or any other sum, to be expended under the direction of the Building Commissioner, with any necessary contracts over $100,000 to be approved by the Select Board for HVAC equipment in Town and School facilities.

23. Appropriate $225,000, or any other sum, to be expended under the direction of the Building Commissioner, with any necessary contracts over $100,000 to be approved by the School Committee for climate control projects in School facilities.

24. Appropriate $75,000, or any other sum, to be expended under the direction of the Building Commissioner for ADA renovations to Town and School facilities.

25. Appropriate $300,000, or any other sum, to be expended under the direction of the Building Commission, with any necessary contracts over $100,000 to be approved by the Select Board and, with respect to School Buildings, by the School Committee, for improvements to elevators in Town and School facilities.

26. Appropriate $180,000, or any other sum, to be expended under the direction of the Building Commissioner, with any necessary contracts over $100,000 to be approved by the Select Board for energy conservation projects in Town and School facilities.

27. Appropriate $125,000, or any other sum, to be expended under the direction of the Building Commissioner, with any necessary contracts over $100,000 to be approved by the Select Board, for upgrades to energy management systems in Town and School facilities.

28. Appropriate $250,000, or any other sum, to be expended under the direction of the Building Commissioner, with any necessary contracts over $100,000 to be approved by the Select Board, for improvements to the fire alarm system in Town and School facilities.

29. Appropriate $130,000, or any other sum, to be expended under the direction of the Building Commissioner, with any necessary contracts over $100,000 to be approved by the Board of Select Board and, with respect to School Buildings, by the School Committee, for improvements to life safety systems and building security in Town and School facilities.

30. Appropriate $100,000, or any other sum, to be expended under the direction of the Building Commissioner, for trash compactor replacements in Town and School facilities.

31. Appropriate $230,000 or any other sum, to be expended under the direction of the Building Commissioner, with any necessary contracts over $100,000 to be approved by the Select Board and the School Committee, for minor renovations / upgrades to school buildings.

32. Appropriate $1,500,000, or any other sum, to be expended under the direction of the Building Commission, with any necessary contracts over $100,000 to be approved by the Select Board and the School Committee, for the schematic design services to construct or expand a school as determined by the outcome of the 9th School feasibility study.

33. Appropriate $1,165,000, or any other sum, to be expended under the direction of the Building Commission, with any necessary contracts over $100,000 to be approved by the Select Board and the School Committee, for the expansion of classroom capacity in various schools.

34. Appropriate $2,450,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the renovation of Harry Downes Field & Playground/ and the Kraft Family Athletic Field Turf Replacement.

35. Appropriate $4,000,000 or any other sum, to be expended under the direction of the Building Commissioner, with any necessary contracts over $100,000 to be approved by the Select Board and the School Committee, for HVAC system improvements at the Driscoll School.

36. Appropriate $2,700,000, or any other sum, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the renovation of Larz Anderson Park.

37. To see if the Town will vote to appropriate, borrow or transfer from available funds, 189,200,000, or any other sum, to be expended under the direction of the Building Commission, with any necessary contracts to be approved by the Select Board and the School Committee to renovate and expand Brookline High School, including the acquisition and reconstruction of the property located at 111 Cypress Street and renovations or repairs to Brookline High School, the Evelyn Kirrane Aquatic Center, the Unified Arts Building, the 66 Tappan Street Gym, and Cypress Field.

C.) Funding

And determine whether such appropriations shall be raised by taxation, transferred from available funds, borrowed or provided by any combination of the foregoing, and authorize the

leasing, leasing with an option to purchase, or the installment purchase of any equipment or any capital items; and authorize the Select Board, except in the case of the School Department Budget, and with regard to the School Department, the School Committee, to apply for, accept and expend grants, gifts, reimbursements, and aid from both federal, state, and other sources and agencies for any of the purposes noted in this Article, or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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.

SELECT BOARD'S RECOMMENDATION

The Select Board would like to thank the Town Administrator and his staff, the Advisory Committee, the School Superintendent and his staff, and the School Committee for all of their efforts and collaboration toward dealing with this FY2019 budget,

ACTIONS SINCE THE RELEASE OF THE FINANCIAL PLAN

Since the Financial Plan was released on February 13th, there have been a number of changes made, all of which have been approved by both the Select Board and the Advisory Committee. The changes, as follows, were applied to the base budget (Vote A):

BUDGET ADJUSTMENTS			
	ORIGINAL BUDGET	PROPOSED CHANGE	AMENDED BUDGET
Group Health	31,463,720	(792,929)	30,670,792
Debt and Interest	17,119,364	(1,460,727)	15,658,637
School Department	108,402,430	409,675	108,812,105
Building Department	7,860,144	134,196	7,994,340
Department of Public Works	14,860,185	249,059	15,109,244

The Health Insurance budget has decreased by $792,929. This is due to final GIC rates coming in less than originally budgeted. Of that amount, $443,871 is the School's share and $349,058 is the Town's. The School's share of the savings has been added to their appropriation less a portion of those savings being used to fund $34,196 in inflation that should have been applied to the School Building Maintenance account. Town savings was used to lower the override

total by adding funding to the Building and DPW budgets for town building repair and the replacement of snow equipment.

With the completion of the bond sale, some adjustments are needed for the debt and interest portion of the budget. The FY2019 budget reflected a plan to borrow the remaining authorization left on the Devotion School project. Due to the current cash requirements needed to close out the fiscal year and the uncertainty of the final MSBA reimbursement we decided to borrow less than that plan calls for. We will use next year's borrowing cycle to close out the remaining budget requirements and anticipate that we will have known information on final expenditures and MSBA reimbursement. Since this adjustment is specific to the debt exclusion there is a corresponding adjustment to the revenue estimate for property taxes, and no further budget adjustments are needed.

SELECT BOARD'S VOTE vs. ADVISORY COMMITTEE'S BUDGET VOTE:

The Select Board's vote is in line with the Advisory Committee's votes on appropriations with the exception of two items. The Board will offer these as amendments to the Advisory Committee vote.

1. The Board amended conditional language on the **Street Rehabilitation** account as follows:
   Raise and appropriate $3,110,000 to be expended under the direction of the Commissioner of Public Works for the rehabilitation of streets, with any necessary contracts over $100,000 to be approved by the Select Board and that when such contract approval is necessary that there be prior notification to the Select Board ~~**and to the Capital Subcommittee of the Advisory Committee**~~ of any changes to pedestrian, bicycle, or motor vehicle traffic patterns or pavement markings, and to meet the appropriation transfer $1,400,000 from the Parking Meter Fund.

   While the Board appreciates the Advisory Committee's hypervigilance when it comes to aspects of the Town's roadway improvement projects the Board feels that this condition sets a precedent of including the Advisory Committee in the special appropriation conditions when that has traditionally been an aspect of oversight that Town Meeting has vested with the Select Board as the contract awarding authority. The Transportation Board, who provide their own notification to abutters and Town Meeting via the Town Meeting Members Association listserve, hold public meetings that allow for public comment and input on any proposed changes to the roadway, including any aspects of implementing the Town's Complete Streets policy. The Board suggests that notification to the Capital Subcommittee of the Advisory Committee after projects have gone through this heavy vetting does not serve a useful purpose.

2. The Board voted to amend the **High School** appropriation as follows:
   Appropriate, $189,200,000, to be expended under the direction of the Building Commission, with any necessary contracts to be approved by the Select Board and the School Committee to renovate and expand Brookline High School, including the acquisition and reconstruction of the property located at 111 Cypress Street and renovations or repairs to Brookline High School, the Evelyn Kirrane Aquatic Center,

the Unified Arts Building, the 66 Tappan Street Gym, and Cypress Field ~~**with the condition that no money related to the construction of Cypress Field can be encumbered or expended without a vote of Town Meeting relevant to the material for the field**~~; and to meet the appropriation authorize the Treasurer, with approval of the Board of Selectmen, to borrow $186,800,000, under General Laws, Chapter 44, Section 7(1) and transfer $2,400,000 from the Town's bond premium account. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with Chapter 44, Section 20 of the General Laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

Given the amount of debate on whether the athletic field at Cypress Playground should be synthetic or natural grass, the Park and Recreation Commission decided to postpone their vote until this element of the project had gone through the comprehensive public design review process. The Advisory Committee felt that this was a decision that should be made by Town Meeting. The Board felt that the decision was expressly given to the Park and Recreation Commission under the Town's By-Laws which established a design review process that "respect[s] the historical, cultural, aesthetic, and open space values of the Town and serves the expressed needs of the primary community to be served by the improvement". Commission members have already spent a substantial amount of time educating their membership on the pros and cons of artificial vs. natural turf, and have solicited a great deal of feedback from the neighborhood, the recreational user groups and the community at large. The Board feels that the Commission will be best positioned to make this decision given the amount of community engagement, user meetings and technical review that will be done to render a decision.

BUDGET SUMMARY

The General Fund budget under vote A proposed by the Select Board totals $280 million, of which $280.3 million is appropriated, reflecting an increase of $15.6 million (5.9%). If the override vote is successful and additional $2.9 million will be allocated to Town and School Departments under vote B bringing the total increase to $283 million reflecting an increase of $18.5 million (7%). The remaining $8.5 million is the so-called "Non-Appropriated" portion of the budget. In total, the $280 million reflects a 5.9% increase. This budget recommendation includes a General Fund Operating Budget of $267 million, which represents an increase of $12 million (4.7%); revenue-financed capital of $13.4 million; enterprise / revolving funds of $35.4 million (gross); and non-appropriated expenses of $8.5 million.

FY2019 OVERVIEW

Overall, the Budget is nearly $318.5 million, representing a 4.7% increase over FY 2018. I am pleased to report that this Budget accomplishes the following;

1.) Allocates funding to meet the operational needs of the School and Municipal departments, including reserves to cover collective bargaining agreements that have, or will, come due in FY 2019.
2.) Funds $9.1 million in capital expenditures, meeting the Town's policy of allocating at least 7.5% of prior year's operating revenue for this purpose.
3.) Retains $2.6 million in Free Cash, ensuring that the Town's unreserved fund balance will remain at least 10% of general fund revenue. This is a key factor in maintaining the Town's Aaa bond rating.
4.) Appropriates $4.6 million in additional funds to meet the Town's funding schedule to eliminate the unfunded liability in the pension system and to address the major unfunded liability in Other Post Employment Benefits (OPEB), which is mostly the future cost of retiree health insurance.
5.) Meets all other financial policies of the Town, including the appropriation of Free Cash for reserves.
6.) Funds the annual debt costs of an expansion of Brookline High School, subject to voter approval of a Debt Exclusion Override referendum scheduled for May of 2018.

The FY 2019 Budget and CIP reflects a conservative, yet realistic, approach at funding the operations and capital investment in the Town of Brookline's municipal government. However, with continued growth in school population projected for FY 2019 and beyond, the costs of school building expansion and operations within the school department cannot be met with normal revenue growth. As a result, Brookline voters will be asked once again to consider additional tax levy to support the Budget and Capital Plan.

REVENUES

The following summarizes the major categories of revenues that make up the Town's FY 2019 Budget.

TAXES: The property tax levy represents the Town's most prominent and stable source of revenue. For FY 2019, property taxes are projected to total $223.1 million, representing 78% of the Town's total general fund revenue. Traditionally, the Town collects 99% of its property tax within the fiscal year they are assessed. For FY 2019, the property tax will increase by the allowed 2.5% increment under Proposition 2½ of $5,259,411, plus $2,587,500 in taxes resulting from increased property value from new construction (referred to as New Growth).

Finally, $4,833,739 will be added to the tax levy from prior approved "Debt Exclusion" overrides to fund school construction projects. This includes the cost of principal and interest on debt issued for the prior High School renovation project (this debt will be retired after FY 2020), the new Devotion School renovation and expansion, and the recent property acquisition of 111 Cypress Street which will become the site of an expanded Brookline High School.

Property taxes could increase further in FY 2019 dependent upon the outcome of the Tax Override proposal recommended by the OSC. The debt costs of additional school capital projects, including the expansion of classroom capacity from a 9th Elementary School (or its equivalent) and expansion of Brookline High School will also impact the property tax in the future, beginning in FY 2020.
The table below shows a breakdown of property taxes.

PROPERTY TAXES	
Prior Year Levy Limit	210,376,447
2 1/2 % Increase	5,259,411
New Growth	2,587,500
Debt Exclusion (Debt Service Costs)	4,833,739
Annual Levy FY 2019	**223,057,097**

Proposition 2½ allows the Town to levy additional taxes from new property construction or development. The Town of Brookline benefits from millions of dollars in new property tax value from various improvements to residential and commercial property each year. In addition, major projects contributing to New Growth in FY 2019 are the new Circle Cinema development in Cleveland Circle, the new River Road hotel development and the Children's Hospital project at Brookline Place. The Town will continue to benefit from new taxes resulting from these developments over the next few years, and we have incorporated them into our long range budget forecast. Encouraging prudent economic development is a key budgetary strategy of the Town. The value of New Growth taxes for commercial properties is combined with other economic activity (e.g. meals and hotel taxes) and helps provide overall tax relief to the residential portion of the tax base. There are other Town revenues that are tax related, including the Motor Vehicle Excise Tax and the Payment in Lieu of Tax (PILOT) Program. However, this revenue is accounted for in the Local Receipts revenue category and will be discussed further in that section.
LOCAL RECEIPTS: This is the category of Town revenue that is generated through licenses, permits, and other fees for municipal services. In FY 2019, this category of revenue is about 10% of all Town general fund revenue. We project that $29.7 million will be generated from this category, representing a 1% increase from FY 2018. Motor Vehicle Excise Taxes are the largest single category of revenue within Local Receipts. Other major categories of revenue in this category include Parking Meter Receipts, Parking and Court Fines, the Refuse Fee and Building Permits.

The Refuse Fee is an annual fee charged to residents using the Town's collection of trash service. FY 2018 represented the first full year of a new Pay as You Throw (PAYT) fee system. This new system established a variable fee depending upon the size of the wheeled trash cart (bin) that a resident chooses. It was expected that the Refuse Fee would be evaluated for FY 2019 to assess whether the fee should cover more of the costs of refuse collection and disposal (currently the rate is subsidized 28% by general tax funding). However, the OSC determined

that the impacts of the new PAYT system should be fully evaluated before addressing the fee amounts.

STATE AID: This category of revenue represents general and programmatic aid provided to the Town from the Commonwealth of Massachusetts. In FY 2019, we project this aid to represent about 8% of the Town's general revenue. As part of its commitment to share general revenues with Massachusetts cities and towns, the Baker administration has proposed to increase general government aid (Unrestricted General Government Aid) at the same rate that state general revenues increase. In FY 2019, this aid will increase by 3.5%. The Chapter 70 Education Aid program will grow at an even higher rate based on the Town's growth in student enrollment and its higher contribution to funding public education that the state benchmark. The Town believes the Chapter 70 formula for education does not adequately reflect the costs incurred by cities and towns in public education. We support reforms proposed by the Foundation Budget Review Commission and hope that the House or Senate will reflect some of these reforms in the FY 2019 Budget it will submit shortly. However, to be prudent we have assumed the Governor's proposed state aid numbers in this Budget.

FREE CASH: Free Cash represents the State approved amount of the prior year's fund balance available for appropriation. The Town of Brookline maintains a very rigorous financial policy for the use of Free Cash, limiting its use to non-recurring, non-operational expenses of the Town. Following the conclusion of FY 2018, the State certified $11,151,363 in Free Cash that was available for appropriation in FY 2019. Of this amount, the Town will leave $2.6 unappropriated to meet our Unreserved Fund Balance policy, ensuring that at least 10% of general revenue will be maintained in reserve. $6,012,271 will be used to fund the CIP and the remainder will be used to fund various special reserve accounts of the Town. Of particular importance is the use of Free Cash to support the funding of the Town's Unfunded Pension Liability and its Other Post-Employment Benefits (OPEB) liability.

OTHER AVAILABLE FUNDS: This category of revenue mainly accounts for an allocation from the Town's Enterprise Funds or other self-supporting funds, including the Water/Sewer program, the Lynch Golf Course and the Recreation Revolving Fund, to support general government operating expenses. Revenue generated by enterprise and revolving accounts is offset through related expenses in these funds, including indirect charges for their share of Pension and OPEB funding. Another source of revenue in this category includes income from the Cemetery Trust Fund.

In FY 2019, $2,972,678 in revenue is generated from Other Available Funds. This is down 14.6% from FY 2018, mainly due to the use in that year of $430,624 from unexpended balances in prior year capital project accounts.

ENTERPRISES: The Town accounts for its enterprise activities separate from the General Fund. It is the Town's policy to recover 100% from the cost of its water/sewer and golf enterprises while the Recreation Revolving Fund supports 78.3% (with general tax supporting the remaining 21.7%). In FY 2019, Enterprises represent $32,535,687, or a 4% increase over FY 2018. All revenue generated from these enterprises is accounted for separately and offset the same amount of expenditures for these activities.

EXPENDITURES

The Expenditures category of the Budget is comprised of six sections; Municipal Departments, the School Department, Non Departmental, Special Appropriations, Enterprises and Non-Appropriated. Overall, expenditures in the FY 2019 Budget are $318,463,005, up by $14,206,281 for an increase of 4.7% over FY 2018. At this time, we are evaluating the final report and recommendations of the Override Study Committee. The Committee has recommended a multi-year Tax Override proposal for consideration by the Select Board.

MUNICIPAL DEPARTMENTS: The total amount of all municipal department budgets is recommended to be $74,798,984 in FY 2019, or an increase of 2.4% over FY 2018. This amount includes a reserve for collective bargaining with various municipal unions.

As mentioned in the Introductory section of this Budget Message, this amount reflects my recommendation that $500,000 in budget capacity for municipal departments allocated through the Town School Partnership formula be reallocated to the School Department given their budget challenges in FY 2019 that has led to a Tax Override proposal. In anticipation of an Override, we have developed up to $1.5 million in expansion/investment requests for municipal departments whose funding would be subject to a successful Tax Override. This list will be prioritized as the Select Board considers the OSC's override proposal.

EXPANSION LIST		Positions	Cost*
Building	Town R&M Increase		200,000
COA	COA Social Worker	0.50	37,179
Fire	Lieutenant/School Inspector	1.00	91,852
Fire	Restoration of 2 Firefighter Positions	2.00	156,720
DICR	Training		20,000
Library	Brookline Village Children's Room	1.00	62,429
Library	Facilities Coordinator	1.00	91,342
Planning	Energy/Sustainability Planner	1.00	77,110
Planning	Preservation Planner	1.00	77,110
DPW	Snow Equipment		250,000
DPW	Increase yearly equipment investment		300,000
DPW	Landscape Design Upgrades		17,119
Recreation	Aquatics Supervisor	1.00	58,049
Town Clerk	Archivist	1.00	63,459
TOTAL		**9.50**	**1,502,369**

** Cost of benefits included in personnel requests*

With some modest exceptions, funding in municipal departments is flat, maintaining existing staffing levels and expenses. Most increases reflect the step increases and impacts of prior collective bargaining agreements on municipal wages and a small inflation factor for some expense accounts. Some modest increases (but no additional personnel) to municipal departments include;

- Town Clerk- Funding of new "early voting" program for state and local elections

- Planning- Funding of consulting services to advance the Town's energy initiatives
- Building- Funding of additional expenses to support building maintenance activities
- Fire/EMS- Funding of additional capital equipment and supplies
- Diversity and Inclusion/Human Resources- Funding for diversity training
- Public Works- Funding of additional capital equipment and supplies; Funding of higher recycling collection costs resulting from global market crisis.
- Engineering and Transportation- Funding to create a Transportation Demand Management (TDM) program for town and school departments
- Human Resources- Funding to expand Long-Term Disability benefits to personnel not covered under the workers compensation program

In some cases, the Town was able to realize savings in departments. Some of the more meaningful savings in municipal departments include;

- Finance- Reduction in Credit Card Processing by requiring convenience fees
- Buildings- Reduction in Energy Consumption
- Police- Reduction in Educational Incentive (Quinn Bill) Funding as turnover in the department results in newer employees participating in the lower cost education incentive program.

A more detailed description of changes in municipal departmental budgets can be reviewed within the Departmental Budget recommendations section.

THE SCHOOL DEPARTMENT: The School Department's Budget is recommended to be funded at $108,402,430 in FY 2019, an increase of 3.5% over FY 2018. This amount is inclusive of all salary and wage adjustments for teachers and other school employees. This amount is derived by applying the Town School Partnership formula plus a reallocation of $500,000 in budget capacity from municipal departments. The Department has identified an additional $3,750,000 in expenditures above this amount, to cover the following category of expenses;

- Salaries and wages for existing personnel which are growing faster than normal budget growth (also referred to as the structural funding gap)
- Additional teaching and support staff (15 FTE) necessary to maintain existing class size with increasing enrollment.
- Higher costs for school transportation, including students with disabilities
- New strategic investments
- Increased building maintenance costs

The need to fund costs related to increasing enrollment and other factors listed above is the primary reason the Select Board had initiated an Override Study Committee (OSC) process. It is expected that the OSC will recommend that a three-year budget plan be presented to Town Meeting and the voters that will authorize an Override of the Proposition 2½ tax levy limit

For a more detailed review of the School Budget, see the School Department submission in Section IV of this document.

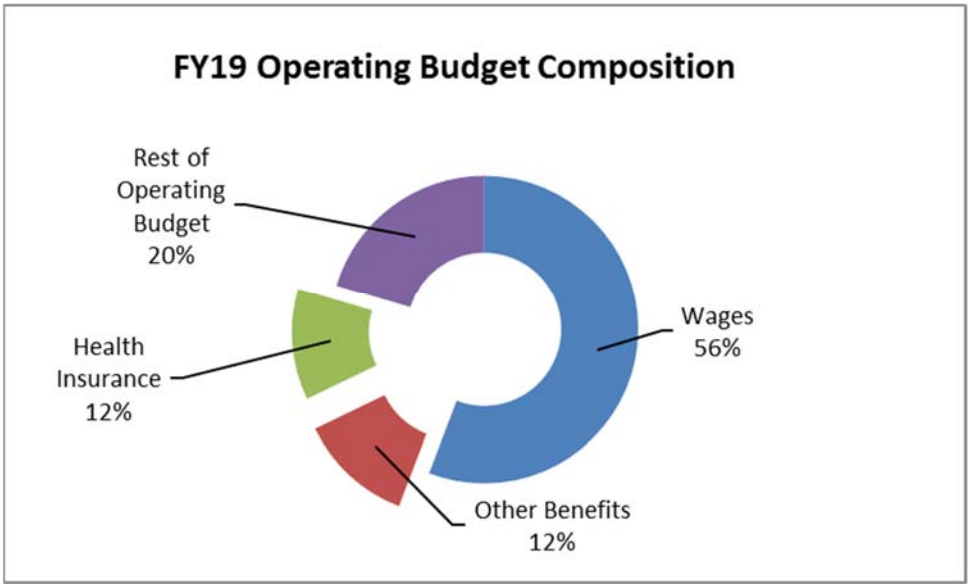
NON-DEPARTMENTAL: This category of Expenditures is a large component of the Town's Budget, including such fixed costs as pensions, health insurance, other insurances and debt service. It also covers the Reserve Fund, which is the account administered by the Advisory Committee to cover any emergency or unforeseen expenses that occur throughout the year, including snow and ice removal expenses. Overall, this category of expenditures is recommended to be funded at $85,150,556 in FY 2019, an increase over FY 2018 of 10.4%. This category includes many of the Town's "budget busters", which are those expenses that rise higher than the general rate of inflation. They include;

Pensions- Eligible employees of the Town and School departments are part of the Massachusetts Contributory Retirement System and receive a defined benefit upon retirement (state and local government employees in Massachusetts are not eligible for participation in the federal Social Security system). The Town of Brookline is responsible for funding the annual expense of existing pension payments, and to make sure that future liability is properly funded. It does so through a multi-year actuarial funding schedule, with funds appropriated to meet the schedule invested for the long term to support this obligation. The current funding schedule requires an annual increase of 7.85% through 2030, at which time the Town will have eliminated the unfunded portion of the liability. For FY 2019, we recommend the appropriation of $23,174,765, representing a $1,675,580 increase over FY 2018.

Other Post-Employment Benefits (OPEB)/Retiree Health Insurance- Similar to the pension system, the Town has an obligation to fund the costs of health insurance for retired employees and eligible family members. The annual cost to support existing retirees is funded within the Health Insurance Budget (see below). A long-term unfunded liability of $280.7 million for OPEB exists, which demands the Town create a long term funding schedule similar to the Pension system. While the Town is not yet on a formal funding schedule, we aggressively appropriate annual funding to a special trust fund for this purpose, and expect to commence a formal actuarial funding schedule at some point in the future. For FY 2019, we are allocating $4,570,465 to the OPEB Trust Fund.

Employee Health Insurance- The Town is obligated to provide health insurance to permanent employees who work at least 18.75 hours per week. The Town also covers retirees and their survivors. The Town procures its insurance coverage through the Massachusetts Group Insurance Commission (GIC), a governmental entity that manages the health care benefit for employees of all state agencies and dozens of cities and towns. The GIC has been very aggressive in keeping its costs/rates as low

as possible, and is in the process of competitively procuring insurance companies to manage this benefit. The GIC's plan to consolidate companies to affect cost savings was met with great resistance and will be deferred. Still, the procurement process and other efforts by the GIC to contain costs are likely to keep the FY 2019 rate increase low. As a result, we are assuming a composite rate increase of 2.5% for GIC plans in addition to a budget reserve for new subscribers who will initiate coverage during the annual open enrollment period. Actual rates will be known at the beginning of March and may require this budget to be adjusted. At this time however, the total Health Insurance budget recommended for FY 2019 is $31,463,720, or an increase of 4.28%. Not unlike other governments and private companies, the cost of Health Insurance as a percentage of the overall budget is increasing. In FY 2019, the cost of health insurance as a percentage of the Town's Budget has grown to 12%.



Debt Service- Another expense within the Non-Departmental category is Debt Service. This is the cost of principal and interest charged on debt (typically issued in municipal bonds). Incurring debt is a way to spread the cost of major capital purchases or projects over time and is a major strategy in the Town's capital financing program. The Town's fiscal policy dictates that at least 6% of the Town's net revenue be allocated to fund capital projects. Within that 6% amount, we strive to have 4.5% funded via debt. In FY 2019, the Town will fund a total of $17,119,364 in debt service, up significantly from FY 2018 due to the borrowing for the Devotion School project. In addition, the Town will be borrowing for the first phase of the High School project in 2018 (land acquisition for the 111 Cypress Street property), impacting the FY 2019 Budget.

The school enrollment crisis has expedited the need for the Town to tackle school capital projects to increase classroom capacity. School projects comprise 69% of the current Debt Service budget. The planned High School and "9th School" projects will expand the use of debt, but these projects must be funded outside of the Proposition 2½ tax levy limit through a voter approved Debt Exclusion. Currently, $4.83 million of the total Debt Service budget are payments on borrowing that the voters have authorized above the Town's Proposition 2½ tax levy limit.

SPECIAL APPROPRIATIONS: This category of expense is mainly the annual appropriations for projects within the Capital Improvement Plan (CIP). The CIP is funded through a combination of direct appropriations and the issuance of debt. In FY 2019, the direct appropriations to fund capital projects are $9,079,868. This level of appropriation is bolstered through the use of over $6 million in Free Cash. A much more detailed review of projects funded through special appropriation is discussed in the CIP Section of this document.

ENTERPRISES: The Town's FY 2019 Budget includes $32,528,761 in expenses related to business type enterprises of the Town. This includes the water/sewer utility, the golf course and recreational programs. The water/sewer and golf course operations are fully funded through fees and charges while the recreation programs are subsidized 21.7% from the Town's General Fund. It is the Town's policy that all direct and indirect expenses of the Enterprises, including debt service and employee benefits be accounted for and paid to the Town's general fund to ensure that the Town's taxpayers do not subsidize such activities.

NON-APPROPRIATED: This category of expenses relates to charges that are mandated but not required to be appropriated by Town Meeting. However, these expenses must be accounted for within the Town's Budget. State and county assessments at $6,633,122 are the largest part of this category, including $5.2 million of which is the Town's allocated share of the MBTA and $972,014 is for our assessment to Norfolk County. This county assessment is a sore spot for the Town for a number of reasons. First, most other counties in Massachusetts have been assumed by state government, meaning Brookline residents' state taxes are paying the legacy costs from those abolished counties while also having to pay for Norfolk County with their local property taxes. Secondly, the Town is geographically distant from the Norfolk County Agricultural School in Walpole and does not have any students attending. Finally, the Town has the highest assessment by virtue of its assessed property value, despite our population and limited usage of county services. Another expense that is covered in the Non-Appropriated category is the Tax Overlay account at $1,750,000. This is an account that is under the control of the Board of Assessors and is used to fund the annual cost of property tax abatements and exemptions.

FY 2019 POLICY ISSUES AND INITIATIVES

The Financial Plan is a required document that budgets the Town's funds for the ensuing fiscal year. It is also a financial planning tool, incorporating the capital improvement plan for the next seven years and making a 5-year projection of the budget. The Financial Plan should also be a strategic and management device, linking financial resources and consequences to overall Town goals and policies. This section addresses a number of policy issues and initiatives that are relevant to the FY 2019 budget process.

Federal Government Policies and Mandates- Last year, I expressed concern about potential negative consequences to the Town of Brookline with the election of Donald J. Trump as President. It is fair to say that a new era of federal/state/local relations has emerged. After years of concern by cities and towns, President Trump proposed and Congress finally approved a new federal tax

plan that caps the deductibility of state and local taxes. For the Town of Brookline and other full service municipalities with a dominant residential tax makeup, this new provision effectively reduces federal financial support to our taxpayers. As a community that consistently seeks voter approval to levy taxes for major capital projects and occasionally for operating budget tax overrides, a federal cap on the deductibility of local property taxes is problematic.

Brookline is also prone to impacts associated with a federal crackdown on immigration. The Town has consistently adopted resolutions and policies respecting the rights of all its residents, regardless of citizenship status. The Select Board recently passed police policies affirming this principle, limiting efforts to inquire about and/or report to federal authorities on the immigration status of residents. Communities adopting these policies are often referred to as "sanctuary cities", and viewed by the current administration as improperly or illegally refusing to cooperate with federal law enforcement authority. The federal administration has attempted to disqualify such communities from receiving federal grants. To date, the courts have limited this effort, but the Town has much to lose if this effort is allowed. We receive $1.4 million in Community Development Block Grants directly from the federal government each year. The Town of Brookline also receives about $3.1 million in direct federal education aid (Title 1, Title 3 and IDEA) as well as many federal grants "passed through" state agencies.

Finally, the Trump administration has threatened enforcement efforts against states who have passed laws allowing for the cultivation, possession and sale of marijuana for medical or recreational purposes. Brookline already has a medical marijuana dispensary that creates economic activity including a Host Community Fee. It is expected that this facility will expand to include recreational sales under the new Massachusetts law, creating opportunities for additional revenue including excise taxes. The United States Attorney has indicated he may enforce federal law that that prohibits commercial activity involving marijuana, creating substantial uncertainty to this emerging industry and threatening a new revenue source to the Town.

Trash Collection and Recycling- The Town has successfully implemented a modified Pay as You Throw (PAYT) trash collection system. The new system incentivizes less trash disposal and more recycling, thereby saving the Town from costly and environmentally unfriendly means of solid waste disposal. Combining PAYT with automated collection has also saved labor costs. Since this a voluntary service, a prior Override Study Committee recommended that the annual trash fee be increased to reduce the subsidy that the Town's general fund contributes to the service. For FY 2019, we will defer this modification and wait until the new PAYT system is more

fully implemented. However, a review of the fee will eventually be necessary, especially given the change in the global recycling market where the value of recycled materials has plummeted. As the market value of recyclables is reduced, the Town no longer receives revenue but must pay our collection vendor for their handling. This has resulted in tens of thousands in unanticipated and unbudgeted costs. We will cover these costs in the Budget in FY 2019, but we hope for a rebound in this volatile market.

Credit Card Processing and Servicing- As credit card and electronic payments have emerged as a convenient and expected method of transacting business in all industries, local government has been somewhat slow to adapt. The technology issues, combined with security risks, have posed a challenge to the Town. In addition, the costs for processing and servicing payments have skyrocketed as usage has increased. When possible, the Town has incorporated these costs within the formula for calculating a fee for service. However, this is not possible for point of service transactions such as parking meters, or building permits. In December, the Select Board adopted the Finance Director's recommendation to assess convenience fees on a comprehensive set of credit card and electronic transactions to defray this cost to the Town. The Board struggled with his policy given the convenience electronic payments provides to the customer and the benefits of collection administration to the Town. Ultimately, the Board felt the imposition of convenience fees were financially required and was acceptable given the availability of no cost, though inconvenient, payment methods.

Diversity and Inclusion- A major Town goal is to improve our local government's responsiveness to a society that is increasingly diverse. One priority area is to increase the diversity of the Town's workforce, especially in its management ranks. Another is to diversify the composition of the Town's elected and appointed committee membership. The Town must also ensure that its fundamental programs and services do not discriminate or create bias depending upon one's race, cultural background, etc. In response to this challenge, the Town has become a member of the Government Alliance for Race and Equity (GARE). GARE is a national network of governments working to achieve racial equity and advance opportunities for all by, 1.) Making a commitment to achieving racial equity; 2.) Focusing on the power and influence of their own institutions; and 3.) Working in partnership with others. The effectiveness of using GARE and other diversity initiatives depends upon a trained workforce. The FY 2019 Budget prioritizes training opportunities throughout the Town's organization.

Performance Management- The Town continues to make steady progress in utilizing performance management as a mechanism to

improve the quality, cost efficiency and transparency in providing municipal services. This past year, subgroups of senior department heads were tasked with identifying several cross-functional objectives that would complement existing Town wide goals. Work continues to identify and locate essential data to better inform decision making, improve efficiency and service delivery across the organization. In FY 2019, we expect this work will result in identifying benchmarks that allow for reporting on several initiatives including Public Health and Safety, e-Government, and the Natural/Built Environment, all of which align with key Town objectives.

The Town has embraced the use of performance management in its budgeting and is attempting to expand and/or convert departmental objectives from activity or output based to more meaningful performance based criteria.

Finally, we have continued to participate in the National Citizen Survey as a means to quantify the priorities of our residents and their assessment of our performance. Using this consistent survey data, we are able to benchmark ourselves with hundreds of other municipalities across the nation.

School Expansion- Planning to expand the Town's public school facilities to accommodate continued increase in student population dominates the time and energy of the Select Board and School Committee and their staffs. The ability to site a 9th elementary school has been vexing. Each municipally owned property under consideration has been complicated by site constraints, legal restrictions and political opposition. A decision to site the school at the Town owned Baldwin site was a victim to all of these challenges and has been set aside as other properties are evaluated. The acquisition of private property, including the use of eminent domain, to site a school has proven to be equally challenging and expensive. At this time, the Town is reconsidering the "expand in place" strategy that might utilize one or more existing school properties to meet the classroom and space needs rather than constructing a single new school on a separate site. However, the K-8 education model creates its own challenges with the size of each school property and how it can accommodate expansion while continuing to operate effectively within the neighborhood where it is located. The current expansion and renovation of the Devotion School is an example of this challenge and has been useful when evaluating other existing school sites. In particular, the use of Transportation Demand Management (TDM) principles will be used to limit the construction of expensive parking facilities and to avoid burdens by allowing all day, on-street parking in the neighborhoods. A new study to site the required classroom

expansion is underway and it is hoped that a siting decision can be made by the end of March to keep this project on its critical path.

The expansion of Brookline High School has moved forward through the acquisition of private property on Cypress Street. This project has entered the design stage and is expected to be presented for approval by Town Meeting and the voters this spring. Both the high school and elementary school projects cannot be funded within the Town's existing taxing capacity for capital improvements. Proposals to exempt the costs for these projects from the Town's tax levy limitations will be submitted to the voters and is essential for these projects to proceed. At this time, eligibility for grants from the Massachusetts School Building Authority (MSBA) do not appear likely given the Town's extensive and current use of MSBA funding and the expedited timeframe associated with constructing these new projects.

The school enrollment crisis not only affects capital planning but the Town's ability to fund adequate operations as well. As previously mentioned, a proposal to levy additional taxes in FY 2019 for up to three years has been advanced by the Override Study Committee and will be considered this spring. The funding will address the many challenges to operating a public school system with an unprecedented increase in enrollment, including salaries and wages for existing personnel, additional teaching and support staff necessary to maintain existing class size, demand for school transportation, and increased building maintenance costs.

Succession Planning and Management Capacity- As the Town of Brookline's workforce ages, we can expect more transition in the department head and upper management ranks. Just this past year, both the Fire Chief and the Chief of Police have retired, preceded by the Finance Director and Director of Public Health. While the Town of Brookline enjoys a fine reputation for professional management and offers competitive compensation, the sheer volume of vacancies in the industry create challenges for effective recruitment. The middle management tier of personnel in the Town is a great resource to develop for promotional opportunities and to assist in longer than normal periods of transition when department head vacancies occur. In addition to providing training and professional development opportunities for this group of managers and supervisors, the FY 2019 Budget will allocate funding to extend long-term disability coverage to this group of employees, as they are not covered by workers compensation.

The Town needs to be more strategic in planning for transition in the department head ranks. In anticipation of the inevitable retirements of the Town's long-term Commissioner of Public Works and the

Department's Director of Engineering, I am working with the Commissioner and Human Resources to study the organizational structure of the Department. In addition to the succession planning that such an organizational change can create, this analysis is intended to strengthen the coordination and capacity of the engineering and transportation functions within the Department. While succession planning can cost money in the short-term, the longer term benefits can be significant in reducing periods of transition and the resulting lack of leadership and management continuity.

Energy Conservation and Sustainability Initiatives- The Town of Brookline has always been a leader in the procurement and management of its energy as well as activism in relation to sustainability and climate change challenges. The FY 2019 Budget will begin an effort at coordinating these activities and creating more management capacity to address emerging issues and opportunities.

The Town continues to benefit from long-term electricity supply contracts. In FY 2019, the guaranteed rate with Constellation Energy will provide a savings of 3.4 cents per kilowatt hour when compared to the standard rates charged by the utility company. In addition, this supply contract provides stability against a volatile market where rates change every three to six months. Thus far, the current contract has provided lower rates than the default utility rates at all times throughout its duration. Finally, the Constellation Energy contract has protected the Town from rising capacity costs, which have increased threefold since FY 2016. With respect to natural gas, the Town has avoided locking in a longer term rate due to the direction of the supply market. Natural Gas prices are projected to decrease by 36% year over year. In addition, new construction methods and more efficient equipment have allowed the Town to reduce energy usage, even when enlarging facilities (such as the Devotion School with 40,000 ft^2 greater area).

The positive budgetary impact of a comprehensive conversion to LED streetlights continues to be realized. In addition to the projected reduction in kWh usage resulting in budget savings, the Town will be eligible for a beneficial rebate program offered by Eversource.

The major policy area of interest is how to combine these more discreet energy initiatives with a longer term and proactive approach at sustainability and climate change. For example, last spring the Town Meeting acted upon a proposal to incorporate Net Zero LEED Platinum certification into all future school building planning. This and other initiatives to reduce the Town's carbon footprint has led me to allocate $25,000 for professional consulting services in the Planning Department and to identify a new full-time energy manager position, conditional upon a tax override.

LONG RANGE FINANCIAL PLANNING

A cornerstone of the Town's budgeting process is the Long-Range Financial Projection, often referred to as "the Forecast". It is essential that a government have a financial planning process that assesses long-term implications of current and proposed policies, programs, and assumptions that develop appropriate strategies to achieve its goals. The Forecast also acts as a bridge between a municipality's annual operating budget and its CIP, bringing all of the fiscal policy and economic variables together to establish coordinated managerial direction. Revenue and expenditure forecasting, along with capital planning and debt management, are key elements in developing a strong municipal fiscal position.

Prepared annually, the five-year Forecast serves as the starting point for the ensuing budget year - - and also provides decision makers, taxpayers, and employees with an understanding of the long-term financial challenges the Town faces. In late-November / early-December, the Deputy Town Administrator and the Director of Finance present the Forecast to the Select Board. This presentation is the culmination of months of work involving the analysis of hundreds of revenue and expenditure line-items, making assumptions about economic conditions, and understanding state budget conditions.

The FY 2019 – FY 2024 Long Range Financial Projection for the General Fund makes the following key assumptions:

- New Growth in the Property Tax Levy of $1.8 million per year, augmented by the redevelopment of the former Circle Cinema site ($350K in FY 2019, and $25K in FY 2020), the new hotel proposed at 25 Washington Street ($200K in FY 2019 and $250K in FY2020), by the re-development of 2 Brookline Place ($238K in FY19, $1.5 million in FY 2020, and $240K in FY 2021) and by the re-development of the Holiday Inn/Waldo Durgin site ($1.65 million in FY21 and $500K in FY 2022).
- For State Aid in FY 2019, full use of the Governor's proposal. For FY 2020 - FY 2023, annual 2.5% increases in Ch. 70 and Unrestricted General Government Aid (UGGA).
- For Local Receipts FY 2019 reflects an increase of $247K (1%). In FY's 2020-2023, limited growth is expected with the exception of adjustments in additional Hotel Excise Taxes from the redevelopment of 25 Washington Street and Waldo Durgin sites ($400K in FY21, $150K in FY22). No adjustment has been made related to the recent changes for recreational marijuana.
- Use of Free Cash continues to follow the Town's Free Cash Policy, as recently updated by the Select Board in 2011.
- A 2% wage increase for all years for all unions.
- Inflation in most Services, Supplies, and Capital Outlay accounts of 1.5% - 2.5% (approximately $546K per year for the Schools and $250K for Town departments).
- Annual utility increases of $150K.
- Annual Special Education growth of $775,000 - $800,000.
- Enrollment growth cost increases of $680K in FY19, $694K in FY20, $1.06M in FY2021, $1.23M in FY22.

- Step increases of $250K per year for Town Departments.
- For FY 2019, a Health Insurance rate increase of 2.5% and an increase in enrollment of 40. For FY's 2019-2023, assume a 5% annual rate increase and 40 new enrollees per year.
- A Pension appropriation based on the most recent funding schedule approved by PERAC for FY 2019 with annual increases of 7.9%.
- Continue to fund OPEB's by increasing the appropriation by at least $250,000 per year from on-going revenues.
- Debt Service and pay-as-you-go CIP that reflects full-funding of the CIP (6% of net revenue plus the use of Free Cash to get to 7.5%).

These assumptions create an escalating deficit position for FY 2020 primarily for the Schools, starting at $2.8 million in FY 2020 and reaching $14 million by FY 2023. It should be noted that the deficits in the out years are inflated because they are built upon a deficit in the prior fiscal year. In fact, the Town must balance its budget each year, and that balanced budget will become the base for the following year's projection. Nonetheless, the cumulative deficits in the Long Range Projection are a reminder that the Town must find ways to support a sustainable budget in the long term.

The Long Range Financial Projection is detailed on the following pages:

	2019	2020	2021	2022	2023
REVENUE					
Property Taxes	**223,057,097**	**232,767,378**	**241,437,289**	**249,659,038**	**257,586,330**
Local Receipts	**29,703,587**	**30,016,685**	**30,706,744**	**31,134,996**	**31,426,707**
Motor Vehicle Excise (MVE)	5,722,200	5,836,644	5,953,377	6,072,444	6,193,893
Local Option Taxes	2,972,410	3,031,858	3,492,495	3,712,345	3,786,592
Licenses & Permits	1,165,775	1,165,775	1,165,775	1,165,775	1,165,775
Parking / Court Fines	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000
General Government	3,886,621	3,967,903	4,028,616	4,064,839	4,101,581
Interest Income	751,197	769,977	789,226	808,957	829,181
PILOT's	983,636	1,010,509	1,030,719	1,051,333	1,072,360
Refuse Fee	2,800,000	2,800,000	2,800,000	2,800,000	2,800,000
Departmental & Other	7,421,749	7,434,020	7,446,536	7,459,303	7,477,325
State Aid	**21,642,592**	**22,042,075**	**22,576,693**	**23,124,676**	**23,251,697**
General Government Aid	6,645,199	6,809,312	6,977,528	7,149,949	7,326,681
School Aid	14,869,259	15,104,629	15,471,031	15,846,593	15,796,882
Tax Abatement Aid	40,779	40,779	40,779	40,779	40,779
Offset Aid	87,355	87,355	87,355	87,355	87,355
Other Available Funds	**2,972,679**	**3,069,355**	**3,183,807**	**3,304,036**	**3,405,351**
Walnut Hill Cemetery Fund	100,000	100,000	100,000	100,000	100,000
Reimb./Pymts from Enterprise Funds	2,521,130	2,601,398	2,696,102	2,795,348	2,874,363
Reimb. from Rec Revolving Fund	351,549	367,957	387,704	408,688	430,988
Capital Project Surplus	0	0	0	0	0
Free Cash (for Appropriation)	**8,551,363**	**4,500,000**	**4,650,000**	**4,775,000**	**4,925,000**
TOTAL REVENUE	285,927,319	292,395,493	302,554,532	311,997,746	320,595,085
$$ Increase	12,908,120	6,468,174	10,159,039	9,443,213	8,597,339
% Increase	4.7%	2.3%	3.5%	3.1%	2.8%

	2019	2020	2021	2022	2023
EXPENDITURES					
Departmental	**73,648,988**	**75,512,530**	**77,344,163**	**79,276,000**	**81,236,758**
Personnel	54,388,122	55,763,122	57,158,122	58,583,122	60,028,122
Services	9,520,446	9,758,457	10,002,418	10,252,479	10,508,791
Supplies	2,285,553	2,342,692	2,401,259	2,461,291	2,522,823
Other	573,332	587,665	602,357	617,416	632,851
Utilities	4,658,033	4,958,033	5,108,033	5,258,033	5,408,033
Capital	2,203,502	2,082,561	2,051,974	2,083,660	2,116,138
Intergovernmental	20,000	20,000	20,000	20,000	20,000
Coll. Barg. - Town	**1,150,000**	**1,170,000**	**1,200,000**	**1,220,000**	**1,240,000**
Schools	**103,752,430**	**109,267,030**	**115,379,238**	**121,896,994**	**127,447,994**
Coll. Barg. - School	**4,650,000**	**4,880,000**	**5,120,000**	**5,380,000**	**5,650,000**
Non-Departmental - Benefits	**63,763,500**	**67,970,313**	**72,447,767**	**77,190,884**	**82,814,840**
Pensions	23,174,765	24,582,486	26,512,211	28,593,420	30,838,004
Group Health	31,463,720	34,233,014	36,315,041	38,498,512	41,385,901
Retiree Group Health Trust Fund (OPEB's)	4,570,465	4,271,536	4,521,536	4,771,536	5,021,536
EAP	28,000	28,000	28,000	28,000	28,000
Group Life	145,000	148,625	152,341	156,149	160,053
Disability Insurance	46,000	46,000	46,000	46,000	46,000
Workers' Compensation	1,450,000	1,486,250	1,523,406	1,561,491	1,600,529
Public Safety IOD Medical Expenses	200,000	275,000	275,000	275,000	275,000
Unemployment Compensation	200,000	250,000	250,000	250,000	250,000
Medical Disabilities	40,000	40,000	40,000	40,000	40,000
Medicare Coverage	2,445,551	2,609,403	2,784,233	2,970,776	3,169,818
Non-Departmental - General	**1,718,821**	**688,910**	**712,001**	**739,981**	**748,597**
Non-Departmental - Debt Service	**17,119,364**	**18,697,150**	**17,003,768**	**17,514,534**	**19,959,320**
General Fund	17,119,364	18,697,150	17,003,768	17,514,534	19,959,320
Non-Departmental - Reserve Fund	**2,548,870**	**2,640,467**	**2,736,808**	**2,844,362**	**2,935,440**
Tax Supported	1,911,653	1,980,351	2,052,606	2,133,271	2,201,580
Free Cash Supported	637,218	660,117	684,202	711,090	733,860
Special Appropriations	**9,079,868**	**6,520,987**	**7,966,070**	**8,199,304**	**6,444,315**
Tax Supported	3,067,597	2,724,589	4,044,416	4,178,973	2,280,655
Free Cash Supported	6,012,271	3,796,397	3,921,653	4,020,331	4,163,659
Other	0	0	0	0	0
Non-Appropriated	**8,495,477**	**8,695,741**	**8,901,011**	**9,111,414**	**9,327,076**
State Assessments	6,633,122	6,789,636	6,950,063	7,114,500	7,283,049
Cherry Sheet Offsets	87,355	87,355	87,355	87,355	87,355
Overlay	1,750,000	1,793,750	1,838,594	1,884,559	1,931,673
Tax Titles - Deficits/Judgements	25,000	25,000	25,000	25,000	25,000
TOTAL EXPENDITURES	**285,927,319**	**296,043,128**	**308,810,826**	**323,373,472**	**337,804,339**
$$ Increase	12,908,120	10,115,809	12,767,698	14,562,646	14,430,867
% Increase	4.7%	3.5%	4.3%	4.7%	4.5%

	2019	2020	2021	2022	2023
CUMULATIVE SURPLUS/(DEFICIT)	**0**	**(3,647,635)**	**(6,256,293)**	**(11,375,726)**	**(17,209,254)**
DEFICIT AS A % OF OP REV	**0.0%**	**-1.2%**	**-2.1%**	**-3.6%**	**-5.4%**
Surplus / (Deficit) Prior to Collective Bargaining	5,800,000	2,402,365	63,707	(4,775,726)	(10,319,254)
Town Share of Surplus / (Deficit)	1,150,000	345,521	470,137	(563,315)	(1,812,969)
Town Collective Bargaining	1,150,000	1,170,000	1,200,000	1,220,000	1,240,000
Total Town Surplus / (Deficit)	**0**	**(824,479)**	**(729,863)**	**(1,783,315)**	**(3,052,969)**
School Share of Surplus / (Deficit)	1,680,000	2,056,844	(406,431)	(4,212,411)	(8,506,285)
School Collective Bargaining	1,680,000	4,880,000	5,120,000	5,380,000	5,650,000
Total School Surplus / (Deficit)	**0**	**(2,823,156)**	**(5,526,431)**	**(9,592,411)**	**(14,156,285)**

CAPITAL IMPROVEMENT PROGRAM (CIP)

Capital planning and budgeting is a critical undertaking for all government organizations and is central to the delivery of essential services and the quality of life for its residents. In fact, without a sound plan for long-term investment in infrastructure and equipment, the ability of local government to accomplish its goals is greatly hampered. Since FY 1995, the Town has invested more than $400 million in the CIP. These efforts, which have been supported by the Select Board, the Advisory Committee, Town Meeting, and, ultimately, the taxpayers of

Brookline, have helped address the backlog of capital projects, have dramatically improved the Town's physical assets, and have helped yield savings in the Operating Budget through investment in technology and energy efficiency. However, the overcrowding situation in Brookline's public schools is a major capital issue that cannot be addressed solely within the general revenue available for the CIP. Since the projects necessary to address this issue are so expensive, this CIP assumes future proposals to seek voter approved "debt exclusions", which are temporary tax increases for the life of the debt incurred for these projects. This year, such debt exclusion is anticipated for the expansion of the High School. The final number for the High School Project has not been incorporated into the current CIP, but will be voted on by the School Building Committee and ultimately placed on the ballot by the Select Board this spring.

It was a challenge to develop a balanced CIP that continues to reflect the various priorities of the Town, while simultaneously addressing the overcrowding issue in the schools. The overcrowding issue in the schools continues to be the most urgent CIP need, consuming more of the CIP and necessitating additional Debt Exclusion Overrides. Since 2005, K-8 enrollment in Brookline has increased from 3,896 students to 6,193 students, a 40% increase in enrollment. While the increase in size of Brookline's kindergarten enrollment has driven the growth, these larger elementary grades will soon begin to enter the high school. Brookline High School is currently experiencing the initial wave of rapid enrollment growth that will increase the student body from 1,800 students in 2015, to at least 2,600 or more students by 2023.

As a result, the Town is in the midst of schematic design for the High School renovation and expansion project as well as a study for a K-8 solution. This CIP is only able to provide minimal funding for additional classroom capacity in the interim years prior to the High School and K-8 projects coming online. Overcrowding in the schools is an issue that we must continue to address. Since the plans to address the issue are expensive, it places great pressure on the CIP. The commencement of debt service for the Devotion School in FY2018 and the plans for the High School in FY2019 limits the ability for this CIP to address projected classroom needs over the next several years. The Classroom Capacity item in FY2019 continues to cover the leases at the temples, 62 Harvard, and 24 Webster Place with very limited funding to modify smaller spaces in existing buildings.

As presented, this proposed $126.9M six-year CIP continues to provide funding for a portion of a High School Project ($35M); and no capacity exists beyond the schematic design phase for the 9th School project. The Soule Athletic Field renovation has been moved to future years due to the uncertainty of the site selection for the 9th School project. A Debt Exclusion Override is assumed for the remainder of what would be required at the High School and 9th School Project.

The recommended FY2019 – FY2024 CIP calls for an investment of $126.9 million, for an average of approximately $21.2 million per year, and follows the Town's CIP and Free Cash policies. This continues the Town's commitment to prevent the decline of its infrastructure, upgrade its facilities, improve its physical appearance, and invest in opportunities that positively impact the Operating Budget. Over the last 10 years (FY09 - FY18), the Town has authorized expenditures of $314 million, for an average of $31 million per year.

Even with the pressure placed on the CIP by the overcrowding issue, this recommended CIP continues the Town's commitment to public works projects, including upgrading its parks/playgrounds, streets/sidewalks, water/sewer infrastructure, and other areas. There is $25.6M of specific park projects included, as shown in the table below:

	Total	Prior Year (FY18)	FY2019		2020		FY2021		FY2022		FY2023		FY2024		Future Years	
			Amount	RC	Amount	RC	Amount	RC	Amount	RC	Amount	RC	Amount	RC	Amount	RC
Parks and Playgrounds																
Amory tennis courts, Parking and Halls	1,650,000														1,650,000	
Brookline Reservoir Park	2,200,000	2,200,000														
Cypress Playground/Athl. Field	2,640,000		**240,000**	A	2,400,000	A										
Fisher Hill Gatehouse Safety and Struct	175,000												175,000	A		
Harry Downes Field & Playground/Kra	2,450,000		**2,450,000**	B												
Heath School Playground Accessibility	1,110,000														1,110,000	
Larz Anderson Park	8,400,000		**2,700,000**	B			2,200,000	B					2,500,000	B	1,000,000	
Larz Anderson Park cash	600,000		**425,000**	A	175,000	A										
Murphy Playground	965,000	70,000							895,000	B						
Riverway Park	625,000														625,000	
Robinson Playground	1,250,000				100,000	A	1,150,000	B								
Schick Playground	1,060,000						90,000	A	970,000	B						
Boylston St. Playground	1,350,000								110,000	A	1,240,000	B				
Griggs Park	1,060,000												90,000	A	970,000	
Soule Athletic Fields	1,450,000														1,450,000	
Skyline Park Turf replacement and Par	1,980,000												180,000	A	1,800,000	

It should be noted that the projected timeframe for both a 9th School and the High School have necessitated changes for both Cypress Playground/Athletic Field Renovations and the Soule Athletic Field Renovation. A portion of the funding for the Cypress Field Project is included in the General Fund (as shown above); any additional scope not included in the $2.64M budget is assumed to be covered via the High School Debt exclusion. Given the uncertainty around the site for the 9th School the Soule Athletic Field project has been moved to future years.

There is also funding allocated in FY2019 for a Traffic Calming/Safety Improvement project that will address improvements to the Walnut--Chestnut-Kennard Intersection.

A few years ago, a study was made of the conditions of the fire stations and what was needed to maintain the integrity of the floors and building in regard to the newer, larger fire equipment. Fire Station Renovation work outlined in the report included flooring, shoring, beams, columns, and structural work. The report also included recommendations for the HVAC systems, generators, lighting, life safety, and mechanical, electrical, plumbing (MEP), along with other peripheral systems. In FY2012, $650K was appropriated to undertake the Structural component. The next phase for implementation was the Life Safety component, which was funded between FY2013 – FY2015 ($890K). Given the work planned for Station 6 the funding schedule for Station 6 MEP work was moved from FY2021 to FY2017 in order to allow efficiencies with bids and project schedules. MEP work for the remaining stations is as follows:

Sta 5 (Babcock St)	$220,000 (FY18)
Sta 4 (Rt. 9/Reservoir Rd)	$445,000 ($60K FY18, $385K FY19)
Sta 1 (Brookline Village)	$450,000 (FY21)
Sta 7 (Washington Sq)	$620,000 ($350K FY21, $270K FY23)

Work at Station 7 also includes a second means of egress and work on the second floor living area.

Some of the major projects proposed in the CIP include:

- High School - $35M of Town funding + debt exclusion (FY19)
- 9th School - $1.5M for Schematic Design
- Larz Anderson - $9M (FY19-24, Future Years)
- Classroom Capacity - $8.1M (FY19-FY24)
- Driscoll School HVAC - $4.4M (FY18-FY19)
- Harry Downes Field & Playground/Kraft Family Athl. Field Turf Repl. - $2.5M (FY19)
- Fire Station Renovations - $1.7M (FY18-22)
- Public Building Fire Alarm upgrades - $1.7M (FY19-24)
- HVAC equipment - $1.3M (FY19-24)
- Fire Department's Engine #1 Replacement - $725K (FY23)

Continued major investments include:

- Street and Sidewalk Rehab - $25 million
- Parks and Open Space - $21.4 million
- Town/School Building Envelope/Fenestration Repairs - $6.4 million
- Town/School Roofs - $1.6 million
- Water & Sewer Infrastructure - $8.2 million -- enterprise fund
- Town/School Energy Management/Conservation - $1.4 million
- Information Technology - $1.1 million
- Tree Replacement - $1.9 million

CONCLUSION AND RECOMMENDATION

The Board would once again like to thank the Town Administrator, his staff and all of the department heads in preparing this Budget. We continue to be grateful for the quality of the Financial Plan, as it provides an outstanding and useful document for the Select Board, Advisory Committee and Town Meeting, and creates transparency and confidence among the Town's citizenry and other stakeholders. Our independent Auditor has publicly acknowledged the quality of this document and we are proud to announce that the Town was awarded the Government Finance Officers Association's (GFOA) award for Excellence in Budget Presentation for the twelfth consecutive year.

We thank the Advisory Committee again for another excellent job on preparing and reviewing the Town's budget, paying particular attention to applying the Financial Policies that have guided Town budgeting over the past decade. The amount of time the Advisory Committee spent on reviewing the Financial Plan is simply remarkable. The willingness of the Advisory Committee, School Committee, this Board, and, ultimately Town Meeting, to work collaboratively throughout the budget process is a major reason why this community has been able to avoid a number of problems that other communities have had to address.

The Board recommends FAVORABLE ACTION by a vote of 4-0 taken on May 1, 2018 on the motion offered by the Advisory Committee with the following amendments: (changes are in **bold, underlined and ~~strikethrough~~)**

13.) SPECIAL APPROPRIATIONS

Item 44: Street Rehabilitation

Raise and appropriate $3,110,000 to be expended under the direction of the Commissioner of Public Works for the rehabilitation of streets, with any necessary contracts over $100,000 to be approved by the Select Board and that when such contract approval is necessary that there be prior notification to the Select Board **~~and to the Capital Subcommittee of the Advisory Committee~~** of any changes to pedestrian, bicycle, or motor vehicle traffic patterns or pavement markings, and to meet the appropriation transfer $1,400,000 from the Parking Meter Fund.

Item 71: High School Renovation/Expansion

Appropriate, $189,200,000, to be expended under the direction of the Building Commission, with any necessary contracts to be approved by the Select Board and the School Committee to renovate and expand Brookline High School, including the acquisition and reconstruction of the property located at 111 Cypress Street and renovations or repairs to Brookline High School, the Evelyn Kirrane Aquatic Center, the Unified Arts Building, the 66 Tappan Street Gym, and Cypress Field **~~with the condition that no money related to the construction of Cypress Field can be encumbered or expended without a vote of Town Meeting relevant to the material for the field~~**; and to meet the appropriation authorize the Treasurer, with approval of the Board of Selectmen, to borrow $186,800,000, under General Laws, Chapter 44, Section 7(1) and transfer $2,400,000 from the Town's bond premium account. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with Chapter 44, Section 20 of the General Laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

ROLL CALL VOTE:

Aye:	Absent:
Wishinsky	Greene
Franco	
Heller	
Hamilton	

TOWN OF BROOKLINE'S FISCAL POLICIES
Adopted by the Board of Select Board on June 28, 2011

FREE CASH POLICIES

Free Cash shall not be used for Operating Budget purposes. It shall be utilized in the following manner and order:

1. Appropriated Budget Reserve – an amount equivalent to 0.25% of the prior year's net revenue shall be appropriated as part of the Town's 1% Appropriated Budget Reserve Fund, as allowed for under MGL Chapter 40, Section 6 and as described in the Town's Reserve Policies.

2. Unreserved Fund Balance / Stabilization Fund – Free Cash shall be used to maintain an Unreserved Fund Balance plus Stabilization Fund in an amount equivalent to no less than 10% of revenue, as defined in the Town's Audited Financial Statements, with a goal of 12.5%, as described in the Town's Reserve Policies. If the Stabilization Fund were drawn down in the immediate prior fiscal year, then an allocation shall be made to the Fund in an amount at least equivalent to the draw down of the immediate prior fiscal year.

3. Liability / Catastrophe Fund – to the extent necessary, Free Cash shall be used to reach the funding target of the Town's Liability / Catastrophe Fund, as described in the Town's Reserve Policies.

4. Capital Improvement Program (CIP) – remaining Free Cash shall be dedicated to the CIP so that total CIP funding as a percent of the prior year's net revenue is not less than 7.5%, to the extent made possible by available levels of Free Cash.

5. Affordable Housing Trust Fund (AHTF) – in order to support the Town's efforts toward creating and maintaining affordable housing, 15% of remaining Free Cash shall be appropriated into the AHTF if the unreserved fund balance in the AHTF, as calculated in the Town's financial system, is less than $5 million.

6. Special Use – remaining Free Cash may be used to augment the trust funds related to fringe benefits, unfunded liabilities related to employee benefits, including pensions and Other Post-Employment Benefits (OPEB's), and other one-time uses, including additional funding for the CIP and AHTF.

RESERVE POLICIES

The establishment and maintenance of adequate financial reserves provide the Town of Brookline with financial flexibility and security and is recognized as an important factor considered by bond rating agencies, the underwriting community and other stakeholders. The Town shall maintain the following general, special, and strategic reserve funds:

- **Budget Reserve** – to respond to extraordinary and unforeseen financial obligations, an annual budget reserve shall be established under the provisions of MGL Chapter 40, Section 6. The funding level shall be an amount equivalent to 1% of the prior year's net revenue, maintained in the manner set out below. Any unexpended balance at the end of the fiscal year must go toward the calculation of free cash; no fund balance is maintained.

    - Funding from Property Tax Levy – an amount equivalent to 0.75% of the prior year's net revenue shall be allocated from the Property Tax levy to the Appropriated Budget Reserve.
    - Funding from Free Cash – an amount equivalent to 0.25% of the prior year's net revenue shall be allocated from Free Cash, per the Town's Free Cash Policies, to the Appropriated Budget Reserve.

- **Unreserved Fund Balance / Stabilization Fund** – the Town shall maintain an Unreserved Fund Balance plus Stabilization Fund in an amount equivalent to no less than 10% of revenue, as defined in the Town's Audited Financial Statements, with a goal of 12.5%. If the balance falls below 10% at the end of the fiscal year, then Free Cash shall be used to bring the amount up to 10%, as described in the Free Cash Policy, as part of the ensuing fiscal year's budget. The Stabilization Fund shall be established under the provisions of MGL Chapter 40, Section 5B.

    1. The Stabilization Fund may only be used under the following circumstances:
        a. to fund capital projects, on a pay-as-you-go basis, when available Free Cash drops below $2 million in any year; and/or
        b. to support the operating budget when Net Revenue, as defined in the CIP policies, increases less than 3% from the prior fiscal year.

    2. The level of use of the Stabilization Fund shall be limited to the following:
        a. when funding capital projects, on a pay-as-you-go basis under #1a. above, no more than $1 million may be drawn down from the fund in any fiscal year. The maximum draw down over any three year period shall not exceed $2.5 million.
        b. when supporting the operating budget under #1b. above, the amount drawn down from the fund shall be equal to the amount necessary to bring the year-over-year increase in the Town's prior year net revenue to 3%, or $1 million, whichever is less. The maximum draw down over any three year period shall not exceed $2.5 million.

3. In order to replenish the Stabilization Fund if used, in the year immediately following any draw down, an amount at least equivalent to the draw down shall be deposited into the fund. Said funding shall come from Free Cash.

- **Liability / Catastrophe Fund** – established by Chapter 66 of the Acts of 1998, and amended by Chapter 137 of the Acts of 2001, this fund shall be maintained in order to protect the community against major facility disaster and/or a substantial negative financial impact of litigation. The uses of and procedures for accessing the fund are described in the above referenced special act. The target fund balance is 1% of the prior year's net revenue and funding shall come from available Free Cash and other one-time revenues.

- **Overlay Reserve** – established per the requirements of MGL Chapter 59, Section 25, the Overlay is used as a reserve, under the direction of the Board of Assessors, to fund property tax exemptions and abatements resulting from adjustments in valuation. The Board of Select Board shall, at the conclusion of each fiscal year, require the Board of Assessors to submit an update of the Overlay reserve for each fiscal year, including, but not limited to, the current balances, amounts of potential abatements, and any transfers between accounts. If the balance of any fiscal year overlay exceeds the amount of potential abatements, the Board of Select Board may request the Board of Assessors to declare those balances surplus, for use in the Town's Capital Improvement Plan (CIP) or for any other one-time expense.

CAPITAL IMPROVEMENT PROGRAM (CIP) POLICIES

Planning, budgeting and financing for the replacement, repair and acquisition of capital assets is a critical component of the Town of Brookline's financial system. Prudent planning and funding of its capital infrastructure ensures that the Town can continue to provide quality public services in a financially sound manner. The development of a Capital Improvement Program (CIP) is the mechanism that the Town uses to identify projects, prioritize funding and create a long-term financial plan that can be achieved within the limitations of the Town's budget.

Definition of a CIP Project

A capital improvement project is any project that improves or adds to the Town's infrastructure, has a substantial useful life, and costs $25,000 or more, regardless of funding source. Examples of capital projects include the following:

. Construction of new buildings
. Major renovation of or additions to existing buildings
. Land acquisition or major land improvements
. Street reconstruction and resurfacing

. Sanitary sewer and storm drain construction and rehabilitation
. Water system construction and rehabilitation
. Major equipment acquisition and refurbishment
. Planning, feasibility studies, and design for potential capital projects

Evaluation of CIP Projects

The capital improvement program shall include those projects that will preserve and provide, in the most efficient manner, the infrastructure necessary to achieve the highest level of public services and quality of life possible within the available financial resources.

Only those projects that have gone through the CIP review process shall be included in the CIP. The CIP shall be developed in concert with the operating budget and shall be in conformance with the Board's CIP financing policy. No project, regardless of the funding source, shall be included in the CIP unless it meets an identified capital need of the Town and is in conformance with this policy.

Capital improvement projects shall be thoroughly evaluated and prioritized using the criteria set forth below. Priority will be given to projects that preserve essential infrastructure. Expansion of the capital plan (buildings, facilities, and equipment) must be necessary to meet a critical service. Consideration shall be given to the distributional effects of a project and the qualitative impact on services, as well as the level of disruption and inconvenience.

The evaluation criteria shall include the following:

- Eliminates a proven or obvious hazard to public health and safety
- Required by legislation or action of other governmental jurisdictions
- Supports adopted plans, goals, objectives, and policies
- Reduces or stabilizes operating costs
- Prolongs the functional life of a capital asset of the Town by five years or more
- Replaces a clearly obsolete facility or maintains and makes better use of an existing facility
- Prevents a substantial reduction in an existing standard of service
- Directly benefits the Town's economic base by increasing property values
- Provides new programs having social, cultural, historic, environmental, economic, or aesthetic value
- Utilizes outside financing sources such as grants

CIP Financing Policies

An important commitment is to providing the funds necessary to fully address the Town's capital improvement needs in a fiscally prudent manner. It is recognized that a balance must be maintained between operating and capital budgets so as to meet the needs of both to the maximum extent possible.

For the purposes of these policies, the following definitions apply:

- Net Operating Revenue - Gross revenues, less net debt exclusion funds, enterprise (self-supporting) operations funds, free cash, grants, transfers from other non-recurring non-general funds, and non-appropriated costs.
- Net Direct Debt (and Debt Service) - Gross costs from local debt, less Prop 2 1/2 debt exclusion amounts and amounts from enterprise operations.
- Net Tax-Financed CIP - Gross amount of appropriations for capital improvements from current revenues, less amounts for enterprise operations, grants, free cash, transfers, and non-recurring special revenue funds.

The capital improvements program shall be prepared and financed in accordance with the following policies:

OUTSIDE FUNDING
State and/or federal grant funding shall be pursued and used to finance the capital budget wherever possible.

ENTERPRISE OPERATIONS - SELF SUPPORTING
Capital projects for enterprise operations shall be financed from enterprise revenues solely.

CIP BUDGET ALLOCATIONS - 6% OF NET REVENUES
Total net direct debt service and net tax-financed CIP shall be maintained at a level equivalent to 6% of prior year net operating revenues.

- TAX FINANCED ALLOCATION - 1.5% OF NET REVENUES
  Net tax-financed capital expenditures shall be maintained at a target level equivalent to 1.5% of prior year net operating revenues.

- DEBT-FINANCED ALLOCATION - 4.5% OF NET REVENUES
  Net direct debt service shall be maintained at a target equivalent to 4.5% of prior year net operating revenues.

DEBT MANAGEMENT POLICIES
Debt financing of capital projects shall be utilized in accordance with the following policies:

- Debt financing for projects supported by General Fund revenue shall be reserved for capital projects and expenditures which either cost in excess of $250,000 or have an anticipated life span of five years or more, or are expected to prolong the useful life of a capital asset by five years or more. For projects supported by Enterprise Fund revenue, debt financing shall be reserved for capital projects and expenditures that cost in excess of $100,000.

- Bond maturities shall not exceed the anticipated useful life of the capital project being financed. Except for major buildings and water and sewer

projects, bond maturities shall be limited to no more than ten years.

- Bond maturities shall be maintained so that at least 60% of the outstanding net direct debt (principal) shall mature within 10 years.

- Total outstanding general obligation debt shall not exceed 2.5% of the total assessed value of property.

- Total outstanding general obligation debt per capita shall not exceed $2,385, which reflects $2,000 inflated annually since July 1, 2004. This amount shall continue to be adjusted annually by the consumer price index (CPI) for all urban consumers (northeast region all items).

- Total outstanding general obligation debt per capita shall not exceed 6% of per capita income, as defined by the Census Bureau of the U.S. Department of Commerce.

FREE CASH

After using free cash in accordance with the Town's free cash policy, available free cash shall be used to supplement the CIP so that total CIP funding as a percent of the prior year's net revenue is not less than 7.5%, to the extent made possible by levels of available free cash.

UNFUNDED LIABILITIES POLICY

Defined as "the actuarial calculation of the value of future benefits payable less the net assets of the fund at a given balance date", unfunded liabilities represent a significant financial obligation for all levels of government across the country. In Brookline and other Massachusetts municipalities, the two primary unfunded liabilities are for Pensions and Other Post-Employment Benefits (OPEB's).

- Pensions – the Contributory Retirement System is a defined benefit program that is governed by Massachusetts General Laws, Ch. 32 and is regulated by the Public Employee Retirement Administration Commission (PERAC), a State entity responsible for the oversight, guidance, monitoring, and regulation of Massachusetts' 105 public pension systems. Funding for this system covers the costs of employees who are part of the Town's retirement system, which does not include teachers, as their pensions are funded by the State.

  In accordance with State law, PERAC regulations and government accounting standards, the Town contracts for an actuarial valuation of the retirement system to quantify the unfunded liability on a biennial basis. Under current State law, the Town then establishes a funding schedule to fully-fund this liability by 2040. The Town shall continue to fund this liability in the most fiscally prudent manner, recognizing the fact

that the adoption of a funding schedule is, by law, the responsibility of the local retirement board.

- OPEB's – these consist primarily of the costs associated with providing health insurance for retirees and their spouses. The Government Accounting Standards Board (GASB) issued Statements No. 43 and No. 45 in 2004 to address the OPEB issue. GASB 43 required the accrual of liabilities of OPEB generally over the working career of plan members rather than the recognition of pay-as-you-go contributions, while GASB 45 required the accrual of the OPEB expense over the same period of time. The reporting requirements of GASB 43 and 45 include disclosures and schedules providing actuarially determined values related to the funded status of the OPEB. This requires that the accrued liabilities be determined by a qualified actuary using acceptable actuarial methods.

  While there is currently no legal requirement to fund OPEB's, the Town shall continue to follow its plan to move toward fully-funding the Annual Required Contribution (ARC), ultimately developing a funding schedule that fully-funds OPEB's according to a schedule similar to the pension funding schedule. This plan should continue to include annual increases in the portion of the appropriation supported by General Fund revenues. It should also include using the "run-off" from the pension system once that system is fully-funded. In order to determine the funding schedule, the Town shall continue its current practice of having an independent actuary prepare biennial valuations, which is in compliance with GASB's requirement.

ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee's recommended FY2019 budget appears below. Tables 1 and 2 show the Base budget (Vote A) that would implemented if the operating override is not approved by Brookline's voters on May 8, 2018, and the Override budget (Vote B) that would be implemented if the override is approved.

The Advisory Committee's report on Article 7 will be presented after the May 8 election so that it can take into account the results of the votes on the operating override and debt exclusion ballot questions. The report, including the Advisory Committee's budget message and analysis of the budget for the Public Schools of Brookline, will be included in the supplemental mailing and posted online as soon as it is available.

The Advisory Committee's recommendations and project descriptions for the Capital Improvements Program (CIP) appear below. The Advisory Committee voted unanimously to recommend funding of all FY2019 CIP items, regardless of whether the operating override is approved.

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Advisory Committee Report on the FY2019
Capital Improvements Program (CIP)
Recommendations and Project Descriptions

35. TOWN BUILDING FURNITURE

Recommendation: $50,000 (Revenue Financed)

This item allows for the replacement of aging furniture in Town Hall and in other non-school buildings.

36. PUBLIC SAFETY HVAC MODIFICATIONS

Recommendation: $125,000 (Revenue Financed)

The Town's utilization of technology to operate, educate and communicate requires stability and reliability in its information technology infrastructure. The current system relies upon four primary data centers whose consistent and efficient operation is dependent on adequate power and cooling, twenty-four hours a day, seven days a week.

In the Public Safety building, there are two rooms (Dispatch and Radio) that house data information services and support systems such as e-911. Although of appropriate size, the

rooms lack the infrastructure necessary to meet the needs of the equipment loads, particularly for power and cooling, and they lack adequately sized back-up capacity.

Two years ago, Town Meeting approved a joint request of $200,000 from the IT and Building Departments to implement recommendations of an outside consultant's study to ensure proper power and cooling capabilities in the data centers in Town Hall and in the Public Safety building. Those dollars were expended on electrical upgrades in the Town Hall data center and on better soundproofing and equipment cooling with some needed modifications to electrical and HVAC systems in the Data Center. A significant portion of the allocation was also spent on upgrading the 911 call center equipment, cabling, telecom equipment, and on the modification of several data closets and fiber connectivity between closets.

In FY18, $125,000 was requested and approved to upgrade and modernize long-standing issues with cooling, electrical capacity, redundancy, and generator backup. Work is ongoing.

For FY19, $125,000 is requested for the Dispatch and Radio rooms in the Police Station: $12,000 for design services, $18,000 for electrical upgrades and modifications to the emergency generator circuits, and $95,000 for HVAC upgrades and modifications.

37. TOWN REHAB/UPGRADES

Recommendation: $50,000 (Revenue Financed)

This program, instituted last year, uses CIP funds for the repair and upgrade of Town facilities in between major renovation projects. Items funded under the program include large-scale painting programs, new flooring, ceilings, window treatments and toilet upgrades. In FY18, funds were spent on painting the basement of Town Hall and various rooms in the Public Safety Building. In addition, stair treads were installed in Fire Station 1, new drainage was created around the doors to the restrooms at Amory Playground, and a number of Thermopane windows were replaced at the Main Library.

In FY19, additional Thermopane windows will be replaced at the Main Library, painting projects will take place at the Kirrane Rink and in the Soule Recreation Center's gym, and new carpeting will be installed in the Soule Recreation Center and in three offices in the Public Safety Building.

38. ZONING BY-LAW REORGANIZATION

Recommendation: $200,000, with the condition that no money can be encumbered or expended before December 1, 2018. (Revenue Financed)

The current structure of the Zoning By-Law dates back to 1962. Since that time, the Zoning By-Law has been amended more than 70 times through changes often proposed by the Planning Department or Planning Board and sometimes by citizen petitions. A number of the amendments have been reactionary in nature and have been proposed to address various

concerns with residential and commercial land use and development, and, on occasion, to address the siting and design of buildings or neighborhood density. In addition, there have been a number of amendments adopted to promote "good" development or redevelopment within specific zoning districts.

One result of this "layering" has been to unintentionally create some inconsistencies with other parts of the by-law and develop a document that is difficult for the public to comprehend and, according to Town Hall staff, difficult for departments to interpret and enforce. Moreover, at present, it is seen by some as "creating a strain on economic development" in areas where economic development should be considered.

The Planning and Community Development Department has requested $200,000 in FY19 CIP funds to engage the services of a consultant, or consultants for the purpose of the performing a comprehensive review of the Zoning By-Law and addressing its deficiencies. The Zoning By-Law will be reviewed/rewritten:

1) To identify and then correct contradictions and inconsistencies that inadvertently resulted from the adoption of such amendments and otherwise;
2) To address specific issues that have come before the Planning Board and Zoning Board of Appeals;
3) To account for changed circumstances in land use patterns and other conditions in the Town;
4) To recognize recent judicial decisions and statutory amendments; and
5) To clarify language and improve organization.

While supportive of the proposal's intent but cognizant of the limited funds available for this project, the Advisory Committee has asked Planning and Building Department staff to review and refine their expectations for the final work product. Postponing the expenditure of appropriated funds until December 1st will allow for staff to develop greater specificity for the project and will allow for an increased budget request by the Fall Town Meeting, should one be needed.

39. CAD SYSTEM UPGRADE

Recommendation: $200,000 (Revenue Financed)

FY 19 CIP funds in the amount of $200,000 are requested to complete an estimated $485,000 updating of the Larimore Public Safety programs of the Town's computer aided dispatch (CAD) system, introduced well over ten years ago to dispatch Police, Fire, and EMS calls. The programs will be updated to use C-Sharp programming language. Grants have been secured to provide the rest of the necessary funds.

The CAD upgraded system will be capable of supporting multi-jurisdictional, multi-agency dispatching for Police, Fire, and EMS and will allow dispatchers to be assigned geographical areas and/or individual agencies. Dispatchers responding to a call will have the ability via the unit's AVL (Automated Vehicle Locator) to assign a unit in closest proximity to the call's location and the ability to dispatch resources to any location by premise name. Premise

information will encompass previous call history, hazardous material information, SOP's (Standard Operating Procedures) and patrol file information. All of the foregoing information will be available as the call is being managed.

Other components of the system include:

- Alert feature that allows time sensitive information to be entered as an alert, stored as a call transaction, and given to dispatchers as a visual notification of crucial information;
- Embedded map on the dispatch and call taking screen that enables dispatchers to assign units directly from the mapping component, in addition to the call list.
- Built-in interfaces for mapping, E-911, mobile data and tablet based systems, State National Crime Information Center, Department of Criminal Justice Information Center, external digitizer fire alarm system, Records Management and Scheduling Systems, and the Police Department's camera network(s).

One of the more timely upgrades will enable the CAD system to work with Next Generation 911 (NextGen 911), the replacement IP (Internet Protocol)-based system for Enhanced 911. The State 911 Department is providing NextGen 911 to municipalities throughout Massachusetts. It allows and captures digital information such as voice, photos, videos, and text messaging from the 911 network. NextGen 911 will be able to pinpoint the location of the 911 call by relying, in part, on cell phone GPS data.

In addition to having compatibility with NextGen 911, the improved CAD system will have a certified interface to Pro/QA Medical application. According to www.emergencydispatch.org this means that during the course of an emergency medical call, "dispatchers will be guided through the process of collecting the vital information from the caller, obtaining the patient's status, choosing an appropriate dispatch level, and instructing the caller with medically approved protocols until the dispatched units arrive at the scene."

The new Larimore System has also developed apps for IOS and Android smart phones and tablets. These modules will connect to the CAD system and the Records Management system and will be part of the Department's new installation.

Over the last few years, the Police Department has updated the foundation of the operating system to C# and new applications such as Traffic Case Management System and Crisis Intervention System have been written in the C# environment. The remaining applications that have to be upgraded to the new C# environment are:

Scheduling, Training, and Records Management Systems;

Intelligence, Detective Case Management, Arrest- Booking, and National Incident Based Reporting Systems (NIBRS);

False Burglar Alarm Tracking and Billing, Detail Assignment and Billing, and Total Overtime Tracking Systems;

Evidence Tracking, Field Interview, Situation Tracking and Analysis Systems;

Parking Ticket and RMV Data Exchange and, Towed Vehicle Systems;

Internal Affairs System;

Liquor Law and Lodging House Tracking Systems;

Department Property Tracking System; and

Vehicle Inspection-Equipment and Hackney Systems.

40. FIRE STATION IMPROVEMENTS

Recommendation: $385,000 (Revenue Financed)

In FY12, after the completion of a study of the conditions of the Town's fire stations, work was undertaken to ensure that their structural elements, such as flooring, shoring, beams, and columns, had the ability to support larger and heavier pieces of fire equipment. The same study also addressed life safety and mechanical, electrical, and plumbing (MEP) systems.

All recommended structural work was addressed first, followed by upgrading life safety systems in each station, as prioritized by the Fire Chief (FY13–FY15), and then finishing the multi-year project with MEP work, which was started in FY17.

In FY19, $60,000 in FY18 CIP funds (previously approved) will be combined with $385,000 in FY19 CIP funds to undertake renovations at Station 4, located at the corner of Reservoir Road and Route 9. The funds will support the installation of a new HVAC system, a new generator, and upgrades to the exhaust and electrical systems.

41. PUTTERHAM BATHROOM RENOVATIONS

Recommendation: $150,000 (Revenue Financed)

There are five bathrooms at the Putterham Library. One was recently redesigned and made ADA-compliant (and unisex), but the remaining four date from the construction of the library in 1961, are single-use, not ADA-compliant, and feature outdated fixtures which need frequent repair.

Plans call for creating new bathrooms that will be ADA-compliant and unisex, and will feature both diaper-changing facilities and water and energy saving devices. On the first floor, one of the two new bathrooms will be located at the front of the library near the circulation desk and the other outside the program room. The very small staff bathroom in the basement will be renovated and enlarged by combining it with space that now functions as a custodial closet. Although the basement is not currently ADA-accessible, the new unisex staff bathroom will be.

42. TRAFFIC CALMING / SAFETY IMPROVEMENTS

Recommendation: $85,000 (Revenue Financed)

The Traffic Calming/Safety Improvements item is an annual appropriation for work that addresses Roadway Safety. For FY 2019, $85,000 is requested for a Traffic Signal Safety Improvement project located at the intersection of Walnut and Chestnut Streets and Kennard Road, in response to a request from neighbors and the School Department. Their request was triggered by a number of "near miss" incidents and by a student crossing Walnut Street at the intersection being hit by a car during non-dismissal time.

The existing signal operates with flashing yellow lights for Walnut Street and flashing red lights for Kennard Road and Chestnut Street. When a pedestrian actuates the signal via a push button, all approaches turn red, allowing the pedestrian to cross.

Based on feedback from attendees at a Transportation Board hearing and data received by the Transportation Division's investigation of the operations of the existing signals, the current arrangement is insufficient, especially during rush hour, when the volume of both vehicles and pedestrians is high. A number of vehicular drivers, accustomed to and expecting to see flashing yellow lights do not anticipate the change to red and do not stop.

Based on a report, which included a traffic signal analysis, in November 2016, the Transportation Board voted to approve changing the flashing lights signal to a full traffic signal with green, yellow, red operations. The cost of the project includes:

- Modifying the traffic signal controller to accommodate the proposed timing and phasing.
- Replacing the traffic signal head sections.
- Upgrading the traffic signal back plates with black back plates with yellow reflective strip.
- Upgrading the pedestrian signal heads with 16" LED pedestrian displays with countdown displays.
- Upgrading the pedestrian push buttons with audible & vibro tactile pedestrian push buttons with field adjustable arrow.
- Installing a vehicle actuation detection system.
- Installing emergency pre-emption capabilities that are compatible with the existing pre-emption systems used by the town's emergency services.

43. BICYCLE ACCESS IMPROVEMENTS

Recommendation: $176,775 (Revenue Financed)

Bicycle Access Improvements are a program of the Transportation Division of the Department of Public Works. They are funded on an annual basis and implement the recommendations of the Green Routes Master Network Plan, developed by the Bicycle Advisory Committee and approved by the Transportation Board.

In FY18, funds were requested for bicycle accommodations on Centre Street, between Fuller and Beacon Streets. That project is expected to be implemented this spring.

For FY19, $176,775 is requested for a raised cycle track on Essex Street from the Town border to Dummer Street and for a raised intersection connecting to the existing Essex Street contra-flow bike lane. The goal of this project is to create a safer Cottage Farm bicycle route consisting of Essex, Ivy, and Carlton Streets. The Cottage Farm bicycle route is part of the regional bicycle route, which includes the Boston University Bridge, Muddy River Path, City of Cambridge bicycle accommodations, and the new cycle tracks on Commonwealth Avenue to the north and Beacon Street and the Longwood Medical Area to the south with connection via the Cottage Farm bicycle route on Essex, Ivy, and Carlton Streets. The number of cyclists using this route has risen significantly, from a count of 87 in 2008 during the peak morning hour to a count of 226 in 2017, also during the peak morning hour.

The track will be approximately 300 feet long and will run from the Town line to just past the new raised intersection of Essex and Dummer Streets. It will be constructed at sidewalk level and will be 6.5 feet wide with varying width buffers from the vehicular travel lane. A sidewalk tracker equipped with a snow blower will be used during the winter months for snow and ice removal.

A breakdown of the requested $176,775 follows:

Curbing & Pavement: $96,323
Drainage: $22,515
Tree Buffer: $2213
Pavement Markings: $37,487
Signs: $2311
Police Details: $15,926

44. STREET REHABILITATION - TOWN

Raise and appropriate $3,110,000 to be expended under the direction of the Commissioner of Public Works for the rehabilitation of streets, with any necessary contracts over $100,000 to be approved by the Select Board and that when such contract approval is necessary, there be prior notification to the Select Board and to the Capital Subcommittee of the Advisory Committee of any changes to pedestrian, bicycle, or motor vehicle traffic patterns or pavement markings, and to meet the appropriation, transfer $1,400,000 from the Parking Meter Fund.

In 1992, the Department of Public Works undertook a comprehensive study of its roads (331streets which add up to 97.6 miles of paved surface) and implemented a pavement management system. The system was designed to bring Town-owned streets to a sufficient level of repair such that the roads could be maintained without undertaking costly full reconstruction. From 1992 to 1997, the Town made some progress in this regard, but funding was inconsistent. Starting in 1997, the Town began allocating $1 million per year to streets, in addition to Chapter 90 funding from the State.

Based on the recommendations of the 2007/2008 Override Study Committee (OSC), the 2008 Override approved by the voters included $750,000 for streets and sidewalks, to be increased annually by 2.5%.

A subsequent assessment and report, indexing roadways according to their condition, noted that roadways with a Pavement Condition Index (PCI) rating of 75 could be kept in good repair with maintenance instead of needing more expensive and time-consuming reconstruction. The most recent figures for preventative maintenance range from $6-$10 per square yard while the cost of reconstruction is double or more.

In 2014, there was a backlog of $18,492,001, exclusive of curbing, sidewalks, etc.; today, that backlog is approximately $23.5 million, an increase of approximately $1.2 million over 2016, attributable to inflation and deterioration. In order to maintain the PCI that existed in 2014, the Town would have needed to invest approximately $2 million dollars in street rehabilitation. Today, to maintain a PCI rating of 73, the amount of needed funding is $4 million. Stantec Consulting Services recommended that the minimal funding for road rehabilitation increase to $3 million "to keep the network in 'good' condition and backlog relatively sustainable in the future."

For FY2019, $1.71 million was requested by the Department of Public Works for Street Rehabilitation funds. That number was derived from the original $1 million base, plus the $300,000 added in FY 2009, increased annually by 2.5%. The Advisory Committee recommended that the allocation be increased so that a total of $3 million would be allocated to Street Rehabilitation. With the transfer of $1.4 million from the parking Meter Fund, the FY19 appropriation will total $3,110,000.

Streets included on the **FY19** list:

Micro-surface:
- Harvard St from Kent St to School St

Mill and Overlay:
- Church St, from South St to Hollywood Rd
- Clinton Rd, from Buckminster Rd to Dean Rd
- Dean Rd, from Beacon Street to Beaconsfield Rd
- Fuller St, from Gibbs St to Hamilton Rd
- Goddard Ave from Avon St to 560 feet north of Newton St
- Harvard St, from School St to Beacon St, eastbound
- Heath St, from Tully St to Glenland Rd
- Heath St, from Woodland Rd to Hammond St
- Kent St, from Station St to Linden St
- Webster St, from Beacon St to Harvard St

Reclamation:
- Clinton Path, from Strathmore Rd to Beacon St, eastbound.

45. SIDEWALK REPAIR/RECONSTRUCTION

Recommendation: $320,000 (Revenue Financed)

Sidewalks that are not reconstructed as part of the street reconstruction program will be reconstructed with funds from DPW's Sidewalk Management Plan. Using the formula recommended by the 2007/2008 Override Study Committee and approved by voters in the 2008 Override, DPW has requested $320,000 for sidewalk repair in FY19.

In accordance with DPW policy, concrete rather than asphalt will be used in sidewalk reconstruction, except in cases determined by the Tree Warden in which asphalt will be used near street trees.

46. WATER METER MOBILE TRANSMISSION UNIT (MTU) REPLACEMENT

Recommendation: $265,000 (Revenue Financed-Water and Sewer Enterprise Fund)

The Town's water meters and infrastructure were installed in 2006. The batteries of the MTU's (mobile transmission units), which transfer meter consumption to the collectors for billing, are nearing the end of their useful life. This program, with a total estimated cost of $1,090,000, proposes to replace all 10,000+/- MTU's over a four-year period. For FY 19, $265,000 from the Water and Sewer Enterprise Fund budget is requested.

47. NETHERLANDS ROAD FACILITY

Recommendation: $150,000 (Revenue Financed-Water and Sewer Enterprise Fund)

Requested funds will be used to replace the crushed floor drain system and concrete floor at 44 Netherlands Road.

48. CYPRESS PLAYGROUND & THOMAS P. HENNESSEY ATHLETIC FIELDS DESIGN

Recommendation: $240,000 (Revenue Financed)

Cypress Playground is a 5.22-acre park, located adjacent to the High School, Tappan Gym and Kirrane Aquatic Center. The park has two softball fields shared with a rectangular natural turf field serving high school sports (formally known as the Thomas P. Hennessey Fields at Cypress Street Playground), adult leagues and year round recreational programming and summer camps. A large seating area and full basketball court are located at the far side of the athletic playing fields. The park has a spray pool, picnic area, play equipment for tots and children, and a sledding hill.

The FY2017–2022 CIP anticipated renovating the playground and athletic field in FY 2021/FY22 at an estimated cost of $1,760,00 ($140,000 for design and $1,620,000 for construction). The scope of the work then was very similar to what is being proposed now for FY19/FY20.

Plans for renovating the playground and athletic field contemplate new play equipment for 2–5 and 5–12 year-old children, repair of a perimeter retaining wall, new curbing, new water play amenities, pathways, drainage improvements, a new basketball court, updated picnic area and seating, plantings, new irrigation, and new athletic field lighting.

Regarding the rectangular field serving high school sports, there have been conversations about widening the width of the lined field, as urged by the High School's varsity soccer team, but no decision has been made by the Park and Recreation Commission. Neither has the Commission decided whether the existing field should be restored with natural turf or replaced with synthetic turf. During three scoping sessions to discuss the elements of the project and to develop a budget, members of the public expressed strong feelings on both the advantages and disadvantages of synthetic and natural turf. All three sessions were attended by representatives from the High School's Athletics Department.

The Commission has opted to postpone its decision on the composition of the field until the design process begins (2-3 years from now) and after it – and members of the public – have had time to evaluate the synthetic turf field at the Devotion School (constructed with a natural infill material of geofil made with coconut fiber) and the alternative infill system proposed for Harry Downes Field, should funding be approved for that project. Evaluation criteria will include appearance and endurance. It has been noted by the Commission that new technologies for artificial turf fields continue to be developed and that its decision regarding the athletic field should be informed by the latest and most relevant information.

Regardless of the material used, funds for the design and the design review process, which will follow the requirements of Section 3.16.2 of the Town's By-laws, an engineering survey, and the preparation of construction bid documents will be needed before work on the playground and fields can begin. The FY19 CIP request for these purposes is $240,000. The construction costs will be shared by FY20 CIP funds ($2.4 million from property tax/free cash) and $4.25 million in debt exclusion funds. (Please see Cost section of Item 71, "High School Expansion.")

49. LARZ ANDERSON PARK

Recommendation: $425,000 (Revenue Financed); $2,700,000 (Bond—Item 69)

Comprising over 65 acres, Larz Anderson Park, listed on the National and State Registers of Historic Places, is the largest park in Brookline and the flagship park of the Town. Within its borders are not only architecturally significant buildings but also athletic fields, play equipment, picnic areas, walking paths, an ice rink, significant trees, a lagoon, sweeping slopes and magnificent views of the City of Boston.

A portion of the F19 $3.125 million request ($425,000 revenue financed and $2.7 million bonded), based on estimates from the Klopfer Martin Design Group, would be directed to restoration work in and around the lagoon area, such as stabilization of the banks, dredging of excessive organic material that has accumulated in the pond leading to constant algae blooms, repairs to the drainage structures, safety repairs or replacement of the deteriorating

Tempietto ("The Temple of Love"), terrace, stairs and fountain, repair of the railings and bridge structures, pathway improvements, removal of invasives, and new plantings.

Structures North, the preservation consultant for the structures in the park, has provided a conditions assessment for the Tempietto and considered options for that structure, including conservation, preservation, stabilization, and reconstruction. A full reconstruction of the dome and columns of the Tempietto is recommended due to the condition of the concrete, while restoration is recommended for the structure's base and its stairs.

Another portion of FY19 funds would be combined with earlier allocations (approximately $591,000) to support the completion of full depth reclamation/reconstruction of the roadway, associated handicapped accessible paths, restoration of the deteriorating stairs, drainage, lighting, parking, and safety improvements. An additional $600,000 is needed for all of this work to be completed.

Finally, approximately $200,000 in FY19 funds would be used to replace the supports, headers and piping from the compressor room to the main ice and smaller ice slap at the Kirrane Rink. The steel infrastructure under the rink has corroded to the point that it is sagging and has caused some of the pipes underneath the ice slab to kink or collapse causing blockages and leading to poor ice conditions. This is an emergency temporary "fix" without which the rink would not open next season.

Work planned for FY 20 with $175,000 in FY20 CIP funds would continue the much needed pathway and stair improvements and installation of upgraded lighting.

FY21 plans call for structural repairs to the remaining walks, stairs and walls of the sunken Italian Garden, the restoration the gazebo on the east side of the garden site (to match the restoration of the west side that was completed several years ago), and the removal of invasive vegetation and replacement with appropriate planting. Below the site of the Italian Garden, the massive walls surrounding the former greenhouses, rose garden, kitchen garden and hen house (now the Parks and Open Space maintenance area) have shifted and are cracking. The walls and access gate are in need of complete replacement. Current estimates for all of this work total $2.2 million.

Beyond FY21, an estimated $3.5 million will be needed for additional work

50. PARKS AND PLAYGROUNDS REHABILITATION & UPGRADE

Recommendation: $305,000 (Revenue Financed)

This annual, town-wide program directs CIP funds to the repair and replacement of unsafe and deteriorating playground, fence, and field facilities or components. Items funded under this program include fences, backstops, retaining walls, picnic furniture, turf restoration, bench replacements, play structures, safety surfacing, and drainage improvements. Although needs shift from year to year, in general, the allocations are as follows:

- $100,000–$125,000: Field Renovation/Repair–Laser Grading and Cutting out Infields, Soil Classification and Amendments, Special Aeration/Overseeding Field Treatments, Irrigation upgrades, Synthetic Turf Infill replenishment and repair.

- $70,000–$100,000: Playground Repair & Replacement—replacement of panels, slides, play components, safety surfacing, access, swings, ADA accommodations, etc.

- $30,000 +: Park Furniture, Trash Receptacles, Signage, Drainage, Walls, Recycling, Bike Racks, Pavement/Concrete repair, etc.

- $95,000–$115,000: Fence Repair & Replacement—Rails, poles, fabric, fixtures, backstops and gates.

51. TOWN/SCHOOL GROUNDS REHABILITATION

Recommendation: $155,000 (Revenue Financed)

Town and School grounds require on-going improvements and repair. CIP funds are used to support a range of undertakings on Town or School grounds, including the installation of plantings, regrading, reseeding, tree work, construction of new retaining walls or concrete or asphalt walkways, purchase of trash receptacles and bike racks, drainage improvements, retaining walls, and repairs to such exterior features as stairs, treads, railings, and benches. These funds are not used for the replacement of areas over building structures or directly connected to buildings, such as entrance stairways or ramps, which are under the Building Department's jurisdiction.

52. TREE REMOVAL AND REPLACEMENT / URBAN FORESTRY MANAGEMENT

Recommendation: $230,000 (Revenue Financed)

The tree removal and replacement program represents the Town's effort to balance street tree removals with plantings. It is critical to remove trees that have matured or have been impacted by storm damage or disease before they become public safety hazards. New tree plantings are also critical since they directly impact the tree-lined character of the community, improve storm water quality, provide oxygen, and reduce heat impact in the summer. Both the planting and watering of new trees have been brought in-house, resulting in cost savings and more quality control.

There are other uses for the funds within this CIP allocation, including the removal of trees identified as safety hazards or concerns in the Town’s four conservation areas and in its parks as well as structural and safety pruning of trees in the parks. In addition, funds may be used for new trees, planted in anticipation of the ultimate loss of existing mature trees.

This line item also includes funding for Urban Forestry Management in the Town’s parks and open spaces. Storm damage, disease, and old age continue to reduce tree canopies. The funds

are utilized to address such needs as tree removal, crown thinning, soil amendments, woodland canopy gap management, removal of invasive species, pest management, health and structural pruning, and planting. Such measures have been developed with the goals of supporting resistance to disease and pests and countering the rapid decline of trees left unmanaged in an urban environment.

Work in this regard continues to be undertaken in collaboration with the Olmsted Tree Society of the Emerald Necklace Conservancy. A significant number of tree removals in Olmsted Park and the Riverway are expected this year, in part due to recent storms or accelerated deterioration resulting from various stressors.

53. AQUATICS CENTER – NEW FILTRATION SYSTEM

Recommendation: $225,000 (Revenue Financed)

The filtration system for the Kirrane Aquatics Center's lap and lesson pools, which hold 127,000 and 24,000 gallons of water, respectively, and diving well, which holds 110,000 gallons of water, is over 30 years old and needs to be replaced. The current system, which includes sand filters to trap particles, is failing and has deteriorated to the point that sand is entering the pools. Because of its age, the system has become increasingly difficult to repair.

Based on quotes, $225,000 is being requested to install a new filtration system, which will be more energy efficient and will filter water faster. If funds are approved, the pools will need to be closed for approximately two weeks for installation, possibly sometime in the late summer.

54. SCHOOL FURNITURE UPGRADES

Recommendation: $ 100,000 (Revenue Financed)

This is an annual appropriation that serves to upgrade the furniture in all schools by replacing the most outdated and worn items. This year, school principals have been invited to identify and take those pieces of furniture from Upper and Lower Devotion that they can use in their own buildings.

55. HVAC EQUIPMENT

Recommendation: $150,000 (Revenue Financed)

The replacement and/or upgrading of HVAC equipment or equipment parts currently do not take place on a predictable schedule. Instead, such work occurs when an air conditioning or heating system fails, usually due to overload of the former during the summer months and demands on the latter during cold weather. The cost to address the problem is borne by the Operations and Maintenance budget of the Building Department. The purpose of the HVAC Equipment program is to enable the Public Facilities Division of the Building Department to

act in a proactive, rather than a reactive, way and to replace the larger and more expensive parts of boilers, burners, air conditioners, including compressors, and other HVAC equipment before an emergency situation arises.

There are currently 199 permanent air conditioning systems in both Town and School buildings. Their sizes range from two to 100+ tons and their ages range from one to 43 years; 112 units are 10 years or older. Typically, air conditioning compressors last between five and 10 years; replacement costs can range from $3,500 to $150,000, depending on the size of the system. Given the increase in installations of AC equipment over the years, the Operations and Maintenance budget can no longer absorb this potential level of expense.

In terms of heating, a cast iron boiler will last at least 50 and in some cases, 100 years. However, the town no longer installs cast iron boilers, opting instead for efficient condensing boilers, which have a life span of 20-25 years.

Current plans call for replacing compressors and upgrading equipment, starting with the oldest equipment and working in the off-season. FY 19 CIP funds would be directed to replacing older air conditioning equipment as follows:

Heath School - old computer room (now Maker Space)
New Lincoln - computer room no. 1
New Lincoln - computer room no. 2
New Lincoln - auditorium
New Lincoln - library
New Lincoln - Main Office, 3 units
Pierce - Main Office, Teachers Room
Pierce - old computer room
Pierce – Sperber Educational Center
Lynch - 6 classrooms

56. CLASSROOM CLIMATE CONTROL

Recommendation: $225,000 (Revenue Financed)

Beginning in FY17, requests from school parents, staff, and PTOs have been made to address the excessive temperatures in a variety of spaces in various school buildings. Some requests have been accompanied with a documented medical need, which must be accommodated, and others stem from the necessity of maintaining an environment that is conducive to teaching and learning.

The buildings are designed and built to hold heat in and to introduce outside air in compliance with the building code. In some situations, including rooms in the warmer months receiving direct sunlight or rooms on the upper floor of a building trapping rising heat, opening windows for fresh air is insufficient.

For FY19, funds have been requested to address climate control on the third floor of both the New Lincoln and Lawrence Schools and in the back (Reservoir Road) of the Heath School.

Current plans call for installing equipment to remove moisture from the air and to improve air circulation in these spaces. Although the rooms may still be warm when the outside temperature is 90 degrees, the air will be drier. The School Capital Subcommittee is in agreement with this approach.

The installation of the equipment is expected to increase utility costs by $19,000.

57. TOWN/SCHOOL BUILDING - ADA RENOVATIONS

Recommendation: $75,000 (Revenue Financed)

Support for this annual program of improvements is requested to bring Town and School buildings into compliance with the Americans with Disabilities Act (ADA), which requires that the Town make public buildings accessible to all.

Last year, approximately 75% of ADA funds were spent in school buildings and used to adjust door thresholds, install door openers, and remodel bathrooms.
In FY19, funds will be directed to improve ADA access in buildings used by the Recreation Department and in the libraries, and for partial ADA modifications in the bathrooms of the Pierce Café.

58. TOWN/SCHOOL BUILDING - ELEVATOR RENOVATIONS

Recommendation: $300,000 (Revenue Financed)

When a building is renovated, most elevators are upgraded (new controls, motors, cables, refurbishment of the car, etc.). Other elevators are partially upgraded to meet the requirements of the existing building code. The buildings that have not been renovated have elevators that are close to 40 years old. Maintenance is an issue and parts are increasingly difficult to find. This project would upgrade those cars and lifts with new equipment.

The New Lincoln School’s elevator was modernized with FY17 funding. In FY 18, funds have been used for work on the elevators in the Unified Arts Building at the High School and at the Lynch Center. In FY 19, funds will be directed to the elevators at the Heath School and the Sperber Education Center at Pierce.

59. TOWN/SCHOOL BUILDING - ENERGY CONSERVATION

Recommendation: $180,000 (Revenue Financed)

Efforts to decrease energy consumption in Town and School buildings include, but are not limited to, lighting retrofit and controls, energy efficient motors, insulation, and heating and cooling equipment. In addition, water conservation efforts are explored. The Town/School Energy Conservation Program augments existing gas and electric utility conservation programs. A continued area of focus is building commissioning. Many years ago, a building's

HVAC system was set up by multiple contractors and then signed off by the design engineer. Sometimes there would be control issues, leading to complaints or high energy use. The Building Department, for all new projects, hires a Commissioning Agent. Recommissioning of certain buildings is suggested in order to confirm that the equipment was designed, installed and set up properly.

In FY18, energy conservation funds were spent at the Municipal Services Center for new LED lights, at the Pierce School for TEC (Thermo-Electric Coolers) controllers, kitchen hood exhaust controllers for the High School, Baker, Driscoll, and Lawrence Schools, and for the installation of a jockey boiler for domestic hot water at the Kirrane Aquatics Center.

In FY19 $180,000 would fund LED lights at all fire stations, the Public Safety Building, and the New Lincoln School and the installations of destratification fans in school gyms and auditoriums, which are designed to reduce hot and cold spots in large spaces through the mixing of air, resulting in reduced energy costs.

60. TOWN/SCHOOL BUILDING - ENERGY MANAGEMENT SYSTEM

Recommendation: $125,000 (Revenue Financed)

This program upgrades the energy management systems in Town and School buildings. A few of the larger buildings have older (30 year) energy management systems that have exceeded their life expectancy and for which replacement parts are no longer available. Plans call for these systems to be replaced and upgraded with new web-based systems integrated into the Town's existing computer network. Other systems would be upgraded with newer software or firmware. The Building Department will continue to work with the Information Technology Department on these projects.

In FY18 funds were used on a management system upgrade at Fire Station 6, server upgrades and software changes at the High School and upgrades to field panels at the Pierce School as well as Cradlepoint installations.

FY19 funds would be used to replace and upgrade field controllers at the Lawrence School, to upgrade the Johnson Energy Management System, and to replace the batteries in all the Johnson main panels to address potential power outages and to provide a constant flow of power in the system.

61. PUBLIC BUILDING FIRE ALARM UPGRADES

Recommendation: $250,000 (Revenue Financed)

During the past year the Town engaged Garcia, Galuska & Desousa to conduct a study to assess the existing fire alarm and fire protection systems in Town and School buildings. An estimated total of $1,650,000, spread out over six years, will allow the Building Department to address the recommendations in the study to properly maintain and upgrade these systems.

In FY19 funds will be spent on replacing the panels and wiring at the Old Lincoln School, the Coolidge Corner Library, and the Main Library. With any remaining funds, work will take place on the fire alarm systems in the Public Safety Building, Putterham Library, and Driscoll and Pierce Schools.

62. TOWN/SCHOOL BUILDING - SECURITY/LIFE SAFETY SYSTEMS

Recommendation: $130,000 (Revenue Financed)

Over the last number of years, several large capital projects have been undertaken that included security improvements in Town and School buildings. This program will extend the effort and improve areas where security may be lacking. These funds would also be used to continue the on-going process of replacement and installation of new and upgraded burglar alarms, sprinkler systems, emergency lighting, and egress signs.

In FY 18, these funds were used for the above-mentioned Fire Alarm study, installing override switches for lockdowns at the schools, connecting the burglar alarm to keycard systems at Town Hall and the Health Center, purchasing hand-held radios for the schools, and installing a freezer alarm in the Baker School kitchen.

FY 19 funds are intended to be directed towards a number of different projects, including installing cameras at the Senior Center, upgrading the cameras at Town Hall from analog to digital, modifying the sprinkler systems for the Pierce and Town Hall garages, and increasing school security measures via new hardware for doors.

63. TOWN/SCHOOL TRASH COMPACTOR REPLACEMENTS

Recommendation: $100,000 (Revenue Financed)

Trash compactors will be replaced at the High School and the Lynch Center, and the Baker, Lawrence, Driscoll, Heath, New Lincoln, and Pierce Schools.

64. SCHOOL REHABILITATION/UPGRADES

Recommendation: $230,000 (Revenue Financed)

This is an on-going, school-wide program for the repair and upgrade of school facilities in between major renovation projects. Items funded under this program include large- scale painting programs, new flooring, ceilings, window treatments and toilet upgrades.

Given the amount of funding needed for such work (a 2017 backlog of almost $15,756,644), a decision was made in 2017 to establish a “mini CIP” program to relieve pressure on the operating budget of the School Department.

In FY 18, $100,000 was spent at a number of different schools, including Baker, Pierce, Old Lincoln, Driscoll and Lawrence. Painting took place at Baldwin, Heath, Lawrence, New Lincoln, and the High School.

In FY 19, out of $3.5 million in requests from the Superintendent of Schools, $230,000 is now sought. A significant portion of the funds would be spent on painting, shades, and flooring at the Heath School and the Lynch Center. The remaining funds would be spent at Baker (gym pads, painting, new flooring in the hallways and on the stairs); Driscoll (gym pads); Lawrence (removal of old wallpaper and painting); New Lincoln (new window screens, removal of wallpaper, painting, gym pads, new flooring); and Pierce (new sink in the Art Room, and carpeting in various areas).

65. 9TH SCHOOL – SCHEMATIC DESIGN

Recommendation: $1,500,000 ($1,000,000 Revenue Financed, $500,000 reappropriated), provided that the money not be released for expenditure without an affirmative vote of a future Town Meeting, thereby providing Town Meeting with the opportunity to restrict, condition or re-appropriate such funds.

In accordance with last fall's Special Town Meeting Warrant Article 1 (STM-1) and supported with $300,000 in CIP funds, HMFH architects and School Department staff, led by Dr. Joseph Connolly, began feasibility and site evaluations for the Baldwin School site, the campus of Pine Manor College, Baker School, Pierce School and other potential locations. They will complete their investigation and evaluation of a total of 12 sites in mid-May. Options under consideration include three different configurations (new construction and renovation) at both the Baker and Pierce Schools, expansions at the Driscoll and Heath Schools, and new construction on sites at Putterham Woods, Pine Manor College, and the Baldwin School (Baldwin North and Baldwin Plan D). Please see https://www.brookline.k12.ma.us/cms/lib/MA01907509/Centricity/Domain/722/3.22.18_School_Committee_Update.pdf for additional information.

The matrix being used for evaluation and comparative study includes the potential of each site to address the Educational Plan for a 9th School; Traffic, Parking and Pedestrian Conditions; and other considerations such as student safety on school grounds and ability to satisfy projected school capacity needs. Other components of the evaluation pertain to the physical characteristics of the site, construction scheduling, risk, and cost factors.

The current schedule for completion of this phase of feasibility calls for a May 17th presentation of findings to the Select Board, School Committee, and members of the Advisory Committee's 9th School Ad Hoc Subcommittee. After at least one public hearing, a vote by the School Committee and Select Board, with the advice of the Ad Hoc Subcommittee, on a preferred site or sites will take place during the week of June 18th.

Once a site or sites are chosen, again in accordance with STM-1, the remaining feasibility study money ($400,000 or, in the case of a multi-site solution, $700,000) will be utilized during the summer months to complete feasibility. It is anticipated that Schematic Design funding will not be needed until late summer at the earliest.

66. CLASSROOM CAPACITY

Recommendation: $1,165,000 (Revenue Financed)

FY19 funds for Classroom Capacity would cover the cost of the leases for pre-school classrooms and auxiliary spaces at Temple Ohabei Shalom and Temple Emeth; the Pierce School Annex at 62 Harvard Street; School Department offices (Brookline Early Education Program, Office of Student Affairs, METCO, ELL, Operations (Custodians, Transportation, & Food Service), Brookline Adult and Community Education, Office of Strategy and Performance, and Steps to Success Inc.) at 24 Webster Place; and two modular classrooms at the Baker School.

67. WASTEWATER SYSTEM IMPROVEMENTS

Recommendation: $3,000,000 (Utility bond)

Improvements to the Wastewater System is an ongoing project, which provides funding from the Water and Sewer Enterprise Fund for the rehabilitation of the wastewater collection system (sanitary sewer). Rehabilitation was based on the recommendations of the Wastewater Master Plan completed in 1999. Previous construction projects to correct sewer system deficiencies targeted: 1) structural improvements, 2) sewer and storm drain separation and 3) hydraulic capacity restoration.

Moving forward the primary focus will be on the removal of inflow and infiltration sources with the overall goals of eliminating sewerage backups into homes and businesses and lowering MWRA wholesale costs by reducing extraneous flows. Funding for this project should ultimately enhance the efficiency of the wastewater collection system and help to lower MWRA wholesale costs.

For FY 19 there is a $3,000,000 request, with funds coming from a $3,000,000 Water & Sewer Enterprise Fund Bond.

68. HARRY DOWNES FIELD AND PLAYGROUND/KRAFT FAMILY ATHLETIC CENTER REHABILITATION & SYNTHETIC TURF REPLACEMENT

Recommendation: $2,450,000 (Bond)

The renovation of the playground and replacement of the synthetic turf athletic field, once separate line items in the CIP and scheduled for different years due to the lack of available funds, have now been combined into one project to be financed through bonding instead of tax revenue.

Harry Downes playground was last renovated in 1993. Its play equipment, picnic area, access and egress points, pathways, park furniture, safety lighting and athletic fields are all in need

of complete renovation. At the request of the community, plans for the renovated facility include a water play/spray amenity for the hot summer months and exercise equipment that can be used by older residents. As is now the standard for all playground renovations, there will be an ADA-accessible fountain and bottle refill station.

Also included in the plans is a fully rehabbed comfort station, which will be ADA-compliant and will see new fixtures, doors, flooring, sinks, and ventilation. Reorganization of the existing storage space is expected to create greater storage capacity and possibly a family restroom.

The current athletic fields are used for lacrosse, soccer, rugby, softball and football games as well as track and field practice and meets. Plans call for the existing natural grass field to be renovated and the synthetic turf surface to be replaced. Both the synthetic turf field and the track were installed in 2006. The former came with a warranty of eight years and an anticipated life cycle of 10–12 years. Intensive use, as evidenced by several tears requiring repair, worn out turf fibers, and a drainage layer in need of replacement, has accelerated the need for its replacement. The track is in need of a new rubberized surface and new lines.

The replacement of the synthetic field cover involves the removal of the existing synthetic turf and infill, laser-grading the sub base, replacing the synthetic turf and safety pad and installing new infill.

With the additional elements, including replacement of the synthetic turf and renovation of the track as well as design services for the former, the total protect cost has grown from $910,000 (tax revenue) to $2,450,000 (bonded). The newly requested funds would cover the cost of all materials, equipment, and construction and the design costs of the synthetic turf and renovated comfort station and storage area. The project is scheduled to go out to bid in December 2018.

69. LARZ ANDERSON PARK

Recommendation: $2,700,000 (Bond)

Please see description under Special Appropriation 49.

This project is financed by a combination of tax revenues and bonds issued by the Town. It thus is listed as two separate Special Appropriations, but the same explanation applies to each.

70. DRISCOLL SCHOOL REHABILITATION

Recommendation: $4,000,000 (Bond)

The Driscoll School’s current steam heating system dates back to 1910 in the main section of the school and to 1928 and 1953 in its later additions. Recognizing the age, increasing unreliability, and inefficiency of the system, as well as the difficulty in finding replacement

parts, the Building Department requested FY 18 CIP funds to develop plans and specifications for a new HVAC system.

Although initially intending to retain the existing boilers and convert them to forced hot water and to replace ductwork, piping and controls over a two-year period, Building Department staff had second thoughts about the scope of the project and its schedule.

As a result, **Garcia, Galuska, DeSousa Consulting Engineers** (the engineers for the new Devotion School) was hired to research and recommend alternative HVAC systems. A decision was eventually made to use a variable refrigerant flow heat pump system.

Like minisplits, a variable refrigerant flow system uses refrigerant conditioned by a condensing unit as the cooling and heating medium. It is able to achieve high efficiencies by modulating the flow of refrigerant according to the exact demands of individual spaces. In addition to its precise control of temperatures, the system has a relatively short installation period, (in the case of Driscoll, one summer and then nights during part of September) and because small, flexible copper lines instead of large steel pipes are used in the system, the amount of cutting and drilling through floors and walls is reduced. This system also allows for the expansion of the school at a future date.

71. HIGH SCHOOL EXPANSION

Recommendation: $189,200,000 ($186,800,000 (bond) and $2,400,000 (transfer from bond premium account)), provided that no money related to the construction of Cypress Field can be encumbered or expended without a vote of Town Meeting relevant to the material for the field.

Background

High School enrollment has increased from 1,700 students seven years ago to 2,050 during the current academic year. Enrollment is expected to increase to 2,700 students by 2023.

Since 2011, there have been three studies, consideration of 15 options, and two visioning sessions to further examine expansion issues. The visioning sessions included the participation of District administrators, BHS administrators, teachers, students, and parents, School Committee members, Selectmen, and members of the Planning Board, Building Commission, and the business community. Their charge included beginning a process of analyzing the pedagogical and administrative implications of optimally serving up to 2,600-2,800 high school students in Brookline. The working group produced an updated Brookline High School Education Plan that was used during the feasibility stage of the project.

In March 2016, the School Committee, the Board of Selectmen, and the Advisory Committee all voted unanimously to proceed with the process of planning the renovation and expansion without submitting a Statement of Interest to the Massachusetts School Building Authority in order to allow for more flexibility in the design processes and the timelines for the projects. In FY17, $500,000 of the School Studies appropriation was directed to undertaking the feasibility phase for both the High School expansion and a 9th K-8 school.

HMFH was selected to undertake the Feasibility Study for the High School. In conducting the study, HMFH worked with the BHS School Building Committee, the School Committee, the Building Department, and numerous town commissions and departments including Parks and Open Space, the Building Commission, the Recreation Department, and the Transportation Board to evaluate the various options for expansion on the current site and other sites abutting the high school complex.

The Feasibility Study was scheduled to be completed in April, and although a preferred option that included constructing an academic building on the site of 111 Cypress Street and constructing a STEM wing at the main building was identified by mid-April, other components of the Feasibility Study, such as a parking study, further assessment of environmental issues, additional traffic analysis and additional survey work, had not been fully addressed by that date. Therefore, the November 2017 Town Meeting approved $1.85 million to support Feasibility Two/Schematic Design. Subsequent to that vote, William Rawn Associates was selected to undertake this phase of the project. The November 2017 Town Meeting also voted to authorize the Select Board to proceed with the taking of 111 Cypress Street at a cost not to exceed $16.4 million ($15.9 million for the property itself and $.5 million for ancillary costs), for the public purpose of expanding the capacity of the High School.

Current Plans

A new 4-story building at 111 Cypress Street will be programmed primarily for 9th grade students but with some classrooms for upper grade courses. In addition to classrooms, the building will contain a cafeteria, integrated breakout spaces, and a “white box.”

Further, a 3-story STEM wing will be constructed on the site of the current Roberts Wing. Plans for the new STEM wing call not only for science labs and classrooms but also for a “Culinary Arts Café” (space that can also be used for classes, community meetings, and adult education programs), culinary kitchen, culinary arts classrooms, and Makerspace.

Additional components of the expansion project are 1) major renovations to the third floor over the Schluntz Gym wing, encompassing the conversion of the current science rooms to BRYT, A.C.E. and ExCel classrooms as well as offices and learning centers; 2) renovations to the Tappan Street gym, with a fitness center, spinning room, dance studios, training room and possible community wellness center; and 3) renovation of the Thomas P. Hennessey Fields at Cypress Street Playground (referred to in this Item 71 as Cypress Field). (For more information about the renovation of the field, please see Item 48.)

Cost

At this time, the total project cost of $205.6 million is broken down as follows:
$137.6 million for hard costs (including new building, new STEM wing, 3rd floor renovation, deferred maintenance, Tappan Street gym renovations, and contingency);
$23.6 million for soft costs (professional fees, utility fees, moving costs, testing agents and contingency);
$5.5 million for furniture, fixtures, equipment and technology;

$23.5 million for real estate costs (Cypress Street acquisition and tenant relocation, and MBTA Air Rights);
$9.6 million for other costs (campus landscaping and sidewalks, swing space at Old Lincoln School, and real estate contingencies; and
$5.8 million for Cypress Field (to be combined with Parks and Open Space CIP funds of **$240K** for a total **$6.04 million**)

During the design process, several elements were added to the project's scope, including a community room on the first floor of the gym/pool complex, landscaping for Tappan Street, and student safety measures. Boiler replacement was added to the deferred maintenance portion of the project.

It should be noted that in May 2017, when the High School Building Committee selected HMFH's "Option 4D," the preliminary cost estimate for this design was $136,612,807, exclusive of the acquisition cost of 111 Cypress Street, improvements to the Tappan Street Gym or improvements to Cypress Field. Preliminary massing of Option 4D included a new building on Cypress Street, a new Science, Technology, Engineering, and Mathematics (STEM) building on the corner of Tappan and Greenough Streets, and additional renovations and improvements to the main BHS building. Option 4D was the basis for Town Meeting's vote in November 2017 to proceed to "Feasibility 2"/ Schematic Design.

Other Issues

1) Environmental/Traffic

Work performed in the "Feasibility 2" stage of the project included the examination of parking and traffic issues as well as further assessment of environmental issues and additional survey work. Building Department staff member Ray Masak reported that geotechnical examination of the 111 Cypress Street site had produced predictable results, including the presence of urban ash and ledge. There were no issues of major concern. The traffic study for the expanded High School has not been finalized. Override funds to support two buses from South Brookline could help to alleviate drop-off and pick-up traffic, depending on how many students opt for bus transportation.

2) Parking

Parking has been an ongoing topic of conversation between the School Department and Transportation Board. As a result of the school's expansion, the number of staff members is expected to increase from the current 364 to an estimated 404-454. Structured or underground parking had initially been considered for 111 Cypress Street but the high cost of providing space for cars (an estimated $6.8 million-$8.5 million for one level of underground parking to accommodate 34 cars) led the School Department to seek an increased number of on-street parking permits. The preliminary request for additional permits is between 11 and 30. (As a result of the planned construction, there will be a net loss of five spaces on campus; two handicap parking spaces will be provided for 111 Cypress Street.)

The Transportation Board has recommended that the School Department develop a comprehensive solution to the parking demand that will result from the expansion project,

including the implementation of a Transportation Demand Management Program (TDM). It has been estimated that TDM incentives could lead to a 10% decrease in permit requests.

3) MBTA Air Rights

One of the more challenging aspects of the High School's expansion is acquiring the right to build over the MBTA tracks as a way to bring the building at 111 Cypress Street on to the campus. Hill International, project manager, has been charged with working with the MBTA, including its Real Estate, Operations, and four other internal departments, to this end. In February 2018, the Operations group gave preliminary approval for building across the tracks. A Memorandum of Agreement with the T is expected to be in place by the time Town Meeting convenes, but the ultimate cost of the agreement is currently unknown. The preliminary schematic phase budget calls for $23.5 million for the acquisition of the Cypress Street property and acquisition of MBTA air rights. Real estate "contingencies" are part of the $9.6 million "Other Costs" budget in the event the cost of air rights acquisition and requirements of the T exceed current estimates.

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ADVISORY COMMITTEE'S FISCAL YEAR 2019 BUDGET RECOMMENDATION

By a vote of 23–0–1 on the non-override Base budget (Vote A) and a vote of 9–4–11 on the override budget (Vote B), and unanimous support for all Special Appropriations (items numbered 35–71 in Table 1), the Advisory Committee submits the FY2019 Town Budget with a recommendation of FAVORABLE ACTION on the following motion:

VOTED: To approve "Base FY19 Vote A" as set forth in the attached Tables 1 and 2, should Question 1 on the Ballot for the May 8, 2018 Annual Town Election fail to pass, or "Override FY19 Vote B" as set forth in the attached Tables 1 and 2 should Question 1 on the Ballot for such Election pass; to appropriate the amounts set forth for such fiscal year in the departments and expenditure object classifications within departments, as set forth in Tables 1 and 2, subject to the following conditions; to raise all sums so appropriated, unless other funding is provided herein; and to establish the following authorizations:

1.) TRANSFERS AMONG APPROPRIATIONS: Transfers between the total departmental appropriations separately set forth in Tables 1 and 2 shall be permitted by vote of Town Meeting or as otherwise provided by Massachusetts General Laws Chapter 44, Section 33B(b). Within each separate departmental appropriation, expenditures shall be restricted to the expenditure object classifications set forth in the recommendation of the Advisory Committee, and voted by the Town Meeting, for each department, subject to the following exceptions:

A) Expenditures within the appropriation for the School Department shall not be restricted.

B) The following transfers within the appropriations for each department (other than the School Department and the Library Department), shall be permitted only with the prior written approval of the Select Board and Advisory Committee:

i) Transfers from the appropriation for the capital outlay object classification to any other object classification.

ii) Transfers to the appropriation for the personal services object classification from any other object classification.

iii) Any transfer which has the effect of increasing the number of positions or the compensation for any position, exclusive of adjustments in wages and benefits voted separately by Town Meeting.

v) Transfers within the Department of Public Works from the Parks Division to any other purpose.

vi) Transfers within the Department of Public Works from the Snow and Ice budget to any other purpose.

C) Transfers within the Library Department appropriation shall be permitted with the approval of the Board of Library Trustees, and written notice of such approval shall be submitted promptly to the Advisory Committee, Town Administrator and Town Comptroller.

D) All other transfers within the total appropriation for a particular department shall be permitted with the written approval of the Town Administrator, subject to review and approval of the Select Board, and upon the condition that written notice of each such approval shall be submitted promptly to the Advisory Committee and Town Comptroller.

2.) <u>PROCUREMENT CONTRACTS AND LEASES</u>: The Chief Procurement Officer is authorized to lease, or lease with an option to purchase, any equipment or capital item funded within the FY2019 budget, and to solicit and award contracts for terms of not more than four years, provided that in each instance the longer term is determined to be in the best interest of the Town by a vote of the Select Board.

3.) <u>ALLOCATION OF SALARY ADJUSTMENTS</u>: Appropriations for salary and wage adjustments (Item #20) shall be transferred by the Town Comptroller to the various affected departments within (60) days from the beginning of the fiscal year, or in the absence of duly approved collective bargaining agreements, within (60) days of the approval of the collective bargaining agreements by Town Meeting. The Select Board shall determine the salaries, which may include merit adjustments, for employees not included in any collective bargaining agreement.

Should a balance remain after the Town Comptroller has made the transfers specified herein, said balance shall be transferred by the Town Comptroller to a budget line entitled Personnel Services Reserve (Item #19), which shall be used to fund costs incurred over the course of the fiscal year pursuant to employee contracts and/or established personnel policies. The Town Comptroller shall include an accounting of all transfers made from this reserve in the Annual Financial Report.

4.) STIPENDS / SALARIES OF ELECTED OFFICIALS: The stipends of members of the Select Board shall be at the rate of $4,500 per year for the Chair and at the rate of $3,500 per year for each of the other four members. The annual salary of the Town Clerk shall be at the rate of $110,136 effective July 1, 2018, plus any adjustment approved by vote of the Select Board. The Town Clerk shall pay all fees received by the Town Clerk by virtue of his office into the Town treasury for Town use.

5.) VACANT POSITIONS: No appropriation for salaries, wages, or other compensation shall be expended for any benefit-eligible position which has become vacant during the fiscal year unless the Select Board, at an official meeting, has determined that the filling of the vacancy is either essential to the proper operation of the Town or is required by law. This condition shall not apply to appropriations of the School Department.

6.) GOLF ENTERPRISE FUND: The following sums, totaling $1,772,700 shall be appropriated into the Golf Enterprise Fund, and may be expended under the direction of the Park and Recreation Commission, for the operation of the Golf Course:

Salaries	$636,150
Purchase of Services	$140,271
Supplies	$326,986
Other	$10,300
Utilities	$117,923
Capital	$168,169
Debt Service	$140,888
Reserve	$25,000
Total Appropriations	$1,565,687
Indirect Costs	$207,013
Total Costs	$1,772,700

Total costs of $1,772,700 to be funded from golf receipts with $207,013 to be reimbursed to the General Fund for indirect costs.

7.) WATER AND SEWER ENTERPRISE FUND: The following sums, totaling $30,225,250, shall be appropriated into the Water and Sewer Enterprise Fund, and may be expended under the direction of the Commissioner of Public Works for the Water and Sewer purposes as voted below:

	Water	Sewer	Total
Salaries	2,290,077	431,104	2,721,181
Purchase of Services	190,598	163,200	353,798
Supplies	102,020	21,000	123,020
Other	8,900	1,680	10,580
Utilities	101,865	0	101,865
Capital	671,800	389,000	1,060,800
Intergovernmental	7,682,197	14,013,723	21,695,920
Debt Service	285,413	1,259,297	1,544,710
Reserve	131,732	167,528	299,260
Total Appropriations	11,464,602	16,446,532	27,911,134
Indirect Costs	1,840,322	473,795	2,314,117
Total Costs	13,304,924	16,920,327	30,225,250

Total costs of $30,225,250 to be funded from water and sewer receipts with $2,314,117 to be reimbursed to the General Fund for indirect costs.

8.) REVOLVING FUNDS:

a.) The Park and Recreation Commission is authorized to maintain and operate, under the provisions of General Laws Chapter 44, Section 53E1/2 and Chapter 79 of the Acts of 2005, a revolving fund for special recreation programs and events. All receipts from said programs and events shall be credited to the fund. Annual expenditures from the fund shall not exceed $3,300,000.

b.) The Building Commissioner is authorized to maintain and operate, under the provisions of General Laws Chapter 44, Section 53E1/2 and Chapter 79 of the Acts of 2005, a revolving fund for the repair and maintenance of the Town's rental properties, including all those listed in the vote under Article 13 of the Warrant for the 1999 Annual Town Meeting. All receipts from said rental properties shall be credited to the fund. Annual expenditures from the fund shall not exceed $150,000.

c.) The Commissioner of Public Works is authorized to maintain and operate, under the provisions of General Laws Chapter 44, Section 53E1/2 and Chapter 79 of the Acts of 2005, a revolving fund for the construction and reconstruction, upkeep, maintenance, repair and improvement of sidewalks and walkways along public streets and ways over, across and through town owned property. Annual expenditures from the fund shall not exceed $100,000.

d.) The Director of Planning and Community Development is authorized to maintain and operate, under the provisions of General Laws Chapter 44, Section 53E1/2 and Chapter 79 of the Acts of 2005, a revolving fund for the Façade Improvement Loan Program. Annual expenditures from the fund shall not exceed $30,000.

9.) SCHOOLHOUSE MAINTENANCE AND REPAIR: The sum of $5,000,828 under budget vote A and $5,200,828 under budget vote B, included within the Building Department appropriation for school building maintenance, shall be expended for School Plant repair and maintenance and not for any other purpose. The listing of work to be accomplished shall be established by the School Department. The feasibility and prioritization of the work to be accomplished under the school plant repair and maintenance budget shall be determined by the Superintendent of Schools and the Building Commissioner, or their designees.

10.) SNOW AND ICE BUDGET: The sum of $681,929 under budget vote A and $731,929 under budget vote B, included within the Department of Public Works appropriation for snow and ice operations, shall be expended for snow and ice operations and not for any other purpose, unless transferred per the provisions of Section 1.B.vi of this Article 7.

11.) INTERFUND TRANSFERS: In order to fund the appropriations voted for the various departments itemized on Table 1, the Town Comptroller is authorized to make the following interfund transfers:

Cemetery Sales Special Revenue Fund [to the General Fund for the Department of Public Works]	$ 100,000
Recreation Revolving Fund [to the General Fund for benefits reimbursement]	$ 351,549

12.) BUDGETARY REPORTING: The Town Comptroller shall provide the Advisory Committee with a report on the budgetary condition of the Town as of September 30, December 31, March 31, and June 30, within 45 days of said dates. This financial report shall include a summary of the status of all annual and special appropriations voted in this article; a report on the status of all special appropriations voted in prior years which remain open at the reporting date; and a summary of the status of all revenues and inter-fund transfers which have been estimated to finance the appropriations voted under this article.

13.) SPECIAL APPROPRIATIONS: The appropriations set forth as items 35 through 71, inclusive, in Table 1 shall be specially appropriated for the following purposes. In addition, with the exception of Items #67 - 71, they shall be transferred from the General Fund to the Revenue-Financed Capital Fund.

Appropriate sums of money for the following special purposes:

35.) Raise and appropriate $50,000 to be expended under the direction of the Chief Procurement Officer for town furniture upgrades.

36.) Raise and appropriate $125,000, to be expended under the direction of the Building Commissioner, with any necessary contracts over $100,000 to be approved by the Select Board, for public safety building HVAC improvements.

37.) Raise and appropriate $50,000 to be expended under the direction of the Building Commissioner for the rehabilitation of Town buildings.

38.) Raise and appropriate $200,000 to be expended under the direction of the Building Commissioner and Planning and Community Development Director, with any necessary contracts over $100,000 to be approved by the Select Board, for a study to reorganize the zoning by-law with the condition that funds not be encumbered or expended before December 1st, 2018.

39.) Raise and appropriate $200,000, to be expended under the direction of the Police Chief, with any necessary contracts over $100,000 to be approved by the Select Board, for upgrades to the Computer Aided Dispatch (CAD) system.

40.) Raise and appropriate $385,000 to be expended under the direction of the Building Commission, with any necessary contracts over $100,000 to be approved by the Select Board, for making extraordinary repairs to Fire Stations.

41.) Raise and appropriate $150,000 to be expended under the direction of the Building Commission, with any necessary contracts over $100,000 to be approved by the Select Board, for bathroom renovations at the Putterham Library.

42.) Raise and appropriate $85,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Select Board, for traffic calming studies and improvements; provided that the Department of Public Works and Transportation Board provide status reports to the Select Board on a semi-annual basis.

43.) Raise and appropriate $176,775 to be expended under the direction of the Commissioner of Public Works, with any necessary contracts to be approved by the Select Board, for bicycle access improvements.

44.) Raise and appropriate $3,110,000 to be expended under the direction of the Commissioner of Public Works for the rehabilitation of streets, with any necessary contracts over $100,000 to be approved by the Select Board and that when such contract approval is necessary that there be prior notification to the Select Board and to the Capital Subcommittee of the Advisory Committee of any changes to pedestrian,

bicycle, or motor vehicle traffic patterns or pavement markings, and to meet the appropriation transfer $1,400,000 from the Parking Meter Fund.

45.) Raise and appropriate $320,000 to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the rehabilitation of sidewalks.

46.) Appropriate $265,000 to be expended under the direction of the Commissioner of Public Works, with any contracts over $100,000 to be approved by the Select Board, for water meter transmission unit (MTU) replacements, and to meet the appropriation transfer $265,000 from retained earnings of the Water and Sewer Fund.

47.) Appropriate $150,000 to be expended under the direction of the Commissioner of Public Works, with any contracts over $100,000 to be approved by the Select Board, for improvements to the Netherland's Road facility, and to meet the appropriation transfer $150,000 from retained earnings of the Water and Sewer Fund.

48.) Raise and appropriate $240,000 to be expended under the direction of the Commissioner of Public Works, with any contracts over $100,000 to be approved by the Select Board, for the design of the renovation of Cypress Playground.

49.) Raise and appropriate $425,000 to be expended under the direction of the Commissioner of Public Works, with any contracts over $100,000 to be approved by the Select Board, for improvements at Larz Anderson Park.

50.) Raise and appropriate $305,000 to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the renovation of playground equipment, fields, and fencing.

51.) Raise and appropriate $155,000 to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the rehabilitation of Town and School grounds.

52.) Raise and appropriate $230,000 to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board and the Tree Planting Committee, for the removal and replacement of trees.

53.) Raise and appropriate $225,000 to be expended under the direction of the Director of Recreation, with any necessary contracts over $100,000 to be approved by the Select Board, for the replacement of the Aquatics Center pool filter.

54.) Raise and appropriate $100,000 to be expended under the direction of the Chief Procurement Officer for school furniture upgrades.

55.) Raise and appropriate $150,000 to be expended under the direction of the Building Commissioner, with any necessary contracts over $100,000 to be approved by the Select Board for HVAC equipment in Town and School.

56.) Raise and appropriate $225,000 to be expended under the direction of the Building Commissioner, with any necessary contracts over $100,000 to be approved by the Select Board for climate control projects in School facilities.

57.) Raise and appropriate $75,000 to be expended under the direction of the Building Commissioner for ADA renovations to Town and School facilities.

58.) Raise and appropriate $300,000 to be expended under the direction of the Building Commission, with any necessary contracts over $100,000 to be approved by the Select Board and, with respect to School Buildings, by the School Committee, for improvements to elevators in Town and School facilities.

59.) Raise and appropriate $180,000 to be expended under the direction of the Building Commissioner, with any necessary contracts over $100,000 to be approved by the Select Board and, with respect to School Buildings, by the School Committee for energy conservation projects in Town and School facilities.

60.) Raise and appropriate $125,000 to be expended under the direction of the Building Commissioner, with any necessary contracts over $100,000 to be approved by the Select Board, for upgrades to energy management systems in Town and School facilities.

61.) Raise and appropriate $250,000 to be expended under the direction of the Building Commissioner, with any necessary contracts over $100,000 to be approved by the Select Board, for improvements to the fire alarm system in Town and School facilities.

62.) Raise and appropriate $130,000 to be expended under the direction of the Building Commissioner, with any necessary contracts over $100,000 to be approved by the Board of Selectmen and, with respect to School Buildings, by the School Committee,

for improvements to life safety systems and building security in Town and School facilities.

63.) Raise and appropriate $100,000 to be expended under the direction of the Building Commissioner for trash compactor replacements in Town and School facilities.

64.) Raise and appropriate $230,000 to be expended under the direction of the Building Commissioner, with any necessary contracts to be approved by the Board of Selectmen and the School Committee, for minor renovations / upgrades to school buildings.

65.) Raise and appropriate $1,500,000 to be expended under the direction of the Building Commissioner, with any necessary contracts to be approved by the Select Board and the School Committee, for the schematic design services to construct or expand a school as determined by the outcome of the 9th School feasibility study, and to meet the appropriation transfer $500,000 from the balance remaining in the appropriation voted under Section 13, Special Appropriation No. 66 of Article 9 of the 2017 Annual Town Meeting, provided that the money not be released for expenditure without an affirmative vote of a future Town Meeting, thereby providing Town Meeting with the opportunity to restrict, condition or re-appropriate such funds.

66.) Raise and appropriate $1,165,000 to be expended under the direction of the Building Commission, with any necessary contracts over $100,000 to be approved by the Board of Selectmen and the School Committee, for the expansion of classroom capacity in various schools.

67.) Appropriate $3,000,000, to be expended under the direction of the Commissioner of Public Works, with the approval of the Select Board, for wastewater system improvements, and to meet the appropriation, authorize the Treasurer, with the approval of the Select Board, to borrow $3,000,000 under General Laws, Chapter 44, Section 7(1), as amended, or pursuant to any other enabling authority; and authorize the Select Board to apply for, accept, receive and expend grants, aid, reimbursements, loans, and all other forms of funding and financial assistance from both state and federal sources and agencies for such purpose. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with Chapter 44, Section 20 of the General Laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

68.) Appropriate $2,450,000 to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for the renovation of Harry Downes Field & Playground/ and the Kraft Family Athletic Field Turf Replacement; and to meet the appropriation authorize the Treasurer,

with the approval of the Select Board, to borrow $2,450,000, under General Laws, Chapter 44, Section 7(1), as amended, or pursuant to any other enabling authority. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with Chapter 44, Section 20 of the General Laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

69.) Appropriate $2,700,000 to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over $100,000 to be approved by the Select Board, for renovation of Larz Anderson Park; and to meet the appropriation authorize the Treasurer, with the approval of the Select Board, to borrow $2,700,000, under General Laws, Chapter 44, Section 7(1), as amended, or pursuant to any other enabling authority. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with Chapter 44, Section 20 of the General Laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

70.) Appropriate $4,000,000, to be expended under the direction of the Building Commission, with any necessary contracts to be approved by the Select Board and, with respect to School Buildings, by the School Committee, for HVAC system improvements at the Driscoll School, and to meet the appropriation, authorize the Treasurer, with the approval of the Select Board, to borrow $4,000,000 under General Laws, Chapter 44, Section 7(1), as amended, or pursuant to any other enabling authority. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with Chapter 44, Section 20 of the General Laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

71.) Appropriate, $189,200,000, to be expended under the direction of the Building Commission, with any necessary contracts to be approved by the Select Board and the School Committee to renovate and expand Brookline High School, including the acquisition and reconstruction of the property located at 111 Cypress Street and renovations or repairs to Brookline High School, the Evelyn Kirrane Aquatic Center, the Unified Arts Building, the 66 Tappan Street Gym, and Cypress Field with the condition that no money related to the construction of Cypress Field can be encumbered or expended without a vote of Town Meeting relevant to the material for the field; and to meet the appropriation authorize the Treasurer, with approval of the Board of Selectmen, to borrow $186,800,000, under General Laws, Chapter 44, Section 7(1) and transfer $2,400,000 from the Town's bond premium account. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with Chapter 44, Section

20 of the General Laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

14.) **FREE CASH**: Appropriate and transfer $8,498,193 from free cash for the following purposes:

a.) Operating Budget Reserve Fund (MGL Chapter 40, Section 6) – $637,218;
b.) Liability/Catastrophe Fund (Chapter 66 of the Acts of 1998, as amended) – $456,762;
c.) Reduce the tax rate (Special Appropriations) – $5,959,101;
d.) Housing Trust Fund – $545,112;
e.) Retiree Healthcare Liability Trust Fund (Chapter 472 of the Acts of 1998, as amended) – $600,000;
f.) Contributory Retirement Pension Fund (MGL Chapter 32, Section 22) – $300,000.

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FY19 BUDGET - TABLE 1 May, 2018

		FY16 ACTUAL	FY17 ACTUAL	FY18 BUDGET	BASE FY19 Vote A	OVERRIDE AMOUNT	OVERRIDE FY19 Vote B	$$ CHANGE FROM FY18	% CHANGE FROM FY18
	REVENUES								
	Property Taxes	195,049,924	204,064,199	211,374,488	221,631,447	2,846,357	224,477,804	**13,103,316**	**6.2%**
	Local Receipts	29,377,154	28,627,979	29,456,650	29,703,587	75,000	29,778,587	**321,937**	**1.1%**
	State Aid	18,837,306	19,705,394	20,352,973	21,642,592		21,642,592	**1,289,619**	**6.3%**
	Free Cash	5,016,501	5,311,538	8,354,017	8,498,193		8,498,193	**144,177**	**1.7%**
	Other Available Funds	6,895,644	7,840,067	3,481,070	7,272,679		7,272,679	**3,791,609**	**108.9%**
	TOTAL REVENUE	**255,176,529**	**265,549,177**	**273,019,198**	**288,748,499**	**2,921,357**	**291,669,856**	**18,650,657**	**6.8%**
	EXPENDITURES								
	DEPARTMENTAL EXPENDITURES								
	1 . Selectmen	684,191	710,634	714,335	718,814		718,814	**4,479**	**0.6%**
	2 . Human Resources	728,432	734,670	665,591	673,873		673,873	**8,282**	**1.2%**
	3 . Information Technology	1,843,320	1,953,280	1,926,238	1,997,981		1,997,981	**71,742**	**3.7%**
	4 . Diversity, Inclusion, and Community Relations	202,210	231,634	246,639	248,778	20,000	268,778	**22,139**	**9.0%**
	5 . Finance Department	2,985,840	3,174,052	3,431,923	3,170,879	0	3,170,879	**(261,044)**	**-7.6%**
	a. Comptroller	*571,910*	*587,376*	*609,295*	*621,748*		*621,748*	***12,453***	***2.0%***
	b. Purchasing	*681,950*	*655,723*	*673,102*	*707,033*		*707,033*	***33,931***	***5.0%***
	c. Assessing	*685,044*	*687,608*	*701,556*	*705,165*		*705,165*	***3,609***	***0.5%***
	d. Treasurer	*1,046,936*	*1,243,344*	*1,447,970*	*1,136,933*		*1,136,933*	***(311,037)***	***-21.5%***
	6 . Legal Services	989,752	1,052,847	1,007,686	1,011,329		1,011,329	**3,643**	**0.4%**
	7 . Advisory Committee	13,704	21,196	26,232	27,341		27,341	**1,109**	**4.2%**
	8 . Town Clerk	613,440	761,507	559,913	788,467		788,467	**228,554**	**40.8%**
	9 . Planning and Community Development	874,057	975,267	998,191	1,035,781	104,766	1,140,547	**142,355**	**14.3%**
	10 . Police	16,732,901	16,478,636	16,871,331	16,730,555		16,730,555	**(140,777)**	**-0.8%**
	11 . Fire	12,961,446	15,007,729	15,256,175	15,377,759		15,377,759	**121,585**	**0.8%**
	12 . Building	7,321,190	7,554,334	7,751,557	7,994,340	300,000	8,294,340	**542,784**	**7.0%**
(1)	13 . Public Works	14,970,796	15,540,196	14,457,331	15,109,244	217,119	15,326,363	**869,032**	**6.0%**
	a. Administration	*908,138*	*881,248*	*906,455*	*902,453*		*902,453*	***(4,001)***	***-0.4%***
	b. Engineering/Transportation	*1,255,638*	*1,151,132*	*1,205,290*	*1,284,984*		*1,284,984*	***79,693***	***6.6%***
	c. Highway	*4,574,473*	*4,504,869*	*5,018,352*	*5,034,350*	*100,000*	*5,134,350*	***115,998***	***2.3%***
	d. Sanitation	*3,340,207*	*3,245,364*	*3,091,871*	*3,241,568*		*3,241,568*	***149,697***	***4.8%***
	e. Parks and Open Space	*3,701,159*	*3,599,580*	*3,862,818*	*3,963,960*	*67,119*	*4,031,079*	***168,261***	***4.4%***
	f. Snow and Ice	*1,191,182*	*2,158,002*	*487,261*	*681,929*	*50,000*	*731,929*	***244,668***	***50.2%***
	14 . Library	3,993,162	4,129,662	4,045,571	4,023,046	131,973	4,155,019	**109,448**	**2.7%**
	15 . Health and Human Services	1,193,045	1,201,816	1,200,237	1,228,332		1,228,332	**28,095**	**2.3%**
	16 . Veterans' Services	326,172	308,507	338,343	338,654		338,654	**311**	**0.1%**
	17 . Council on Aging	883,926	916,512	929,758	931,532	26,280	957,812	**28,054**	**3.0%**
	18 . Recreation	1,124,759	1,020,333	1,009,246	1,015,897	47,150	1,063,047	**53,801**	**5.3%**
(2)	19 . Personnel Services Reserve	715,000	715,000	715,000	715,000		715,000	**0**	**0.0%**
(2)	20 . Collective Bargaining - Town	1,596,442	1,148,529	784,317	2,045,639		2,045,639	**1,261,322**	**160.8%**
	Subtotal Town	*68,442,343*	*71,772,811*	*73,050,330*	***75,183,241***	***847,288***	***76,030,529***	***2,980,198***	***4.1%***
	21 . *Schools*	*95,916,094*	*101,118,780*	*104,758,343*	*108,812,105*	*2,019,574*	*110,831,679*	***6,073,336***	***5.8%***
	22. . *Vocational Euducation Assessments*	*0*	*0*	*92,895*	*92,895*		*92,895*	***0***	*-*
	Subtotal Education	*95,916,094*	*101,118,780*	*104,851,238*	*108,905,000*	*2,019,574*	*110,924,574*	***6,073,336***	***5.8%***
	TOTAL DEPARTMENTAL EXPENDITURES	**164,358,438**	**172,891,591**	**177,901,568**	**184,088,240**	**2,866,862**	**186,955,102**	**9,053,534**	
	NON-DEPARTMENTAL EXPENDITURES								
(1)	23 . Employee Benefits	54,064,860	54,682,308	60,454,518	62,970,572	54,495	63,025,067	**2,570,549**	**4.3%**
(3)	*a. Pensions*	*18,707,021*	*19,720,540*	*21,499,185*	*23,174,765*		*23,174,765*	***1,675,580***	***7.8%***
	b. Group Health	*27,484,720*	*26,821,422*	*30,173,026*	*30,670,792*	*54,495*	*30,725,287*	***552,261***	***1.8%***
	c. Health Reimbursement Account (HRA)	*70,000*	*0*	*0*	*0*		*0*	***0***	
(3)	*d. Retiree Group Health Trust Fund (OPEB's)*	*3,499,119*	*3,774,838*	*4,480,080*	*4,570,465*		*4,570,465*	***90,385***	***2.0%***
	e. Employee Assistance Program (EAP)	*28,000*	*24,900*	*28,000*	*28,000*		*28,000*	***0***	***0.0%***
	f. Group Life	*145,000*	*131,381*	*145,000*	*145,000*		*145,000*	***0***	***0.0%***
	g. Disability Insurance	*16,000*	*11,076*	*16,000*	*46,000*		*46,000*	***30,000***	***187.5%***
(3)	*h. Worker's Compensation*	*1,550,000*	*1,450,000*	*1,450,000*	*1,450,000*		*1,450,000*	***0***	***0.0%***
(3)	*i. Public Safety IOD Medical Expenses*	*250,000*	*250,000*	*200,000*	*200,000*		*200,000*	***0***	***0.0%***

		FY16 ACTUAL	FY17 ACTUAL	FY18 BUDGET	BASE FY19 Vote A	OVERRIDE AMOUNT	OVERRIDE FY19 Vote B	$$ CHANGE FROM FY18	% CHANGE FROM FY18
(3)	*j. Unemployment Compensation*	*300,000*	*300,000*	*200,000*	*200,000*		*200,000*	***0***	***0.0%***
	k. Medical Disabilities	*40,000*	*19,810*	*40,000*	*40,000*		*40,000*	***0***	***0.0%***
	l. Medicare Coverage	*1,975,000*	*2,178,341*	*2,223,228*	*2,445,551*		*2,445,551*	***222,323***	***10.0%***
(2)	24 . Reserve Fund	2,200,198	3,348,737	2,460,011	2,547,870		2,547,870	**87,860**	**3.6%**
	25 Stabilization Fund	0	0	0	0		0	**0**	
	26 Affordable Housing	163,078	158,539	576,803	545,112		545,112	**(31,691)**	**-5.5%**
	27 . Liability/Catastrophe Fund	78,969	144,322	203,644	456,762		456,762	**253,118**	
	28 . General Insurance	382,645	316,595	405,972	420,830		420,830	**14,858**	**3.7%**
	29 . Audit/Professional Services	130,000	129,632	137,000	137,000		137,000	**0**	**0.0%**
	30 . Contingency Fund	15,000	13,374	15,000	15,000		15,000	**0**	**0.0%**
	31 . Out-of-State Travel	3,000	2,039	3,000	3,000		3,000	**0**	**0.0%**
	32 . Printing of Warrants & Reports	35,000	34,479	35,000	35,000		35,000	**0**	**0.0%**
	33 . MMA Dues	12,278	12,281	12,900	13,222		13,222	**322**	**2.5%**
	Subtotal General	*3,020,169*	*4,159,998*	*3,849,329*	*4,173,796*		*4,173,796*	***324,467***	***8.4%***
(1)	34 . Borrowing	9,276,014	10,255,515	12,766,192	15,658,637		15,658,637	**2,892,445**	**22.7%**
	a. Funded Debt - Principal	*7,188,044*	*7,859,250*	*9,031,750*	*10,219,250*		*10,219,250*	***1,187,500***	***13.1%***
	b. Funded Debt - Interest	*2,082,502*	*2,381,652*	*3,574,442*	*5,242,387*		*5,242,387*	***1,667,945***	***46.7%***
	c. Bond Anticipation Notes	*0*	*3,250*	*100,000*	*137,000*		*137,000*	***37,000***	***37.0%***
	d. Abatement Interest and Refunds	*5,468*	*11,363*	*60,000*	*60,000*		*60,000*	***0***	***0.0%***
	TOTAL NON-DEPARTMENTAL EXPENDITURES	**66,361,043**	**69,097,820**	**77,070,040**	**82,803,005**	**54,495**	**82,857,500**	**5,787,460**	**7.5%**
	TOTAL GENERAL APPROPRIATIONS	**230,719,481**	**241,989,410**	**254,971,608**	**266,891,245**	**2,921,357**	**269,812,602**	**14,840,994**	**5.8%**
	SPECIAL APPROPRIATIONS								
	35 . Town Building Furniture (revenue financed)				50,000		50,000		
	36 . Public Safety HVAC Modifications (revenue financed)				125,000		125,000		
	37 . Town Building Rehab/Upgrade (revenue financed)				50,000		50,000		
	38 . Zoning By-Law reorganization (revenue financed)				200,000		200,000		
	39 . CAD System Upgrade (revenue financed)				200,000		200,000		
	40 . Fire Station Renovations (revenue financed)				385,000		385,000		
	41 . Putterham Library Bathroom Renovations (revenue financed)				150,000		150,000		
	42 . Traffic Calming / Safety Improvements (revenue financed)				85,000		85,000		
	43 . Bicycle Access Improvements (revenue financed)				176,775		176,775		
	44 . Street Rehabilitation (revenue financed$1.71M, $1.4M tranferred from Parking Meter Fund)				3,110,000		3,110,000		
	45 . Sidewalk Repair/Reconstruction (revenue financed)				320,000		320,000		
	46 . Water Meter MTU Replacement (revenue financed Water and Sewer fund)				265,000		265,000		
	47 . Netherlands Road Facility Improvements (revenue financed Water and Sewer fund)				150,000		150,000		
	48 . Cypress Playground/Athletic Field Design (revenue financed)				240,000		240,000		
	49 . Larz Anderson Park (revenue financed)				425,000		425,000		
	50 . Playground Equipment, Fields, Fencing (revenue financed)				305,000		305,000		
	51 . Town/School Grounds Rehab (revenue financed)				155,000		155,000		
	52 . Tree Removal and Replacement (revenue financed)				230,000		230,000		
	53 . Aquatics Center Pool Filter Replacement (revenue financed)				225,000		225,000		
	54 . School Furniture Upgrades (revenue financed)				100,000		100,000		
	55 . HVAC Equipment (revenue financed)				150,000		150,000		
	56 . Classroom Climate Control (revenue financed)				225,000		225,000		
	57 . Town/School ADA Renovations (revenue financed)				75,000		75,000		
	58 . Town/School Elevator Renovations (revenue financed)				300,000		300,000		
	59 . Town/School Energy Conservation Projects (revenue financed)				180,000		180,000		
	60 . Town/School Energy Management Systems (revenue financed)				125,000		125,000		
	61 . Public Building Fire Alarm upgrades (revenue financed)				250,000		250,000		
	62 . Town/School Bldg Security / Life Safety Systems (revenue financed)				130,000		130,000		
	63 . Town/School Compactor Replacements (revenue financed)				100,000		100,000		
	64 . School Building Rehab/Upgrade (revenue financed)				230,000		230,000		
	65 . 9th School Schematic Design ($1M revenue financed, $500K re-appropriation)				1,500,000		1,500,000		
	66 . Classroom Capacity (revenue financed)				1,165,000		1,165,000		
	67 . Wastewater System Improvements (Utility bond)				3,000,000		3,000,000		
	68 Harry Downes Field & Playground/Kraft Family Athl. Field Turf Repl. (bond)				2,450,000		2,450,000		

		FY16 ACTUAL	FY17 ACTUAL	FY18 BUDGET	BASE FY19 Vote A	OVERRIDE AMOUNT	OVERRIDE FY19 Vote B	$$ CHANGE FROM FY18	% CHANGE FROM FY18
	69 Larz Anderson Park (bond)				2,700,000		2,700,000		
	70 . Driscoll School Rehabilitation (bond)				4,000,000		4,000,000		
	71 . High School Renovation / Expansion ($186.8M bond, $2.4M transfer from bond premium account)				189,200,000		189,200,000		
(4)	**TOTAL REVENUE-FINANCED SPECIAL APPROPRIATIONS**	**10,113,000**	**8,879,374**	**9,720,862**	**13,361,775**	**0**	**13,361,775**	**3,640,913**	**37.5%**
	TOTAL APPROPRIATED EXPENDITURES	**240,832,481**	**250,868,784**	**264,692,470**	**280,253,020**	**2,921,357**	**283,174,377**	**18,481,907**	**7.0%**
	NON-APPROPRIATED EXPENDITURES								
	Cherry Sheet Offsets	91,451	89,197	86,983	87,355		87,355		
	State & County Charges	6,319,715	6,393,642	6,492,524	6,633,122		6,633,122		
	Overlay	1,965,726	1,840,902	1,722,221	1,750,000		1,750,000		
	Deficits-Judgments-Tax Titles	25,000	25,000	25,000	25,000		25,000		
	TOTAL NON-APPROPRIATED EXPEND.	**8,401,892**	**8,348,741**	**8,326,728**	**8,495,477**	**0**	**8,495,477**	**168,749**	**2.0%**
	TOTAL EXPENDITURES	**249,234,373**	**259,217,525**	**273,019,198**	**288,748,497**	**2,921,357**	**291,669,854**	**18,650,656**	**6.8%**
	SURPLUS/(DEFICIT)	**5,942,156**	**6,331,652**	**0**	**0**	**0**	**0**		

(1) Breakdown provided for informational purposes.
(2) Figures provided for informational purposes. Funds were transferred to departmental budgets for expenditure.
(3) Funds are transferred to trust funds for expenditure.
(4) Amounts appropriated. Bonded appropriations are not included in the total amount, as the debt and interest costs associated with them are funded in the Borrowing category (item #34).

FY19 BUDGET - TABLE 2 May, 2018 Base FY19 Vote A

Department/Board/Commission	Personnel Services/ Benefits	Purchase of Services	Supplies	Other Charges/ Expenses	Utilities	Capital Outlay	Inter-Govt'al	Debt Service	Agency Total
Board of Selectmen (Town Administrator)	687,929	7,080	4,000	17,600		2,205			718,814
Human Resources Department (Human Resources Director)	309,024	311,809	20,400	31,000		1,640			673,873
Information Technology Department (Chief Information Officer)	1,156,208	545,773	10,350	17,550		268,100			1,997,981
Diversity, Inclusion, and Community Relations (Director)	218,753	15,000	10,500	3,650		875			248,778
Finance Department (Director of Finance)	2,255,730	816,857	46,960	25,707	1,375	24,250			3,170,879
Legal Services (Town Counsel)	643,820	250,309	3,500	112,000		1,700			1,011,329
Advisory Committee (Chair, Advisory Committee)	23,201		3,275	570		295			27,341
Town Clerk (Town Clerk)	651,815	110,172	22,750	2,450		1,280			788,467
Planning and Community Department (Plan. & Com. Dev. Dir.)	973,886	43,633	9,712	4,550		4,000			1,035,781
Police Department (Police Chief)	15,078,231	601,243	259,900	74,000	282,373	434,808			16,730,555
Fire Department (Fire Chief)	14,504,987	166,240	167,488	31,350	185,223	322,471			15,377,759
Public Buildings Department (Building Commissioner)	2,550,206	2,722,378	29,750	10,400	2,586,236	95,370			7,994,340
Public Works Department (Commissioner of Public Works)	8,134,964	3,582,009	970,750	53,500	1,102,000	1,246,021	20,000		15,109,244
Public Library Department (Library Board of Trustees)	2,924,666	204,169	605,225	4,700	266,492	17,794			4,023,046
Health & Human Services Department (Health & Human Svcs Dir)	941,807	208,962	15,100	4,120	36,823	21,520			1,228,332
Veterans' Services (Veterans' Services Director)	171,571	2,388	650	163,535		510			338,654
Council on Aging (Council on Aging Director)	796,240	43,583	19,763	4,250	61,996	5,700			931,532
Recreation Department (Recreation Director)	754,445	23,037	86,480	12,400	135,515	4,020			1,015,897
School Department (School Committee)									108,812,105
Total Departmental Budgets	**52,777,483**	**9,654,642**	**2,286,553**	**573,332**	**4,658,033**	**2,452,559**	**20,000**		**181,234,707**
DEBT SERVICE									
Debt Service (Director of Finance)								15,658,637	15,658,637
Total Debt Service								**15,658,637**	**15,658,637**
EMPLOYEE BENEFITS									
Contributory Pensions Contribution (Director of Finance)	23,144,765								23,144,765
Non-Contributory Pensions Contribution (Director of Finance)	30,000								30,000
Group Health Insurance (Human Resources Director)	30,670,792								30,670,792
Retiree Group Health Insurance - OPEB's (Director of Finance)	4,570,465								4,570,465
Employee Assistance Program (Human Resources Director)	28,000								28,000
Group Life Insurance (Human Resources Director)	145,000								145,000
Disability Insurance	46,000								46,000
Workers' Compensation (Human Resources Director)	1,450,000								1,450,000
Public Safety IOD Medical Expenses (Human Resources Director)	200,000								200,000
Unemployment Insurance (Human Resources Director)	200,000								200,000
Ch. 41, Sec. 100B Medical Benefits (Town Counsel)	40,000								40,000
Medicare Payroll Tax (Director of Finance)	2,445,551								2,445,551
Total Employee Benefits	**62,970,572**								**62,970,572**
GENERAL / UNCLASSIFIED									
Vocational Euducation Assessments									92,895
Reserve Fund (*) (Chair, Advisory Committee)				2,547,870					2,547,870
Liability/Catastrophe Fund (Director of Finance)				456,762					456,762
Housing Trust Fund (Planning & Community Develpoment Dir.)				545,112					545,112
General Insurance (Town Administrator)		420,830							420,830
Audit/Professional Services (Director of Finance)		137,000							137,000
Contingency (Town Administrator)				15,000					15,000
Out of State Travel (Town Administrator)		3,000							3,000
Printing of Warrants (Town Administrator)	15,000	10,000	10,000						35,000
MMA Dues (Town Administrator)				13,222					13,222
Town Salary Reserve (*) (Director of Finance)	2,045,639								2,045,639
Personnel Services Reserve (*) (Director of Finance)	715,000								715,000
Total General / Unclassified	**2,775,639**	**570,830**	**10,000**	**3,577,966**					**7,027,330**
TOTAL GENERAL APPROPRIATIONS	**118,523,694**	**10,225,472**	**2,296,553**	**4,151,298**	**4,658,033**	**2,452,559**	**20,000**	**15,658,637**	**266,891,245**

(*) NO EXPENDITURES AUTHORIZED DIRECTLY AGAINST THESE APPROPRIATIONS. FUNDS TO BE TRANSFERRED AND EXPENDED IN APPROPRIATE DEPT.

FY19 BUDGET - TABLE 2 May, 2018 Override FY19 Vote B

Department/Board/Commission	Personnel Services/ Benefits	Purchase of Services	Supplies	Other Charges/ Expenses	Utilities	Capital Outlay	Inter-Govt'al	Debt Service	Agency Total
Board of Selectmen (Town Administrator)	687,929	7,080	4,000	17,600		2,205			718,814
Human Resources Department (Human Resources Director)	309,024	311,809	20,400	31,000		1,640			673,873
Information Technology Department (Chief Information Officer)	1,156,208	545,773	10,350	17,550		268,100			1,997,981
Diversity, Inclusion, and Community Relations (Director)	218,753	35,000	10,500	3,650		875			268,778
Finance Department (Director of Finance)	2,255,730	816,857	46,960	25,707	1,375	24,250			3,170,879
Legal Services (Town Counsel)	643,820	250,309	3,500	112,000		1,700			1,011,329
Advisory Committee (Chair, Advisory Committee)	23,201		3,275	570		295			27,341
Town Clerk (Town Clerk)	651,815	110,172	22,750	2,450		1,280			788,467
Planning and Community Department (Plan. & Com. Dev. Dir.)	1,078,652	43,633	9,712	4,550		4,000			1,140,547
Police Department (Police Chief)	15,078,231	601,243	259,900	74,000	282,373	434,808			16,730,555
Fire Department (Fire Chief)	14,504,987	166,240	167,488	31,350	185,223	322,471			15,377,759
Public Buildings Department (Building Commissioner)	2,550,206	3,022,378	29,750	10,400	2,586,236	95,370			8,294,340
Public Works Department (Commissioner of Public Works)	8,152,083	3,582,009	970,750	53,500	1,102,000	1,446,021	20,000		15,326,363
Public Library Department (Library Board of Trustees)	3,056,639	204,169	605,225	4,700	266,492	17,794			4,155,019
Health & Human Services Department (Health & Human Svcs Dir)	941,807	208,962	15,100	4,120	36,823	21,520			1,228,332
Veterans' Services (Veterans' Services Director)	171,571	2,388	650	163,535		510			338,654
Council on Aging (Council on Aging Director)	822,520	43,583	19,763	4,250	61,996	5,700			957,812
Recreation Department (Recreation Director)	801,595	23,037	86,480	12,400	135,515	4,020			1,063,047
School Department (School Committee)									110,831,679
Total Departmental Budgets	**53,104,771**	**9,974,642**	**2,286,553**	**573,332**	**4,658,033**	**2,652,559**	**20,000**		**184,101,569**
DEBT SERVICE									
Debt Service (Director of Finance)								15,658,637	15,658,637
Total Debt Service								**15,658,637**	**15,658,637**
EMPLOYEE BENEFITS									
Contributory Pensions Contribution (Director of Finance)	23,144,765								23,144,765
Non-Contributory Pensions Contribution (Director of Finance)	30,000								30,000
Group Health Insurance (Human Resources Director)	30,725,287								30,725,287
Retiree Group Health Insurance - OPEB's (Director of Finance)	4,570,465								4,570,465
Employee Assistance Program (Human Resources Director)	28,000								28,000
Group Life Insurance (Human Resources Director)	145,000								145,000
Disability Insurance	46,000								46,000
Workers' Compensation (Human Resources Director)	1,450,000								1,450,000
Public Safety IOD Medical Expenses (Human Resources Director)	200,000								200,000
Unemployment Insurance (Human Resources Director)	200,000								200,000
Ch. 41, Sec. 100B Medical Benefits (Town Counsel)	40,000								40,000
Medicare Payroll Tax (Director of Finance)	2,445,551								2,445,551
Total Employee Benefits	**63,025,067**								**63,025,067**
GENERAL / UNCLASSIFIED									
Vocational Euducation Assessments									92,895
Reserve Fund (*) (Chair, Advisory Committee)				2,547,870					2,547,870
Liability/Catastrophe Fund (Director of Finance)				456,762					456,762
Housing Trust Fund (Planning & Community Develpoment Dir.)				545,112					545,112
General Insurance (Town Administrator)		420,830							420,830
Audit/Professional Services (Director of Finance)		137,000							137,000
Contingency (Town Administrator)				15,000					15,000
Out of State Travel (Town Administrator)		3,000							3,000
Printing of Warrants (Town Administrator)	15,000	10,000	10,000						35,000
MMA Dues (Town Administrator)				13,222					13,222
Town Salary Reserve (*) (Director of Finance)	2,045,639								2,045,639
Personnel Services Reserve (*) (Director of Finance)	715,000								715,000
Total General / Unclassified	**2,775,639**	**570,830**	**10,000**	**3,577,966**					**7,027,330**
TOTAL GENERAL APPROPRIATIONS	**118,905,477**	**10,545,472**	**2,296,553**	**4,151,298**	**4,658,033**	**2,652,559**	**20,000**	**15,658,637**	**269,812,603**

(*) NO EXPENDITURES AUTHORIZED DIRECTLY AGAINST THESE APPROPRIATIONS. FUNDS TO BE TRANSFERRED AND EXPENDED IN APPROPRIATE DEPT.

ARTICLE 7

MOTION OFFERED BY BRIAN HOCHLEUTNER, TMM6, SCOTT ENGLANDER, TMM6 and CLAIRE STAMPFER, TMM5

With respect to the Advisory Committee motion starting on page 7-63, modify the referenced special appropriations as follows (changes are in **bold underlined and ~~strikethrough~~**):

- Item 48: Cypress Playground
  Raise and appropriate $240,000 to be expended under the direction of the Commissioner of Public Works, with any contracts over $100,000 to be approved by the Select Board, for the design of the renovation of Cypress Playground, **with the condition that no money in any way related to design, procurement, or construction for Cypress Field can be encumbered or expended in furtherance of installing plastic turf on Cypress Field.**

- Item 71: High School Renovation/Expansion
  Appropriate, $189,200,000, to be expended under the direction of the Building Commission, with any necessary contracts to be approved by the Select Board and the School Committee to renovate and expand Brookline High School, including the acquisition and reconstruction of the property located at 111 Cypress Street and renovations or repairs to Brookline High School, the Evelyn Kirrane Aquatic Center, the Unified Arts Building, the 66 Tappan Street Gym, and Cypress Field with the condition that no money **in any way** related to **~~the~~ design, procurement, or** construction of Cypress Field can be encumbered or expended **~~without a vote of Town Meeting relevant to the material for the field~~ in furtherance of installing plastic turf on Cypress Field**; and to meet the appropriation authorize the Treasurer, with approval of the Board of Selectmen, to borrow $186,800,000, under General Laws, Chapter 44, Section 7(1) and transfer $2,400,000 from the Town's bond premium account. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with Chapter 44, Section 20 of the General Laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount, this appropriation seeks to fund approximately $189,200,000 for construction of a large project to include renovation of Cypress Field as well as renovation and expansion of Brookline High School);

Explanation:
The intent of the motion is to impose restrictions on expenditure of funds so as to prohibit spending in furtherance of installation of plastic turf at Cypress Field. The motion covers not only construction funds under special appropriation 71, but also the substantial design

funds under special appropriation 48, with the same condition language proposed for each.

ARTICLE 7

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

The Advisory Committee has reviewed the proposed appropriations for FY2019 and is pleased to present this report to Town Meeting. Since February 2018, the Committee and its subcommittees have conducted public hearings with the Town's department heads and the leadership of the Public Schools of Brookline. The Committee recommends FAVORABLE ACTION on the FY2019 budget.

We thank all the people who assisted in this year's complicated budget process, including the Select Board, Town Administrator, Deputy Town Administrator, School Committee, central administration of the Public Schools of Brookline, and Town department heads. A complete list of people who deserve to be thanked appears below, at the end of this report.

OVERVIEW

The FY2019 budget funds several important new initiatives and addresses unmet needs, while also proving the Public Schools of Brookline sufficient funds to keep up with continuing enrollment increases. The operating budget benefits from increased revenue from the May 2018 override, as well as increased state aid and lower-than-expected group health costs. The Capital Improvements Program features a recommended appropriation of $189.2 million, funded almost entirely by borrowing, to fund most of the cost of the $205.6 million renovation and expansion of Brookline High School.

DIFFERENCES BETWEEN THE RECOMMENDATIONS OF THE ADVISORY COMMITTEE AND THE SELECT BOARD

The Advisory Committee and the Select Board are recommending the same FY2019 budget levels, with identical appropriation levels in every category. The two bodies differ on the conditions that should be attached to two of the special appropriations (Capital Improvements Program items).

Special Appropriation Item 44

In Special Appropriation 44 (pp. 7-64 – 7-65, with the explanation on pp. 7-42 – 7-43), the Advisory Committee voted to recommend including the condition that the Advisory Committee's Capital Subcommittee be given prior notification when a street rehabilitation project includes changes to traffic patterns or pavement markings. The condition appears in ***bold*** below:

44) Raise and appropriate $3,110,000 to be expended under the direction of the Commissioner of Public Works for the rehabilitation of streets, with any contracts over

$100,000 to be approved by the Select Board and that when such approval is necessary that there be prior notification to the Select Board ***and to the Capital Subcommittee of the Advisory Committee*** *of any changes to pedestrian, bicycle, or motor vehicle traffic patterns or pavement markings, and to meet the appropriation transfer $1,400,000 from the Parking Meter Fund.*

The Advisory Committee inserted this language because there have been several instances in which a street rehabilitation project incorporated changes to roadway patterns or pavement marking that were neither anticipated nor approved by Town Meeting or the affected residents of Brookline.

The Capital Subcommittee of the Advisory Committee is already deeply involved in the review of capital and operating expenditures of the Department of Public Works (DPW). Few, if any, other Town bodies have as much knowledge or experience related to reviewing DPW expenditures. In order to properly perform its role as a subcommittee of the Town's Finance Committee, the Capital Subcommittee needs to be informed of the important details of major projects. In exercising this oversight function, the Capital Subcommittee can ensure that roadway projects do not contain unwanted and unexpected features that generate neighborhood opposition and controversy. The Capital Subcommittee will act to ensure that street rehabilitation funds are used for their intended purpose, as described in the CIP, and that funding for traffic calming/public safety is used for its intended purpose—to enhance roadway safety. The Transportation Board plays an important role, but it is not the Town's Finance Committee and it does not track actual costs and how funds are spent.

Special Appropriation Item 71

In Special Appropriation 71, (pp. 7-68 – 7-69, with the explanation on pp. 7-44 – 7-45 and pp. 7-56 – 7-59), the Advisory Committee voted to recommend including the condition that Town Meeting vote on the material (grass or artificial turf) to be used for Cypress Field. The condition appears in ***bold*** below:

71) Appropriate $189,200, to be expended under the direction of the Building Commission, with any necessary contracts to be approved by the Select Board and the School Committee to renovate and expand Brookline High School, including the acquisition and reconstruction of the property located at 111 Cypress Street and renovations or repairs to Brookline High School, the Evelyn Kirrane Aquatic Center, the Unified Arts Building, the 66 Tappan Street Gym, and Cypress Field ***with the condition that no money related to the construction of Cypress Field can be encumbered or expended without a vote of Town Meeting relevant to the material for the field****; and to meet the appropriation authorize the Treasurer, with the approval of the Select Board, to borrow $186,8000, under General Laws, Chapter 44, Section 7(1) and transfer $2,4000,00 from the Town's bond premium account. Any premium received upon the sale of any bonds or notes approved by this vote, less any premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with Chapter*

44, Section 20 of the General laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

The debate over installing grass or synthetic turf at a renovated Cypress Field has been intense, with proponents of each alternative offering strong arguments. The debate has raised questions of neighborhood concerns, town-wide athletic needs, and the meaning of green space. The Advisory Committee has not taken a position on which surface should be installed. The Committee, however, thinks that the issue is important enough to justify a Town Meeting vote on whether to expend Town funds on grass or artificial turf.

In its report on item 71, the Select Board claims that Town by-laws give the Park and Recreation Commission the authority to select the surface for an athletic field, but those by-laws only lay out the process. Town Meeting ultimately is the appropriating authority and determines how Town funds should be spent.

Whether Town Meeting votes for the Advisory Committee's motion with the condition attached to item 71 or the Select Board's amendment, it will be Town Meeting's choice of how to resolve the question of which surface to install at Cypress Field.

Note that the Advisory Committee voted to add each of these conditions by an overwhelming vote of twenty-three in favor, none opposed, and one abstention (23–0–1).

BUDGET BASICS: FY2019 REVENUES AND EXPENDITURES

As a result of the May 2018 and other changes in revenues and expenditures, the proposed FY2019 budget differs significantly from what was included in the *FY-2019 Financial Plan*. What follows is a brief overview and explanation of the proposed revenues and expenditures, and how they compare to the FY2018 budget.

Revenues

Projected total revenue for FY2019 will increase by 6.8% over FY2018, compared to an increase of 4.7% from FY2017 to FY2018. The higher percentage increase primarily reflects $2.9 million in additional property tax revenue due to the May 2018 override, an increase in state aid, and a significant increase in Other Available Funds.

Brookline’s revenue from property taxes will increase by 6.2% in FY2019, compared to 3.5% in FY2018. Property taxes remain the greatest contributor to our revenues, representing 77% of total revenue. Property tax revenue increases annually faster than the 2.5% implied by the name of Proposition 2½, because new growth (i.e., new construction) generates additional taxes. New growth is projected to be about $2.6 million in FY2019.

In FY2019, projected State Aid accounts for $21.6 million of Brookline’s revenue, a 6.3% increase over FY2018. The final total will depend on the state budget, which is in its final legislative stages. After being cut deeply in the years following the 2008 financial crisis

and recession, Brookline's state aid has been climbing in recent years, but this revenue is vulnerable to general economic trends and the health of the state budget.

Local Receipts are projected to increase by 1.1% to $29.8 million. Revenue in the Local Receipts category comes from parking meter revenue, motor vehicle excise taxes, hotel and meals taxes, building permit fees, fees for other licenses and permits, the refuse fee, payments in lieu of taxes (PILOTs), and parking fines. Revenue in most of these categories has been increasing slowly or not at all in recent years, partly because fees (e.g. the refuse fee) have not been increased. A small amount reflects interest income, which remains low due to continued low interest rates.

Free Cash is the result of previous revenues exceeding estimates and/or expenditures coming in below appropriations. For FY2019, State-certified Free Cash is $11.1 million, but the amount available for appropriation is only $8.5 million. Under the fiscal policies that Brookline has followed in recent years, $2.6 million of the Free Cash will remain unappropriated so Brookline can maintain an unrestricted fund balance of at least 10% of annual revenue, with a goal of 12.5%. In recent years, bond-rating agencies have expressed concern about the low levels (as a percentage of annual revenue) of Brookline's undesignated fund balance. The Town does not want to jeopardize its Aaa/AAA bond rating, which was recently reaffirmed by Moody's and issued for the first time by Standard and Poor's. To ensure that Brookline's bond rating remains high, $2.6 million of the Free Cash will be left unappropriated, in order to improve the Town's undesignated fund balance. This leaves just under $8.5 million of Free Cash available for appropriation. In accordance with fiscal policies, some of this Free Cash is allocated to the Liability/Catastrophe Fund ($456,762), and the Operating Budget Reserve Fund ($637,218), the Capital Improvements Program ($5,959,101), and the Affordable Housing Trust Fund ($545,112). The FY2019 budget also provides for appropriating $600,000 in Free Cash to post-retiree group health (OPEBs) and $300,000 to the Pension Fund. In each case, the appropriation is intended to accelerate the Town's progress toward meeting its long-term financial obligations to fully fund these two funds.

The Town's revenues also include a category called "Other Available Funds." This category includes Walnut Hills Cemetery funds, state aid for libraries, Golf Enterprise Fund reimbursement, Recreation Revolving Fund reimbursement, Water and Sewer Enterprise Fund reimbursement, Tax Abatement Reserve surplus, capital project surplus, and the proceeds from the sale of Town-owned land. The reimbursements from the revolving funds are primarily to cover the cost of fringe benefits received by employees whose salaries are charged to those funds.

The FY2019 revenue from Other Available funds will increase 108.9% compared to FY2018, from $3.5 million to $7.3 million. This increase is primarily the result of: (1) a $1.4 million transfer from the Parking Meter Fund (to be used for street rehabilitation); (2) a re-appropriation of $500,000 in FY2018 CIP funds that were not used for schematic design of a 9th elementary school; and (3) a $2.4 million transfer from the bond premium account (to be added to the funding for expanding and renovating Brookline High School).

(The Town receives a bond premium when buyers of bonds issued by Brookline pay more than the face value of the bonds. Buyers might pay such a premium to receive a higher interest rate.)

All revenue sources combined produce a projected total of $291.67 million in FY2019, a 6.8% increase in total revenue, compared to the 4.7% increase from FY2017 to FY2018. Some of this General Fund revenue must be deducted for Non-Appropriated Expenses: State/County charges—primarily the Norfolk County and MBTA assessments—of $6.6 million, "Cherry Sheet" offsets of $87,355, and the Tax Abatement Overlay of $1.75 million. This leaves us with a total of $283.17 million available for appropriation.

Expenditures

On the expenditure side, departmental expenditures (65% of total general expenditures) increase from a budgeted amount of $177.9 million in FY2018 to $186.96 million in FY2019—a 5.1% increase. Almost two-thirds of the increase is in the Schools appropriation, which climbs by 5.8% to $110,831,679, an increase of about $6.1 million. (As discussed below, total school spending is higher than this amount, because the schools receive additional funding from grants and other sources that are not appropriated by Town Meeting, and some school-related spending is not reflected in the Schools budget.) Spending for Town departments rises by approximately $3 million, an increase of 4.1%.

Non-Departmental expenditures increase by 7.5% to $82.9 million, compared to $77 million in FY2018. Of the increase, about $2.6 million reflects the growth in Employee Benefits, which will grow by 4.3 % in FY2019. Most of the rest of the increase is attributable to higher debt service costs, which will increase by just over $2.9 million from FY2018 to FY2019, reaching a total of $15.7 million, which reflects higher borrowing to finance capital projects, such as the Devotion School. Additionally, there are revenue-financed Special Appropriations (Capital Improvements Program, generally referred to as the CIP) of $13.36 million, up by 37.5% compared to FY2018. (The amount budgeted for the CIP only includes revenue-financed projects. The cost of CIP items funded by borrowing is reflected in the amount budgeted for debt service. These large expenses are spread out over many years, even though they are voted on as part of the annual budget.)

There are also the Non-Appropriated expenses of $8.5 million as mentioned above.

FY2019 Revenues and Expenditures

Revenues

	$	% change
Property Tax	224,477,804	6.2
Local Receipts	29,778,587	1.1
State Aid	21,642,592	6.3
Free Cash	8,498,193	1.7
Other Available Funds	7,272,679	108.9

Total Revenue	$ 291,669,856	6.8 %

Expenditures

	$	% change
Departmental	186,955,102	5.1
Non-Departmental	82,857,500	7.5
Special Appropriations (CIP)	13,361,775	37.5*
Non-Appropriated Exp.	8,495,477	2.0
Total Expenditures	$ 291,669,854	6.8 %

*Reflects use of $2.4 million in bond premium funds and $1.4 million from the Parking Meter Fund.

GROUP HEALTH AND BENEFITS

In FY2019, as in previous years, Employee Benefits (including Pensions, Workers' Compensation, Unemployment, Life Insurance and Health Insurance) are one of Brookline's largest expenses. In FY2019, these costs represent about 23% of our General Appropriation, roughly the same percentage as in FY2018, even though group health costs increased at a very slow rate (1.8%) this year.

Group Health

Health insurance now represents about 11% of the budget. For FY2019, the recommended appropriation is $30.73 million, an increase of 1.8% over FY2018's $30.67 million. The FY2019 group health appropriation came in $792,929 under what had been projected in the *FY-2019 Financial Plan*, resulting in a savings of $349,058 for the town and $443,871 for the schools. The state Group Insurance Commission (GIC) set this year's rates at lower-than-expected level.

Total group health enrollment is estimated at 3,297 for FY2019, up from the estimated 3,257 in FY2018, divided almost evenly between active employees and retirees. Of the total, 1,896 (57.5%) are or were school employees, while 1,401 are or were Town employees. As enrollment grows and more teachers are hired, school employees are gradually becoming a larger proportion of group health enrollees.

Healthcare benefits have been a primary source of increases in Brookline's budget since FY2000. For the third year in a row, Brookline has been fortunate to have a relatively small increase in group health costs. As the number of active and retired enrollees increases, the group health appropriation will consume a larger and larger share of Brookline's budget.

Some savings in healthcare costs may be possible if Brookline can reduce the share of premium costs it pays on behalf of our employees. Under the current (expiring) negotiated agreement, the Town covers 83% of the cost, while employees cover 17%. The state-wide average is closer to 70% municipality/30% employee. Each 1% reduction in the Town's share saves about $300,000.

Any change in these percentages would have to be negotiated with the Town's unions. The Advisory Committee hopes that those negotiations can lead to savings.

- Retiree Health: OPEBs

Brookline has a significant obligation to provide healthcare benefits for its current and future retirees. As employees in the Baby Boomer cohort retire and live longer than previous generations, the number of retirees receiving healthcare benefits will continue to grow. These benefits are referred to as Other Post Retirement Benefits (OPEBs). According to the Segal Group, the unfunded liability for Brookline's retiree health obligation was $280.7 million as of June 30, 2016, a significant increase since June 30, 2014, when it was $198.3 million. The calculation of the liability will be updated on June 30, 2018. The increase partly reflects the fact that the actual rate of return on the fund's investments was lower than previous estimates.

After doing little to fund its OPEB obligations for many years, Brookline has been extremely proactive in controlling and funding this obligation. The Town has taken several steps to manage its OPEB obligations. Entering the GIC in FY2010 reduced the overall cost of healthcare benefits and also substantially reduced the unfunded OPEB liability. In the early 1990s, the Town adopted of Chapter 32B Section 18, enabling Brookline to reduce costs by moving retirees into Medicare coverage.

Brookline has established a post-retirement benefits trust fund to defray OPEB costs. As of January 1, 2015, the fund balance was $25.4 million. Under Brookline's plan for funding its OPEB liabilities, annual trust fund contributions are appropriated from General Fund revenues ($3.57 million) assessments on grants and special revenue funds ($311,988), savings redirected from the non-contributory retirement health plan, and one-time revenues. Brookline's OPEB funding plan adds $250,000 each year to the base contribution. The FY2019 contribution will be $4.57 million, including an additional contribution of $600,000 from Free Cash, which offsets the end of availability of Medicare Part D revenue.

After FY2030, when the pension fund is scheduled to be fully funded, Brookline will be able to accelerate OPEB funding by redirecting its pension fund contributions to OPEBs. Those contributions are expected to exceed $30 million per year by then.

Brookline is among the few communities in Massachusetts that sets aside funds to cover its OPEB liability. We should congratulate ourselves for being fiscally responsible, but we also should bear in mind that Brookline's OPEC obligations are exceptionally large in both absolute and relative terms. After the next calculation, Brookline's unfunded OPEC liability probably will represent more than 100% of annual revenue. Even disciplined adherence to the current funding plan may not reduce our unfunded liability.

- Pensions

Brookline maintains a defined benefit pension system for Town and School employees, with the exception of teachers, who are covered by a state pension system. Many newer positions in the

Schools tend to be aides, and therefore may be eligible for the Town pension system. Currently, there are 3,578 employees (active, inactive, and retired) and their survivors in the Town pension system.

Brookline maintains a pension fund that was valued at approximately $256 million on December 31, 2015, down from $260 million on December 31, 2014. The next valuation and calculation of the unfunded liability will be available in 2018. Because returns on the fund's investments have been inconsistent in recent years, the unfunded liability has been increasing. After a 28% loss due to poor investment returns in 2008, the Town increased its annual contributions and extended the funding schedule so that Brookline will reach full funding in 2030 instead of the previous target date of 2028. The Retirement Board, which controls the pension fund, voted to reduce the assumed annual rate of return on investments from 8.15% to 7.75%, to 7.6%, and most recently to 7.4%. As the assumed rate is reduced, Brookline will need to appropriate more for pension fund contributions, which will increase pressure on other areas of the budget.

Brookline's FY2019 pension fund contribution will be $23.17 million, a 7.8% increase over FY2018. This includes $300,000 from Free Cash—an addition to the required contribution.

Brookline could mitigate the impact of being required to make larger pension fund contributions by extending its planned schedule for fully funding the pension fund. State law would allow Brookline to take until 2040 to fully fund the pension fund. That strategy, however, would mean that the Town would have to make OPEB contributions for longer than expected. The current fiscal strategy assumes that after Brookline fully funds its pension fund in 2030, the amount annually contributed to the pension fund would be instead be contributed to the Post-Retirement Benefits Trust Fund. At that point, annual pension fund contributions are expected to be approximately $30 million. Redirecting these contributions toward OPEBs would enable Brookline to rapidly fund its OPEB liability.

THE SCHOOL BUDGET

In FY2019, the General Fund appropriation for the Public Schools of Brookline will be $110,831,679, a 5.8% increase over the FY2018 appropriation of $104,851,238. In addition, in order to comply with state law, the Town budget includes a separate appropriation of $92,895 for vocational education assessments. This appropriation funds the cost of Brookline students' enrollment in out-of-district vocational schools. Combining it with the Schools budget brings the total education appropriation to $110,924,574. Spending on the Schools, whether in the Schools budget or for school-related expenses in the Town budget, is actually considerably higher and accounts for about 60% of Brookline's appropriations. The Advisory Committee's report on the school budget (see below) offers an analysis of the FY2019 school budget.

THE OPERATING OVERRIDE

The operating override approved by Brookline voters on May 8, 2018, has a significant impact on the FY2019 budget, although the tax increases allowed under the override will

be phased in and will not fully take effect until FY2021. Almost all of the property tax increases will occur in FY2019 and FY2020.

What the Operating Override Will Fund

In FY2019, the operating override will increase property taxes by $2,846,357, of which $701,783 will be allocated to Town departments and $2,144,574 will be allocated to the Public Schools of Brookline. These funds are scheduled to be appropriated as follows, according to the three-year funding plan voted on March 14, 2018:

Town

Repair and maintenance of Town buildings:	$100,000
Geriatric social worker (part-time):	$37,179
Library Facilities Position:	$91,342
Brookline Village children's librarian:	$62,429
DPW capital equipment replacement:	$100,000
DPW snow equipment/streets & sidewalks:	$100,000
Aquatics position:	$58,049
Park and Open Space staffing:	$17,119
Diversity and inclusion training:	$20,000
Preservation position:	$38,555
Planning Department sustainability position:	$77,110

Schools

Repair and maintenance of school buildings:	$200,000
Salary increases:	$371,415
Classroom staff:	$347,779
Transportation (in-district SPED students):	$234,826
Transportation (regular education students):	$53,560
504 supplies and services:	$68,000
Response to intervention programs and practices:	$100,000
Student support staff (Guidance, OT, PT, etc.):	$237,495
BESA and custodian for BHS expansion:	$71,165
Administrator support staff:	$262,330
Financial assistance policy:	$100,000
BHS transportation—South Brookline bus:	$132,200

In addition to the increased revenues from higher property taxes, the overall override plan for FY2019 includes appropriating $792,929 in group health savings, funds that became available when the GIC increased group health rates less than expected. These funds will not be generated by higher property taxes, but they are associated with the override as part of an overall package of funds to address departmental funding needs.

Town departments will receive $349,058 in GIC savings—the amount estimated to be saved due to lower group health costs for Town employees. The Building Department will receive $100,000 for the repair and maintenance of Town buildings. The Department of Public Works (DPW) will receive $100,000 for capital equipment replacement and $49,058 for snow equipment/streets & sidewalks.

The Public Schools of Brookline will receive $443,871 in GIC savings—the amount estimated to be saved due to lower group health costs for school employees. Of this amount, $409,675 will be devoted to classroom staff and $34,196 will be transferred to the Building Department for the repair and maintenance of school buildings.

Strong Support for the Operating Override

The 2018 operating override passed with "yes" votes from 69.5% of voters who cast ballots (not including blanks). This electoral support for the 2018 override exceeds the level of support for the two most recent operating overrides. In 2015, 61.5% of those who voted (excluding blanks) voted for the operating override. In 2008, the operating override was separated into two tiers, Question 1A and Question 1B. Question 1A passed with 62.6% of the votes, Question 1B with 55.4%. The number of voters participating in the 2018 override was lower than in either 2008 or 2015. In 2008, 9,590 voters cast votes on Question 1A and 9,541 on Question 1B. In 2015, 10,283 cast votes on the operating override. In 2018, however, only 7,767 voters cast a vote on the operation override. (The decline seems even more dramatic when measured in terms of voter turnout, which fell from 33.96% in 2008 to 29.82% in 2015 before falling even further to 22.29% in 2018. This comparison is misleading, however, because the number of registered voters has been increasing even as overall population has remained about the same.)

Overrides and Bond Ratings

During the campaign for the General (operating) Override and the debt exclusion override, it was argued that passage of the overrides would help the Town's bond rating. This is probably true for the vote on the operating override. The most recent reports on the Town's bond rating point to passage of overrides as evidence of Brookline's financial stability and flexibility. Moody's, in its March 5, 2018, report observes: "Maintenance of the town's very stable financial position over the long term will likely require ongoing taxpayer support of general overrides and debt exclusions." The Standard and Poor's report of March 5, 2018, however, focuses on operating overrides, stating, "the town has an ability and willingness to raise taxes when needed, which we view as a positive credit factor…if the town is unable to secure a voter-approved operating override when required to maintain financial balance, we could revise our view of its flexibility…" On the other hand, the Standard and Poor's report expresses concern about Brookline's increasing debt burden: "Negatively affecting our view of the town's debt profile is its significant medium-term debt plans." As Brookline increases its debt as the result of further borrowing financed by further debt exclusions, Standard and Poor's may revise the Town's bond rating.

Assessing the Override: An Advisory Committee Perspective

In February 2018, the Advisory Committee by a vote of 16–5–2 adopted a resolution that urged the Select Board to put on the ballot an override question that would raise property taxes by $3.5 million in FY2019 and to appoint a committee to analyze revenues and expenditures to determine the need for further operating overrides. That resolution was adopted shortly after the Override Study Committee delivered its report with a recommendation for a three-year override that would increase property taxes by up to $11.7 million.

The Advisory Committee resolution was based on five principles: (1) the need for an override; (2) the need to consider overall capacity to pay; (3) the need for a balance between town and school expenditures; (4) the need for diversified revenue sources; and (5) the need for further analysis before proposing a larger override

How does this actual override as voted in May 2018 compare to the principles underlying the Advisory Committee resolution?

- The need for an override: The override as voted obviously reflects a recognition that an operating override will be necessary to fund the FY2019 budget. Members of the Advisory Committee, many of whom are parents of current and former students in Brookline's schools, understand the need to increase taxes for the schools and for town departments. The override approved by the voters, however, is for a cumulative total of approximately $6.6 million over three years (with $2.8 million and $3.3 million coming in FY2019 and FY2020, respectively.), as opposed to the Advisory Committee's recommendation of a $3.5 million override in FY2019.

- The need to consider overall capacity to pay: The Advisory Committee was concerned that any override take into account the ability of Brookline's taxpayers to pay the cumulative cost of tax increases associated with the Devotion School debt exclusion (an estimated 1.66%); the Brookline High School debt exclusion (an estimated 5.6%); an operating override; and a debt exclusion for a ninth elementary school or other projects to increase classroom capacity. The Committee also recognized the need to take into account the slow or stagnant growth of household incomes in Brookline since 2010—as documented in the Override Study Committee Report; the rapid growth in the number of Brookline residents who are 65 and older—also documented by the Override Study Committee—and the fact that many elderly residents have incomes well below the median; and the need to limit the size of the May 2018 override in order to ensure that taxpayers will be able to afford the next override, which could be on the ballot in three years. The May 2018 override as voted is considerably smaller than the maximum override recommended by the Override Study Committee: $6.6 million versus $11.7 million, which represents a 3.1% increase in real-estate taxes instead of 5.5%. Thus it reflects some recognition that the operating override needs to be considered in the context of the debt exclusions and annual increases that Brookline taxpayers will be asked to pay in the next three years.

- The need for a balance between funding town and school expenditures: The Advisory Committee believes that an operating override should fund the budgets of town departments, as well as the Public Schools of Brookline, for three reasons. First, this is a matter of equity. All Brookline taxpayers will pay the increased taxes. Taxpayers who do not directly benefit from higher spending on the schools may benefit from override-financed spending on recreation or snow removal, for example. Second, some town departments have been under-funded and are overdue for budget increases. For example, the Department of Public Works has had a level-funded equipment budget for many years. Third, it is important to repair and maintain the town's capital stock by, for example, adding to the Building Department budget. The May 2018 override funds town and school programs. In most cases, it funds the town budget expansion requests that the Town Administrator submitted to the Override Study Committee, as well as many of the proposed increases in the school budget. The Advisory Committee welcomes the funding of town departments and, in particular, strongly supports the increased funding for the Building Department, which needs more funds for the repair and maintenance of public buildings.

- The need for diversified revenue sources: Diversifying the overall package of new revenues associated with an override can reduce the tax burden on Brookline property-owners. In its February 2018 resolution, the Advisory Committee resolution thus recommended identifying approximately $2.1 million of non-real-estate tax revenues. Possible sources include taxes on recreational marijuana sales, increased parking meter rates, and increased parking and refuse fees. Brookline also may be able to tax short-term rentals, such as AirBnB, although that remains uncertain. The May 2018 override includes just under $2.1 million in revenue from sources other than real-estate taxes, almost exactly the same amount as recommended in the Advisory Committee resolution. All of this revenue would be generated in FY2021, the third year of the proposed financial package. That means that there would be time to identify sources of revenue and to, for example, assess the potential but uncertain revenue from, for example, recreational marijuana.

- The need for further analysis before proposing a larger Override: Although the Advisory Committee called upon the Select Board (then the Board of Selectmen) to appoint an Override Study Committee in February 2017, the Committee was not convened until October 2017. That delay meant the Override Study Committee did not have enough time to consider every issue, and key staff members were focused on developing the FY2019 budgets for the Town and the Public Schools of Brookline. Thus the February 2018 Advisory Committee resolution recommended that the Select Board appoint a committee to further analyze questions that were not addressed by the 2017–2018 Override Study Committee, including but not limited to steps that Brookline could take to reduce or eliminate the projected long-term structural budget deficit through Fiscal Year 2025. So far, the Select Board has not appointed a committee to take a detailed look at Brookline's long-term budget outlook. The Advisory Committee has reiterated its recommendation that such a committee be appointed. This issue is discussed in detail below as part of this report's analysis of the long-term budget outlook.

NEW PROGRAMS AND NEW INITIATIVES IN THE FY2019 BUDGET

The FY2019 budget features several new initiatives and programs by town departments. The increased revenues generated by the May 2018 override, as well as savings due to lower-than-expected group health costs, have enabled the Building Department to devote more resources to the repair and maintenance of public buildings and the Department of Public Works to acquire new equipment. The override revenues also fund positions that directly serve the public at popular community facilities (the library and the pool), as well as a sustainability coordinator who can further Brookline's goals as a Green community.

Street Rehabilitation: The Capital Improvements Program includes $3.11 million for street rehabilitation, an amount that was increased by $1.4 million transferred from the Parking Meter Fund. This large increase will help to improve the condition of Brookline's roadways.

Credit Card Processing: Convenience Fees: As more and more payments to the Town are made by credit card, Brookline has had to bear the cost of the fees associated with those transactions. These costs have added to the budget at a time when budgets have been tight. The Town has decided to adopt a policy of imposing convenience fees on credit card and electronic transactions to reduce the cost of such transactions to the Town.

GARE and Diversity Training: Recognizing the need to increase diversity, end discrimination and achieve racial equity, Brookline has become a member of GARE (Government Alliance for Race and Equity) and added funds for diversity training—including $20,000 in override funds.

School Strategic Initiatives: The May 2018 override funds allocated to the Public Schools of Brookline are largely devoted to addressing enrollment growth, but they also make it possible for the schools to invest in a limited number of strategic initiatives. For South Brookline students attending Brookline High School, the most noticeable will be a bus to the high school. Other initiatives include restorative justice training, Anti-Defamation League training, and training in Response to Intervention practices.

Some requests for new initiatives or new positions were not funded with override or other revenues. For example, the Town Clerk's office requested an archival FTE for retention and storage of records and documents, but this position was not created. Neither the GIC (group health) savings nor the override revenues fund additional firefighter positions. That question may be revisited after the new Fire Chief has set his budgetary priorities.

CAPITAL IMPROVEMENTS PROGRAM (CIP)

Brookline's Capital Improvements Program (CIP) is funded by setting aside 6% of the prior year's net revenue for capital projects and supplementing this amount with Free Cash so that the total CIP funding is 7.5% of the prior year's net revenue. This policy has served Brookline well, enabling the Town to invest consistently in its public facilities. CIP funds

have been used to renovate or expand many of Brookline's public buildings, schools, parks, and other facilities in recent years. CIP funds are also used for the construction of new facilities, such as the Fire Department's training facilities and a potential ninth elementary school. The Town's CIP policies prevent the "shabbification" of Brookline's public assets and protect the Town's investment in its capital stock.

Brookline High School Renovation and Expansion

The most prominent item in the FY2019 CIP is the expansion of Brookline High School (BHS). That project has a total cost of $205.6 million. Of that total, $189.2 million will be funded by the FY2019 CIP. Of this amount, $186.8 will be funded by borrowing in the FY2019 CIP, with an additional $2.4 million in cash to be transferred from the bond premium account. A total of $16.4 in borrowing already has been authorized to finance acquisition of the property at 111 Cypress Street. (Funds raised by the May 2018 debt exclusion vote will be used to finance bonds for the $16.4 million plus an additional $151.8 million, a total of $168.2 million.)

The total cost of this project has grown since the Advisory Committee reported in the May 2017 Combined Reports (p. 9-82) that the estimated cost of a new High School building at 111 Cypress Street was $105,342,903–$136,612,807. That cost did not, however, include the cost of acquiring 111 Cypress Street, renovating the Tappan Street gym, improving Cypress Field, and other costs that are now included in the overall cost of the BHS project.

In its May 2017 report on the FY2018 budget and the chair's budget speech to the May 2017 Annual Town Meeting, the Advisory Committee estimated that the BHS expansion project would require a debt exclusion override of $150 million plus the use of $35 million in available CIP funds. Those estimates are only slightly below the current estimates of $168.2 million in debt exclusion override funds plus $35 million in other CIP borrowing and $2.4 million in bond premium funds. The Advisory Committee also was aware that cost estimates of other options for improving and expanding Brookline High School ranged as high as $348,352,647 in April 2017 and almost certainly would have grown in the past year. The proposed BHS expansion will be the most expensive CIP project in the Town's history, but the projected cost remains lower than the estimated cost of the alternatives.

Ninth Elementary School/Other Measures to Expand Classroom Capacity

The CIP continues to include funds for feasibility studies and schematic design for a 9th elementary school or a multi-site solution to the problem of classroom capacity. During the past year, Dr. Joseph Connelly has been leading an evaluation of many potential sites. The current timetable calls for presentation of the study's findings on May 17 and selection of a preferred site or sites during the week of June 18.

Other School Projects

- Driscoll School rehabilitation features $4,000,000 for a new, energy-efficient HVAC system.
- Classroom climate control for parts of New Lincoln, Lawrence, and Heath
- Leased space at various locations to add to classroom capacity

Street Rehabilitation

The CIP includes $3.11 million for street rehabilitation, an amount that includes an additional $1.4 million recommended by the Advisory Committee. Brookline will be implementing a Complete Streets policy, which may increase street rehabilitation costs unless grants are available for Complete Streets projects. There is backlog of over $20 million in roadway repair and maintenance. A recent report by Stantec Consulting Services recommended that funding be increased to $3 million per year to keep the roads in good condition and the backlog under control. It remains to be seen whether future budgets can sustain this level of funding.

Parks, Open Space, and Recreation

- Larz Anderson Park, including restoration of the lagoon area and emergency repairs to the ice rink
- Aquatics Center—new filtration system
- Cypress Field—to be renovated in conjunction with the BHS expansion project, either with a grass or artificial surface

Public Safety

- HVAC upgrades in data centers
- Updates for the computer aided dispatch (CAD) system
- Renovations at Station 4 (corner of Route 9 and Reservoir Road)

The Advisory Committee has provided detailed descriptions of each of the many projects in the FY2019 CIP (Special Appropriations 35–71) in its report on Article 7. (See pp. 7-36 – 7-59 of the Combined Reports.) Town Meeting may take a separate vote on any one of these items. It must take a separate vote for any bond-financed special appropriation; those appropriations require a two-thirds majority. This year, the Advisory Committee voted on the special appropriations separately and supported funding all of these CIP items by a unanimous vote of 24–0–0.

ADVISORY COMMITTEE REPORT TO TOWN MEETING ON THE PUBLIC SCHOOLS OF BROOKLINE FY2019 BUDGET

This report covers four topics: (1) The Advisory Committee' recommendations to Town meeting and a separate recommendation to the Select Board; (2) A high-level view of how the Schools spend operating funds; (3) the override aspects of the FY2019 School operating budget'; and (4) the long-term structural deficit.

Recommendations

When it considered the FY2019 budget for the Public Schools of Brookline, the Advisory Committee voted 13–9–1 to recommend Town Meeting's approval of the "override" operating budget of $110,831,679 for FY2019. The recommendation was contingent on approval by the voters of the operating override on the May 8, 2018, ballot. At least some of the "no" votes reflected dissatisfaction with the fact that the override includes funds for FY2020 and FY2021, not just for FY2019. This dissatisfaction is based on concern that there has not been enough work done on studying the need for additional funds in those two years.

The Advisory Committee is very concerned about the prospect of continued requests for operating overrides, and about the long-term structural deficit the Brookline faces. Therefore, at the same time that it voted to recommend the FY2019 school budget, the Advisory Committee also voted to recommend that the Select Board appoint a committee or task force by June 30, 2018 to identify ways to reduce the structural deficit, and that the committee be instructed to provide a preliminary report by November 1, 2018 and a final report by April 1, 2019.

The School Budget and Overall Spending on Schools

The $110.8 million in operating funds is not the total amount spent on school operations. When grants, receipts from revolving funds, and expenses attributable to the schools but accounted for on the town side of the budget are included, the total amount for FY2019 is $160.8 million. The table below shows the detail. Eighty-seven percent of the budget is related to personnel costs. Approximately 85% of the budget is related to instruction.

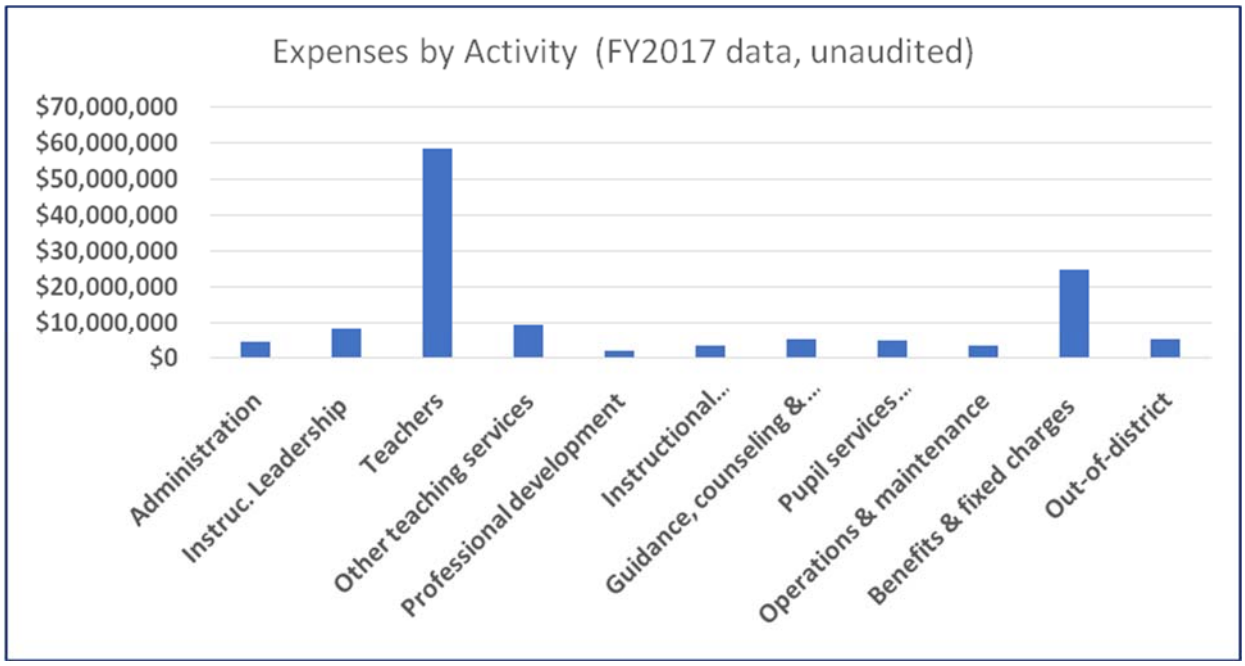
<u>Revenue</u>

The following table lists the revenues from a variety of sources that support this level of school-related expenditure:

Source	Total
Town Meeting appropriation	$110,831,679
Tuition & fees	$696,016
Circuit breaker funding	$1,688,705
Revolving fund reimbursements	$150,680
Other sources	$358,680
Subtotal School revenues	**$113,725,760**
Grants and revolving funds	$14,447,760
Benefits attributable to the Schools (Town FY19 Plan, p. IV-139)	$27,690,841
Building services attributable to the Schools (Town FY2019 Plan, p. IV-59)	$4,966,632
Subtotal - Non-School sources	**$47,105,233**
Total, all sources	**$160,830,993**

One factor affecting the size of the operating budget request is a $1,236,295 drop in the amount of "Circuit Breaker" reimbursement anticipated from the State. Circuit Breaker funds offset the high cost of support for Special Education students, primarily but not exclusively those placed out of district. The Legislature reduced circuit breaker funding from 70% of those costs in FY2018 to 65% for FY2019, well below the promise of 75% that is included in the legislation. As a result, the Public Schools of Brookline have to cover a shortfall of $1.2 million, an amount that needs to be made up by some combination of cuts and alternative sources of revenue.

Expenses



Meanwhile, the FY2019 budget continues the shift toward better organization and improved transparency that we have saw in FY2017 and FY2018. A close reading of the budget provides a useful and comprehensive picture of what the taxpayers are getting for their money. Each department's activities are explained and the associated costs are list—with the unfortunate omission of the cost of benefits. (Those benefits are carried on the Town budget, as noted above.)

For example, the description of the Office of Professional Learning's program and budget includes the office's objectives and accomplishment, and in the following pages, the budgets and activities of each of the departments reporting to the Office are explained.

Similarly, Special Education, which accounts for more than 21% of total spending, is explained in detail in its own section.

The Override Budget

Below is a one-page summary of the sources and uses of override funds, including funds for both the Town and Schools, projected out through FY2020 and FY2021.The override budget enables the Schools to avoid cutting programs and positions in order to cover the costs of increased salaries agreed in the labor contracts signed in 2017—with broad public support. The "no-override" budget prepared by the Schools cut $2,019,574 from the operating budget. Since personnel costs account for 87% of the budget, the major impact of the non-override budget would have been on staffing levels. The second chart show which programs or line items would have been cut in a no-override budget and which are included or changed in the override budget.

One impact is that the Office of Strategy and Performance would lose three full-time-equivalents (FTEs). Even with passage of the override, one FTE will be cut. That office has been a lightning rod for adverse comments about the cost of administration. Those comments reflect a misunderstanding of what the office does and why it is important.

The Office of Strategy and Performance has the responsibility of answering the question, "How are our students doing?" Importantly, one of the Advisory Committee's recommendations is to ask the Schools to look at the outcomes from the full range of special programs as a way of prioritizing the funding of those programs. The Office is a data analysis operation, and the output it provides to the School Committee, PSB staff, and the community as a whole is a key tool for assessing outcomes and managing a $160 million enterprise.

If the Select Board accepts the Advisory Committee's recommendation to appoint a committee to identify ways to close the long-term structural budget deficit the data the office provided by the Office of Strategy and Performance will be very important.

The override funds allocated to the Schools will cover the cost of increased wages as agreed with the Schools' employees, the added cost of increased enrollment, and $337,200 to fund

new programs and expand existing programs—most notably the addition of buses for Brookline High School students from South Brookline at a net cost of $117,200. (The $207,200 cost of busing would be offset by a per student fee equal to 50% of the anticipated per student cost.)

3 Year Override Funding Plan

4/25/18

	FY 2019 No Override	FY 2019 Override	FY2020 Override	FY2021 Override	Total Override	New Revenue	3 YR Total
3 Year Funding Plan by Source of Funds							
School Department		$ 1,944,574	$ 3,139,505	$ 389,563	5,473,642	5,873,642	
Public Buildings		200,000	200,000		400,000		
Municipal Departments		701,783	-	-	701,783		
Proposed Tax Levy Override		2,846,357	3,339,505	389,563	6,575,425		
Town GIC Portion		$ 349,058			$ 349,058		
Public Buildingss Portion	*34,196*	34,196			34,196	443,871	
School Department Portion	409,675	409,675	-	-	409,675		
Employee Health Insurance Savings (GIC)	***443,871***	***792,929***	**-**	**-**	***792,929***		8,375,132
Public Facilities Portion	*75,000*	*75,000*			*75,000*		
BHS Busing - Local Receipts		*75,000*			75,000		
School Department Portion	*3,534,891*	*3,644,085*	*3,399,413*	*3,634,633*	*10,678,131*		
Town/School Partnership Revenue	*3,609,891*	*3,794,085*	*3,399,413*	*3,634,633*	*10,828,131*		
Non Property Tax Revenue				*2,057,619*	2,057,619	2,057,619	
School Revenue Offsett	*(1,236,295)*	*(1,236,295)*	*21,507*	*22,152*	(1,192,636)		
Totals	***2,817,467***	***6,197,076***	***6,760,425***	***6,103,967***	***19,061,468***		
Allocation of 3 Year Funding Plan							
Town Uses Of Funds							
Infrastucture							
Repair and Maintenance of Buildings		200,000			200,000		
DPW Capital Equipment Replacement		300,000			300,000		
Snow Equipment/Streets Sidewalks		149,058			149,058		
Total Infrastructure		**649,058**			**649,058**		
Services							
Library		153,771			153,771		
Recreation		58,049			58,049		
Senior Center		37,179			37,179		
Planning (Perservation and Sustainability)		115,665			115,665		
Diversity,Inclusion and Community Relations		20,000			20,000		
Parks and Open Space		17,119			17,119		
Total Services		**401,783**			**401,783**		
		1,050,841			**1,050,841**		
Infrastructure: Maintenance of School Buildings							
Public Buildings Division - Select Board Override Funds		200,000	200,000		400,000		
Public Buildings Division - SC Town/School Partnership	*75,000*	*109,196*	-	-	*109,196*		
	75,000	**309,196**	**200,000**	**-**	**509,196**		
School Uses of Funds							
Maintenance of Effort							
Current Staff (+2%COLA, +3%Steps, -Turnover Savings)	3,327,535	3,645,718	4,251,695	4,338,780	12,236,194		
Reclassifications, Reductions, & Efficiencies	(2,434,724)	(1,203,933)			(1,203,933)		
Special- and Regular Ed Transportation Contracts	288,386	288,386	57,886	58,754	405,026		
504 Services and Supports	68,000	68,000	-	-	68,000		
Supplies/Misc	44,270	44,270	68,337	36,983	149,590		
Financial Assistance	175,000	175,000	-	-	175,000		
Program Review (Math FY19 & FY20)	-	-	371,880	-	371,880		
Projected Tuition Increase	-	-	300,000	300,000	600,000		
	1,468,467	3,017,441	5,049,798	4,734,517	12,801,756		
Enrollment Growth							
Classroom Staff, Nurses, Guidance, Ell/Other	884,000	884,000	901,680	1,273,450	3,059,130	8,375,134	
Maintain Educational Leader Ratio of 250:1	240,000	240,000	120,000	96,000	456,000		
Overmax Aides BESA and Custodian for BHS (OLS, then move to New Bldg)	60,000	193,400	60,000	-	253,400		
	1,184,000	1,317,400	1,081,680	1,369,450	3,768,530		
Strategic New Investments							
Sr. Director for Equity and PD for Equity and Restorative Justice	65,000	195,000	280,000	-	475,000		
BHS Transportation - South Brookline Bus	-	207,200	-	-	207,200		
Response to Invervention Programs and Practices	100,000	100,000	-	-	100,000		
Pending Contract Negotiations: Add. Funds for Para Wages	-	-	148,947	-	148,947		
	165,000	502,200	428,947	-	931,147		
Total Schools Budget Increase	2,817,467	4,837,041	6,560,425	6,103,967	17,501,433		
Town/School Partnership Revenue	(2,817,467)	(2,482,790)	(3,420,920)	(3,656,785)	(9,635,495)		
Net New Revenue Required (All Sources)	-	2,354,251	3,139,505	2,447,182	7,865,938		
Town Appropriation	108,812,105	110,831,679					
School Revenue Offsett	2,894,081	2,894,081					
New School Committee Budget	111,706,186	113,725,760					

School Uses of Override Funds					
Maintenance of Efforts	**FY 2019**	**FY2020**	**FY2021**	**Totals**	
Portion of Salaries Covered by Override	1,237,926	830,775	681,995	2,750,697	33%
General Expenses	400,656	498,103	95,737	994,496	12%
Financial Assistance	175,000	-	-	175,000	2%
Special Education Tuition Increase	-	300,000	300,000	600,000	7%
Enrollment	1,317,400	1,081,680	1,369,450	3,768,530	45%
Strategic Investments	427,200	428,947	-	856,147	10%
Infrastructure	234,196	200,000	-	434,196	5%
Efficiencies	(1,203,933)	-	-	(1,203,933)	-14%
Total Override Funds	2,588,445	3,339,505	2,447,182	8,375,132	100%

FY19 School Budget - Override vs. Non Override Summary
Advisory Committee School Subcommittee 4/3/2018
Edited Deputy Supt Admin & Finance for 4/10/2018

X = budget cut from base	0 = no funding		✓= New Funding or Restored Funding
	No override	**Override**	**Notes**
Maintenance of effort	**$1,468,467**	**$3,017,441**	
Contract obligations, net of turnover	✓	✓	Efficiencies include reclassification of positions, moving appropriate charges to revolving funds, reducing for known savings in out of district tuitions, professional development, and program modification
Cuts from efficiencies	✓	✓	
Family Enrollment & Comm. Specialist	X	✓	No override means reduced ability to support families with registration; eliminates paraprofessionals in large classes; eliminated LAHB support at Driscoll; reduces ability to support increased request for student learning data (outcomes data); eliminate. support for fragile adolescents; Only BHS Secy is funded in Non-Override scenario; No override means increased class sizes, reduces student:teacher ratio in several schools; less paraprofessional support; less professional development; postpones technology purchases to replace worn out devices; supplies 2.5% increase not adjusted for Enrollment; funding for targeted support & funding for basic supplies; and reduces ability manage large capital projects, and one time expenses
BEEP Reg. Specialist	X	✓	
Support @ Driscoll for LAHB program (Driscoll Inclusion Specialist)	X	✓	
Mandated in-district special education transportation	✓	✓	
Transportation contract cost increase	✓	✓	
OverMax Aides (unfunded)	0	✓	
Data analyst	X	✓	
10 paraprofessionals (for large classes)	X	✓	
3.0 FTE school-based special education & classroom teachers	X	✓	
3 Instructional Coaches for teachers	X	✓	
Sec'y & custodian for BHS expansion	X	✓	
Funding for financial assistance policy	✓	✓	
Program Review Materials (FY20)	0	✓	
504 services & support	✓	✓	
ADL training for middle grades	0	✓	
Maintain technology investments	X	✓	
Supplies budget increase	✓	✓	
Accreditation process for BHS	0	✓	
Student Services Supports to Regular Education Students: Eliminate 8.0 FTEs (may be updated)	X	✓	
Enrollment Growth	1,184,000	1,317,400	
10 add'l classroom teachers - 3 @ K-8; 7 @ BHS	✓	✓	
3.0 FTE nurses, guidance and ELL	✓	✓	
Maintain leader ratio of 250:1; adds Lawrence VP & BHS Assoc. Dean	✓	✓	
New Programs/Expansions	165,000	502,200	
Equity Leadership and imbedded Professional Development	0	✓	No override eliminates coord. with schools on prof. development & educational equity; busing for S. Brookline; ; eliminates funding for eliminates renewal of BHS accreditation
Restorative Justice program	0	✓	
South Brookline busing	0	✓	Introduces Fee Based Busing for BHS students
Response to Intervention Programs & Practices	✓	✓	Professional Development
Paraprofessional wages	0	✓	
Accreditation process for BHS	0	✓	One Time Expense
	2,817,467	**4,837,041**	
Public Buildings Div. funding	✓	✓	
	75,000	**309,196**	
	2,892,467	**5,146,237**	

GENERAL NOTES:

1. Remember that the subcommittee and AC will be reporting on the entire school budget request of **$111,815,382** (no override) or **$113,782,256**
2. The budget as presented does not include state aid, grants and revolving funds on the receipts side, and it does not include the aggregate cost of benefits or school building maintenance on the expenses side.
3. The long-term Town budget does not include a potential increase in state aid to school districts. Changes in the allocation formula would favor Brookline in FY19 and beyond.
4. The final version of the enrollment projection is due; for the moment the budget includes the preliminary projections that have been widely circulated. Nothing suggests that the current trend will reverse; the students who will drive overcapacity at BHS are already in the K-8 schools.
5. The proposed override will not eliminate the long-term structural deficit. Possible solutions include a significant increase in non-tax revenue, or an increase in the non-residential tax base; or a re-thinking by the School Committee and residents of priorities such as class size, classroom equity; and increased compensation for the cost of educating non-resident students

The Schools and the Structural Deficit

Both the Public Schools of Brookline and the Town forecast an ongoing, widening structural deficit. There is nothing new about the forecast of future deficits except for one important distinction: this time, they appear to be real. Looking back twenty years, a steady regime of belt-tightening and occasional bump-ups in revenue from new construction, other sources, and the 2008 operating override, kept budgets in balance for long periods, until the strain resulting from the 2.5% limit on annual increase in the real estate tax levy resulted in operating overrides in 2015 and 2018, with a further override possible in 2021.

Currently, increasing school enrollment is the main driver of the structural deficit. Just as happened in 2015, today we are looking at an operating override that will cover only three years of future School budget deficits. With such a short interval between going to the voters, we face the prospect of living from override to override, a condition that is as unsatisfactory as living from paycheck to paycheck.

One important question is whether future kindergarten enrollments will continue at the current level of approximately 600 to 625 students. On April 1, the Schools issued the 2017–18 Enrollment Projection Report detailing both the forecast for the next ten years and the method for developing that forecast. The projection is based on actual Brookline birthrates for FY2019–2023 and on future birthrates for the out-years.

Thus, the children who will enroll in kindergarten over the next four years have already been born to mothers living in Brookline. The children who are expected to enroll in FY2024 and beyond are projected to be born at the average Brookline birthrate for the past three years, or 615 births per year. It is hard to argue with the proposition that children who are already born to Brookline mothers are likely to enroll in Brookline schools. Brookline birthrates have been stable and show no signs of declining.

The voters have been strong supporters of their schools, as shown by the high percentage of votes in favor of recent overrides, and the reputation of Brookline schools has been one of the key factors in pushing real estate values up. Based on asset values, Brookline voters can afford to pay for the 2018 override and for overrides beyond, but high appraisals do not pay tax bills. Even if real estate values continue to advance, property owners will see escalating tax bills. At some point, even in Brookline, it will become difficult to sustain the cycle of repeated overrides. It is worth remembering that in 2008, the same year Brookline voters approved a $6.2 million override, Newton voters turned down a $12 million override for the school operating budget.

The potential consequences of a steady stream of overrides is an issue that demands our attention. As noted by the bond rating agencies, predictability of revenue is one of the keys to Brookline's financial stability, and it is not rational to assume that voters will continue to approve overrides every few years into the foreseeable future.

Possible solutions include a significant increase in non-tax revenue, commercial development that would result in an increase in the commercial tax base, continued efforts to improve operating efficiency, a re-thinking by the School Committee and residents of how to achieve such priorities such as class size and classroom equity, and increased compensation for the cost of educating non-resident students.

We emphasize that asking the School Committee to consider priorities is not asking for a reconsideration of principles. A principle is not subject to compromise, but priorities may be.

Brookline schools offer a wide range of programs, each of which has a cost and a set of outcomes. Superintendent Bott explained to the subcommittee that the START, whose outcomes were not up to expectations, has been dropped form the FY2019 budget for a reduction of $177,268. The Advisory Committee recommends that the School Committee and Superintendent continue to look carefully at outcomes to consider which programs merit continued support, and whether budget priorities need to be adjusted as part of the effort to reduce the structural deficit.

Both METCO and the Materials Fee program continue to draw questions about their cost and whether they are appropriate, given the stress on classroom capacity. The 2017–18 Override Study Committee (OSC) estimated that the cost of educating each METCO student exceeded the State's reimbursements by $9,967 for a total operating cost of $2,990,128 for 300 students. The OSC estimated that the net cost of educating each Materials Fee student is $10,712 for a total program operating cost of $1,713,984 for $160 students. Some Advisory Committee members argue that these estimates do not include capital costs and are too low.

The School Subcommittee of the Advisory Committee has consistently supported the continuation of METCO at its current level. The Advisory Committee accepts the rationale for the Materials Fee Program, although not necessarily the size of the program. However, there may be ways to narrow the substantial gap between the cost of these two programs and the reimbursement the Town receives, including raising tuition for Materials Fee children and working with other municipalities to extract an appropriate rate of reimbursement for the cost of METCO. There are also more complex approaches to study. For example, it may be possible for Brookline to adopt a policy of accepting any non-resident student on a space-available basis and receive statutory reimbursement from that student's home city or town, thereby capturing a substantial portion of the cost of Materials Fee students, and possibly even METCO students.

More generally, it may also be time to have a conversation with the Town and School employees regarding the 83% contribution Brookline makes to medical insurance. Employees and their representatives may need to decide whether protecting that level of contribution is more important than protecting jobs.

LONG-TERM BUDGET OUTLOOK

The May 2018 operating override and associated revenue increases will enable Brookline to balance its budget, cope with increased school enrollment, and add some new programs and initiatives during the next few years. The long-term budget outlook, however, remains a cause for concern. In the not-too-distant future, Brookline will again face potential deficits and the need to make difficult choices.

Every year the Town Administrator's Financial Plan projects a long-term structural deficit. In the presentation of this forecast, there is usually a graph showing expenditures and revenues. The line for expenditures always goes up faster than the line for revenues, suggesting that there is a structural deficit. In the *FY-2019 Financial Plan*, the long-range financial projection shows an "escalating deficit position." The projected deficit emerges in FY2020 at about $3.6 million and balloons to $17.2 million in FY2023. These projections do not take into account the increased revenue from the May 2018 operating override, and they are generally based on very conservative assumptions about revenue growth. Nevertheless, even the best-case scenario would probably involve a significant deficit. The May 2018 operating override is projected to enable the Town to balance its budget for only three years. Starting in FY2022, there will probably be a projected budget deficit. Moreover, such projections of the impact of overrides and related revenue increases are often too optimistic. In the third year after passage of the May 2015 override, for example, revenues fell short of expectations and the school budget started to show a likely deficit, requiring some budget cuts and a FY2018 shift of $770,430 from town departments to the schools via the Town/School Partnership.

Budget Challenges will Remain Even if School Enrollment Growth Slows Down or Stops

It is possible that Brookline's long-term structural budget deficit will be reduced or eliminated if the town's school-age population grows at a slower rate or declines. If that happens, Brookline might face a much better budget outlook. We should not, however, base Brookline's financial plans on an optimistic assumption that may turn out to be wishful thinking. Moreover, even if school enrollment levels off or falls there are many reasons why Brookline may face budget challenges during the next decade.

First, inflation may increase. After remaining at or below 2% for several years, the Boston Consumer Price Index (CPI) rose at a 3.6% rate from March 2017 to March 2018. (These are the latest figures available as of early May 2018.) Even if volatile food and energy prices are excluded, the Boston CPI increased at a 2.6% rate during this period. If inflation continues to accelerate, Brookline will need to spend more on many budget items,

including personnel costs that are determined through collective bargaining. The long-range financial projection in the *FY-2019 Financial Plan* assumes that unions will receive 2% annual wage increases. Higher inflation will also translate into higher bids for capital projects and higher construction costs.

Second, interest rates may continue to go up. Interest rates have been at or near historic lows for almost a decade. They have begun to rise. If this trend continues, Brookline's borrowing costs will increase. Although the town will earn more interest income, such earnings probably will not offset the increased debt service costs of major capital projections such as future school renovations or expansions.

Third, the long period of U.S. and global economic expansion that began after the Great Recession of 2008 will eventually end with another recession of uncertain magnitude. If there is a recession, state aid to Brookline is likely to decline. During the last recession, net state aid to Brookline fell from $10.81 million in FY2009 to $6.48 million in FY2012, and did not exceed the FY2009 level until FY2016. The *FY-2019 Financial Plan* assumes that state aid will increase by 2.5% each year. A recession also would reduce many of Brookline's other revenues, including new growth in the property tax levy, building permits, meals and lodging taxes, and parking meter receipts—and maybe even any revenue received from taxes on the sale of recreational marijuana.

Fourth, group health costs could increase more rapidly. The FY2019 increase in insurance rates set by the Group Insurance Commission (GIC) is remarkably low. Future increases are likely to be higher. The *FY-2019 Financial Plan* prudently assumes annual health insurance rate increases of 5%, but a decade ago annual rate increases often exceeded 10%.

Fifth, appropriations for pension obligations, which are already scheduled to increase during the next decade, may have to increase even more if the rate of return on pension fund investments declines. After the significant appreciation in the stock market since 2009, it may be unrealistic to expect high returns for next 5–10 years. Brookline also may need to make much larger contributions for retiree health benefits (OPEBs). In its report on Brookline's bond rating, Standard and Poor's noted that in FY2017, Brookline's contributions to the Town's OPEB trust fund fell about $8.5 million short of the annual contribution that would put Brookline on track for fully funding its OPEB liability. The annual shortfall between now and FY2026 is estimated at $7–8 million.

Finally, the Town may need to make a large investment to maintain its physical plant, which includes 45 public buildings valued at an estimated $135 million. The Building Department's Public Buildings Division reports that the backlog of deferred maintenance for school buildings is now $16.7 million. Yearly preventative maintenance costs continue to increase as new buildings are added and existing buildings are expanded. When existing and planned school construction projects are completed, the total square footage of school buildings will have increased by 25%. A 2016 report by an outside consultant found that the Public Buildings Division lacked the FTEs to carry out its functions. The Building Department requested an additional $775,000 for FY2019 for school building repair and

maintenance. Although it did not receive this amount, the allocations from override funds and GIC savings will enable it to perform more repairs and maintenance. Brookline's roadways also will deteriorate unless the Town invests more in repairs and maintenance. A recent Stantec report found that spending more now will pay off in future savings, because it is much more expensive to repair a road that has deteriorated badly. The FY2019 CIP thus includes an additional $1.4 million for roadway maintenance.

Overall, apart from the severe budget pressures due to increasing school enrollment, Brookline has enjoyed what might be described as "Goldilocks" budget conditions in recent years: low inflation, low interest rates, small increases in labor compensation costs, small increases in healthcare costs, and steady increases in state aid. These conditions may not last.

Can More Operating Overrides be the Solution to Budget Challenges?

For all the reasons outlined above, the Town is likely to face continuing budget challenges that may lead to calls for additional operating overrides. Until 2015, Brookline has infrequently resorted to Proposition 2½ overrides to balance its budget. Starting in 2015, however, it now seems necessary to approve a large override every three years. The 2018 override is projected to produce balanced budgets until FY2021. Although Brookline's voters have been willing to approve operating overrides by a large margin, this support may erode as the cumulative tax impact increases, most likely compounded by at least one more debt exclusion to finance school construction costs. Even if overrides continue to be supported by a majority of Brookline voters, they will impose an increasing financial hardship on many residents, particularly seniors.

The Need for a Long-Range Financial Review Committee

The Advisory Committee believes that a Long-Range Financial Review Committee will be necessary and important as Brookline addresses its revenue and budget issues for the next 5–7 years.

On May 1, 2018, the Advisory Committee voted 22–0–1 for the following motion:

VOTED: That the Advisory Committee ask the Select Board to appoint by June 30, 2018, a committee or task force to make recommendations for closing the long-term structural deficit and to provide a preliminary report to the Advisory Committee no later than April 1, 2019, and a final report by November 1, 2019.

Such a committee should not be called an Override Study Committee. Calling the committee a Long-Range Financial Review Committee would make it clear to prospective members that the committee will not convene only to consider whether to propose an override or not, but to take a broader look at Brookline's finances.

The Advisory Committee previously had voted to recommend the formation of such a committee when it adopted a resolution regarding the May 2018 override. Such a committee would consider some of the long-term revenue and expenditure issues that were not addressed by the 2017–2018 Override Study Committee (OSC).

With a longer lead time than the OSC had, there would be more time to identify a sufficient number of qualified candidates. A Long-Range Financial Review Committee might include residents with finance and management experience from the private, public, and non-profit sectors, veterans of similar previous committees, and former Brookline elected officials. It might even be helpful to give the committee dedicated staff support.

The fundamental reason for such a committee is the need to address Brookline's long-term structural deficit without having to resort to large and frequent operating overrides. Brookline voters approved an operating override in 1994. Fourteen years then passed before another operating override appeared on the ballot, in 2008. The 2015 override came seven years later. Only three years have passed, and another operating override almost certainly will be on the May 2018 ballot. All signs indicate that the next override will be in 2021. This is not a sustainable solution to Brookline's financial problems.

The charge to this committee should focus on analysis of options to address the long-term structural deficit, including options that do not depend on frequent large operating overrides.

The committee might consider the following issues:

Revenues

- Analysis of all potential new non-tax revenues, including those included in the May 2018 override plan and any others. Such an analysis might be particularly useful in FY2021, when the three-year override plan relies almost entirely on non-tax revenues.

- Analysis of the potential and limits of new construction, particularly commercial construction, to add to the tax base. How many hotels, for example, can Brookline support?

- Analysis of potential tax revenues other than property taxes, including a real estate transfer tax and taxes on AirBnB and similar short-term rentals.

Expenditure and Efficiencies

- A review of the benefits and costs of current Town and school policies. Are best practices being used in all cases? Is Brookline adopting new policies that increase costs without identifying funding sources?

- An evaluation of programs to determine if they are meeting their goals.

- Analysis of which potential new expenditures would be most important and cost-beneficial. How much should Brookline invest in repairing and maintaining its public buildings, facilities, and infrastructure?

Capacity to Pay and Potential Tax Relief

- Assessment of Brookline taxpayers' capacity to pay tax increases due to future operating and debt exclusion overrides. Such an assessment would take into account the changes in federal tax law that have eliminated the deduction for state and local taxes.

Fiscal Policies

- Review of Brookline's fiscal policies. Existing fiscal policies have worked well, but some may need to be reconsidered. Should the appropriation of Free Cash for the Housing Trust Fund be changed? Are CIP policies meeting Brookline's capital needs? Should there be a more formal statement of how Free Cash is used to fund the unrestricted fund balance, the Pension Fund, and the OPEB trust fund?

CONCLUSION AND RECOMMENDATION

The Advisory Committee thanks all the individuals, boards, committees, and commissions that have been involved in the FY2019 budget process. Town Administrator Melvin Kleckner has our gratitude for overseeing the production of an award-winning Financial Plan, which always provides a solid basis for developing each year's budget. We owe great thanks to Deputy Town Administrator Melissa Goff, who works closely with the Advisory Committee during its consideration of departmental budgets and is an absolutely invaluable source of information at every stage of the budget process. Assistant Town Administrator Austin Faison is an additional vital liaison between the Advisory Committee and the executive branch of Town government.

We thank all of the Town's department heads for their cooperation during the Advisory Committee's review of each department budget, including their attendance at subcommittee hearings and meetings of the full Advisory Committee. Every Town employee has our gratitude for all they do to carry out their work in difficult fiscal circumstances.

Special thanks go to the Select Board and its chair, Neil Wishinsky. The Select Board, as always, devoted much time to attempting to address the fiscal challenges that Brookline faces as a result of increasing school enrollment. As chair, Neil Wishinsky worked tirelessly to craft an operating override proposal that would be as fiscally responsible as possible. We also thank Select Board Members Ben Franco and Heather Hamilton for chairing the Override Study Committee. We realize it was a difficult task.

The School Committee, particularly its chair, David Pollak, and Superintendent Andrew Bott all have our gratitude for their patience and willingness to meet with Advisory Committee members to hold extensive discussions of budget issues and enrollment trends.

We bid a sad farewell to School Committee member Beth Jackson Stram, who brought keen budget expertise and knowledge to her role as chair of the Finance Committee of the School Committee, and to School Committee member Ben Chang, both of whom decided not to seek re-election to the School Committee this year.

We thank the staff of the Public Schools of Brookline for what they have done to improve the school budget process and the school budget document itself. Deputy Superintendent for Administration and Finance Mary Ellen Dunn has made a major effort to present a clearer and more complete school budget. We appreciate her innovations and her willingness to explain the school budget to the Advisory Committee.

Finally, we extend special thanks to the members of the Override Study Committee, including Brookline residents who had not previously participated extensively in local politics and government. Whether or not one agrees with the Committee's conclusions or its approach, we all owe a debt of gratitude to those who volunteered and devoted so much time and energy to the work of the Committee. We very much hope that citizens who volunteered for the Committee will continue to be engaged in Brookline's civic life. It would be wonderful if they will use what they learned from their experience this time in future discussions of Brookline's budget and finance issues.

As reported in the Advisory Committee's recommendation on Article 7 in the Combined Reports, the Advisory Committee is honored to submit the FY2019 Town Budget with a recommendation of FAVORABLE ACTION, as voted on May 1, 2018. The vote on the non-override budget was 23–0–1. The vote on the override budget, which is now the recommended FY2019 budget, was 9–4–11.

ARTICLE 8

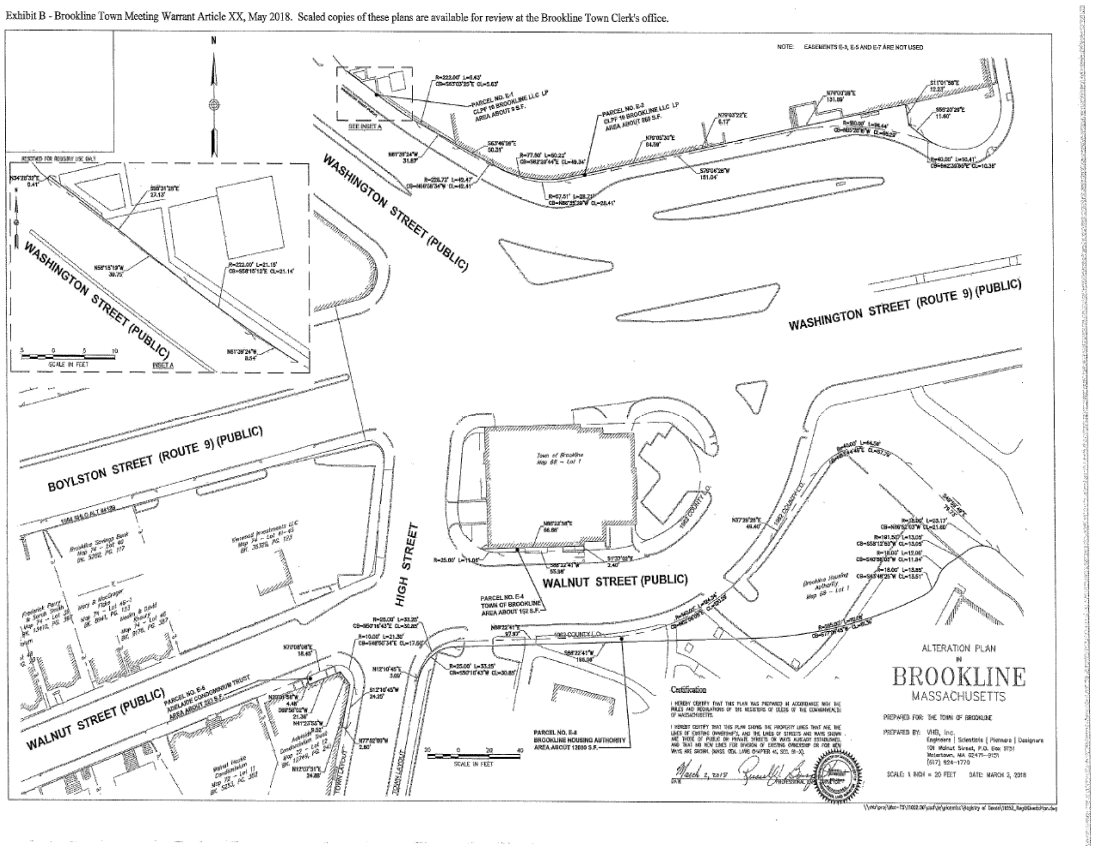
EIGTH ARTICLE

Submitted by: Department of Public Works

To see if the Town will vote to accept as public ways the altered layouts of Walnut Street and Washington Street, to include within the layout of Walnut Street the parcels of land shown as E-4, E-6 and E-8 and to include within the layout of Washington Street the parcels of land shown as E-1, E-2, E-9 and E-10 on a plan entitled "Alteration Plan in Brookline Massachusetts Prepared For: The Town of Brookline," dated March 2, 2018, prepared by VHB, Inc., as may be amended, said plan on file with the Town Clerk; and to authorize the Select Board to acquire, by gift, purchase, eminent domain or otherwise, permanent easements to use such parcels of land for all purposes for which public ways are used in the Town of Brookline,

or act on anything relative thereto.

Exhibit B: Town Alteration Plan, dated March 2, 2018 - as referenced in Warrant Article



PETITIONER'S ARTICLE DESCRIPTION

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.

PLANNING BOARD REPORT AND RECOMMENDATION

This zoning amendment was submitted by the Department of Public Works and has the unanimous support of the Planning Board.

Warrant Article 8 requests acquisition by the Town of seven permanent easements for the Gateway East project. Town Meeting must vote to accept as public ways the altered layouts of Walnut Street and Washington Street and authorize the Select Board to acquire all of the permanent easements for use as public ways. The permanent easements are needed to allow for the construction of such things as sidewalks, roadways, traffics signals and other improvements. Prior to the project being formally funded, bid and constructed by MassDOT's selected contractor, the Town is responsible for acquiring all necessary temporary and permanent easements.

The Gateway East project has been in the planning stages for almost a decade after a conceptual plan was included in the Town's *Gateway East Public Realm Plan* in 2006. 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 consists now of significant roadway and traffic signal improvements, pedestrian crossings, protected bicycle facilities, sidewalk improvements and landscape and streetscape amenities.

The project is nearing its 100% design submission and is scheduled to be bid by the Massachusetts Dept. of Transportation in late August 2018. In order to complete 100% plans, the Town must work closely with MassDOT through its iterative design process, where projects methodically advance from 25% to 100% design. MassDOT conducted its 25% Design Public Hearing in April 2017 following a number of public information meetings and after local project review by the Transportation Board and Select Board, where continued public input was sought on project design. The Gateway East project has been thoroughly reviewed and discussed as it transformed from design concept to 25%, 75% and currently 100% design.

The Planning Board is supportive of the project and understands its importance not only in enhancing the Rt. 9 corridor near Brookline Village, but for the project's role in bringing coordinated improvements to the corridor along with the new hotel at 700 Brookline Avenue and the buildout of 2-4 Brookline Place by Children's Hospital. The Gateway East project will knit together these new development sites and will provide greater mobility for all modes.

The Planning Board recommends favorable action on Warrant Article 8. The acquisition of permanent easements ensures that the Town is securing all needed rights for the Gateway East project, as required by MassDOT, and ensures that the Town will have the ability to maintain the constructed improvements in the future. The Board recommends that Town

Meeting vote to accept as public ways the altered layouts of Walnut Street and Washington Street, to include within the layout of Walnut Street the parcels of land shown as E-4, E-6 and E-8 and to include within the layout of Washington Street the parcels of land shown as E-1, E-2, E-9 and E-10 on a plan entitled "Alteration Plan in Brookline Massachusetts Prepared For: The Town of Brookline," dated March 2, 2018, prepared by VHB, Inc., as may be amended. At a meeting on April 3rd, the Brookline Select Board voted its support to alter the layouts of Walnut Street and Washington Street for the Gateway East project.

The Board recommends that Town Meeting authorize the Select Board to acquire by gift, purchase, eminent domain or otherwise, permanent easements to use such parcels of land for all purposes for which public ways are used in the Town of Brookline.

Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article VIII as submitted.

SELECT BOARD'S RECOMMENDATION

Gateway East is an $8 million transportation project to be funded by the state and federal government to redesign the roadway intersections along the Washington Street/Route 9 corridor in Brookline Village and to enhance safety and mobility for pedestrians and bicyclists. Warrant Article 8 requests that Town Meeting accept the altered layouts of Walnut Street and Washington Street and authorize the Select Board to acquire all permanent easements needed for the Gateway East project for use as public ways. Acquisition of permanent easements ensures that the Town is securing all needed rights for the construction of the project.

Since the project will not be undertaken entirely within the Town of Brookline's roadway and sidewalk layout, the Gateway East 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. 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 signal on Brook House property. Roadway easement E-8 is being sought from the Brookline Housing Authority (BHA), which will allow the realigned Walnut Street to cross what is currently a BHA-owned parking lot to form a new intersection at Route 9 and Pearl Street that provides enhanced pedestrian crossings in the heart of Brookline Village.

Substantial state and federal construction funding is being provided by the state for this project. The Massachusetts Department of Transportation (MassDOT), which oversees project design and construction of state-funded projects, requires municipalities to obtain permanent easements to allow for the construction of sidewalks, traffic and pedestrian signals and other public facilities and maintenance post-construction.

The Board is excited to see this project move forward and unanimously voted FAVORABLE ACTION on May 1, 2018 on the following motion:

VOTED: That the Town accept as public ways the altered layouts of Walnut Street and Washington Street, to include within the layout of Walnut Street the parcels of land shown as E-4, E-6 and E-8 and to include within the layout of Washington Street the parcels of land shown as E-1, E-2, E-9 and E-10 on a plan entitled "Alteration Plan in Brookline Massachusetts Prepared For: The Town of Brookline," dated March 2, 2018, prepared by VHB, Inc., as may be amended, said plan on file with the Town Clerk; and to authorize the Select Board to acquire, by gift, purchase, eminent domain or otherwise, permanent easements to use such parcels of land for all purposes for which public ways are used in the Town of Brookline,

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ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 8 is one of five Warrant Articles all associated with the Gateway East project. Broadly speaking, Articles 8–12 combine to (a) give the Select Board, the Department of Public Works and the Department of Planning and Community Development both the authority and the means to fulfill Brookline's obligations with regard to the Gateway East project, and (b) to address ancillary administrative items broadly related thereto. The Advisory Committee recommends FAVORABLE ACTION on five Articles by near-unanimous votes. Article 12 was approved with additional language as discussed in greater detail in.

GENERAL BACKGROUND:
Gateway East is an approximately $8 million transportation project to be funded by the State and the Federal government to redesign the roadway intersections along the Washington Street/Route 9 corridor in Brookline Village and to enhance safety and mobility for pedestrians and bicyclists. While the State and Federal government will fund the construction of this project, they require that municipalities fund all pre-construction activity (design and acquisition of any required land). The land acquisition portion of the Town's requirement includes procuring temporary and permanent easements; Articles 8 and 9 and 11 address these matters. Article 10 is a "housekeeping" matter that deals with an easement granted to the Town in 1972, which the Town no longer needs. Brookline also committed to a $1 million construction match to make the project more favorable in the highly competitive Transportation Improvement Plan (TIP) process. Funding of the $1 million comes from two sources, $750,000 from Children's Hospital as part of their mitigation payments relating to the redevelopment of 2 Brookline Place and, if approved by Town Meeting, $250,000 from sources discussed in Article 12.

DISCUSSION:
Approval of Article 8 will mean that the Town is accepting as public ways the proposed altered layouts of Washington and Walnut Streets, including certain parcels of land, and

that the Select Board is authorized to acquire by whatever means necessary eight permanent easements for the use of such certain parcels of land. It should be underscored that this is authorization language only and that the Town is expected to acquire easements to use the properties but not to acquire the properties themselves.

RECOMMENDATION:
The Advisory Committee unanimously recommends FAVORABLE ACTION on the motion offered by the Select Board.

XXX

ARTICLE 9

NINETH ARTICLE

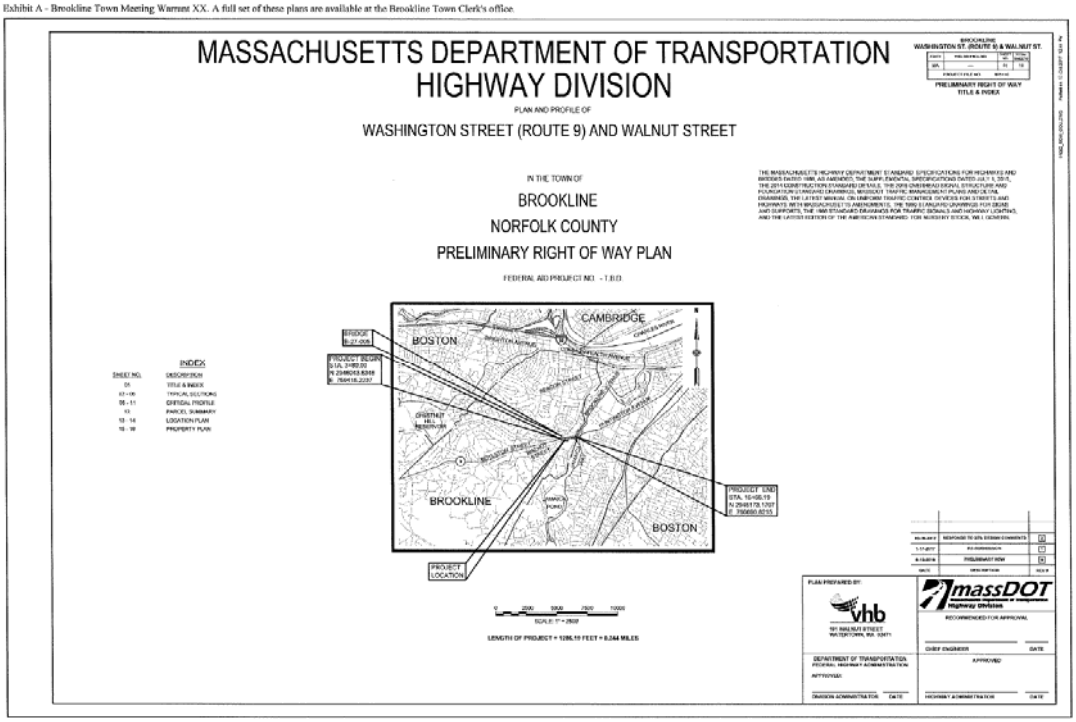
Submitted by: Department of Public Works

To see if the Town will vote to acquire by gift, purchase, eminent domain or otherwise, on such terms and conditions as the Select Board shall deem to be in the best interests of the Town, permanent and temporary easements on the parcels of land shown on plans entitled "Massachusetts Department of Transportation Highway Division Plan and Profile of Washington Street (Route 9) and Walnut Street in the Town of Brookline Norfolk County," prepared by VHB, revised through October 16, 2017, as may be amended, said plans on file with the Town Clerk, for public way purposes, including, but not limited to, the construction, alteration, maintenance, improvement, repair and/or replacement of roads, sidewalks and landscaping; and, further, to raise and appropriate a sum or sums of money therefor, and determine whether such appropriation shall be raised by taxation, transferred from available funds, provided by borrowing, raised via a Section 108 program loan or provided by any combination of the foregoing; and, further, to authorize the Select Board to enter into all agreements and take all related actions necessary or appropriate to carry out this vote and other acts authorized herein,

or act on anything relative thereto.

Exhibit A: Relevant sheets from plans referenced in the Warrant

Exhibit A - Brookline Town Meeting Warrant XX. A full set of these plans are available at the Brookline Town Clerk's office.



BROOKLINE
WASHINGTON ST. (ROUTE 9) & WALNUT ST.

STATE	FED.AID PROJ. NO.	SHEET NO.	TOTAL SHEETS
MA	XXXX	12	19
PROJECT FILE NO.	606110		

PRELIMINARY RIGHT OF WAY
PARCEL SUMMARY

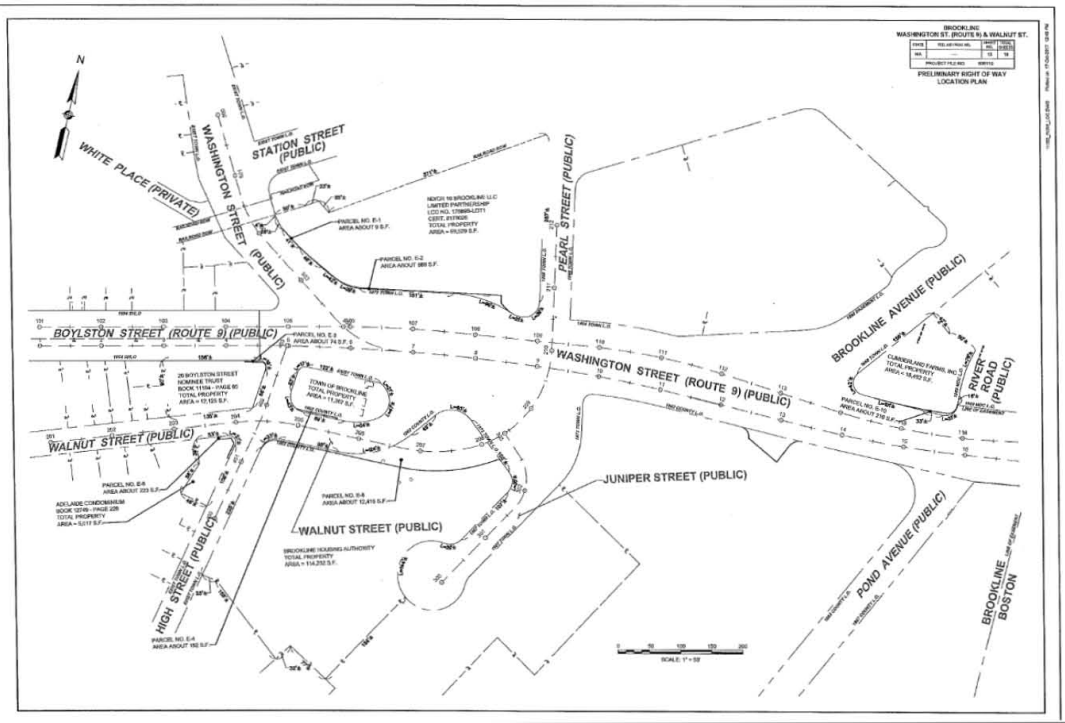
PARCEL SUMMARY

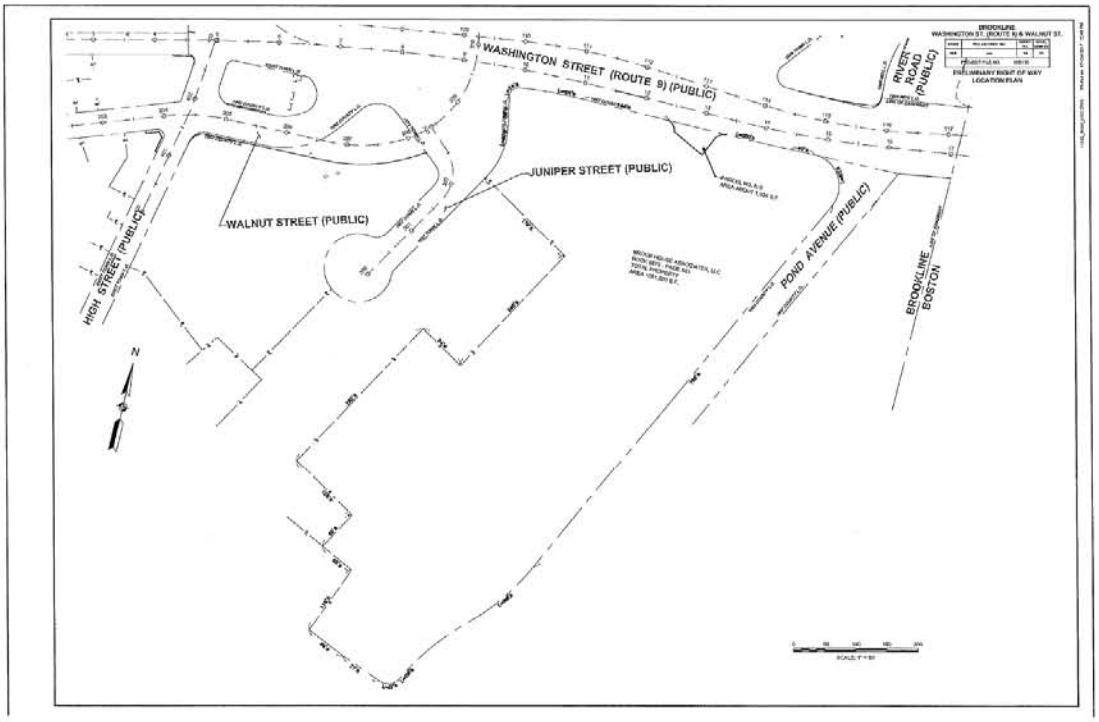
PARCEL NO.	PLAN SHEET NO.	TITLEHOLDER	TITLE REFERENCE: DEED BOOK	PAGE NO.	LCC NO.	CERT NO.	AREA (S.F. +/-): TAKEN: TOWN	STATE	EASEMENT: TYPE	AREA	TOTAL TAKEN	REMAINING	TOTAL PROPERTY AREA (S.F.)	REMARKS
E-1	15, 16	NGVCH 30 BROOKLINE LLC LIMITED PARTNERSHIP		1708BK-LCT 1		1708BK			PERM	9			65,520	SIDEWALK RECONSTRUCTION
E-2	15, 16, 18	NGVCH 30 BROOKLINE LLC LIMITED PARTNERSHIP		1708BK-LCT 1		1708BK			PERM	869				SIDEWALK RECONSTRUCTION
TE-1	17, 18	NGVCH 30 BROOKLINE LLC LIMITED PARTNERSHIP		1708BK-LCT 1		1708BK			TEMP	694				SIDEWALK RECONSTRUCTION
TE-2	18	NGVCH 30 BROOKLINE LLC LIMITED PARTNERSHIP		1708BK-LCT 1		1708BK			TEMP	3030				ACCESS
TE-11	18	NGVCH 30 BROOKLINE LLC LIMITED PARTNERSHIP		1708BK-LCT 1		1708BK			TEMP	625				SIDEWALK RECONSTRUCTION
E-3	13, 15, 18	28 BOYLSTON STREET NOMINEE TRUST	11184	85					PERM	24			12,125	SIDEWALK RECONSTRUCTION, TRAFFIC SIGNAL
TE-3	13, 18	28 BOYLSTON STREET NOMINEE TRUST	11184	85					TEMP	1051				GRADING, LANDSCAPING
E-4	13, 18	TOWN OF BROOKLINE							PERM	152			13,307	SIDEWALK RECONSTRUCTION
TE-4	15, 18	TOWN OF BROOKLINE							TEMP	1068				GRADING, LANDSCAPING
TE-5	13, 16, 18	TOWN OF BROOKLINE							TEMP	2791				PAVEMENT, SIDEWALK RECONSTRUCTION, GRADING, LANDSCAPING
E-5	13, 18	ADELAIDE CONDOMINIUM	12749	226					PERM	223			5,217	SIDEWALK RECONSTRUCTION
E-6	13, 18	BROOKLINE HOUSING AUTHORITY							PERM	12418			114,212	PAVEMENT, SIDEWALK RECONSTRUCTION, GRADING, LANDSCAPING, DRAINAGE
TE-6	18	BROOKLINE HOUSING AUTHORITY							TEMP	32154				SIDEWALK RECONSTRUCTION, GRADING, LANDSCAPING, CONCRETE STEPS, FENCE, WALL
E-9	14, 17	BROOK HOUSE ASSOCIATES, LLC	3075	549					PERM	1514			261,010	PAVEMENT, SIDEWALK RECONSTRUCTION, DRAINAGE, TRAFFIC SIGNAL
TE-7	16, 17, 18	BROOK HOUSE ASSOCIATES, LLC	3075	549					TEMP	4149				DRIVEWAY, GRADING, LANDSCAPING
TE-8	18	BROOKLINE HOUSING AUTHORITY							TEMP	550			111,457	DRIVEWAY, GRADING, LANDSCAPING
E-10	13, 17	CUMBERLAND FARMS, INC	3074	489					PERM	236			18,492	SIDEWALK RECONSTRUCTION
TE-10	16, 17	CUMBERLAND FARMS, INC	3074	489					TEMP	1085				GRADING, LANDSCAPING
TE-12	15	OWNER UNKNOWN							TEMP	318				PAVEMENT, SIDEWALK RECONSTRUCTION, GRADING, LANDSCAPING
TE-13	15	BROOKLINE SAVINGS BANK	1430	199					TEMP	43				PAVEMENT, SIDEWALK RECONSTRUCTION, GRADING, LANDSCAPING
TE-14	15	BROOKLINE SAVINGS BANK	1430	199					TEMP	34				PAVEMENT, SIDEWALK RECONSTRUCTION, GRADING, LANDSCAPING

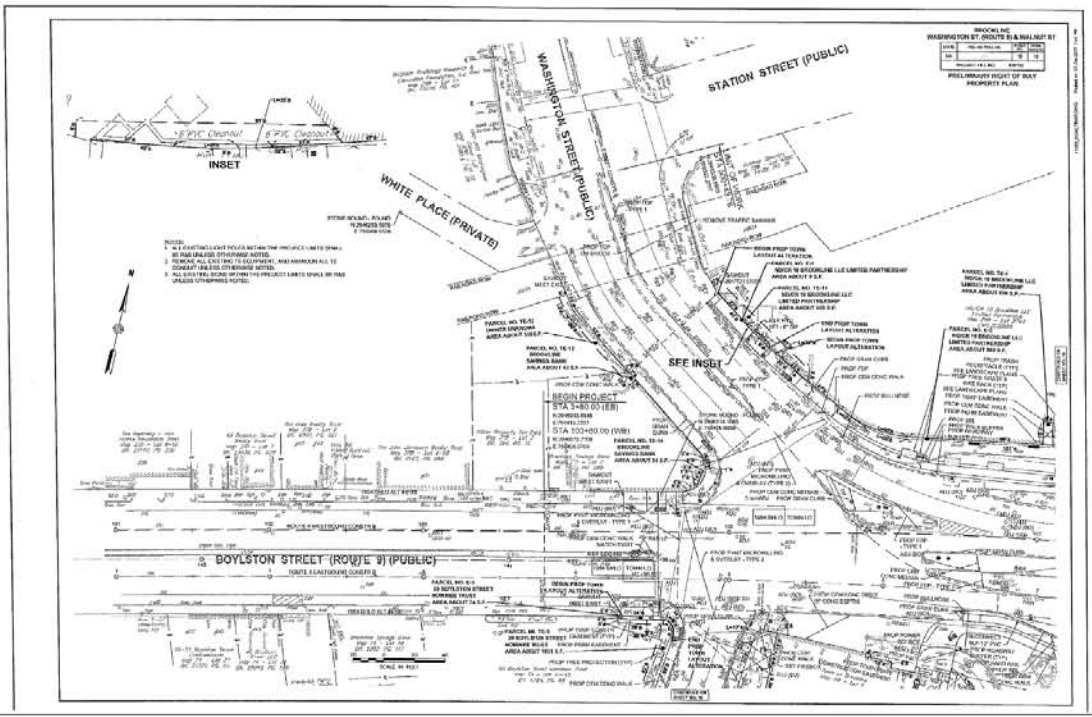
BROOKLINE
WASHINGTON ST. (ROUTE 9) & WALNUT ST.

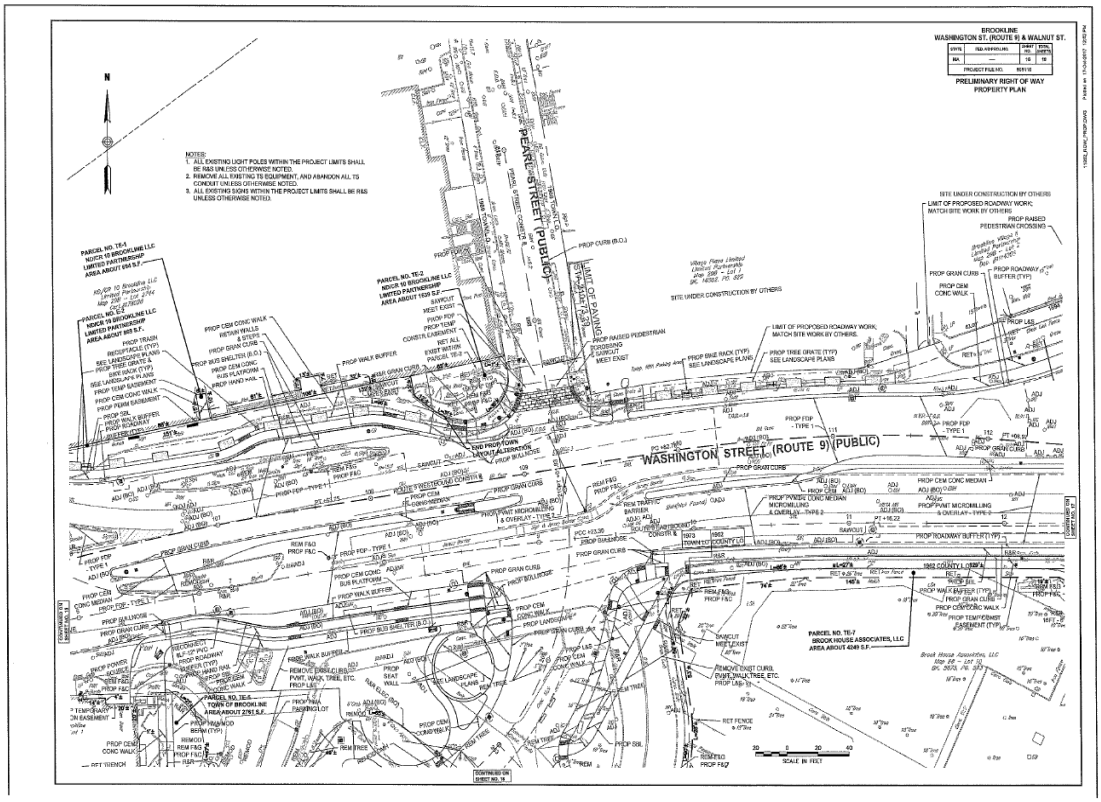
STATE	FED.AID PROJ. NO.	SHEET NO.	TOTAL SHEETS
MA	—	13	19
PROJECT FILE NO.	606110		

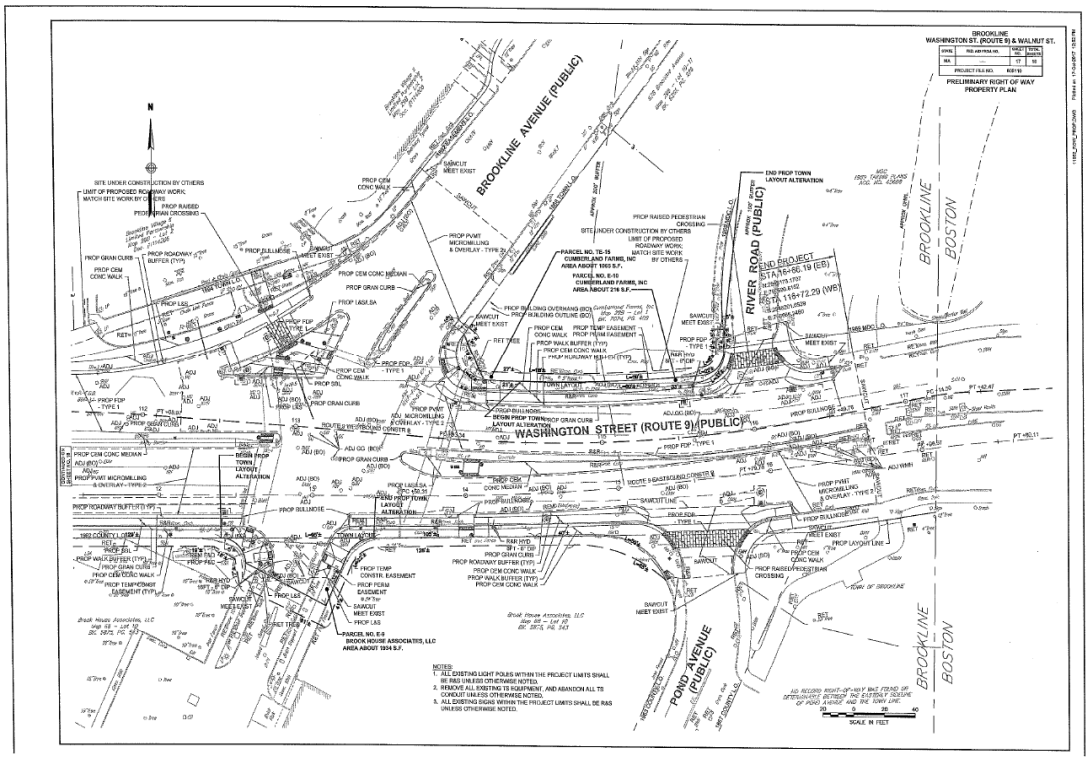
PRELIMINARY RIGHT OF WAY
LOCATION PLAN

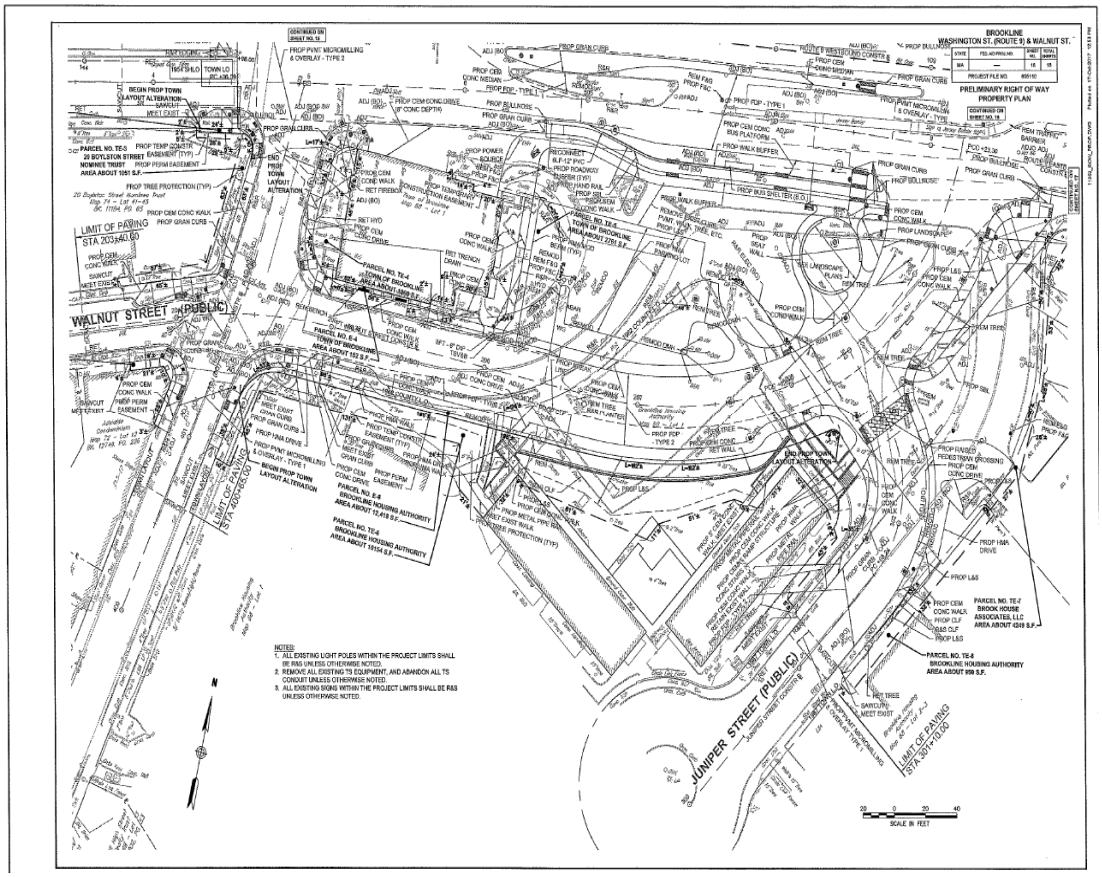



WASHINGTON STREET (ROUTE 9) (PUBLIC)
RIVER ROAD (PUBLIC)
JUNIPER STREET (PUBLIC)
WALNUT STREET (PUBLIC)
HIGH STREET (PUBLIC)
POND AVENUE (PUBLIC)
BROOKLINE
BOSTON
N


STATION STREET (PUBLIC)
WASHINGTON STREET (PUBLIC)
WHITE PLACE (PRIVATE)
INSET
SEE INSET
BEGIN PROJECT
BOYLSTON STREET (ROUTE 9) (PUBLIC)


BROOKLINE
WASHINGTON ST. (ROUTE 9) & WALNUT ST.
PRELIMINARY RIGHT OF WAY PROPERTY PLAN
PEARL STREET (PUBLIC)
WASHINGTON STREET (ROUTE 9) (PUBLIC)
PARCEL NO. TE-7
BROOKHOUSE ASSOCIATES, LLC
AREA ABOUT 4049 S.F.
PARCEL NO. TE-6
TOWN OF BROOKLINE
AREA ABOUT 2751 S.F.
SCALE IN FEET


BROOKLINE
WASHINGTON ST. (ROUTE 9) & WALNUT ST.
PRELIMINARY RIGHT OF WAY PROPERTY PLAN
BROOKLINE AVENUE (PUBLIC)
RIVER ROAD (PUBLIC)
WASHINGTON STREET (ROUTE 9) (PUBLIC)
PONDS AVENUE (PUBLIC)
BROOKLINE
BOSTON
PARCEL NO. TE-15
CUMBERLAND FARMS, INC
AREA ABOUT 1993 S.F.
PARCEL NO. E-10
CUMBERLAND FARMS, INC
AREA ABOUT 276 S.F.
PARCEL NO. E-9
BROOK HOUSE ASSOCIATES, LLC
AREA ABOUT 1934 S.F.
SCALE IN FEET



PETITIONER'S ARTICLE DESCRIPTION

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.

SELECT BOARD'S RECOMMENDATION

Articles 9 and 12 of the Annual Town Meeting are also related to the Gateway East project. While the state and federal governments will fund the construction of this project, they require all pre-construction activity (design and acquisition of any required easements) to be funded by the municipality. The Town previously committed to a $1 million construction match to increase the project's favorability in the State's highly competitive Transportation Improvement Plan (TIP) process. Article 9 seeks authorization to acquire certain easements to accommodate the new public way layout and design. Article 12 seeks funding to meet the required construction match. Over time, the Town has assembled over $1.3 million in funding to meet its required match and costs associated with design and acquisition through a variety of public and private sources. We have determined that an additional $500,000 will be required. Previously, Town Staff felt that a loan from our future CDBG allocations (a Section 108 Loan) was a prudent option. Since that time, a legislative change has freed up an alternative source of funding.

Specifically, the Municipal Modernization Act allowed the Town to convert parking meter revenue from a special fund into a general fund local receipt. This change has created a one-time opportunity to allocate from the balance in the Parking Meter Fund to support transportation-related costs. Now that there is more certainty on the Gateway East project, the Select Board supports the recommendation that the Parking Meter Fund be used to support the needed $250,000 for rights-of-way acquisition under Article 9 and $250,000 deficit for the construction match under Article 12.

On May 1, 2018, a unanimous Select Board voted FAVORABLE ACTION on the following motion:

VOTED: That the town acquire by gift, purchase, eminent domain or otherwise, on such terms and conditions as the Select Board shall deem to be in the best interests of the Town, permanent and temporary easements on the parcels of land shown on plans entitled "Massachusetts Department of Transportation Highway Division Plan and Profile of Washington Street (Route 9) and Walnut Street in the Town of Brookline Norfolk County," prepared by VHB, revised through October 16, 2017, as may be amended, said plans on file with the Town Clerk, for public way purposes, including, but not limited to, the construction, alteration, maintenance, improvement, repair and/or replacement of roads, sidewalks and landscaping; and, further, appropriate $250,000 to be expended under the direction of the Director of Planning and Community Development and to meet the appropriation transfer $250,000 from the Parking Meter Fund, and, further, to authorize the Select Board to enter into all agreements and take all related actions necessary or appropriate to carry out this vote and other acts authorized herein.
Exhibit A: Relevant sheets from plans referenced in the Warrant

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ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
See the report on Article 8 for general background information on Articles 8–12.

DISCUSSION:
Approval of Article 9 will mean that the Select Board can enter into agreements and can use funds to acquire, in the name of the Town, the eight permanent easements referenced in Article 8 as well as nine temporary easements that are expected to be required during the reconstruction of the roadways. The Town expects that grantors of some easements will require compensation, while many others will either gift or grant an easement for nominal consideration. The Town conservatively anticipates that up to $250,000 of funds may be needed for the acquisitions. Capital for the payments is expected to come from the Town's Parking Meter Fund.

RECOMMENDATION:
The Advisory Committee unanimously recommends FAVORABLE ACTION on the motion offered by the Select Board.

XXX

ARTICLE 10

TENTH ARTICLE
Submitted by: Department of Public Works

To see if the Town will vote to release any and all interest in an easement containing 926 square feet, more or less, described in a Grant of Easement recorded with the Norfolk Registry of Deeds in Book 4995, Page 135, and shown on a plan entitled "Plan of Easement Washington Street Brookline, Mass." dated August 23, 1972, prepared by the Commissioner of Public Works of the Town of Brookline, recorded with the Norfolk Registry of Deeds as No. 1544 of 1973 (Plan Book 240), said plan on filed with the Town Clerk; and authorize the Select Board to execute any and all instruments to release and convey said easement for such consideration as deemed appropriate, including nominal consideration, to CLPF Brookline Place LLC, its successor or assign,

or act on anything relative thereto.

Exhibit C: August 23, 1972 Plan of Easement; Illustrative photo with approximate easement location

Approximate Location of Pedestrian Bridge Easement
As Shown on Plan of Easement Dated August 23, 1972
NOT TO SCALE

Exhibit C - Brookline Town Meeting Warrant Article XX, May 2018

PETITIONER'S ARTICLE DESCRIPTION

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".

SELECT BOARD'S RECOMMENDATION

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 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 and Route 9 east was demolished in October 2015. This Warrant Article seeks Town Meeting approval to authorize the Select Board to execute any and all instruments necessary 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".

On May 1, 2018, a unanimous Select Board voted FAVORABLE ACTION on the following motion:

VOTED: That the Town release any and all interest in an easement containing 926 square feet, more or less, described in a Grant of Easement recorded with the Norfolk Registry of Deeds in Book 4995, Page 135, and shown on a plan entitled "Plan of Easement Washington Street Brookline, Mass." dated August 23, 1972, prepared by the Commissioner of Public Works of the Town of Brookline, recorded with the Norfolk Registry of Deeds as No. 1544 of 1973 (Plan Book 240), said plan on filed with the Town Clerk; and authorize the Select Board to execute any and all instruments to release and convey said easement for such consideration as deemed appropriate, including nominal consideration, to CLPF Brookline Place LLC, its successor or assign.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
See the report on Article 8 for general background information on Articles 8–12.

DISCUSSION:
Approval of Article 10 will mean that the Town is releasing its interest in an easement that was granted to it in 1972 to enable the Town to construct a pedestrian walkway over Route 9. The walkway was torn down in 2015 and the easement is no longer needed, or expected to be needed, by the Town. The actual land is owned by CLPF Brookline Place LLC, the owner of 10 Brookline Place, and the release will inure to their benefit.

RECOMMENDATION:
The Advisory Committee unanimously recommends FAVORABLE ACTION on the motion offered by the Select Board.

XXX

ARTICLE 11

ELEVENTH ARTICLE

Submitted by: Department of Public Works

To see if the Town will vote to grant a permanent, exclusive easement for parking spaces upon property of the Town of Brookline, located at the relocated intersection of Washington Street (Route 9) and Walnut Street, as shown on plans submitted under Article 9 entitled "Massachusetts Department of Transportation Highway Division Plan and Profile of Washington Street (Route 9) and Walnut Street in the Town of Brookline Norfolk County," prepared by VHB, revised through October 16, 2017 (Sheets 13 and 18), as may be amended, said parking easement to be appurtenant to property of Brookline Housing Authority, its successor or assign, said property described in a deed recorded with the Norfolk Registry of Deeds in Book 3905, Page 160, and authorize the Select Board to execute any and all instruments to convey said easement for such consideration as deemed appropriate, including nominal consideration,

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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.

SELECT BOARD'S RECOMMENDATION

The Town discussed with Brookline Housing Authority (BHA) leadership 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, which will be acquired by the Town.

To facilitate the discussion, the BHA provided Town Staff with a parking analysis indicating that the BHA would need at least seven relocated parking spaces to make up for the loss of the 24 spaces at its existing parking lot. BHA leadership has agreed that an acceptable solution would be for the Town to provide some or all of these spaces at the Town-owned lot proposed to be created adjacent to Firehouse #1. The Town directed its project designer to explore all options to accommodate the BHA's parking needs. After considering alternatives, the Town and BHA mutually 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 needed 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.

On May 1, 2018, a unanimous Select Board voted FAVORABLE ACTION on the following motion:

VOTED: That the Town grant a permanent, exclusive easement for parking spaces upon property of the Town of Brookline, located at the relocated intersection of Washington Street (Route 9) and Walnut Street, as shown on plans submitted under Article 9 entitled "Massachusetts Department of Transportation Highway Division Plan and Profile of Washington Street (Route 9) and Walnut Street in the Town of Brookline Norfolk County," prepared by VHB, revised through October 16, 2017 (Sheets 13 and 18), as may be amended, said parking easement to be appurtenant to property of Brookline Housing Authority, its successor or assign, said property described in a deed recorded with the Norfolk Registry of Deeds in Book 3905, Page 160, and authorize the Select Board to execute any and all instruments to convey said easement for such consideration as deemed appropriate, including nominal consideration.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
See the report on Article 8 for general background information on Articles 8–12.

DISCUSSION:
One of the most significant changes that will occur from the Gateway East project is the alteration and extension of Walnut Street. Walnut Street currently crosses High Street and curves tightly around Fire Station 1. The tight curve runs adjacent to the existing parking lot of the housing complex owned by the Brookline Housing Authority (BHA).

The proposed alteration and expansion will extend Walnut Street into the BHA's parking lot and then square to meet Route 9 directly opposite and in line with Pearl Street. The area between Fire Station 1 and the Route 9 curb cut for the new Walnut Street will contain both a parking lot and a small area of green space.

The alteration and extension of Walnut Street will result in the loss of approximately (16) parking spaces currently owned by the BHA. Many of those spaces are used by firefighters of Station 1.

Article 11 would authorize the Select Board to grant a permanent and exclusive easement for parking spaces within the new parking lot. The easement will be for the benefit of the BHA in order to mitigate the aforementioned loss of parking. The BHA has requested seven spots for its exclusive use. The ultimate number of spaces to be covered by the easement has yet to be determined since the final design of the lot, including the number of parking spaces, has yet to be completed.

Discussion at the Advisory Committee hearing centered on the number of spaces that the BHA will be giving up and the number of spaces that they will receive as a remedy. The Committee was reassured that the BHA's request for seven spaces had come only after the BHA had conducted its own internal analysis of demand for parking to meet the needs of residents. As mentioned, the balance of the spaces to be taken have been used by firefighters who will be accommodated in the new lot.

RECOMMENDATION:
The Advisory Committee by a vote of 25–0–1 recommends FAVORABLE ACTION on the motion offered by the Select Board.

XXX

ARTICLE 12

TWELVTH ARTICLE

Submitted by: Department of Planning and Community Development.

To see if the Town will vote to appropriate, borrow or transfer from available funds, or raise via a Section 108 program loan, the sum of $250,000, or any other sum, to be expended under the direction of the Planning and Community Development Director, with any necessary contracts or any Municipal Agreement to be executed with the Massachusetts Department of Transportation over the amount of $100,000 to be approved by the Select Board, with said sum to be used to fulfill a portion of the Town's one million dollar construction match for the Gateway East project,

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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.

SELECT BOARD'S RECOMMENDATION

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 towards 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 Select Board discussed an earlier amendment proposed by Town Meeting Member Mattison at an April 17, 2018 public hearing. While the Board believes that the feasibility of of curbed, irrigated planting beds should be explored by the Town with project designers and MassDOT, the Select Board does not support the amendment as proposed since the language makes the Town's construction match contingent upon the inclusion of a design items that have neither been reviewed for feasibility nor approved by MassDOT, whose role is to review and approve the design of projects receiving state and federal funding. The Board was concerned that compelling the inclusion of this design feature could conceivably put the Town's funding at risk and its position on the TIP in jeopardy. At the recommendation of the Capital Subcommittee, the Advisory Committee voted to include an amendment that would acknowledge the importance of exploring the continuous planting beds without potentially jeopardizing project funding by compelling their inclusion since, ultimately, MassDOT determines how the Town's construction match is applied to project costs. The Advisory Committee voted favorable action at its May 1 meeting on a motion that both supports the recommended use of the Parking Meter fund for the Town's construction match and affirms that the Town's support the inclusion of a continuous planting bed. The Select Board supports the Advisory Committee's motion, the language of which is also included in the Board's own below motion.

On May 1, 2018, a unanimous Select Board voted FAVORABLE ACTION on the following motion (bold language reflects the Advisory Committee's amendments to the original motion) :

VOTED: That the Town will appropriate the sum of $250,000, to be expended under the direction of the Director of Planning and Community Development, with any necessary contracts or any Municipal Agreement to be executed with the Massachusetts Department

of Transportation over the amount of $100,000 to be approved by the Select Board, with said sum to be used to fulfill a portion of the Town's one million dollar construction match for the Gateway East project **for which Town Meeting strongly encourages the inclusion of continuous curbed, irrigated planting beds between River Road and Boylston Street,** and to meet the appropriation transfer $250,000 from the Parking Meter Fund.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
See the report on Article 8 for general background information on Articles 8–12.

As noted in the General Background to Articles 8–12, the Town has certain operation and financial obligations for the Gateway East project. With regard to financial obligations, the Town committed to invest $1 million towards the construction project. The $1 million is coming from two sources: $750,000 from Children's Hospital as part of its mitigation payments relating to the redevelopment of 2 Brookline Place and, if approved, $250,000 from sources discussed further herein.

Approval of Article 12 will enable the Town to appropriate, borrow or transfer, from available funds, the $250,000 remaining under the Town's $1,000,000 construction match obligation.

DISCUSSION:
The Advisory Committee was informed of an amendment to The Article that had been proposed to the Capital Subcommittee by Hugh Mattison (TMM-5). Mr. Mattison proposed that the language of Article 12 be amended to read as follows (changes in bold):

VOTED: That the appropriate, borrow or transfer from available funds, or raise via a Section 108 program loan, the sum of $250,000, or any other sum, to be expended under the direction of the Planning and Community Development Director, with any necessary contracts or any Municipal Agreement to be executed with the Massachusetts Department of Transportation over the amount of $100,000 to be approved by the Select Board, with said sum to be used to fulfill a portion of the Town's one million dollar construction match for the Gateway East project, ***to include construction of continuous curbed, irrigated planting beds between River Road and Boylston Street****.*

Mr. Mattison explained that his amendment would accomplish several objectives including, but not limited to, the following:

• Follow 2005 Comprehensive Plan with a primary goal to "create an attractive new gateway…and reshape the overall character";
• Provide continuity of design with the Claremont hotel which will have one continuous planting bed;
• Mitigate the loss of trees and open space at 1 Brookline Place removed in 2016;
• Soften this edge and primary gateway to Brookline, reduce heat-generating pavement,

and re-enforce Brookline's image as a "tree-lined" environmentally-conscious suburb;
• Separate pedestrians and cyclists for safety.

The Advisory Committee was informed of the issues raised by Mr. Mattison's proposed amendment that has been discussed by the Capital Subcommittee. The questions that were raised primarily surrounded timing/Massachusetts Department of Transportation (Mass DOT) and cost considerations.

Timing: The 100% design schematics are expected to be filed by the end of April. Correspondence with Mass DOT, which has the ultimate control over this project, suggests that while the DOT understands the merit of Mr. Mattison's suggestion, it will not interrupt the process to address the suggestion raised by the proposed amendment. The result of that conclusion is that the Town could put the entire project in jeopardy if Town Meeting requires that the $250,000 include sums for the planting of the continuous beds. Mr. Mattison suggested that his research indicated that the cost to install the beds would approximate $60,000 and offered the possibility that the $250,000 could be increased to $310,000. The issue with that approach is that it would still mean that Town Meeting was requiring the inclusion of the beds when the only plans that the DOT will have accepted do not include the beds and, therefore, does not address the risk of jeopardizing the project. On the other hand, it is believed that a vote from Town Meeting expressing support for the concept would be both necessary, and influential, in whatever consideration Mass DOT gives to the overall idea.

Cost: While Mr. Mattison provided an estimate for the cost of establishing the beds, there are questions regarding ongoing maintenance expenditures. Though Mr. Mattison suggested that the property owners along Route 9 might be approached and solicited to shoulder the cost of maintenance, at least one such owner, Children's Hospital, stated that the Hospital did not have any interest in taking on that responsibility. Further, while Mr. Mattison may be correct in his estimate of initial costs, it is clear that an understanding of the actual cost of installation and maintenance would require the services of an independent expert. The issue of cost remains unresolved.

Possible Source of Funds: Whatever the ultimate conclusion on cost, the question of where funds would come from also was an issue. One possible source is to use funds from the Parking Meter Fund, the revenues of which may be used for the "acquisition, installation, maintenance and operation of parking meters and other parking payment and enforcement technology, the regulation of parking, salaries of parking management personnel, **improvements to the public realm**, and transportation improvements, including, but not limited to, the operations of mass transit and **facilities for biking and walking**." Town Counsel has expressed the opinion that funds from the Parking Meter Fund could be used for the purposes encompassed in the proposal. The motion under Article 12 would transfer $250,000 from the Parking Meter Fund.

Even with an identified source of funds, it must be understood that the entire concept is subject to Mass DOT determining that it will accept the proposed change in plans.

The full Advisory Committee supported Mr. Mattison's goals and thus recommends an amended motion under Article 12. The Select Board voted to recommend the same

motion, including the language added by the Advisory Committee.

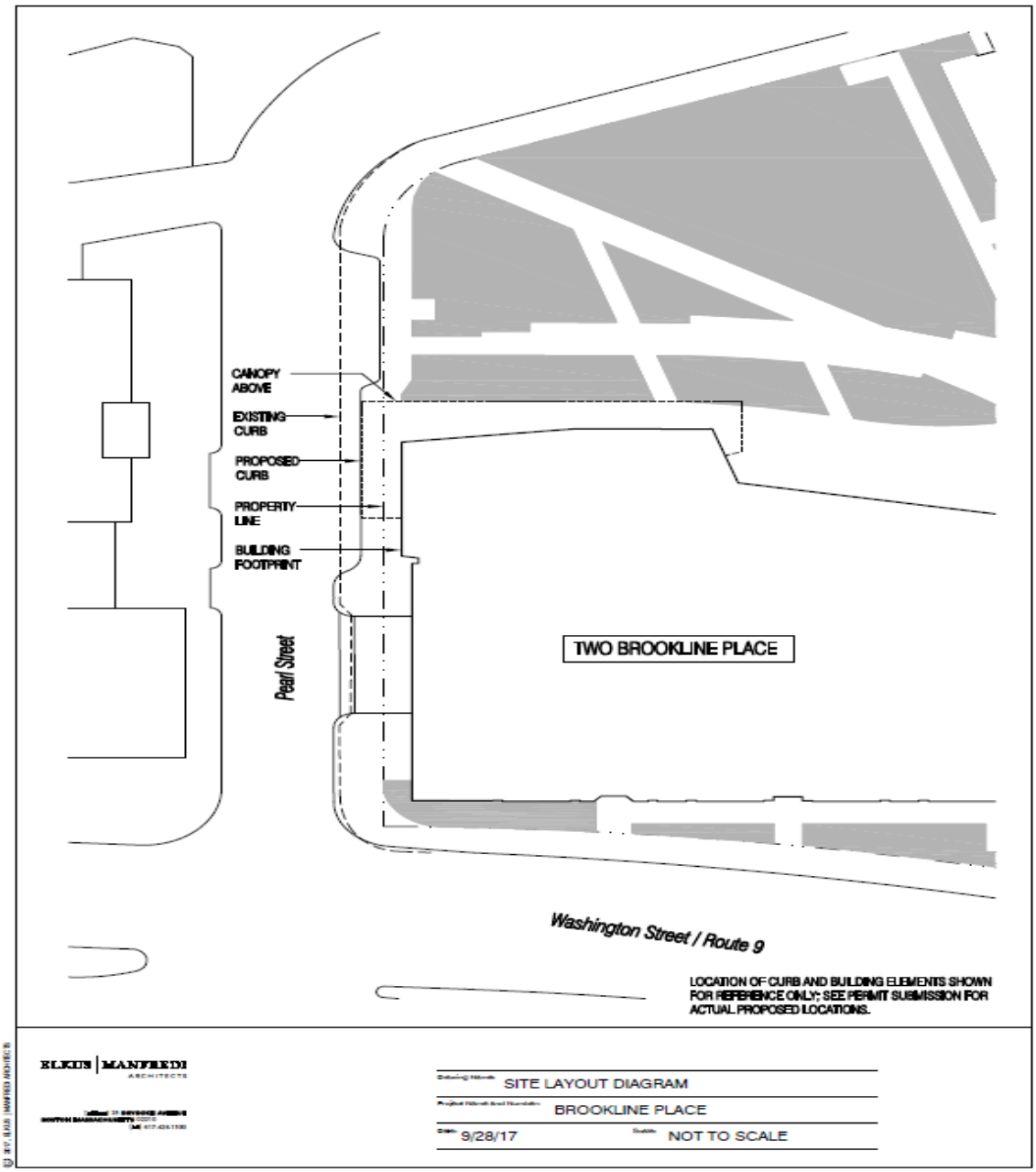
RECOMMENDATION:
By a vote of 22–1–0, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Select Board.

XXX

ARTICLE 13

THIRTEENTH ARTICLE
Submitted by: Children's Hospital

To see if the Town will vote to authorize the Select Board to grant, for a minimum amount of $100.00, permanent easements over and/or vertical discontinuances of certain portions of Pearl Street for the construction of a canopy over the main entrance to the building located at 2-4 Brookline Place, as substantially shown on the plan submitted herewith entitled "Site Layout Diagram" and dated 9/28/17.



Or to take any other action relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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.

PLANNING BOARD REPORT AND RECOMMENDATION

Warrant Article 13 proposes to authorize the Select Board to grant for a minimum amount of $100, a permanent easement approximately 290 square feet in size over a portion of Pearl Street, as depicted in the Warrant Article's "Site Layout Diagram" dated 9/28/17 and further detailed by the following exhibits dated March 28, 2018:

- Illustrated Site Plan
- Canopy Diagram
- View of Canopy and Main Entry

Integral to the main entrance of 2-4 Brookline Place, the canopy design was recommended by the Planning Board and approved by the Board of Appeals. Final building plans and elevations with this canopy design were also approved by the Planning Board. The purpose of this overhang is to provide shelter for patients and their caregivers that are being dropped off on Pearl Street. The edge of the overhang aligns with the Pearl Street design approved by the Transportation Board.

We note the signage hanging down from the canopy depicted in the rendering listed above still needs to be approved by the Planning Board, Board of Appeals, and Public Works. Signage is often approved separately in a project of this size, closer to the building construction phase.

Therefore, the Planning Board unanimously recommends FAVORABLE ACTION on Article XIII as submitted.

ECONOMIC DEVELOPMENT ADVISORY BOARD REPORT AND RECOMMENATION

During our April 9th meeting, the Economic Development Advisory Board (EDAB) voted in support of Warrant Article 13 (7-0-1). The abstention was a member that serves on another Board voting on this item.

We understand that the Select Board will continue conversation with the petitioner, Boston Children's Hospital, regarding the terms of any agreement that would allow for a building canopy over approximately 290 square feet of Pearl Street. This canopy will provide for weather protection for patients and their caregivers that are being dropped off at 2-4 Brookline Place. The canopy overhang is an integral part of the building structure design as recommended by the Planning Board and approved by the Board of Appeals. Further, the Transportation Board has voted on the Pearl Street curb alignment, which includes this overhang design.

EDAB recommends to the Select Board that any permanent easement end with the life of the building and/or the canopy. We would also like to make sure the Town receives the full and fair value for any agreement.

Finally, we recognize that the Warrant Article simply asks whether Town Meeting *will authorize* the Select Board to enter an agreement regarding this easement. The article does not require the Board to do so, nor does it specify any terms or conditions except that the minimum compensation is $100.

SELECT BOARD'S RECOMMENDATION

Submitted by Boston Children's Hospital, Article 13 seeks authorization for the Select Board to grant an easement or lease of air rights to Children's Hospital. The easement or lease will enable the construction of a canopy at the proposed 2-4 Brookline Place building. The canopy would shelter a portion of the building's drop-off area, and partially overhang a portion of the public sidewalk, as illustrated in the attached plans. The article has been amended, as recommended by the Economic Development Advisory Board, to terminate the easement or lease of air rights upon demolition of the proposed canopy or building. The proposed canopy is the same design that was recommended by the Planning Board, and approved by the Board of Appeals, with the 2-4 Brookline Place plans reviewed several years ago, and the design aligns with the Pearl Street design approved by the Transportation Board.

In 2014, when the Brookline Place development was authorized by Town Meeting, the Select Board, on behalf of the Town of Brookline, and Boston Children's Hospital (BCH) entered into a Memorandum of Agreement (MOA) detailing the development of 1 and 2-4 Brookline Place. Assuming passage of Article 13, the Select Board and BCH intend to enter into a Letter of Understanding prior to Town Meeting which would provide Town Meeting with the detailed terms of the canopy easement/lease agreement with BCH. The Letter of Understanding will require BCH to compensate the Town for full and fair cash value, determined by the Tax Assessor to be approximately $16,000, for the easement or lease. The Letter of Understanding will also clarify several items related to implementing the 2014 MOA, including:

(i) the Town's election to receive a check from BCH for $335,000 towards the Town's construction of Pearl Street;

(ii) define the construction boundaries for each party along the Brookline Place side of Pearl Street;

(iii) clarify that BCH will install the bases and conduit for pedestrian lighting at the intersection of Brookline Avenue and Pearl Street;

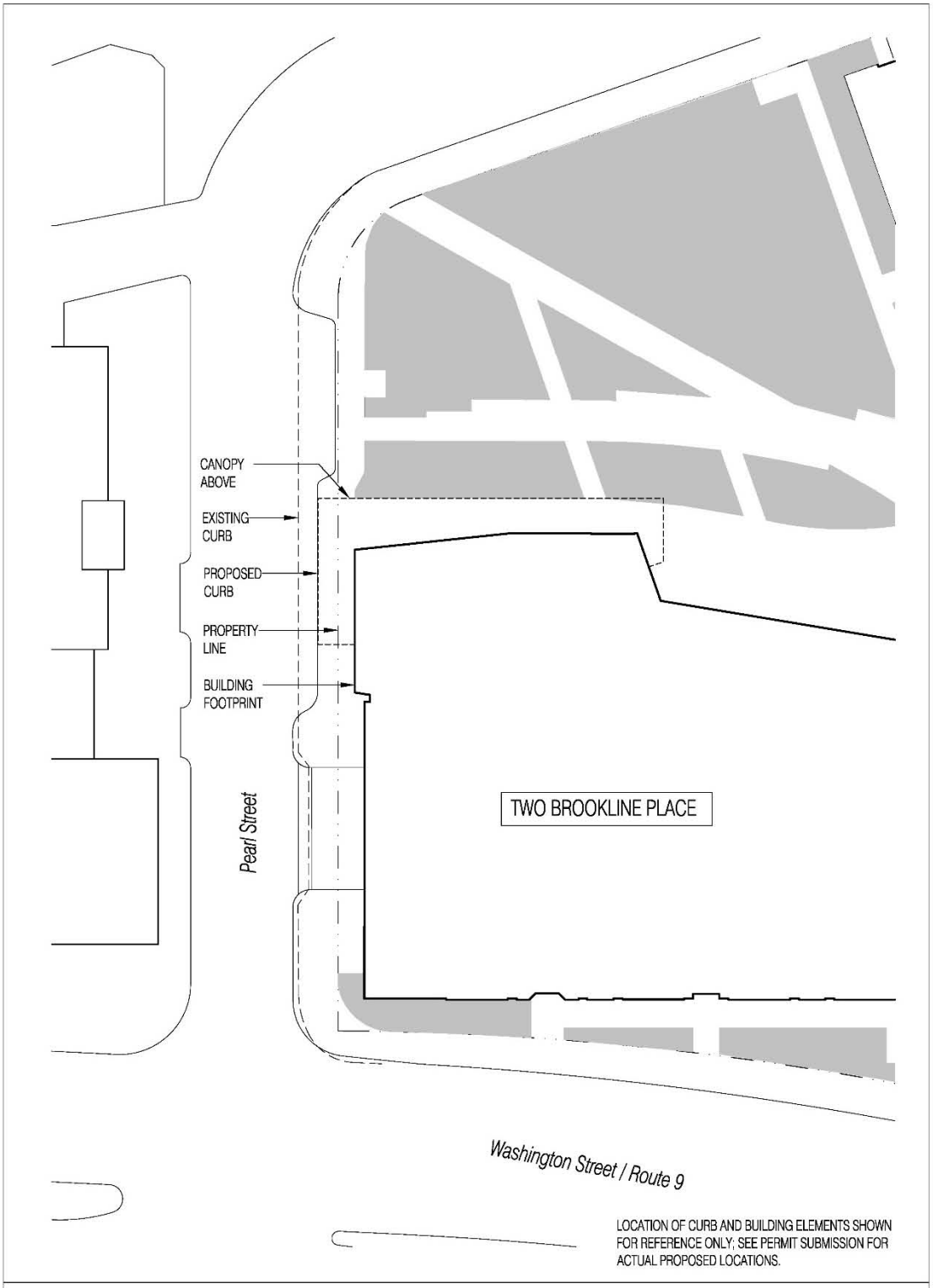
(iv) clarify that the Town will install the lights and poles for the pedestrian lighting at the intersection of Brookline Avenue and Pearl Street;

(v) require that any additional off-site mitigation requested by Town officials first be submitted to the Select Board as it may affect the future Community Benefits Mitigation Payment pursuant to the MOA; and

(vi) further define "substantial completion" of the Proposed Project as the issuance of a temporary Certificate of Occupancy or any other condition approved by the Select Board, the timing of which could affect the value of the Community Mitigations Payment pursuant to the MOA.

The Select Board is supportive of the Brookline Place project, including the canopy overhang. A key component of the Board's support is the continued careful implementation of the 2014 Memorandum of Agreement, in partnership with BCH. The Select Board recommends FAVORABLE ACTION, by a vote of 5-0 taken on May 1, 2018, on the following:

VOTED: To authorize the Select Board to grant, for full and fair cash value and upon terms and conditions in the best interest of the Town, an easement or lease of air rights over a portion of Pearl Street for the construction of a canopy over the main entrance to the building to be located at 2-4 Brookline Place, as substantially shown on the plan submitted herewith entitled "Site Layout Diagram" and dated 9/28/17, and on the further condition that any easement or lease shall be terminated at the end of the life of the proposed building or canopy.



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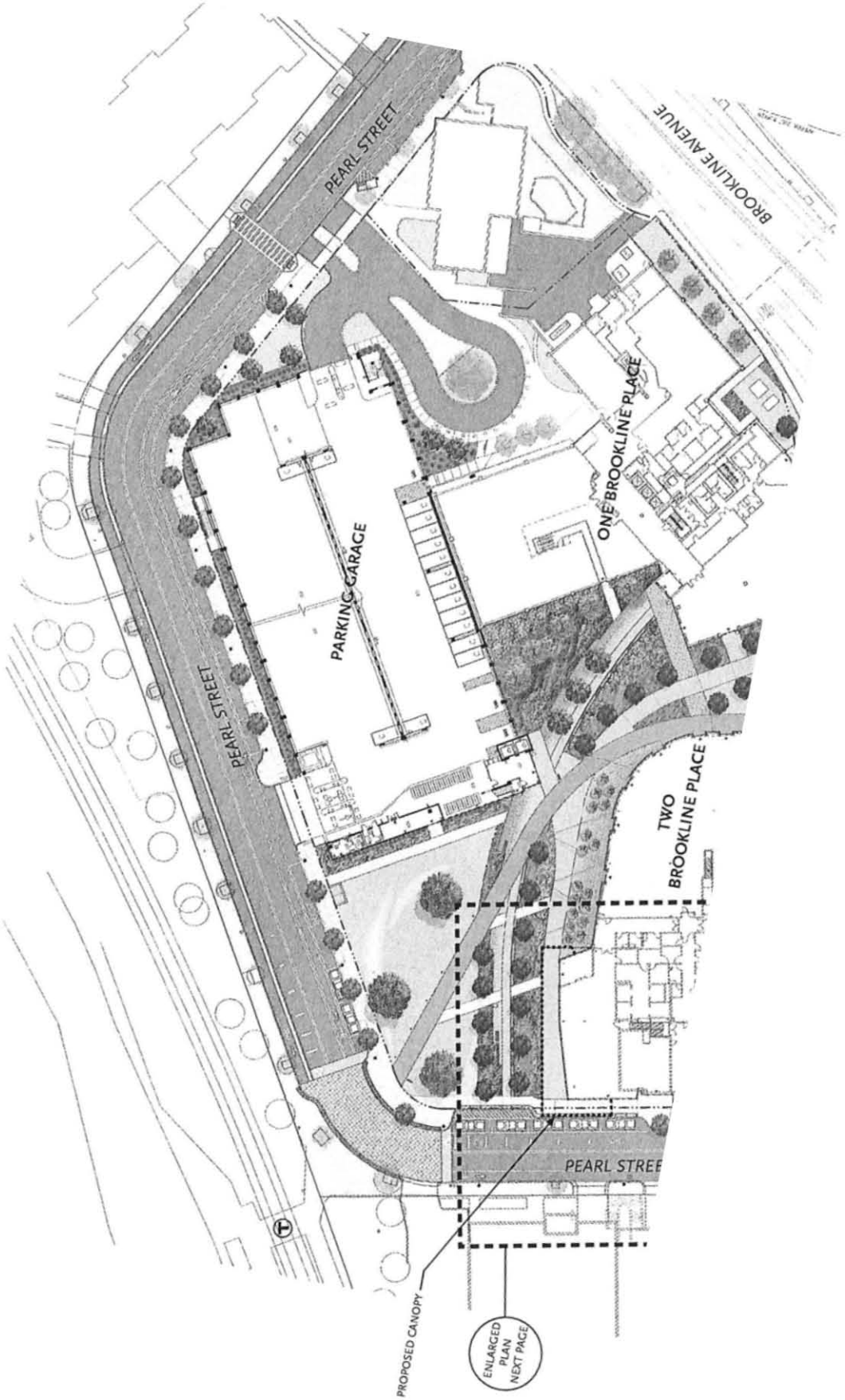
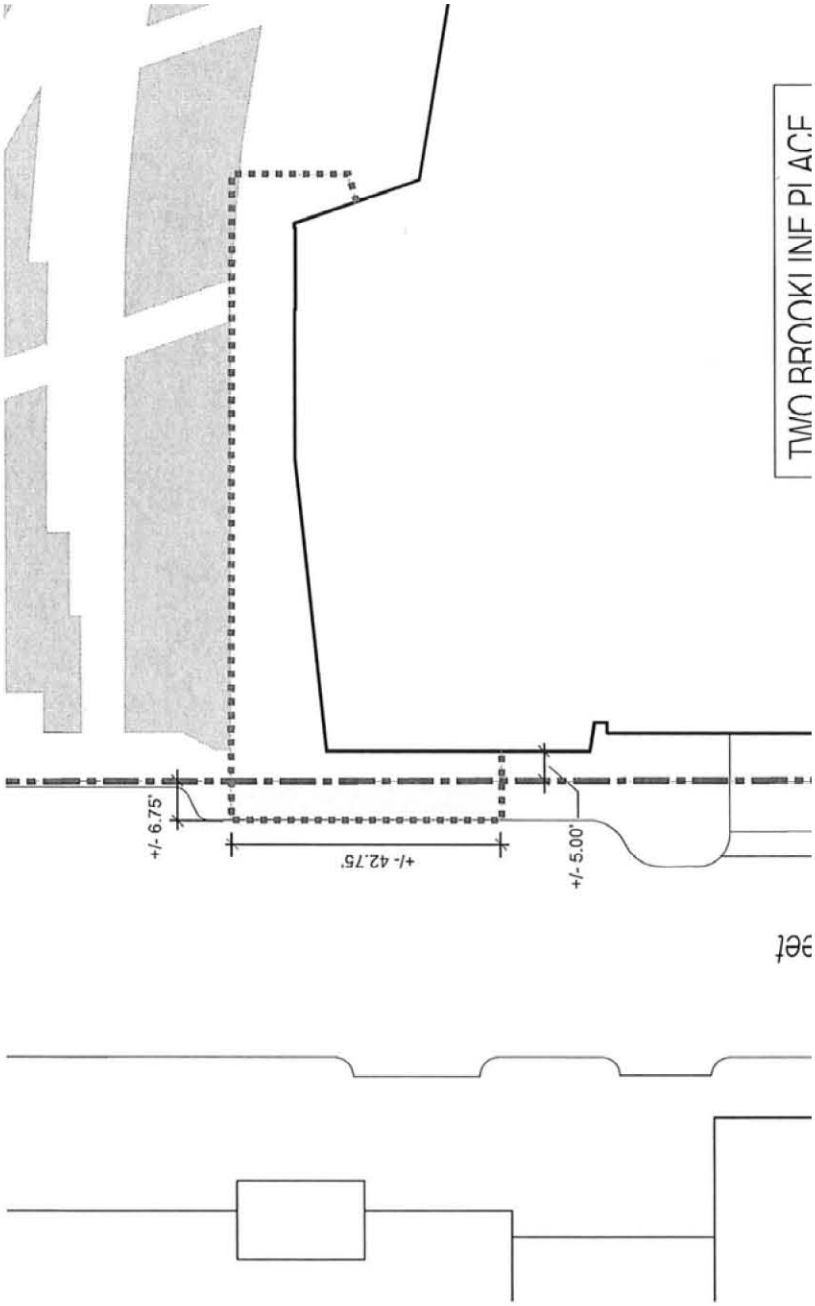
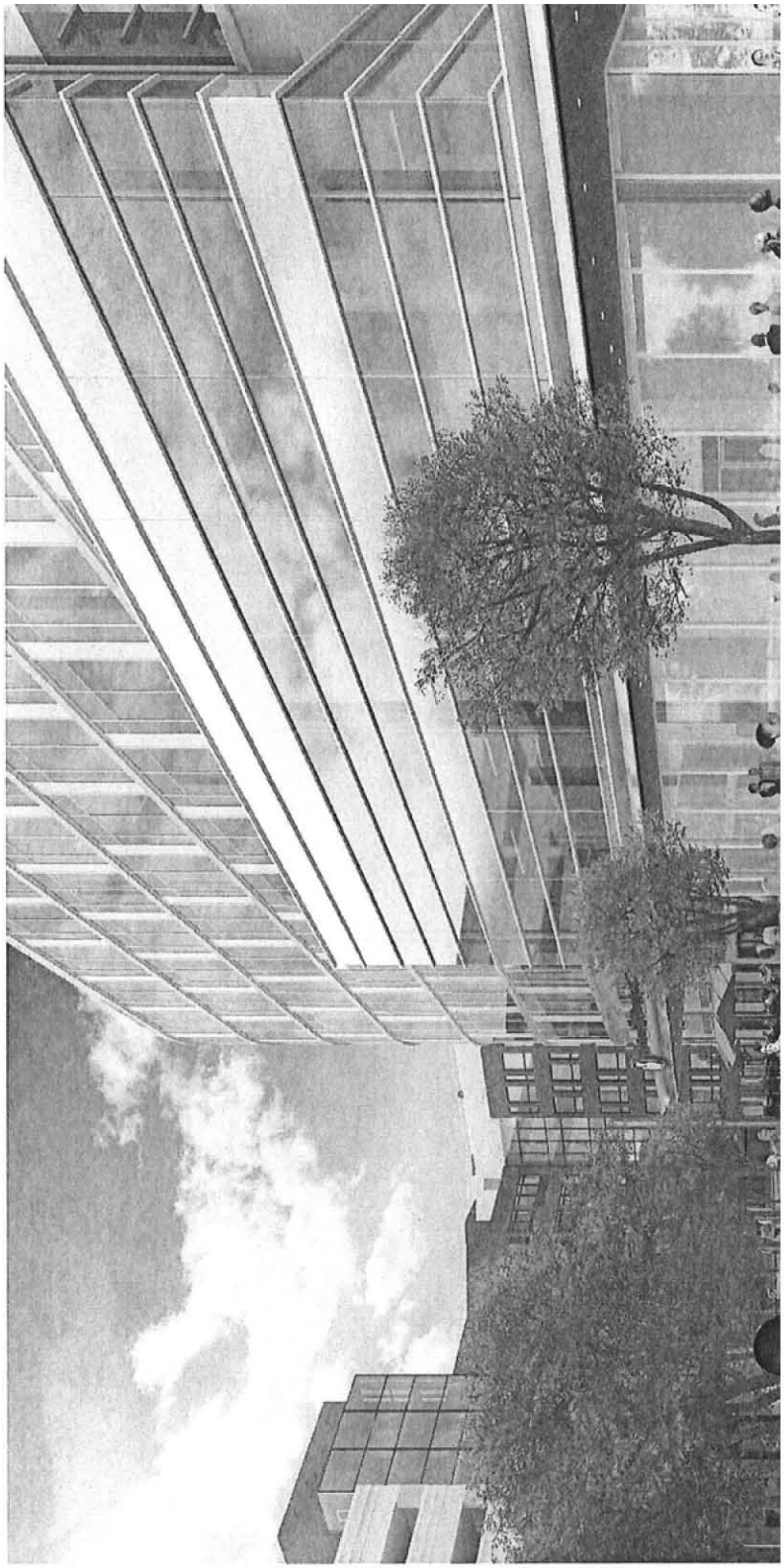
Drawing Name: SITE LAYOUT DIAGRAM

Project Name and Number: BROOKLINE PLACE

Date: 9/28/17 Scale: NOT TO SCALE


PEARL STREET
PARKING GARAGE
PEARL STREET
BROOKLINE AVENUE
ONE BROOKLINE PLACE
TWO BROOKLINE PLACE
PEARL STREET
PROPOSED CANOPY
ENLARGED PLAN NEXT PAGE


TWO BROOKLINE PLACE
+/- 6.75'
+/- 42.75'
+/- 5.00'



BROOKLINE BOARD OF ASSESSORS

333 Washington Street, Brookline, MA 02445 (617) 730-2060

TO: John Buchheit, Associate Town Counsel
FROM: Gary J. McCabe, Chief Assessor
DATE: April 13, 2018
RE: Valuation Analysis for Town Owned Property Associated with Article 13 of the 2018 Annual Town Meeting Warrant

Per your request, I have prepared the summary valuation analysis below for the property associated with Article 13 of the Warrant for the 2018 Annual Town Meeting known as the '2-4 Brookline Place Main Entry Canopy Easement' The proposed article and related property descriptions are attached. Included below is an easement valuation worksheet which includes more detail on the calculations used to arrive at the value estimates. The effective date of the value estimates is April 13, 2018. Should the article's language or other material conditions change, the value estimates should be reviewed and revised as necessary.

The valuation estimates are based on the best available information at the time of this report and my understanding of the property interests to be conveyed by the town. I have considered current real estate market trends, rates and factors in calculating the value estimates. I have also considered both the current and proposed uses of the property in question and the various property rights and interests to be conveyed. Due to the nature of the current and proposed use and the land interests involved, I have selected a hybrid model using an income capitalization approach to value in fee and relying in part on market rental rates, typical investment yield rates and construction cost estimates as required to prepare this analysis of the limited rights to be conveyed. The construction cost estimate is based on 2018 building permits issued by the Town of Brookline for the construction of the multi-story office building to be located at 2-4 Brookline Place on a per square-foot basis.

ARTICLE 13: CURRENT USE & VALUE ESTIMATE:

The town currently uses the 290 square-foot 'column lot'[1] described in Article 13 as part of the vertical rights associated with the public right-of-way known as Pearl Street.

[1] Column Lot; between the land surface and 23 feet above the surface.

To estimate the value of the proposed easement to be conveyed by the town based on the current and future use as a part of the public right-of-way an estimate was made of the market value of a completed one-story (lobby level) extension of the Class A office building being constructed on the site, less the estimated construction cost of that portion of the building within the proposed easement and the town's retained land rights.

The market value of a hypothetical one-story (lobby level) Class A office building extension was estimated using an income capitalization method. An annual net rental income of $40.00 per square-foot (after landowner fixed operating expenses) was estimated for the completed building based on the proposed use and market rates within the Brookline Village area. A market capitalization rate of 5.0% was used to estimate a total market value of the property. From the value estimate using the income approach, the cost of constructing 290 square-feet of the building was subtracted from the total value along with the town's retained interest in the underlying land rights.

The result of subtracting the cost of construction and the retained land-use rights from the estimated value of the developed site is the value of the air-rights to be granted. The estimate of the annual rent based on the value of the air-rights was determined using a discount rate of 5%, and a 20, 25 and 30 year lease period.

The details of the calculations are provided below. The result of the valuation analysis model for the Article 13 easement area is as follows:

- One-story air-rights: Value; $15,950 20-Year Rental Rate; $1,219/yr.
- One-story air-rights: Value; $15,950 25-Year Rental Rate; $1,078/yr.
- One-story air-rights: Value; $15,950 30-Year Rental Rate; $ 988/yr.

Article 13 Worksheet: Value of Air-rights

Value Loss Associated with Grant of One-story Air-rights (column lot)

Area (Sq.Ft.)	One-Story	Net Rent	Income	OAR	Income Value	Value/SF
290	Lobby Level	$ 40.00	$ 11,600	5.0%	$ 232,000	$ 800.00
290	Less Cost of Construction				$ (92,800)	$ (320.00)
290	Less Retained Land Use				$ (123,250)	$ (425.00)
Loss in Value					**$ 15,950**	**$ 55.00**
Annual Rental Payment at 5% Discount Rate:			Years>	20	$ 1,219	
				25	$ 1,078	
				30	$ 988	

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:
Boston Children's Hospital has asked the Town to grant a permanent easement so that it can build a structural canopy at the Pearl Street entrance to the Children's Hospital building at 2 Brookline Place, per the approved design for that building.

The canopy (6.75 feet by 42.75 feet) will be partly on Children's property and partly over the public right of way. This canopy will jut out over the sidewalk and provide a covered entrance to the building at 2 Brookline Place.

The layout and curbing are shown on the drawing. The Transportation Board approved the curved sidewalk. Economic Development Director Kara Brewton confirmed that the curb alignment is in sync with the plans for Gateway East. She also reported that Assessor Gary McCabe is doing a value assessment to determine the value of the permanent easement for the portion of the canopy that will be built over Town property. This value will be determined before Children's Hospital pays the Town for the permanent easement.

DISCUSSION:
This is a rather straightforward request and the Advisory Committee expressed no concerns. The Advisory Committee joined the Select Board in adopting the recommendations of the Economic Development Advisory Board and voting for a motion that authorized the Select Board to negotiate for the best possible price and terms for the Town and specified that the easement would terminate at the end of the life of the building or canopy.

RECOMMENDATION:
The Advisory Committee by a vote of 22–0–1 recommends FAVORABLE ACTION on the motion offered by the Select Board.

XXX

SELECT BOARD'S ADDITIONAL INFORMATION

At their regular meeting on May 15th, the Select Board agreed to include the attached draft Letter of Understanding for reference purposes, as noted in the Combined Reports. The Select Board intends to execute a substantially similar version with Boston Children's Hospital in the coming weeks.

LETTER OF UNDERSTANDING

May __, 2018

Select Board
Town of Brookline
333 Washington Street
Brookline, MA 0 2445

Dear Select Board Members,

Reference is hereby made to that certain Memorandum of Agreement dated May 15, 2014 (the "**MOA**") by and among CHILDREN'S ONE BROOKLINE PLACE LLC, a Massachusetts limited liability company ("**Children's 1BP**"), and CHILDREN'S BROOKLINE PLACE LLC, a Massachusetts limited liability company ("**Children's 2 BP**") (Children's 1BP and Children's 2 BP, together with their respective successors and assigns, are hereinafter collectively referred to as "**BCH**") and the TOWN OF BROOKLINE, a municipal corporation, acting by and through its Board of Selectmen (the "**Town**"), which MOA was entered into in connection with a project consisting of: (i) an approximately 182,500 SF, eight floor mixed-use building to be known as 2 Brookline Place; (ii) an approximately 47,000 SF expansion of the existing medical office building known as 1 Brookline Place; and (iii) a parking garage (collectively, the "**Project**"). All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the MOA.

BCH has obtained the necessary permits and approvals for the Project, which are consistent with the terms of the MOA. To date, BCH has completed the parking garage and is in process of constructing the building located at 2 Brookline Place and the expansion of the building located at 1 Brookline Place.

This Letter of Understanding confirms the understandings that have been reached between BCH and the Town regarding certain matters set forth below that have arisen in the normal course of finalizing the Project design and commencing construction.

If these terms set forth below are acceptable to the Town, kindly so indicate by countersigning and returning a copy of this Letter of Understanding to us on or before Friday, May 18, 2018, whereupon this Letter of Understanding will be binding upon the Parties, and the Parties shall execute such further documents as they mutually agree are necessary or appropriate to further evidence the understandings set forth below, consistent with the terms and conditions hereof.

For the purposes of this Letter of Understanding, the term "**Parties**" shall mean the Town and BCH. The specific agreement of the Parties is set forth below.

1. Main Entrance Canopy

In connection with the Project, the BCH received zoning approval from the Brookline Planning Board (the "**Planning Board**") and the Brookline Board of Appeals (the "**BOA**") for a canopy over the main entrance to the 2 Brookline Place building in the location shown on **Figure 1** attached hereto (the "**Canopy**"). Subject to receiving the necessary authorization from the Brookline Town Meeting, the Select Board shall grant, for full and fair cash value of $16,000 and upon terms and conditions mutually acceptable to the Parties, an easement, or lease of air rights over a portion of Pearl Street for the construction and maintenance of the Canopy, subject to conditions necessary to protect the Town's interest in the public way, including but not limited to a condition that any easement or lease shall be terminated at the end of the life of the proposed building or canopy (subject to the right of BCH to reconstruct the Canopy in the event of a casualty).

2. Implementation of the MOA

In connection with the implementation of the MOA (and in accordance with the terms of the Special Permit issued by the BOA for the Project (the "**Special Permit**")), the parties agree as follows:

a. Pearl Street Reconstruction - Pursuant to Condition 24(a) of the Special Permit and Section 7(c)(i) of the MOA, the Town hereby notifies BCH that the Town will undertake the "**Pearl Street Reconstruction**" consisting of improvements to the street lighting system on the south side of Pearl Street, reconstruction and installation of pavement and curbing along Pearl Street and landscaping and pedestrian markings and/or pavers that visually connect the Property to the Brookline Village MBTA. Accordingly, on or before August 1, 2018, BCH shall deposit $335,000 in escrow to be expended by the Town for the reasonable costs of the Pearl Street Reconstruction. To the extent the costs of the Pearl Street Reconstruction exceed $335,000, such excess costs shall be the sole responsibility of and paid for by the Town. To the extent the costs of the Pearl Street Reconstruction are less than $335,000, any excess funds remaining after the completion of the Pearl Street Reconstruction by the Town shall be returned to BCH.

In connection with the Project, BCH has proposed the reinstallation of curbing, sidewalks, trees, landscaping and pedestrian lighting at locations along Pearl Street (the "Pearl Street Southerly Sidewalk Work") as shown on Sheets C-3 (revised February 8, 2018), L-201 (revised December 11, 2017), L-202 (revised September 8, 2017) and L-203 (September 8, 2017) (collectively, the "**Project Site Plans**") of the plan set titled "2 Brookline Place Construction Documents" and attached hereto. BCH shall modify the Pearl Street Southerly Sidewalk Work as shown on the Project Site Plans to conform to the Town's design plans for the Pearl Street Reconstruction and construct the Pearl Street

Southerly Sidewalk Work in accordance with the revised Project Site Plans if the following conditions are satisfied: (i) the Town delivers its final design plans for the Pearl Street Reconstruction to BCH on or before November 1, 2018; and (ii) the cost of constructing the revised Project Site Plans shall not exceed the cost of constructing the Pearl Street Southerly Sidewalk Work as shown on the Project Site Plans by more than $50,000. In the event (i) the Town fails to delivers its final design plans for the Pearl Street Reconstruction to BCH on or before November 1, 2018; or (ii) the cost of constructing the revised Project Site Plans exceeds the cost of constructing the Pearl Street Southerly Sidewalk Work as shown on the Project Site Plans by more than $50,000, BCH shall only be obligated to construct the Pearl Street Southerly Sidewalk Work as shown on the Project Site Plans.

The Town will not seek any reimbursement or other compensation from BCH for damage to the Pearl Street pavement or curbing that may occur in connection with the construction of the Project prior to the Town's completion of the Pearl Street Reconstruction.

b. Pedestrian Lighting at Pearl Street and Brookline Avenue – In connection with the construction of the signalized intersection at Pearl Street and Brookline Avenue in accordance Condition 24(b) of the Special Permit and Section 7(c)(ii) of the MOA, BCH will install the bases and conduit for pedestrian lighting at such intersection in the locations shown on **Figure 3** attached hereto. The cost of installing such bases and conduit will not be credited against funds owed by BCH to the Town pursuant to the terms of the MOA.

c. Future Mitigation Requests – To the extent any Town official or representative desires to request any additional off-site mitigation from BCH not contemplated by the MOA, such request must be submitted to and approved by the Select Board. The Select Board may only approve such request if it determines that funds remain to be paid by BCH to the Town which are not otherwise allocated to a specific mitigation item. In the event that the Board approves such request after making the foregoing determination, such mitigation will be funded only from remaining unpaid amounts that BCH owes the Town pursuant to MOA and to the extent the costs of completing such mitigation matters exceed such unpaid amounts, the excess costs shall be the sole responsibility of and paid for by the Town.

d. Substantial Completion – For the purposes of Section 7(b) of the MOA, the term "substantial completion" shall mean the issuance of the first temporary Certificate of Occupancy for both 2 Brookline Place building and the 1 Brookline Place addition as well as:

(i) a finished and open pedestrian pathway through the site, running from Route 9 between 1 and 2 Brookline Place to Pearl Street; and

(ii) (a) funding in escrow (or bonding for) to complete any unfinished site work and landscaping, including the on- and off-site tree replacement proposed, and (b) payment of a net tree mitigation fee of $45,900 as contemplated in the March 20,2017 communication between Mikyoung Kim Design and the Town of Brookline.

Alternatively, the term "substantial completion" can be met with any other such condition as the Select Board may approve. The Parties agree that the parking garage at the Project is complete.

3. Miscellaneous

a. Binding Agreement. This Letter of Understanding is binding and enforceable against, and inures to the benefit of, the Parties and their respective successors and assigns.

b. Severability. If any term or provision of this Letter of Understanding, or the application thereof to any person or circumstance, shall to any extent be determined to be invalid and unenforceable, the remainder of this Letter of Understanding, or the application of such terms to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Letter of Understanding shall be valid and shall be enforced to the extent permitted by law.

c. Governing Law. This Letter of Understanding shall be construed in accordance with the laws of The Commonwealth of Massachusetts without regard for conflict of laws principles.

d. Facsimile Signatures; Counterparts. Electronic copies of signatures appearing hereon shall be deemed an original and this Letter of Understanding may be executed simultaneously in two *(2)* or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

e. Amendments. This Letter of Understanding may be amended only by a written instrument signed by the Parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

To indicate your acceptance of this Letter of Understanding, please countersign the enclosed copy of this Letter of Understanding below and return it to the undersigned at the address first set forth above.

Very truly yours,

BCH:

Witness:

CHILDREN'S ONE BROOKLINE PLACE LLC

By: The Children's Hospital Corporation, its sole manager

_____
Print Name

By:_____
Name:
Title:

Witness:

CHILDREN'S BROOKLINE PLACE LLC

By: The Children's Hospital Corporation, its sole manager

_____
Print Name

By:_____
Name:
Title:

[Signatures continued on next page]

THE FOREGOING IS AGREED AND ACCEPTED
THIS____ DAY OF May, 2018, BY:

TOWN:

TOWN OF BROOKLINE
By its Select Board

_____
Neil Wishinsky

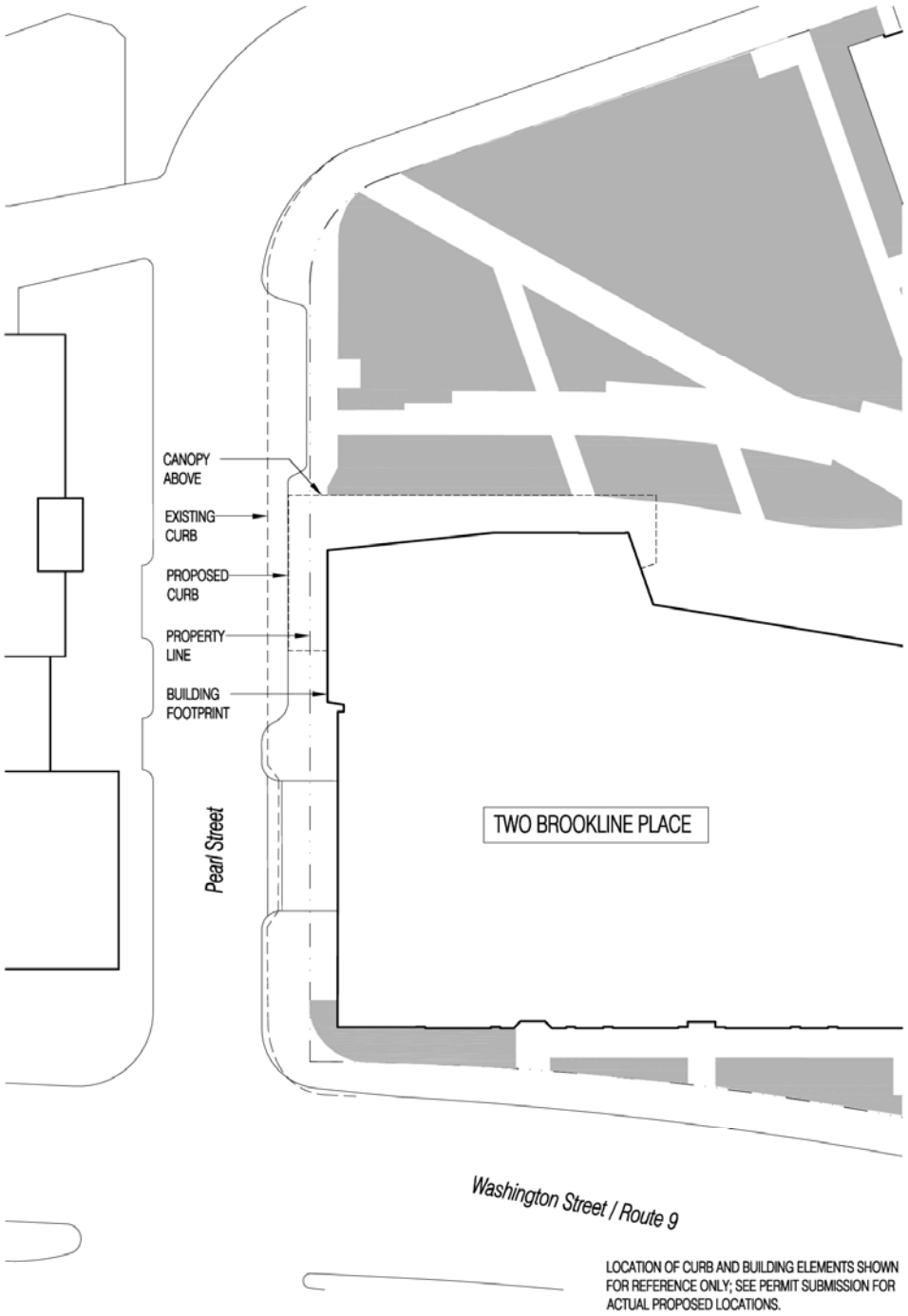
_____
Ben Franco

_____
Nancy Heller

_____
Bernard Greene

_____
Heather Hamilton

Figure 1



ELKUS | MANFREDI
ARCHITECTS

(address) 25 DRYDOCK AVENUE
BOSTON MASSACHUSETTS 02210
(tel) 617.426.1300

Drawing Name: SITE LAYOUT DIAGRAM

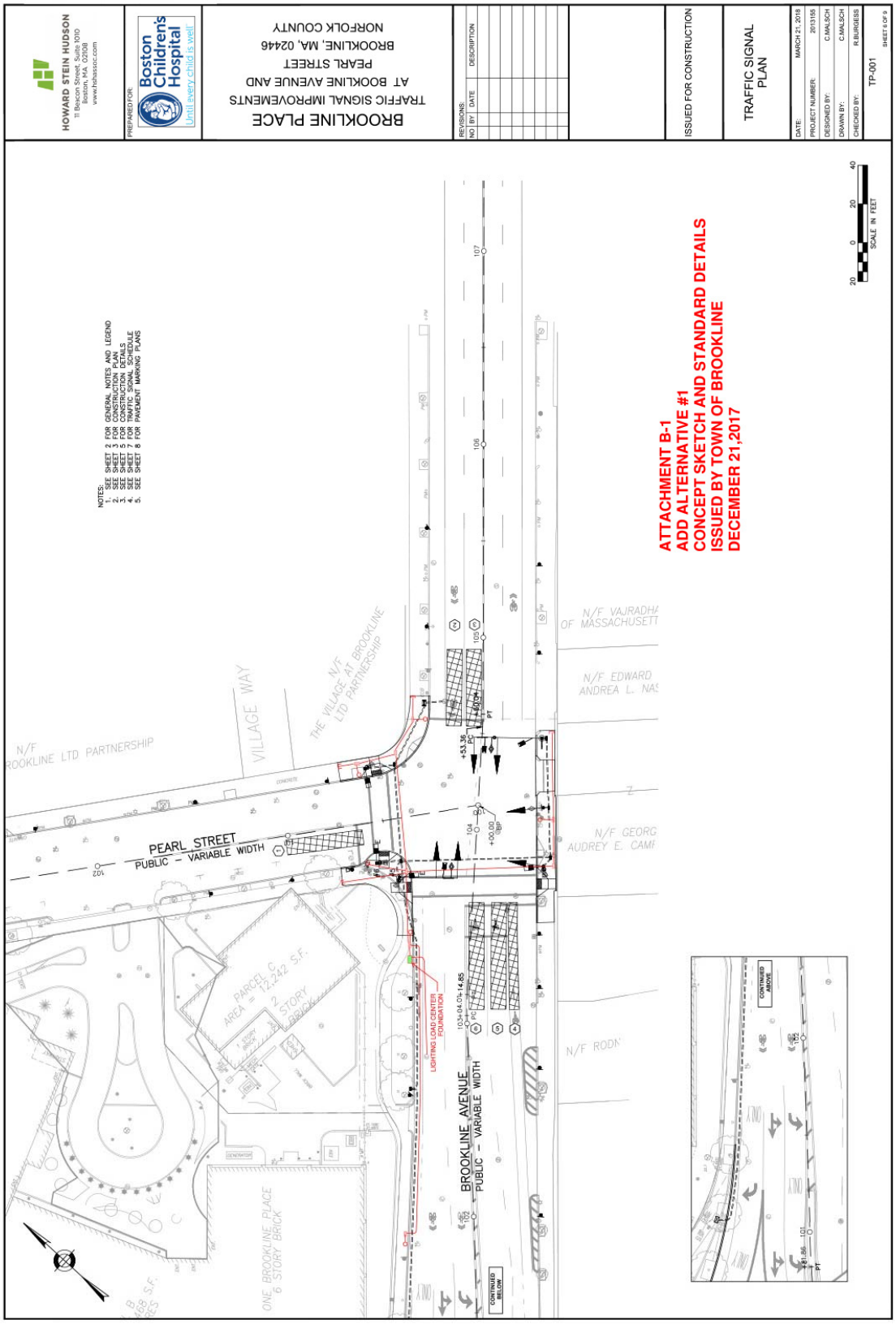
Project Name and Number: BROOKLINE PLACE

Date: 9/28/17 Scale: NOT TO SCALE

Figure 2

Pearl Street South of MBTA
Proposed Cross Section
Pearl Street West of Brookline Ave
Proposed Cross Section
Pearl Street North of Banks
Proposed Cross Section
Pearl Street One-Way Cycle Track Option
3 - 15 Min Metered Parking Spaces
5 - 15 Min Non-Metered Parking Spaces
13 - Metered Parking Spaces
2 - Handicap Parking Spaces
2 - Taxi Cab Parking Spaces
2 - Taxi Cab Parking Spaces on Station Street
25 - Total Pearl Street Parking Spaces
Pearl St
Station St
Washington St (Rte 9)
Brookline Ave
Pearl St
Scale: 1" = 60'
BROOKLINE ENGINEERING/TRANSPORTATION DIVISION
333 WASHINGTON ST 4TH FLOOR, BROOKLINE, MA
TELEPHONE : (617) 730-3128 FAX: (617) 364-4505
Pearl Street One Way Cycle Track And Bike Lane Option
Revised July 24 2017

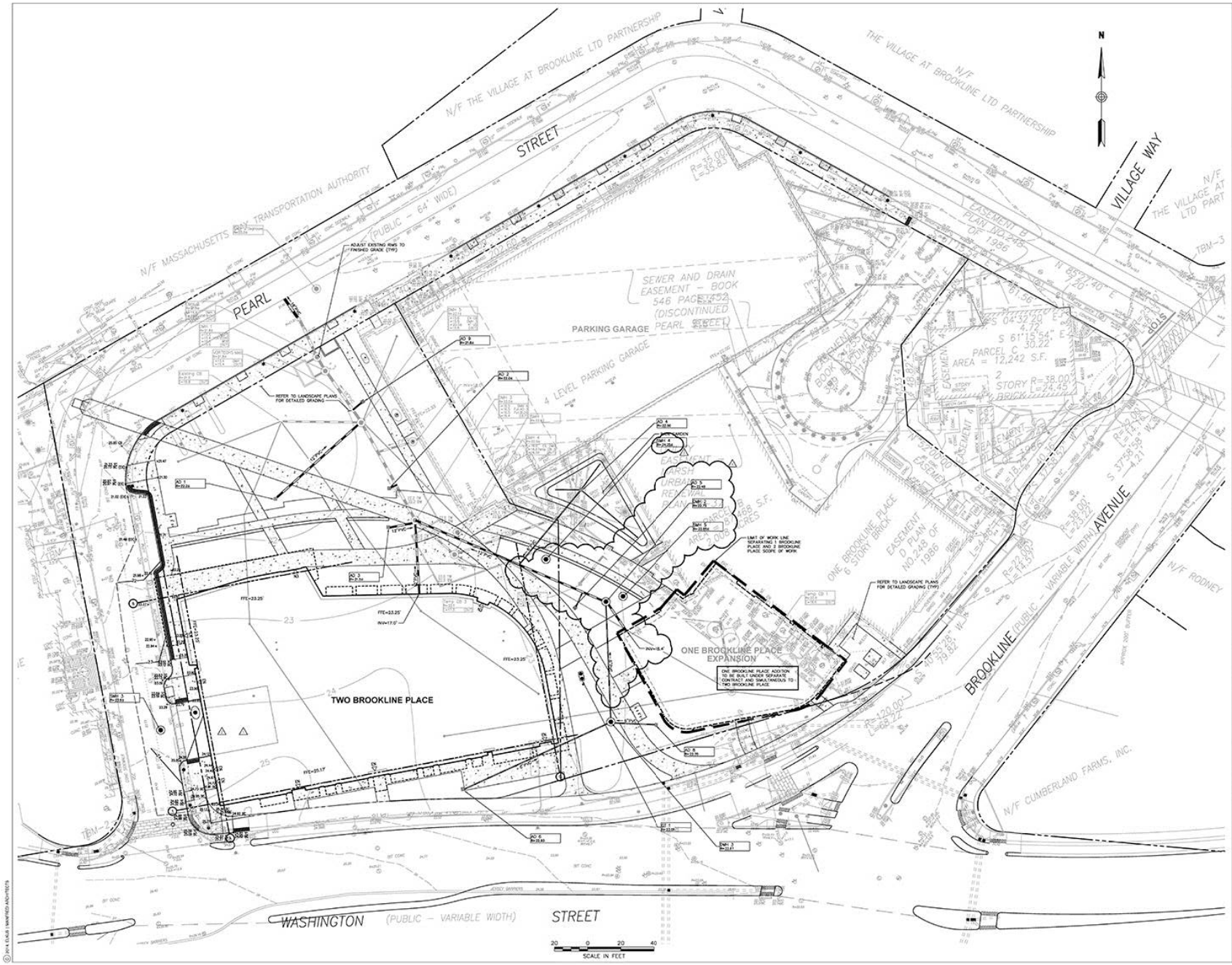
Figure 3


HOWARD STEIN HUDSON
11 Beacon Street, Suite 1010
Boston, MA 02108
www.hshassoc.com
PREPARED FOR:
Boston Children's Hospital
Until every child is well
BROOKLINE PLACE
TRAFFIC SIGNAL IMPROVEMENTS
AT BOOKLINE AVENUE AND
PEARL STREET
BROOKLINE, MA, 02446
NORFOLK COUNTY
REVISIONS:
NO BY DATE DESCRIPTION
ISSUED FOR CONSTRUCTION
TRAFFIC SIGNAL PLAN
DATE: MARCH 21, 2018
PROJECT NUMBER: 2013155
DESIGNED BY: C.MALSCH
DRAWN BY: C.MALSCH
CHECKED BY: R.BURGESS
TP-001
SHEET 6 OF 9
NOTES:
1. SEE SHEET 2 FOR GENERAL, NOTES AND LEGEND
2. SEE SHEET 3 FOR CONSTRUCTION NAL
3. SEE SHEET 5 FOR CONSTRUCTION DETAILS
4. SEE SHEET 7 FOR TRAFFIC SIGNAL SCHEDULE
5. SEE SHEET 8 FOR PAVEMENT MARKING PLANS
ATTACHMENT B-1
ADD ALTERNATIVE #1
CONCEPT SKETCH AND STANDARD DETAILS
ISSUED BY TOWN OF BROOKLINE
DECEMBER 21,2017
SCALE IN FEET
PEARL STREET
PUBLIC - VARIABLE WIDTH
BROOKLINE AVENUE
PUBLIC - VARIABLE WIDTH
VILLAGE WAY
THE VILLAGE AT BROOKLINE LTD PARTNERSHIP
N/F BROOKLINE LTD PARTNERSHIP
PARCEL C AREA = 12,242 S.F. 2 STORY BRICK
ONE BROOKLINE PLACE 6 STORY BRICK
LIGHTING LOAD CENTER FOUNDATION
CONTINUED BELOW
CONTINUED ABOVE
N/F VAJRADHA OF MASSACHUSETT
N/F EDWARD ANDREA L. NAS
N/F GEORG AUDREY E. CAMI
N/F RODN

Attachment – Project Site Plans

2 Brookline Place Construction Documents, Sheets:

C-3 (revised February 8, 2018)
L-201 (revised December 11, 2017)
L-202 (revised September 8, 2017)
L-203 (September 8, 2017)



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ELKUS | MANFREDI
ARCHITECTS

[address] 25 DRYDOCK AVENUE
BOSTON, MASSACHUSETTS 02210
[tel] 617.426.1300

Two Brookline Place

Brookline, Massachusetts

Owner/Developer
Boston Children's Hospital
300 Longwood Avenue
Boston, MA 02115

Project Manager
Eastco Consulting Inc.
226 Causeway Street - 6th Floor
Boston, MA 02114

Landscape Architect
Minjoung Kim Design
119 Braintree Street
Boston, MA 02134

Structural Engineer
McNamara/Salvia, Inc.
101 Federal Street - 11th Floor
Boston, MA 02110

Mechanical, Electrical, Tele. Engineer
FDK Engineers
200 Brickstone Square
Andover, MA 01810

Plumbing, Fire Protection Engineer
R.W.Sullivan Engineering
529 Main Street, Suite 203
Boston, MA 02129

Geotechnical Engineer
Barbour Hood & Associates
1 Technology Park Drive
Westford, MA 01886

Civil Engineer
VHB/Vanasse Hangen Brustlin, Inc
99 High Street, Suite 1005
Boston, MA 02110

Traffic Engineers
Howard Stein Hudson
11 Beacon Street, Suite 1010
Boston, MA 02108

Code Consultant
Jensen Hughes Associates
1601 Worcester Road, Suite 301
Framingham, MA 01701

Elevator Consultant
VDA (Van Deusen & Associates)
101 Summer Street - 6th Floor
Boston, MA 02210

Lighting Consultant
Lam Partners
84 Sherman Street
Cambridge, MA 02140

Specifications Consultant
Keith Associates Inc.
1121 Washington Street
Newton, MA 02465

LEED & Sustainability Consultant
The Green Engineer
56 Junction Square Drive
Concord, MA 01742

Building Envelope & Waterproofing Consultant
Simpson Gumpertz & Heger
41 Seton Street
Waltham, MA 02453

PROJECT NUMBER:	13037.03
CONSTRUCTION DOCUMENTS	
DATE:	February 22, 2017

REVISIONS:

1	Bulletin 1	09.08.2017
2	Bulletin 3	12.11.2017
3	RFI 035	02.08.2018

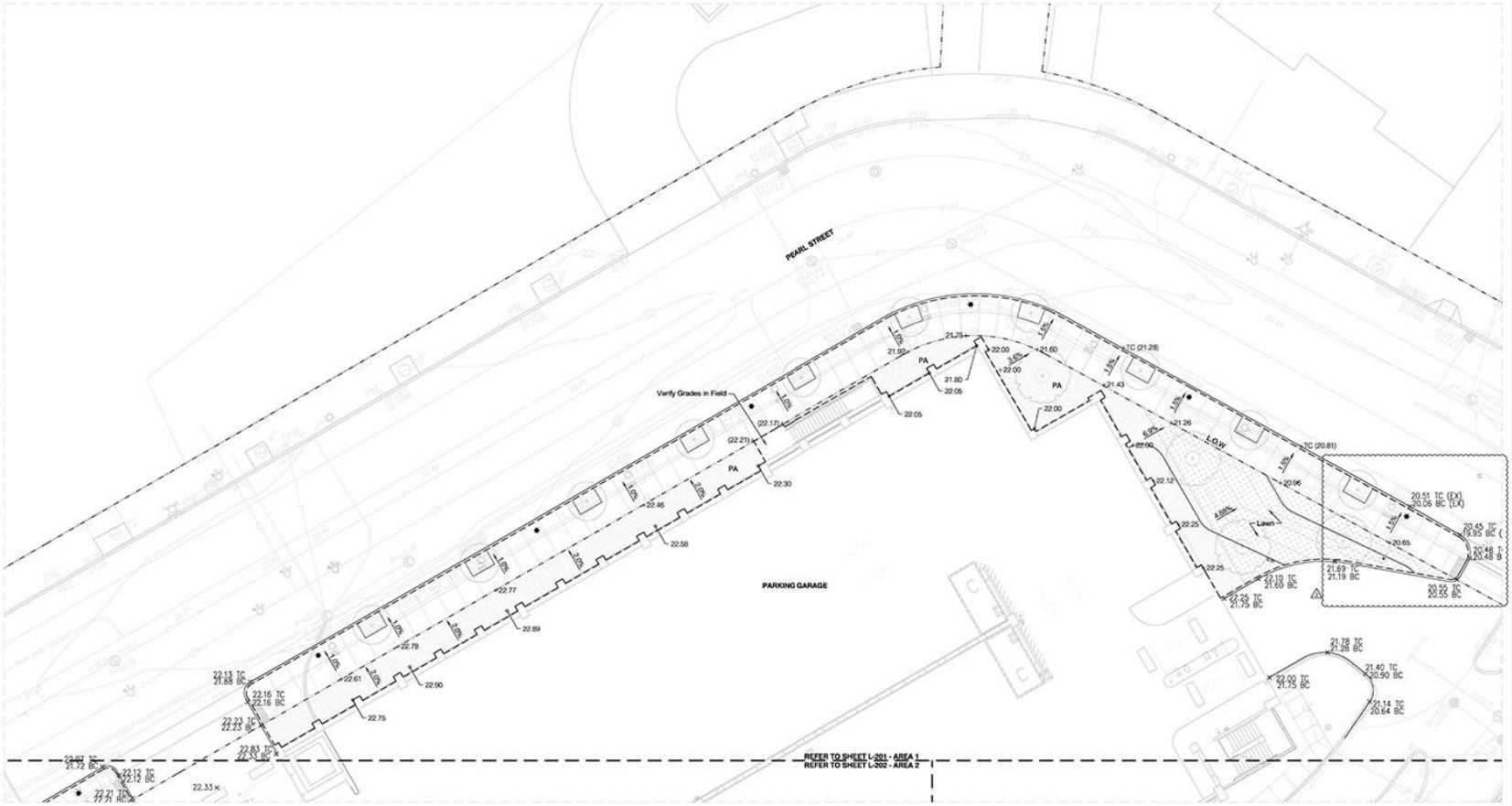
SCALE: 1"=20'

DRAWING NAME:

GRADING AND DRAINAGE PLAN

DRAWING NUMBER:

C-3



GRADING PLAN KEY

515	Existing Contour
515	Proposed Contour
+ (516.6)	Existing Spot Elevation. VIF
+ 515.6	Proposed Spot Elevation
HP	High Point Elevation
LP	Low Point Elevation
x:x	Ratio of Down Slope (Horiz:Vert)
x.x%	Direction/Percentage of Down Slope

GRADING PLAN KEY

1.0 Existing Conditions

Refer to Layout and Materials Plan Drawing — L101-L104

2.0 Pavement, Surfaces, Edging and Curbs

Refer to Layout and Materials Plan Drawing — L101-L104

3.0 Site Elements

Refer to Layout and Materials Plan Drawing — L101-L104

4.0 Planting

Refer to Planting Plan Drawing — L301-L304

5.0 Drainage

(5.7) Landscape Drain. Refer to Civil Drawings. — ---

GRADING NOTES

1. Refer to Sheet L000 for Full List of Grading Notes.
2. Contractor to Verify Adjacent Spot Grades at LOW to Ensure New Work meets Existing Work Properly.
3. Cross Slopes at all paved surfaces shall not exceed 1.8%. Longitudinal Slopes shall not exceed 4.8%
   The Contractor Shall Notify the Landscape Architect before placing any pavement with a Cross Pitch that is Greater than 2%, less than 1%, and not noted as such on the Drawings. Pitch evenly between Spot Grades. All Paved Areas must Pitch to Drain at a minimum of One-Eighth Inch (1/8") per Foot.
4. All rough grading shall be Reviewed and Approved by Landscape Architect prior to final Planting.

ELKUS | MANFREDI ARCHITECTS

[address] 25 DRYDOCK AVENUE
BOSTON MASSACHUSETTS 02210
[w/c] 617.426.1180

Two Brookline Place

Brookline, Massachusetts

Owner/Developer
Boston Children's Hospital
300 Longwood Avenue
Boston, MA 02115

Project Manager
Starker Consulting Inc.
226 Causeway Street - 6th Floor
Boston, MA 02114

Landscape Architect
Mingyung Kim Design
119 Braintree Street
Boston, MA 02134

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101 Federal Street - 11th Floor
Boston, MA 02110

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RDK Engineers
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Andover, MA 01810

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The Green Engineer
54 Junction Square Drive
Concord, MA 01742

Building Envelope & Waterproofing Consultant
Simpson Gumpertz & Heger
41 Seton Street
Waltham, MA 02453

PROJECT NUMBER: 13037.00

CONSTRUCTION DOCUMENTS

DATE: February 20, 2017

REVISIONS:

1	Bulletin 1	09/29/2017
2	Bulletin 3	12/11/2017

SCALE: 1" = 10'-0"

DRAWING NAME:

GRADING PLAN - AREA 1

DRAWING NUMBER:

L201

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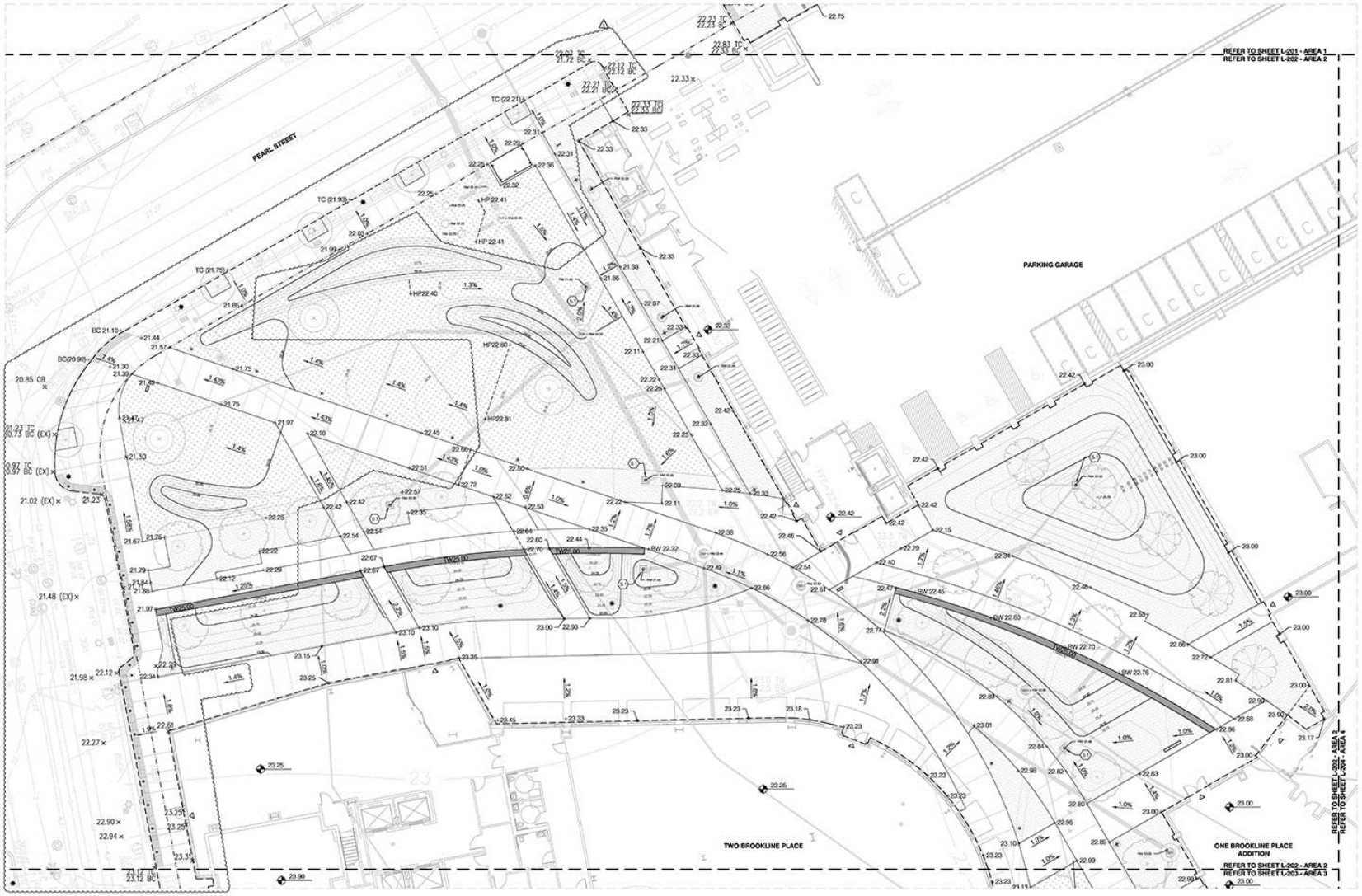

GRADING PLAN KEY

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+ 515.6	Proposed Spot Elevation
HP	High Point Elevation
LP	Low Point Elevation
x:x	Ratio of Down Slope (Horiz:Vert)
x.x%	Direction/Percentage of Down Slope

GRADING PLAN KEY

1.0 Existing Conditions

Refer to Layout and Materials Plan Drawing — L101-L104

2.0 Pavement, Surfaces, Edging and Curbs

Refer to Layout and Materials Plan Drawing — L101-L104

3.0 Site Elements

Refer to Layout and Materials Plan Drawing — L101-L104

4.0 Planting

Refer to Planting Plan Drawing — L301-L304

5.0 Drainage

(5.1) Landscape Drain. Refer to Civil Drawings. — ---

GRADING NOTES

1. Refer to Sheet L000 for Full List of Grading Notes.
2. Contractor to Verify Adjacent Spot Grades at LOW to Ensure New Work meets Existing Work Properly.
3. Cross Slopes at all paved surfaces shall not exceed 1.8%. Longitudinal Slopes shall not exceed 4.8%
   The Contractor Shall Notify the Landscape Architect before placing any pavement with a Cross Pitch that is Greater than 2%, less than 1%, and not noted as such on the Drawings. Pitch evenly between Spot Grades. All Paved Areas must Pitch to Drain at a minimum of One-Eighth Inch (1/8") per Foot.
4. All rough grading shall be Reviewed and Approved by Landscape Architect prior to final Planting.

ELKUS | MANFREDI ARCHITECTS

(address) 25 DRYDOCK AVENUE
BOSTON MASSACHUSETTS 02210
(tel) 617.426.1180

Two Brookline Place

Brookline, Massachusetts

Owner/Developer
Boston Children's Hospital
300 Longwood Avenue
Boston, MA 02115

Project Manager
Starwer Consulting Inc.
226 Causeway Street - 6th Floor
Boston, MA 02114

Landscape Architect
Minyoung Kim Design
119 Braintree Street
Boston, MA 02134

Structural Engineer
McNamara/Salvia, Inc.
101 Federal Street - 11th Floor
Boston, MA 02110

Mechanical, Electrical, Tele. Engineer
ROK Engineers
300 Brickstone Square
Andover, MA 01810

Plumbing, Fire Protection Engineer
R.W.Sullivan Engineering
509 Main Street, Suite 203
Boston, MA 02129

Geotechnical Engineer
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1 Technology Park Drive
Westford, MA 01886

Civil Engineer
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Boston, MA 02110

Traffic Engineers
Howard Stein Hudson
11 Beacon Street, Suite 1010
Boston, MA 02108

Code Consultant
Jensen Hughes Associates
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Framingham, MA 01701

Elevator Consultant
VDA (John Deuben & Associates)
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Lighting Consultant
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Specifications Consultant
Kalin Associates Inc.
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Newton, MA 02465

LEED & Sustainability Consultant
The Green Engineer
54 Junction Square Drive
Concord, MA 01742

Building Envelope & Waterproofing Consultant
Simpson Gumpertz & Heger
41 Seton Street
Waltham, MA 02453

PROJECT NUMBER:	13037.00
CONSTRUCTION DOCUMENTS	
DATE:	February 20, 2017

REVISIONS:

1	Bulletin 1	09/08/2017

SCALE: 1" = 10'-0"

DRAWING NAME:

GRADING PLAN - AREA 2

DRAWING NUMBER:

L202

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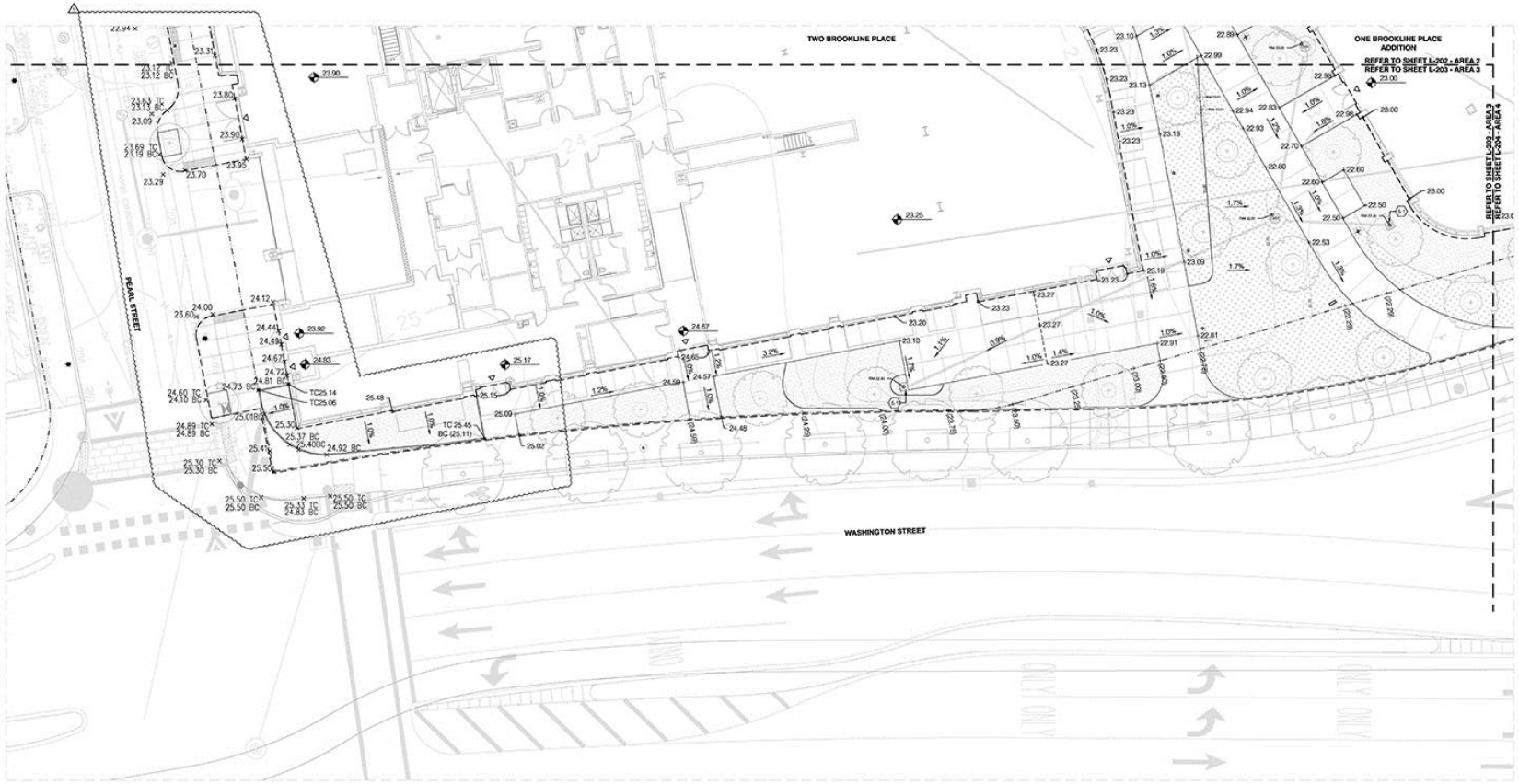

GRADING PLAN KEY

515	Existing Contour
515	Proposed Contour
+ (516.6)	Existing Spot Elevation. VIF
+ 515.6	Proposed Spot Elevation
HP	High Point Elevation
LP	Low Point Elevation
x:x	Ratio of Down Slope (Horiz:Vert)
x.x%	Direction/Percentage of Down Slope

GRADING PLAN KEY

1.0	**Existing Conditions**	
	Refer to Layout and Materials Plan Drawing	L101-L104
2.0	**Pavement, Surfaces, Edging and Curbs**	
	Refer to Layout and Materials Plan Drawing	L101-L104
3.0	**Site Elements**	
	Refer to Layout and Materials Plan Drawing	L101-L104
4.0	**Planting**	
	Refer to Planting Plan Drawing	L301-L304
5.0	**Drainage**	
	(5.1) Landscape Drain. Refer to Civil Drawings.	—

GRADING NOTES

1. Refer to Sheet L000 for Full List of Grading Notes.
2. Contractor to Verify Adjacent Spot Grades at LOW to Ensure New Work meets Existing Work Properly.
3. Cross Slopes at all paved surfaces shall not exceed 1.8%. Longitudinal Slopes shall not exceed 4.8%
3. The Contractor Shall Notify the Landscape Architect before placing any pavement with a Cross Pitch that is Greater than 2%, less than 1%, and not noted as such on the Drawings. Pitch evenly between Spot Grades. All Paved Areas must Pitch to Drain at a minimum of One-Eighth Inch (1/8") per Foot.
4. All rough grading shall be Reviewed and Approved by Landscape Architect prior to final Planting.

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Brookline, Massachusetts

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The Green Engineer
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Concord, MA 01742

Building Envelope & Waterproofing Consultant
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Waltham, MA 02453

PROJECT NUMBER:	13037.03
CONSTRUCTION DOCUMENTS	
DATE:	February 20, 2017

REVISIONS:

1	Bulletin 1	09/26/2017

SCALE: 1" = 10'-0"

DRAWING NAME:

GRADING PLAN - AREA 3

DRAWING NUMBER:

L203

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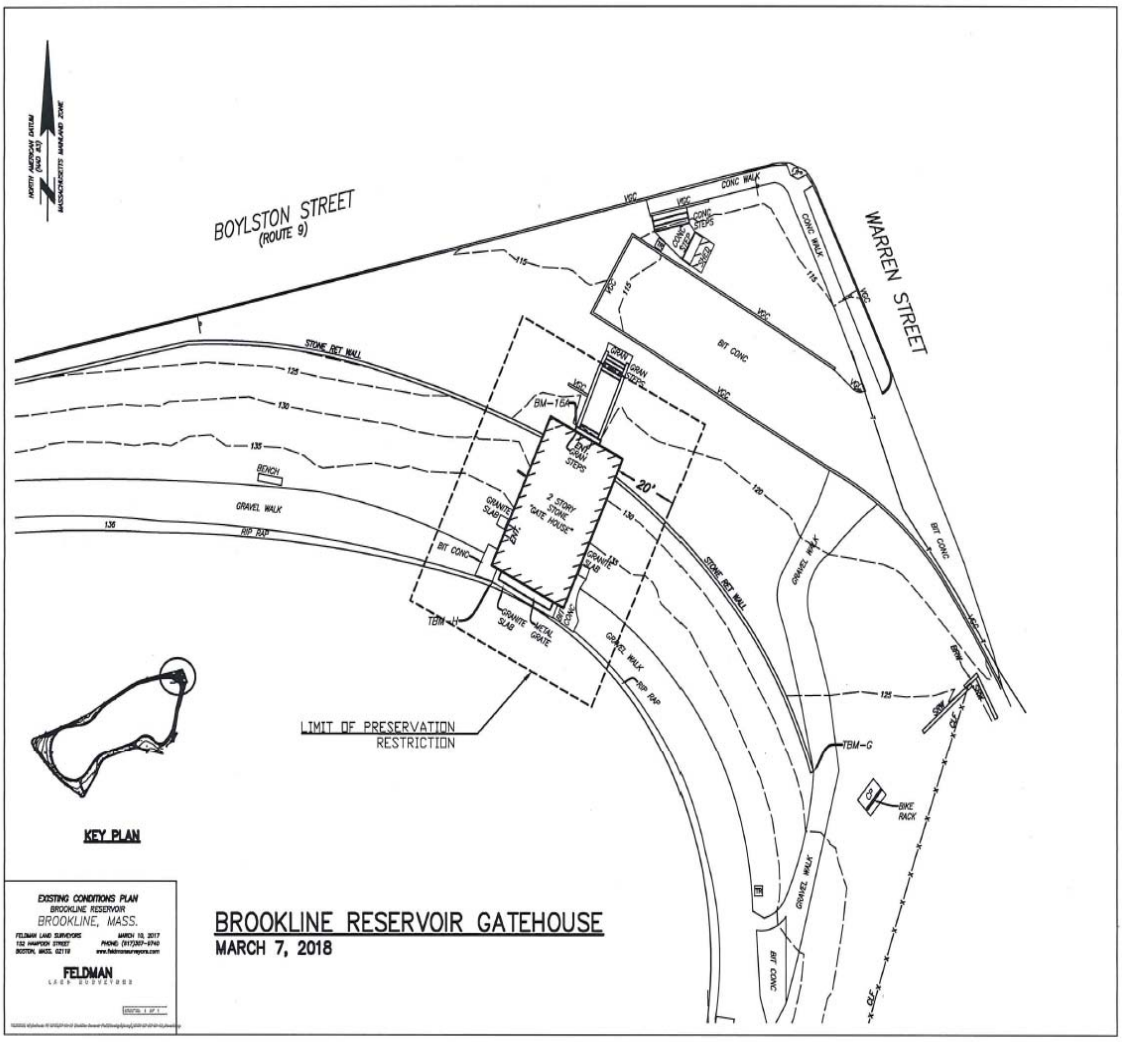
ARTICLE 14

FOURTEENTH ARTICLE
Submitted by: Commissioner of Public Works

To see if the Town will authorize and empower the Select Board to grant a preservation restriction to the Massachusetts Historical Commission in perpetuity on the structure generally known and referred to as the Brookline Reservoir Gatehouse, a two-story granite structure located at the southwest corner of Warren and Boylston Streets adjacent to the Brookline Reservoir, as well as the surrounding twenty-foot area, shown on the plan dated March 7, 2018 submitted herewith and entitled "Brookline Reservoir Gatehouse", with the entire Reservoir shown on Sheet 76 of the Town's 2005 Assessors Atlas as Parcel 10 in Block 324,



or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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.

SELECT BOARD'S RECOMMENDATION

Article 14 would authorize and empower the Select Board to grant a preservation restriction to the Massachusetts Historical Commission ("Historical Commission") in perpetuity on the Brookline Reservoir Gatehouse ("Gatehouse"). The Department of Public Works has applied for a matching grant from the Historical Commission for the repair and restoration of the Gatehouse, and a requirement of said matching grant is to enter into a preservation restriction protecting the building and a twenty-foot buffer. Any major alterations would

have to be reviewed by the Historical Commission (which are spelled out in an addendum to the preservation restriction).

The Select Board is fully supportive of preserving a long standing historic landmark within the Town. The Gatehouse is a well-known building, and the potential restoration would allow for it to be used for the first time since the 1960s. In this case, the Department of Public Works Division of Parks and Open Space would be using the interior space. The use of the Gatehouse would not be restricted by the Historical Commission, because the commission is only concerned with the visible appearance of the building. The restriction would only be focused on the building and not the landscape or the dam of the reservoir. The restrictions will be unique for the property, so there will be future discussions about the twenty-foot buffer and its impacts. There was a discussion about the nature of "in perpetuity" concerning the restriction, but the oversight of the Historical Commission is limited.

The Select Board voted 4-0 FAVORABLE ACTION on the motion offered by the Advisory Committee.

ROLL CALL VOTE:

Aye:	Absent:
Wishinsky	Greene
Franco	
Heller	
Hamilton	

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Warrant Article 14 was submitted by the Commissioner of Public Works. The Town is seeking a matching grant from the Massachusetts Historical Commission (MHC) in order to perform masonry repair and restoration or replacement of windows and doors at the Brookline Reservoir Gatehouse, a two-story granite structure located at the southwest corner of Warren and Boylston Streets adjacent to the Brookline Reservoir. In return for the grant, the Warrant Article asks Town Meeting to authorize and empower the Select Board (formerly the Board of Selectmen) to grant a Preservation Restriction to MHC in perpetuity on the Gatehouse, as well as the surrounding twenty-foot area.

The Advisory Committee, by a vote of 23–0–1, recommends FAVORABLE ACTION.

BACKGROUND:
The Brookline Reservoir is located on the south side of Boylston Street (Route 9), also bordering Lee, Dudley, and Warren Streets.

This area was once low-lying pasture land with a marsh in the centre and a stream running through it. The reservoir was originally built as a drinking water supply for the City of Boston. Built, and filled to capacity, in 1848, it was the main terminus of the now-defunct

Cochituate Aqueduct, which delivered water from Lake Cochituate in Natick/Wayland/Framingham to Boston. The reservoir was part of the Cochituate water system and was built to feed the Beacon Hill Reservoir that stood at the intersection of Hancock, Derne, and Temple Streets in Boston.

With the construction of the reservoirs at Chestnut Hill between 1866 and 1868, the Brookline Reservoir became a standby reservoir, used in case of emergency. Larger reservoirs later came on line, and Brookline had its own reservoir on Fisher Hill, built 1886–1887. Thus, in 1902, the City of Boston decided to sell the reservoir and its surrounding land. Prompted by rumors of undesired development, the neighbors, including Amy Lowell, John C. Olmsted, Walter Channing, Edward Atkinson, and George Lee, contributed more than $50,000 towards the purchase price of $150,000. The reservoir was purchased by the Town of Brookline.

The granite gatehouse at the northeastern end is architecturally significant. Built of dressed granite, it was designed to be a public space. Its main façade has Renaissance Revival elements within a Greek-style temple front. The corners of the building have quoins in a paler shade of stone, and there is a course of that same stone in between the two floors. It has a gabled roof with a fully pedimented gable end, decorated with dentil stonework. The façade is three bays wide, with a centred entry on the lower level. The entry is recessed behind an arch that is flanked by round columns supporting an entablature. The entry is flanked by small elongated round-arch windows. The upper level consists of three larger equal-sized round-arch windows. The upper level of the building also has a façade facing the water; this also has three round-arch windows.

Because the gatehouse was intended as a public space, its interior was also finished. The walls were plastered, and there were stairs, constructed of wrought iron, which were used to reach a platform giving a view of the water. These staircases are believed to the oldest surviving example of wrought iron stairs intended for public use in the United States. (They are predated by surviving stairs in lighthouses and a prison, and by public stairs in other countries.) The building's roof is also believed to be the only surviving period roof supported by wrought iron trusses.

In 1926, the gatehouse interior was altered to provide rooms and toilet facilities for swimming meets, skating and other occasions, and a pier was built nearby. A 1945 plan to build a beach and bathhouse near Lee and Dudley Streets was never realized. The Reservoir Park was considered briefly in 1956 as a possible location for a new Town Hall.

The gatehouse is a significant historic landmark. It is currently listed in both the National and State Registers, and has been designated as a National Historic Landmark.

DISCUSSION:

The Department of Public Works plans to convert a portion of the gatehouse to a single-occupant, gender-neutral, handicapped-accessible restroom, which would include a baby-changing station. The Town already has $250,000 with which to do this. In addition, the Town is seeking a grant from the MHC in order to do other repairs. The maximum grant is $100,000, although if we get a grant, the amount is expected to be closer to half of that. If we are required to match the grant, part of the $250,000 will be used for that. Should

we receive more than expected, there are plenty of repairs to the gatehouse that can be made.

If the Town receives the grant, the MHC requires the Town to enter into a Preservation Restriction protecting the building and a twenty-foot buffer around it, in perpetuity. The 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 MHC has reviewed the proposed work and given its permission.

What constitutes major, as opposed to minor changes, is spelled out in an attachment to the Preservation Restriction titled "Restriction Guidelines." Samples of major alterations that could potentially be applicable to the projected work at the gatehouse include:

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

Changes classified as major alterations are not necessarily unacceptable to MHC. The intent is not to preclude future changes but to require review by MHC and assessment of their impact on the historic integrity of the gatehouse. (Note: the preservation restriction would be identical to the one that currently exists for the Fisher Hill Gatehouse.)

Given recent discoveries that accepting state and federal grants at other sites, such as Baldwin, has come back to haunt the Town, the Advisory Committee asked if such an occurrence could happen here. The petitioner said that we would be allowed to do what we currently plan, i.e. using part of the structure for a comfort station, or if we wanted to use part of it as a concession stand. The petitioner believed that anything the Parks and Recreation Commission itself would approve would be in conformance with the Preservation Restriction. The petitioner did not foresee a contemplated use that would violate the restriction.

The grant is only related to the Gatehouse. The Town has not accepted any grant money relating to the reservoir site from the federal Land and Water Conservation Fund grant programme.

Once the restroom was constructed, public access would be limited to only that part of the Gatehouse. The public would still be precluded from entering other portions of the Gatehouse for safety reasons. There are no plans to resume public swimming, again for safety reasons.

RECOMMENDATION:
The Advisory Committee, by a vote of 23–0–1 recommends FAVORABLE ACTION on the following motion:

VOTED: That the Town authorize and empower the Select Board to grant a preservation restriction to the Massachusetts Historical Commission in perpetuity on the structure generally known and referred to as the Brookline Reservoir Gatehouse, a two-story granite

structure located at the southwest corner of Warren and Boylston Streets adjacent to the Brookline Reservoir, as well as the surrounding twenty-foot area, shown on the plan dated March 7, 2018 submitted herewith and entitled “Brookline Reservoir Gatehouse”, with the entire Reservoir shown on Sheet 76 of the Town’s 2005 Assessors
Atlas as Parcel 10 in Block 324:

XXX

ARTICLE 15

FIFTEENTH ARTICLE
Submitted by: Commissioner of Public Works

To see if the Town will amend the Brookline Stormwater By-Law, by:

Amending Section 8.26 of the General By-Law as follows: (new language in bold and underline; deleted language struck):

SECTION 8.26.2 EROSION AND SEDIMENT CONTROL

1. Purpose

The purpose of this section is to eliminate or reduce the adverse effects of soil erosion and sedimentation on the environment, public welfare/health, and municipal facilities. These adverse effects may be the result of managed construction and other activities including but not limited to earth alteration, excavation, removal of vegetation and general construction activities.

2. Definitions

AGRICULTURE – The normal maintenance or improvement of land in agricultural or aquacultural use as defined by the Massachusetts Wetlands Protection Act and its implementing regulations

CLEARING—Any activity that removes the vegetative surface cover

DRAINAGE WAY—Any channel that conveys surface runoff throughout the site

DBH- Diameter at Breast Height- The measuring point for the diameter of a tree, which shall be 4.5’ above ground level.

EROSION CONTROL—A measure that prevents erosion

EROSION AND SEDIMENT CONTROL PLAN—A set of plans prepared by or under the direction of a licensed professional engineer, certified professional

in erosion and sediment control, or other appropriately licensed and experienced professional, indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction

GRADING—Excavation or fill of material, including the resulting conditions thereof

OWNER – a person with a legal or equitable interest in property

PERIMETER CONTROL—A barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to an on-site sediment trap or basin

PHASING—Clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next

PROTECTED TREE-Any tree 8 inches or greater in diameter, as measured at DBH.

SEDIMENT CONTROL—Measures that prevent eroded sediment from leaving the site or entering off-site drainage structures

SITE—A parcel of land or a contiguous combination thereof, where grading work is performed as a single unified operation

STABILIZATION—The use of practices that prevent exposed soil from eroding

START OF CONSTRUCTION—The first land-disturbing activity associated with a development, including but not limited to land preparation such as clearing, **tree removal**, grading and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages

TREE REMOVAL-The removal of any tree 8” DBH or greater down to ground level including the entire stem and crown. If more than 80% of the stem and crown are removed it shall be deemed a removal for the purposes of this bylaw.

VEGETATION-All living woody and herbaceous plants growing in a particular place taken as a whole.

WATERCOURSE—Any body of water, including, but not limited to, lakes, ponds, rivers, streams, and bodies of water

WATERWAY—A channel that directs surface runoff to a watercourse or to the public storm drain

3. Jurisdiction

No person shall excavate, cut, grade or perform any land-disturbing activities of significance, **including tree removal**, without an approved Erosion and Sediment Control Plan. Activities of significance are those which meet or exceed the following thresholds:

a. Any change of existing grade of more than 2500 sq. ft. or 25% of the lot whichever is smaller.
b. Removal of existing vegetation of more than 2500 sq. ft. or 25% of the lot whichever is smaller
c. Storage of more than 100 cubic yards of excavate or fill.
d. Removal of protected tree(s)32" DBH or greater, either in the aggregate or a single tree.

Activities which are exempt from the requirement of an approved Erosion and Sediment Control Plan are as follows:

a. Emergency activities for the protection of life, property, or natural resources
b. Existing permitted nursery and agricultural operations
c. Pruning undertaken on trees in accordance with the ANSI 300 Pruning Standard, as amended

4. Erosion and Sediment Control Plan

a. Activities which require the change of existing grade or removal of existing vegetation on any parcel of less than 20,000 sq. ft. or storage of excavate or fill between 100 and 1300 cubic yards shall be deemed a project of minor significance and will require that the following information to be included on the Erosion and Sediment Control Plan:

1) Name, address and telephone number of owner, civil engineer and person responsible for implementation of the plan
2) Property lines.
3) Location of all existing and proposed building and impervious surfaces.
4) Location of all existing and proposed stormwater utilities, including structures, pipes, swales and detention basins.
5) **All trees 8" DBH or greater in diameter shall be identified on the plan showing the location of the trunk, a notation of the DBH and species, and the approximate edge of the canopy drawn to scale. All protected trees that are proposed to be removed and all protected trees that are proposed to be saved should be identified on the plan.**
6) Erosion and sediment control provisions to minimize on-site erosion and prevent off-site sediment transport, including provisions to preserve topsoil and limit disturbance.
7) Design details for both temporary and permanent erosion control structures.
8) The Department of Public Works may require any additional information or data deemed appropriate and/or may impose such conditions thereto as may be deemed necessary to ensure compliance with the provisions of Chapter 52, the Manual of Standards, or the preservation of public health and safety.

b. Activities which require, 1.) the change of existing grade or removal of existing vegetation on more than 20,000 sq. ft. or 2.) storage of excavate or fill in excess of 1300 c.y. shall be deemed a project of significant impact and will require that the Erosion and Sediment Control Plan include all of the information required of projects of minor significance plus the following additional information:

1) An attached vicinity map showing the location of the site in relationship to the surrounding area's watercourses, water bodies and other significant geographic features, and roads and other significant structures.

2) Suitable contours for the existing and proposed topography.

~~3) A clear and definite delineation of any areas of vegetation or trees. Note all vegetation that is to be removed and all vegetation that is to be saved.~~

3) **All trees 8" DBH or greater in diameter shall be identified on the plan with the location of the trunk, a notation of the DBH, and the approximate edge of the canopy drawn to scale. All protected trees that are proposed to be removed and all protected trees that are proposed to be saved should be identified on the plan.**

4) A clear and definite delineation of any wetlands, natural or artificial water storage detention areas, and drainage ditches on the site.

5) A sequence of construction of the development site, including stripping and clearing; **protective measures for the trees to remain,** rough grading; construction of utilities; infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, and establishment of permanent vegetation.

5. Performance Standards

A construction project shall be considered in conformance with this section if soils or other eroded matter has been prevented from being deposited onto adjacent properties, rights-of-ways, public storm drainage system, or wetland or watercourse. The design, testing, installation, and maintenance of erosion and sediment control operations and facilities shall adhere to the standards and specifications contained in the Massachusetts Erosion and Sediment Control Guidelines for Urban and Suburban Areas dated March 1997 or the latest edition thereof.

6. Review and Approval

An Erosion and Sediment Control review is triggered by a building permit application or other activity that falls within the jurisdiction described in paragraphs 3 and 4 above. Applicants are referred by the permit

issuing agency to the Engineering Division of the Department of Public Works to conduct the Erosion and Sediment Control review. Activities that fall within the jurisdiction described in paragraphs 3 and 4 above that do not require a permit from any Town department are not exempt from this provision. In this situation, the applicant must seek Erosion and Sediment Control review directly from the Department of Public Works.

The Department of Public Works will review each Erosion and Sediment Control Plan to determine its conformance with the provisions of this section. Within 30 calendar days after receiving an application, the Department of Public Works shall, in writing:

a. Approve the plan as submitted.
b. Approve the plan subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or

c. Disapprove the plan, indicating the reason(s) and procedure for submitting a revised application and/or submission.

Failure of the Department of Public Works to act on an original or revised plan within 30 calendar days of receipt shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by agreement between the applicant and the Department of Public Works. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the Department of Public Works.

7. Inspections

The Commissioner of Public Works, or designated agent shall make inspections as hereinafter required and either shall approve that portion of the work completed or shall notify the owner or person responsible for the implementation of the plan wherein the work fails to comply with the Erosion and Sediment Control Plan as approved. Plans for grading, stripping, excavating, **tree removal as well as protective measures for the trees to remain,** and

filling work bearing the stamp of approval of the Department of Public Works shall be maintained at the site during the progress of the work. To obtain inspections, the permittee shall notify the Department of Public Works at least two working days before the following:

a. Installation of sediment and erosion control measures[1]
b. Start of construction**, removal of protected trees, or site clearing**
c. Completion of site clearing
d. Completion of rough grading
e. Close of the construction season
f. Completion of final landscaping

The person responsible for implementation of the plan shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved Erosion and Sediment Control Plan(s). The purpose of such inspections will be to determine the overall effectiveness of the control plan and the need for additional control measures. All inspections shall be documented in written form and submitted to the Department of Public Works at the time interval specified in the approved permit.

The Commissioner of Public Works or its designated agent shall enter the property of the applicant as deemed necessary to make regular inspections to ensure the validity of the reports filed as noted above.

8. Enforcement

Suspension of Construction or Site Alteration Activity—In the event that the activity at a site violates the conditions as stated or shown on the approved Erosion and Sediment Control Plan in such a manner as to adversely affect the environment, public welfare/health and municipal facilities, then the Commissioner of Public Works may suspend work until the violation is corrected. **Corrective actions may include, but will not be limited to, regrading, installation of additional erosion controls,**

[1] Only Notification required on minor projects.

replacement of vegetation, or other remedial actions as determined by the Commissioner of Public Works.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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.

PLANNING BOARD REPORT AND RECOMMENDATION

Warrant Article 15, submitted by the Commissioner of Public Works, proposes amending the Town's **Stormwater Management Bylaw** to require an Erosion and Sediment Control Plan when there is removal of "more than 32 inches in aggregate of 'protected trees,' defined as trees greater than 8 inches diameter at breast height (DBH)."

This proposal was informed and vetted by the Select Board's Committee on Tree Preservation, which includes designees from pertinent Town boards, including Planning Board member Robert Cook, the Town Arborist, and the Deputy Building Commissioner.

The proposed warrant article fills a gap in the Town's existing bylaw by refining language such as "clearing" and "vegetation" to better address the potential impact tree removal has on erosion and stormwater runoff. Providing a tree survey will also better inform DPW's site plan review process, which involves calculating pre- and post-construction runoff and factors in the presence or removal of trees on the site. Such a proposal is consistent with the guidelines under Section 5.09 of the Zoning Bylaw's Community and Environmental Impact and Design Standards: *"Preservation of Trees and Landscape—Trees and other landscape features shall be preserved in a natural state, insofar as practicable, by minimizing tree and soil removal, and any grade changes shall be in keeping with the general appearance of neighboring developed areas."*

The proposal will guide property owners to recognize the value in avoiding indiscriminate tree removal. According to the Planning Department's 2017 Climate Vulnerability Assessment, the estimated carbon storage value of Brookline's tree canopy exceeds $8 million. It removes over 130,000 pounds of air polluting gases and particulate matter and avoids 26.7 million gallons of stormwater runoff per year.

The Planning Board notes that not all tree species have the same value in terms of environmental impact.

A recommended next step would be to provide accompanying "tree removal and replacement" guidelines that prioritize certain species and encourage replacement of similar or in-kind species and comparable caliper inches when tree removal is unavoidable.

The Board recommends the following adjustments:

- Under "3 – Jurisdiction," add "clearing, grubbing, and stripping" to the phrase "including tree removal."

- It appears that Paragraph 4.b.3 of the proposal should include "and species" after "DBH," consistent with Paragraph 4.a.5 of the proposal.

Therefore, the Planning Board recommends **FAVORABLE ACTION** on Warrant Article 15 with the two aforementioned changes. (April 12, 2018)

SELECT BOARD'S CLIMATE ACTION COMMITTEE (SBCAC)
REPORT AND RECOMMENDATION

The warrant article, submitted by the Commissioner of Public Works, proposes amending the Town's Stormwater Management Bylaw to require an Erosion and Sediment Control Plan when there is removal of "more than 32 inches in aggregate of 'protected trees,' defined as trees greater than 8 inches diameter at breast height (DBH)."

This proposal was informed and vetted by the Select Board's Committee on Tree Preservation, which includes designees from pertinent Town boards, including Select Board member and SBCAC Co-Chair Nancy Heller, Town Arborist Thomas Brady, and the participation of several staff members across departments including Deputy Building Commissioner Michael Yanovitch and Senior Planner Maria Morelli, who works with the SBCAC.

The SBCAC's charge includes developing comprehensive strategies to reduce greenhouse gas emissions, promoting sustainable practices, and implementing resiliency measures to better prepare the community for the impacts of climate change. These strategies, which are outlined in Brookline's Climate Action Plan 2018, span greater energy efficiency, increased renewable energy, improved transportation options, reduced waste, enhanced tree canopy, and adaption/climate preparedness. Presenters who come before the SBCAC are asked to address how their proposals meet the goals of the Climate Action Plan (CAP) and the SBCAC's charge by providing evidence and data, if possible.

Although the proposed amendment addresses only erosion and sedimentation control, science supports a wide range of environmental benefits tree planting provides, generally stated below in accordance with four of the CAP's six strategies:

- **Energy Efficiency:** reduces heating and cooling loads on buildings
- **Reduced Waste:** avoids stormwater runoff
- **Enhance Tree Canopy:** absorbs large quantities of air polluting gases and particulate matters
- **Adaptation:** reduces land surface temperatures, mitigates urban heat island effects, controls erosion

More specifically, the value of Brookline's tree canopy, which includes both public and private trees, was calculated in the Town's 2017 Climate Vulnerability Assessment prepared with the Metropolitan Area Planning Council and researchers at Northeastern University. Evidence provided in this report strongly supports the goals of the stormwater bylaw amendment, which will be effective in raising awareness of trees' environmental value and discouraging indiscriminate tree removal:

> The estimated value of carbon storage in Brookline's tree canopy exceeds $8 million [per year], while the estimated value of annual carbon sequestration (tree growth minus loss due to decomposition and mortality) is over $200,000. Estimates of annual air pollution removal include 1,332 pounds of carbon monoxide, 6,391 pounds of nitrogen dioxide, 101,285 pounds of ozone, 4,363 pounds of sulfur dioxide, and 20,267 pounds of particulate matter. For stormwater runoff i-Tree

> [USDA Forest Service tool] estimates that 26.4 million gallons per year is avoided due to transpiration and interception of rainfall. The value of the reduced runoff is estimated at over $235,000 annually
> (p. 35: http://www.brooklinema.gov/DocumentCenter/View/13876)

The SBCAC supports the tracking of removal and replacement of trees on private land, which will be facilitated by this by-law amendment. In addition the SBCAC supports quantifying how much an increase in tree canopy proportionally lowers land surface temperatures, how much energy (and cost) savings are achieved through strategic planting of trees on private property, and continuing to track how much carbon Brookline's tree canopy stores and sequesters. Having tree surveys, as a result of this bylaw amendment, will make these calculations more accurate.

SBCAC briefly questioned the financial impact on property owners and concluded that common, small-scale projects such as installing a walkway already trigger the bylaw's erosion and sedimentation control planning. In addition, the Conservation staff has a proven track record of assisting property owners through the planning process and recommending reasonable plans for each project's scale and unique conditions.

The SBCAC wishes to emphasize that although the stormwater amendment is a good first step, it strongly urges the Tree Preservation Committee to develop objective standards for tree replacement (if removal is unavoidable) and for staff to continue its work drafting a Site Plan Review bylaw that will reference the amended stormwater bylaw and more robust tree preservation guidelines to promote holistic, sustainable development practices.

Therefore, the Select Board's Climate Action Committee recommends **FAVORABLE ACTION** on Warrant Article 15 (April 19, 2018).

SELECT BOARD'S RECOMMENDATION

Article 15 would amend the Town's Stormwater Management Bylaw, and it would require an Erosion and Sediment Control Plan when there is removal of "more than 32 inches in aggregate of 'protected trees,' defined as trees greater than 8 inches in diameter at breast height (DBH)." The Article was developed and assessed by the Select Board's Committee on Tree Preservation ("Committee"). This is an attempt to refine language concerning clearing and vegetation in the Town's existing bylaw.

The Select Board formed the Committee as a result of a Town Meeting action. In the event that a property owner wants to remove an aggregate of 32 inches in diameter of protected trees, then that would trigger a Department of Public Works site plan review. Although the change would present a $150 fee to homeowners, in the event that the removal of trees requires site plan review, the fee would cover the staff time involved with the plan review. There is no requirement to remove and replant in kind.

The Board is supportive of mitigating the effects of indiscriminate tree removal by property owners, because there is a desire to maintain the Town's tree canopy and there are effects to stormwater management. The Board acknowledges that this is an action to produce another level protection for the community's trees, through the Stormwater Management Bylaw. The trees across the Town absorb water and carbon dioxide, regardless if they reside on Town or private property. The protection of the Town's trees is an investment for the entire community.

The Select Board voted 4-0 Favorable Action on the following motion:

VOTED:
will amend the Brookline Stormwater By-Law, by:

Amending Section 8.26 of the General By-Law as follows: (new language in bold and underline; deleted language struck):

SECTION 8.26.2 EROSION AND SEDIMENT CONTROL

1. Purpose

The purpose of this section is to eliminate or reduce the adverse effects of soil erosion and sedimentation on the environment, public welfare/health, and municipal facilities. These adverse effects may be the result of managed construction and other activities including but not limited to earth alteration, excavation, removal of vegetation and general construction activities.

2. Definitions

AGRICULTURE – The normal maintenance or improvement of land in agricultural or aquacultural use as defined by the Massachusetts Wetlands Protection Act and its implementing regulations

CLEARING—Any activity that removes the vegetative surface cover

DRAINAGE WAY—Any channel that conveys surface runoff throughout the site

DBH- Diameter at Breast Height- The measuring point for the diameter of a tree, which shall be 4.5' above ground level.

EROSION CONTROL—A measure that prevents erosion

EROSION AND SEDIMENT CONTROL PLAN—A set of plans prepared by or under the direction of a licensed professional engineer, certified professional in erosion and sediment control, or other appropriately licensed and experienced professional, indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction

GRADING—Excavation or fill of material, including the resulting conditions thereof

OWNER – a person with a legal or equitable interest in property

PERIMETER CONTROL—A barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to an on-site sediment trap or basin

PHASING—Clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next

PROTECTED TREE-Any tree 8 inches or greater in diameter, as measured at DBH.

SEDIMENT CONTROL—Measures that prevent eroded sediment from leaving the site or entering off-site drainage structures

SITE—A parcel of land or a contiguous combination thereof, where grading work is performed as a single unified operation

STABILIZATION—The use of practices that prevent exposed soil from eroding

START OF CONSTRUCTION—The first land-disturbing activity associated with a development, including but not limited to land preparation such as clearing, **tree removal**, grading and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages

TREE REMOVAL-The removal of any tree 8” DBH or greater down to ground level including the entire stem

and crown. If more than 80% of the stem and crown are removed it shall be deemed a removal for the purposes of this bylaw.

VEGETATION-All living woody and herbaceous plants growing in a particular place taken as a whole.

WATERCOURSE—Any body of water, including, but not limited to, lakes, ponds, rivers, streams, and bodies of water

WATERWAY—A channel that directs surface runoff to a watercourse or to the public storm drain

3. Jurisdiction

No person shall excavate, cut, grade or perform any land-disturbing activities of significance, **including tree removal, clearing, grubbing, and stripping,** without an approved Erosion and Sediment Control Plan. Activities of significance are those which meet or exceed the following thresholds:

a. Any change of existing grade of more than 2500 sq. ft. or 25% of the lot whichever is smaller.
b. Removal of existing vegetation of more than 2500 sq. ft. or 25% of the lot whichever is smaller
c. Storage of more than 100 cubic yards of excavate or fill.
d. Removal of protected tree(s)32” DBH or greater, either in the aggregate or a single tree.

Activities which are exempt from the requirement of an approved Erosion and Sediment Control Plan are as follows:

d. Emergency activities for the protection of life, property, or natural resources
e. Existing permitted nursery and agricultural operations
f. Pruning undertaken on trees in accordance with the ANSI 300 Pruning Standard, as amended

4. Erosion and Sediment Control Plan

a. Activities which require the change of existing grade or removal of existing vegetation on any parcel of less than 20,000 sq. ft. or storage of excavate or fill between 100 and 1300 cubic yards

shall be deemed a project of minor significance and will require that the following information to be included on the Erosion and Sediment Control Plan:

1) Name, address and telephone number of owner, civil engineer and person responsible for implementation of the plan
2) Property lines.
3) Location of all existing and proposed building and impervious surfaces.
4) Location of all existing and proposed stormwater utilities, including structures, pipes, swales and detention basins.
5) **All trees 8” DBH or greater in diameter shall be identified on the plan showing the location of the trunk, a notation of the DBH and species, and the approximate edge of the canopy drawn to scale. All protected trees that are proposed to be removed and all protected trees that are proposed to be saved should be identified on the plan.**
6) Erosion and sediment control provisions to minimize on-site erosion and prevent off-site sediment transport, including provisions to preserve topsoil and limit disturbance.
7) Design details for both temporary and permanent erosion control structures.
8) The Department of Public Works may require any additional information or data deemed appropriate and/or may impose such conditions thereto as may be deemed necessary to ensure compliance with the provisions of Chapter 52, the Manual of Standards, or the preservation of public health and safety.

b. Activities which require, 1.) the change of existing grade or removal of existing vegetation on more than 20,000 sq. ft. or 2.) storage of excavate or fill in excess of 1300 c.y. shall be deemed a project of significant impact and will require that the Erosion and Sediment Control Plan include all of the information required of projects of minor significance plus the following additional information:

1) An attached vicinity map showing the location of the site in relationship to the surrounding area’s watercourses, water bodies and other

significant geographic features, and roads and other significant structures.

2) Suitable contours for the existing and proposed topography.

~~3) A clear and definite delineation of any areas of vegetation or trees. Note all vegetation that is to be removed and all vegetation that is to be saved.~~

3) **All trees 8" DBH or greater in diameter shall be identified on the plan with the location of the trunk, a notation of the DBH and species, and the approximate edge of the canopy drawn to scale. All protected trees that are proposed to be removed and all protected trees that are proposed to be saved should be identified on the plan.**

4) A clear and definite delineation of any wetlands, natural or artificial water storage detention areas, and drainage ditches on the site.

5) A sequence of construction of the development site, including stripping and clearing; **protective measures for the trees to remain,** rough grading; construction of utilities; infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, and establishment of permanent vegetation.

5. Performance Standards

A construction project shall be considered in conformance with this section if soils or other eroded matter has been prevented from being deposited onto adjacent properties, rights-of-ways, public storm drainage system, or wetland or watercourse. The design, testing, installation, and maintenance of erosion and sediment control operations and facilities shall adhere to the standards and specifications contained in the Massachusetts Erosion and Sediment Control Guidelines for Urban and Suburban Areas dated March 1997 or the latest edition thereof.

6. Review and Approval

An Erosion and Sediment Control review is triggered by a building permit application or other activity that falls within the jurisdiction described in paragraphs 3 and 4 above. Applicants are referred by the permit issuing agency to the Engineering Division of the Department of Public Works to conduct the Erosion and Sediment Control review. Activities that fall within the jurisdiction described in paragraphs 3 and 4 above that do not require a permit from any Town department are not exempt from this provision. In this situation, the applicant must seek Erosion and Sediment Control review directly from the Department of Public Works.

The Department of Public Works will review each Erosion and Sediment Control Plan to determine its conformance with the provisions of this section. Within 30 calendar days after receiving an application, the Department of Public Works shall, in writing:

a. Approve the plan as submitted.
b. Approve the plan subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or

c. Disapprove the plan, indicating the reason(s) and procedure for submitting a revised application and/or submission.

Failure of the Department of Public Works to act on an original or revised plan within 30 calendar days of receipt shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by agreement between the applicant and the Department of Public Works. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the Department of Public Works.

7. Inspections

The Commissioner of Public Works, or designated agent shall make inspections as hereinafter required and either shall approve that portion of the work

completed or shall notify the owner or person responsible for the implementation of the plan wherein the work fails to comply with the Erosion and Sediment Control Plan as approved. Plans for grading, stripping, excavating, **tree removal as well as protective measures for the trees to remain,** and filling work bearing the stamp of approval of the Department of Public Works shall be maintained at the site during the progress of the work. To obtain inspections, the permittee shall notify the Department of Public Works at least two working days before the following:

a. Installation of sediment and erosion control measures[2]
b. Start of construction**, removal of protected trees, or site clearing**
c. Completion of site clearing
d. Completion of rough grading
e. Close of the construction season
f. Completion of final landscaping

The person responsible for implementation of the plan shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved Erosion and Sediment Control Plan(s). The purpose of such inspections will be to determine the overall effectiveness of the control plan and the need for additional control measures. All inspections shall be documented in written form and submitted to the Department of Public Works at the time interval specified in the approved permit.

The Commissioner of Public Works or its designated agent shall enter the property of the applicant as deemed necessary to make regular inspections to ensure the validity of the reports filed as noted above.

8. Enforcement

Suspension of Construction or Site Alteration Activity—In the event that the activity at a site violates the conditions as stated or shown on the approved Erosion and Sediment Control Plan in such a manner as to adversely affect the environment,

[2] Only Notification required on minor projects.

public welfare/health and municipal facilities, then the Commissioner of Public Works may suspend work until the violation is corrected. **Corrective actions may include, but will not be limited to, regrading, installation of additional erosion controls, replacement of vegetation, or other remedial actions as determined by the Commissioner of Public Works.**

ROLL CALL VOTE:

Aye:	Absent:
Wishinsky	Greene
Franco	
Heller	
Hamilton	

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Warrant Article 15 has been submitted by: Commissioner of Public Works. It would amend the Brookline Stormwater By-Law, by amending certain Sections of 8.26 of the General By-Law that affect erosion and sediment control. This amendment to the existing Stormwater Management By-Law is a first step in efforts to formalize tree protection in Brookline. By a vote of 18–0–1, the Advisory Committee recommends FAVORABLE ACTION.

BACKGROUND:
In 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, Warrant Article 11 for the May 2016 Brookline Town Meeting voted the following motion and 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.

> VOTED: To refer the subject matter of Article 11 to the Selectmen for appointment of a committee, with members to be chosen from the public, and appropriate Town Committees and Boards, having the necessary skills and expertise to evaluate the best way to provide tree protection in the Town, including whether this should be a zoning and/or general by-law amendment and make a report back to the 2017 Annual Town Meeting.

The Select Board's Tree Protection Committee was established with the following members:

Nancy Heller, Chair
Clara Batchelor, Park and Recreation Commission

May 22, 2018 Annual Town Meeting

15-20

Harry Bohrs, Greenspace Alliance
Bob Cook, Planning Board
Liz Erdman, Tree Planting Committee
Ken Goldstein, former Selectman and former chair of Zoning By-Law Committee
Richard Murphy, Citizen and Petitioner of Tree Protection Article
Roberta Schnoor, Conservation Commission

As a result of its initial work, and as a step toward improved protection for trees, the recommendation of the Select Board's Tree Protection Committee is to amend the Town's General By-Laws, Article 8.26, Stormwater Management.

Below are the main points of the proposed changes and definitions that will be added to Article 8.26 if adopted by Town Meeting.

Overall, as described in the petitioner's explanation, "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."

The by-law amendment adds the following definitions to the existing by-law:

PROTECTED TREE: Any tree 8 inches or greater in diameter, as measured at DBH (Diameter at Breast Height).

TREE REMOVAL: The removal of any tree 8" DBH or greater down to ground level including the entire stem and crown. If more than 80% of the stem and crown are removed it shall be deemed a removal for the purposes of this by-law.

VEGETATION: All living woody and herbaceous plants growing in a particular place taken as a whole.

The 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" DBH.

If adopted by Town Meeting the Erosion and Sediment Control review will then be triggered by a building permit application or other activity that involves tree removal of trees 8" DBH or greater or any wetlands, natural or artificial water storage detention areas, and drainage ditches on the site.

All trees 8" DBH or greater in diameter shall be identified on the plan showing the location of the trunk, a notation of the DBH and species, and the approximate edge of the canopy drawn to scale. All protected trees that are proposed to be removed and all protected trees that are proposed to be saved should be identified on the plan.

The proposed by-law amendment also describes protective measures for the trees to remain.

Plans for grading, stripping, excavating, tree removal, as well as protective measures for the trees to remain, and for filling work, that bear the stamp of approval of the Department of Public Works shall be maintained at the site during the progress of the work.

ENFORCEMENT: Suspension of Construction or Site Alteration Activity—In the event that the activity at a site violates the conditions as stated or shown on the approved Erosion and Sediment Control Plan in such a manner as to adversely affect the environment, public welfare/health and municipal facilities, then the Commissioner of Public Works may suspend work until the violation is corrected. Corrective actions may include, but will not be limited to, regrading, installation of additional erosion controls, replacement of vegetation, or other remedial actions as determined by the Commissioner of Public Works.

There will be no monetary consequence for violations; however the Department of Public Works or their designee can issue a stop work order with anyone in violation of the storm water management by-law.

DISCUSSION:
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.

The proposed changes were developed as a result of the work of the Select Board's committee. To date, this has been a long process. Representatives of several other communities attended a committee meeting to share their experiences with regards to the daily application of their respective tree protection by-laws or ordinances. This change in the by-law, if adopted, is intended to be an interim step. Tom Brady, the Tree Warden (Department of Public Works) reported that within a few years, the Planning Department, will be proposing enhanced site plan management and expects to introduce changes to the site plan review by-law. This will give the Town an opportunity to work with this by-law for a few years and make any necessary adjustments. If passed this by-law will need to be approved by the state Attorney General.

Changes to Federal Laws were also considered. Most issues with tree removal dovetail with storm water management.

Tom Brady, is in close contact with contractors, land companies, tree companies and he told us that he feels that he will be able to quickly educate these professional and that they will understand the revised by-law. Michael Yanovitch (Building Department) explained that most significant tree issues are neighbor to neighbor.

There is a possibility that property owners will attempt to evade the requirements of the amended by-law by removing trees incrementally so that the proposed thresholds and requirements would not be triggered. Tom Brady noted that neighbors frequently call the Town when they see trees being cut down. The Building Department can issue a stop work order in such cases.

Tom Brady reported that the cost of removing a 32” caliper tree would be about $4,000. A permit costs only $150. He expects that compliance with the amended by-law will neither be expensive nor complicated.

Several suggested minor changes proposed by the Planning Board were incorporated into the motion voted by the Advisory Committee and the Select Board.

RECOMMENDATION:
The Advisory Committee by a vote of 18–0–1, recommends FAVORABLE ACTION on the motion offered by the Select Board.

XXX

ARTICLE 15

CONSERVATION COMMISSION RECOMMENDATION

The Conservation Commission recommends favorable action on Article 15, as revised. This Article, submitted by the Commissioner of Public Works and with input from the Select Board's Committee on Tree Protection, amends the town's Stormwater Management By-Law to provide some protection against the removal of mature trees on private property due to the role such trees have in preventing erosion and sediment runoff.

Not only aesthetically appealing, mature trees have many desirable environmental qualities. In the context of controlling erosion and sediment run-off, the canopy of a mature tree slows the arrival of rain on the ground surface, mitigating the erosive impact of a hard rainfall on permeable ground. The extensive root system of such a tree absorbs large quantities of rainfall, preventing destabilization of the soil and sediment run-off. And in areas where the land is not level, a large, well-established tree root system also plays a role in maintaining the grade of the land, acting as a bulwark against sliding earth and its damaging stormwater impacts.

While there are many environmental reasons to support the preservation of mature trees, the Conservation Commission wholeheartedly agrees with amending the Stormwater Management By-law to specifically acknowledge the value of mature tress in this context. The focus on the size of a tree, established through its DBH and the requirement of a minimum removal of 32', is reasonably related to the environmental goals this bylaw seeks to achieve.

With the triggers it establishes, Article 15 will bring scrutiny to some clear-cutting events which in the past would not have been reviewed by the Town. Nonetheless, the Article does not flat out prevent tree removal. Instead, owners will be required to pause, to consider the location and scope of the removal, and review it with the Town in the context of the work's stormwater impacts. Thus, this Article will not only curtail erosion and sediment runoff, but will also have an educational impact. The Conservation Commission views mature trees as an important component of climate resilience and believes that increased public awareness of their benefits will facilitate the Town's ability to craft and institute additional environmental protections going forward.

For these reasons, the Conservation Commission recommends favorable action on Article 15, as revised.

ARTICLE 16

SIXTEENTH ARTICLE

Submitted by: Planning and Community Development Department, Contact: Trevor Johnson, tjohnson@brooklinema.gov

To see if the Town will amend Section 7.00 of the Zoning By-law as follows (new and modified language in bold and italics, deleted language appearing in strikeout)

ARTICLE VII

SIGNS, ILLUMINATION, & REGULATED FACADE ALTERATIONS

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§7.00 - SIGN BY-LAW
§7.01 - SIGNS IN ALL DISTRICTS
§7.02 - SIGNS IN S, SC, T, AND F DISTRICTS
§7.03 - SIGNS IN M DISTRICTS
§7.04 - SIGNS IN I, G, L AND O DISTRICTS
§7.05 - TEMPORARY SIGNS
§7.06 - ILLUMINATION
§7.07 - EXCEPTIONS TO THE ABOVE
§7.08 - DESIGN REVIEW PROCEDURES
§7.09 - NONCONFORMANCE OF SIGNS

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§7.00 – SIGN BY-LAW

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

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

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

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

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

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

ii. Town of Brookline government signs and signs permitted by the Town on Town property.

iii. Building markers indicating the name of a building and date and incidental information about its construction, which marker is cut into a masonry surface or made of other permanent material.

iv. Flags, holiday lights and decorations.

v. Customary displays of merchandise or objects and materials without lettering behind a store window.

vi. Signs not visible from a public way or residential dwelling.

vii. Bulletin boards, menu or announcement boards mounted to a building outside an entryway.

b. Regulated Façade Alteration: Any change intended to be permanent in the visual appearance of the facade including the blocking of the view through a street-level window and any change in door or window style, unless such change consists of an exact replication in terms of size, color, location and detail of the replaced element. A regulated alteration shall also include installation of a fence, wall or driveway. A regulated facade alteration shall include:

i. commercial building facades in all districts; and

ii. residential building facades on lots with frontage on Beacon Street, Boylston Street, Brookline Avenue, Commonwealth Avenue, Harvard Street, or Washington Street, with the exception of buildings on lots located in S, SC, and T districts.

c. Façade Sign: A sign consisting of letters, numbers or other graphics mounted directly to the façade of a building or mounted to a raceway, panel or sign-backer comprised of substantial materials that is mounted to the façade of a building.

d. Banner Sign: A sign constructed of pliable fabric or similar material with no internal illumination or other mechanical function that is mounted perpendicular to a building as a decorative element via mounting poles or brackets.

e. Projecting Sign: A sign constructed of wood, a composite of wood and plastic, metal, glass or another substantial material that is mounted perpendicular to a building façade.

f. Window Sign: Any sign that is applied, painted, or affixed to a window, or placed inside a window, facing the outside of the building, and easily seen from the outside.

h. Freestanding Sign: A sign mounted to a base structure, pole, or post that is anchored to the ground and is not attached to a building.

§7.01 – SIGNS IN ALL DISTRICTS

a. All regulated facade alterations shall be subject to the design review process in **§7.08.**

b. Signs, whether temporary or permanently attached to the exterior of buildings shall be made of substantial materials.

b. Signs with visible moving or moveable parts or with flashing animated or intermittent illumination are prohibited.

c. Signs or parts thereof attached to a building, shall not exceed a height of 25 feet above ground level, ***except as provided in*** **§7.07.1.b**.

~~d. Projecting or banner signs attached to a building shall not be internally Illuminated shall not exceed 12 square feet in area per face and shall not extend lower than a height of 8 feet.~~

e. ***Façade*** Signs ~~attached to a building~~ shall not project above the roof or parapet line nor more than 12 inches out from the wall to which it is attached.

e. Signs shall not be permitted on building walls not parallel or within 45 degrees of parallel to the street***, except as provided in*** **§7.04.1.*e.***

g. No A-Frame or "Sandwich board" signs shall be permitted in any district.

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

~~i. The aggregate area of all signs in any window, whether temporary or permanent, shall not exceed 30% of the area of such window, and the area of permanent window signs shall be included in the aggregate sign area permitted in paragraph (h) above.~~

h. All permanent ***Freestanding*** signs in excess of 1 square foot shall be set back one-half the depth of the required front yard setback from all street lot lines.

i. ~~Permanent signs not attached to a building shall not exceed 30 square feet in area of each face exclusive of posts or other structural supports and shall not exceed 19 feet in height.~~

j. Temporary, non-illuminated, signs may be placed on private property in all zoning districts, provided that the signs are in fact temporary, not involving any substantial expense, and are displayed in a manner which will not deface the building facade.

k. Non-illuminated signs that do not exceed 1.5 square feet in area identifying allowed users of individual parking spaces may be placed in all zoning districts.

l. All lighting shall be installed and maintained so that no direct light or glare shines on any street or nearby property.

m. No neon type or exposed gas-illuminated tube type of sign which is red, yellow, or green shall be located within 100 feet of a traffic signal unless it is shielded from the line of sight of any driver of a motor vehicle approaching the traffic signal.

n. There shall be not more than one freestanding sign per property, except as provided in **§7.07.*1.c.***

~~that the Board of Appeals by special permit may allow additional freestanding signs on a property with more than one building or more than one street frontage but not more than one sign per building per street frontage.~~

~~Whenever possible, signs shall be combined or clustered to minimize their number.~~

~~q. Signs, whether temporary or permanently attached to the exterior of buildings shall be made of substantial materials.~~

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

1. ~~In any S, SC, T and F District, no permanent on-premises sign or other permanent on-premises advertising device shall be permitted except as follows:~~
   ***Permanent on premises signs and other permanent on premises advertising devices shall only be allowed in any S, SC, T and F Districts as permitted in* §7.01 and as follows:**

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

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

§7.03 – SIGNS IN M DISTRICTS

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

   ***Permanent on premises signs and other permanent on premises advertising devices shall only be allowed in any M District as permitted in* §7.01 and as follows:**

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

   b. Two signs not exceeding a total aggregate of 20 square feet in area.

   c. Dwellings with more than 200 units may have an additional aggregate area of 5 square feet per 100 units above 100 units, up to a maximum aggregate area of 40 square feet.

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

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

***Permanent on premises signs and other permanent on premises advertising devices shall only be allowed in any I, G, L and O Districts as permitted in* §7.01 and as follows:**

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

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

c. The aggregate area of all signs in any window, whether temporary or permanent, shall not exceed 30% of the area of such window. ~~and the area of permanent window signs shall be included in the aggregate sign area permitted in paragraph (h) above.~~

d. Signs ~~on upper floors of~~ ***attached to*** a building may have ~~signage~~ additional ***area in accordance with §7.07.1.a.*** ~~above, if located at the second floor level, but not exceeding the height limit of 25 feet as stipulated in **§7.01(c)**, at an additional aggregate area of a half a square foot for each foot of building face parallel or substantially parallel to a street lot line.~~

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

f. ~~Permanent signs not attached to a building~~ ***Freestanding signs shall not exceed 30 square feet in area of each face exclusive of posts or other structural supports and shall not exceed 19 feet in height.***

§7.05 – TEMPORARY SIGNS

1. In all districts, no temporary on-premises sign or other temporary on-premises advertising device shall be permitted except as follows:

a. The design and location of all temporary signs attached to or associated with a commercial property or use shall be subject to the approval of the Building Commissioner following guidelines approved by the Planning Board.

b. Except as provided in **§7.07(b)**, the Building Commissioner may approve temporary signs attached to or associated with a commercial property or use for no more than a four month period in any calendar year.

c. Temporary signs associated with a non-commercial property, dwelling or use not exceeding 12 square feet may be placed in all districts.

d. Signs related to an event on a specific date or dates shall be removed within 7 days after the event.

§7.06 – ILLUMINATION

1. In all districts, no sign shall be illuminated except as follows:

a. In any residence district, no sign shall be of the neon type or exposed gas-illuminated tube type; and any lighting of a sign shall be continuous, indirect white light installed in a manner that will prevent direct light from shining onto any street or nearby property. In S, SC, and T Districts no sign shall be illuminated after 11 p.m.

b. In an S, SC, T, M-0.5, M-1.0, or M-1.5 District, no outdoor floodlighting or decorative lighting shall be permitted except lighting primarily designed to illuminate walks, driveways, doorways, outdoor living areas, or outdoor recreational facilities.

c. New internally illuminated signs in L, G, I and O Districts may be illuminated via low intensity LED light bulbs from 5 am until 11 pm; or ½ hour past the close of business, whichever is later. In the case of a business that operates 24 hours per day; internally illuminated signs shall be dimmed between the hours of 11 pm and 5 am. Signs shall be installed with an automatic timer to comply with this Section.

§7.07 – EXCEPTIONS TO THE ABOVE

1. Signs in all districts shall comply with this section of the By-Law except as follows:

a. ***Where an applicant can demonstrate that Signs*** ~~In cases where an attached sign size~~ larger than permitted in this Article VII ~~is~~ ***are*** appropriate because of the size of a natural space for a sign on a facade or because of other architectural features of a building, ***the Planning Board may approve such*** ~~a~~ larger ~~attached~~ sign***s*** up to but not more than 25% larger than permitted by the specific regulations in this Article ~~may be allowed by the Planning Board in accordance with the procedures of **§7.01(h)**~~ only if such an increase is necessary to fill the most appropriate sign area on the building and the sign location ***appropriate*** ~~is a proper one~~ for a~~n~~ ***larger*** ~~oversized~~ sign. ~~No lettering or other advertising message shall be placed in the additional sign area authorized by this paragraph. The increase of the background up to 25% shall not in any event permit an increase in the size of the lettering had the background increase not been permitted.~~

b. Where an applicant can demonstrate that the granting of exception(s) to the requirements of this Article 7.00 would result in an improved design because of the nature or use of a lot, the architecture of a building or its location with respect to public ways, the Board of Appeals may grant a Special Permit to allow exception(s) to the limitations on the number, size, location and/or height of signs. A Special Permit to allow such exception(s) shall only be granted where the Planning Board finds that such exception(s) will result in an improved design with respect to the architecture of a building; the aesthetic of the signs and/or improved site circulation. The Planning Board may offer a written recommendation to the Board of Appeals to allow any such exception(s).

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

d. Upon the expiration of the initial four month period for a temporary sign for a commercial property or use, the Building Commissioner may permit a temporary sign for an additional four month period upon written application, if need is shown.

e. Additional temporary signs on a construction or development site may be allowed by ***the Building Commissioner*** ~~special permit of the Board of Appeals~~

~~which~~ ***who*** shall specify limits on the size and number of signs and the length of time to be maintained.

f. Permanent decorative floodlighting of institutional or historic buildings may be permitted by the Board of Appeals by special permit. Any permanent lighting permitted by the preceding sentence shall be continuous, indirect, white light, installed in a manner that will prevent direct light from shining onto any street or nearby property.

§7.08 – DESIGN REVIEW PROCEDURES

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

1. ALL APPLICATIONS

   a. The applicant shall submit to the Planning and Community Development Department an application form, plans ***and elevations including all dimensions*** of the proposed sign, facade alterations, if any, and photographs showing the existing building or site, and such other material as may be required by the Assistant Director for Regulatory Planning or designee, Building Commissioner or Planning Board.

2. ADMINISTRATIVE APPROVAL

   a. Within 10 working days, the Assistant Director for Regulatory Planning or designee may administratively approve an application only if it solely relates to either an in-kind or substantially similar replacement of an existing sign following the guidelines of the Planning Board with respect to size, color, number, style, location and illumination. All administratively approved applications shall be subject to the notice and appeals procedures described in subparagraphs b, c, d, e and 3.b below.

   b. Within 5 working days of any administrative approval, notice shall be provided to the Building Commissioner and those Town Meeting Members set forth in subparagraph 3.b below.

   c. The address and a description of all administratively approved signs shall be noticed in the next Planning Board Design Review Meeting agenda.

d. Upon receipt of the notice of administrative approval, the Building Commissioner may issue a permit for a sign which conforms to the administrative approval; regulations of the Zoning By-Law and such other technical requirements as are within the Building Commissioner's jurisdiction.

e. An aggrieved party may appeal the administrative approval to the Planning Board within 15 days of the date of publication of the next Planning Board Design Review Meeting agenda containing the notice of approval by submitting a written request for Planning Board review of the application to the Assistant Director for Regulatory Planning.

3. PLANNING BOARD APPROVAL

a. Within 10 working days, all applications not subject to administrative approval as described above as well as those for which an aggrieved party has requested Planning Board review, shall be referred to the Planning Board along with recommendations, and accompanying materials for review and approval and shall be subject to the notice and appeals procedures described in subparagraphs b, c and d below.

b. After its receipt of the application and all required materials, the Planning Board shall review the application at its next public meeting for which legal notice can be given. At least seven days before such meeting, the Planning Board shall mail or deliver a notice of the meeting, with a description of such application or a copy thereof, to each elected Town Meeting Member for the precinct in which the property is located, and to those Town Meeting Members of a precinct which is within 200 feet of such property as to which such application has been made. The notice requirements of this section shall be deemed satisfied if such notices are mailed and/or emailed to those individuals whose names appear as Town Meeting Members in the records of the Town Clerk at the addresses as they appear in such records. The Planning Board shall submit its recommendations in writing to the applicant, aggrieved part(ies) and the Building Commissioner. The recommendations shall be based on the provisions of this Section of the Zoning By-law, the community and Environmental Impact and Design Standards in **§5.09** and such design guidelines as the Planning Board may adopt.

c. Upon receipt of the Planning Board's report or the lapse of thirty days from referral to the Board without such report, the Building Commissioner may issue a permit for a sign which conforms to the Planning Board's recommendations, if any, the

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

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

§7.09 – NON-CONFORMANCE OF SIGNS

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

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

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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.

SELECT BOARD'S RECOMMENDATION

Upon review of this article, the Planning Director felt more work is needed to other components of the sign by-law that were not originally addressed when this article was filed. The recommendation is that no motion be made in order to re-submit a more comprehensive proposal at the fall Town Meeting.

The Board offers no motion under this article.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Warrant Article 16 seeks to modify Section 7.00 of the Town's Zoning By-law as it pertains to signs. Specific changes are proposed in Article 16 that would add definitions to the sign types regulated by the Planning Board, clarify what signs are allowable in which districts, shift the mechanism for approval of specific sign types from a variance to special permit process governed by design review and give the Planning Board more leeway with the size, number and location of signs on a property.

The Advisory Committee initially voted to recommend No Action. After being informed that no motion will be offered under Article 16, the Advisory Committee unanimously voted to rescind that recommendation and to offer no recommendation.

RECOMMENDATION:
The Advisory Committee has been informed that no motion will be offered under Article 16. The Committee therefore makes no recommendation.

XXX

ARTICLE 17

SEVENTEENTH ARTICLE
Submitted by: Department of Planning and Community Development

To see if the Town will amend the Brookline Zoning By-law as follows:

By amending §2.13, "M" Definitions, as follows (additions are denoted in **bold*, italicized text***, deletions are denoted in ~~stricken~~ text)**:**

~~1. MEDICAL MARIJUANA TREATMENT CENTER — Any medical marijuana treatment center, to be known as a Registered Marijuana Dispensary (RMD), as defined under state law as a Massachusetts not-for-profit entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supposes, or educational materials to qualifying patients or their personal caregivers, which is properly licenses and registered by the Massachusetts Department of Public Health pursuant to all applicable state laws and regulations.~~

1. ***MARIJUANA — As defined or amended by State regulations, all parts of any plant of the genus Cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C; provided, however, that "Marijuana" shall not include (1) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks, fiber, oil or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (2) hemp; or (3) the weight of any other ingredient combined with Marijuana to prepare topical or oral administrations, food, drink or other products. Marijuana also includes Marijuana Products except where the context clearly indicates otherwise.***

    a. ***Marijuana, Hemp — As defined or amended by State regulations, the plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 per cent on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of Marijuana product, or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.***

2. ***MARIJUANA ESTABLISHMENT – As defined or amended by State regulations, a Marijuana Retailer, Marijuana Product Manufacturer, Marijuana***

Cultivator, Independent Testing Laboratory, or any other type of Marijuana-related business that has been duly licensed by the Massachusetts Cannabis Control Commission or relevant State agency.

a. Marijuana Establishment, Craft Marijuana Cultivator Cooperative — As defined or amended by State regulations, a Marijuana Cultivator comprised of residents of Massachusetts organized as a limited liability company or limited liability partnership under Massachusetts law, or an appropriate business structure as determined by the Massachusetts Cannabis Control Commission, and that is licensed by the Cannabis Control Commission to cultivate, obtain, manufacture, process, package, and brand Marijuana and Marijuana Products to deliver Marijuana to Marijuana Establishments but not to consumers. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

b. Marijuana Establishment, Marijuana Cultivator – As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to cultivate, process, and package Marijuana, to deliver Marijuana to Marijuana Establishments and to transfer Marijuana to other Marijuana Establishments, but not to consumers. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

c. Marijuana Establishment, Delivery-Only Marijuana Retailer — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission as a Marijuana Retailer that does not provide a retail location accessible to the public, but is authorized to deliver directly from a Marijuana Cultivator facility, Craft Marijuana Cultivator Cooperative facility, Marijuana Product Manufacturer facility, or Micro-Business.

d. Marijuana Establishment, Marijuana Independent Testing Laboratory — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission that is (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation Mutual Recognition Arrangement or that is otherwise approved by the Cannabis Control Commission; (ii) independent financially from any Medical Marijuana Treatment Center or any Cannabis Control Commission licensee or Marijuana Establishment of which it conducts a test; and (iii) qualified to test Marijuana in compliance with 935 CMR 500.160 and M.G.L. c. 94C, § 34. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

e. Marijuana Establishment, Marijuana Micro-Business — As defined or amended by State regulations, an entity licensed by the Massachusetts

Cannabis Control Commission to act as a co-located licensed Marijuana Cultivator in an area less than 5,000 square feet, a licensed Marijuana Product Manufacturer, and a licensed Marijuana Delivery Service, in compliance with operating procedures for each such license and siting requirements for each type of licensee.

f. Marijuana Establishment, Marijuana Product Manufacturer — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to obtain, manufacture, process and package Marijuana and Marijuana Products, to deliver Marijuana and Marijuana Products to Marijuana Establishments and to transfer Marijuana and Marijuana Products to other Marijuana Establishments, but not to consumers. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

g. Marijuana Establishment, Marijuana Research Facility — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to engage in research projects, including cultivation, purchase or acquisition otherwise of Marijuana for the purpose of conducting research regarding Marijuana and Marijuana Products or any analogous uses. A Marijuana Research Facility may be academic institutions, non-profit corporations and domestic corporations or entities authorized to do business in Massachusetts. A Marijuana Research Facility may hold a Cannabis Control Commission Marijuana Retailer License to sell Marijuana and Marijuana Products other than Marijuana cultivated under its research license. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

h. Marijuana Establishment, Marijuana Retailer — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to purchase and deliver Marijuana and Marijuana Products from Marijuana Establishments and to deliver, sell or otherwise transfer Marijuana and Marijuana Products to Marijuana Establishments and to consumers. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

i. Marijuana Establishment, Social Consumption Marijuana Retailer — As defined or amended by State regulations, a Marijuana Retailer licensed by the Massachusetts Cannabis Control Commission to purchase Marijuana and Marijuana Products from Marijuana Establishments and to sell Marijuana and Marijuana Products on its premises only to consumers or allow consumers to consume Marijuana and Marijuana Products on its premises only.

j. Marijuana Establishment, Marijuana Transporter — As defined or amended by State regulations, an entity, not otherwise licensed by the Massachusetts Cannabis Control Commission, that is licensed by the Cannabis Control Commission to purchase, obtain and possess Marijuana and Marijuana Products solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments, not for sale to consumers. This definition includes the foregoing uses described in this definition when conducted by Marijuana Establishments.

k. Marijuana Establishment, Medical Marijuana Treatment Center — As defined of amended by State regulations, an entity that acquires, cultivates, possesses, processes (including development of related products such as edible Marijuana-infused products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers Marijuana, products containing Marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use, as otherwise defined by State law. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

l. Marijuana Establishment, Standards Laboratory — As defined or amended by State regulations, a laboratory meeting the requirements of the Independent Testing laboratory that is licensed by the Massachusetts Cannabis Control Commission as a Standards Laboratory to ensure consistent and compliant testing by the Independent Testing Laboratories.

m. Marijuana Establishment, Storefront Marijuana Retailer — As defined or amended by State regulations, a Marijuana Retailer providing a retail location accessible to consumers 21 years of age or older or in possession of a registration card demonstrating that the individual is a registered qualifying patient with the Medical Use of Marijuana Program.

3. MARIJUANA ESTABLISHMENT AGENT — As defined or amended by State regulations, a board member, director, employee, executive, manager, or volunteer of a Marijuana Establishment, who is 21 years of age or older. Employee includes a consultant who provides on-site services to a Marijuana Establishment related to the cultivation, harvesting, preparation, packaging, storage, testing, dispensing, or any other analogous uses of Marijuana.

4. MARIJUANA PRODUCTS — As defined or amended by State regulations, products that have been manufactured and contain Marijuana or an extract from Marijuana, including concentrated forms of Marijuana and products composed of Marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

5. ***MARIJUANA, MANUFACTURE — As defined or amended by State regulations, to compound, blend, extract, infuse or otherwise make or prepare a Marijuana product.***

6. **MARIJUANA, *MARIJUANA MANUFACTURER RESIDENTIAL USE: Residential Marijuana Extraction by Non-licensed Establishments or Individuals utilizing extraction processes that pose an explosive or flammable danger, including solvent-based extraction and any method utilizing liquefied petroleum gas ("LPG", as may be defined by NFPA1, including propylene, propane, butane, butylenes, and mixtures thereof).***

And further, by amending §4.07, Table of Use Regulations, as follows (all uses are new):

Principal Uses	Residence					Business			Ind.
	S	**SC**	**T**	**F**	**M**	**L**	**G**	**O**	**I**
20B. ***Medical Marijuana Treatment Centers (see Section 4.13 for applicable definition), and uses analogous to Marijuana Retailer Uses Only*** ~~Registered Marijuana Dispensary (RMD)*~~ * To be eligible for a special permit under Use 20B, the requirements under Sec. 4.12, Registered Marijuana Dispensary, ***and Sec. 4.13, Marijuana Establishments,*** shall be met***, as each may be applicable.***	No	No	No	No	No	No	SP*[2]	SP*[2]	SP*
20C. Delivery-Only Marijuana Retailers and Marijuana Transporters ****To be eligible for a special permit under Use 20C, the requirements***	***No***	***No***	***No***	***No***	***No***	***SP*[1]***	***SP*[1]***	***SP*[1]***	***SP*[1]***

under Sec. 4.13, Marijuana Establishments, shall be met.									
29A. Storefront Marijuana Retailers, stores of less than 5,000 square feet of gross floor area per establishment **** Permitted by special permit pursuant to Section 4.13, Marijuana Establishments***	***No***	***No***	***No***	***No***	***No***	***SP*[1, 2]***	***SP*[1, 2]***	***No***	***SP*[1]***
29B. Social Consumption Marijuana Retailers **** Permitted by special permit pursuant to Section 4.13, Marijuana Establishments, only in the event of a Town-wide vote approving on-site consumption pursuant to M.G.L c.94G,*** **§ 3(b).**	***No***	***No***	***No***	***No***	***No***	***SP*[1, 2]***	***SP*[1, 2]***	***No***	***SP*[1]***
36C. Marijuana Independent Testing Laboratories, Marijuana Standards Laboratories, and Marijuana Research Facilities **** To be eligible for a special permit under Use 36C, the requirements under Sec. 4.13, Marijuana Establishments, and Use 36A. and 36B., restrictions on Marijuana Research Laboratories, shall be met.***	***No***	***No***	***No***	***No***	***No***	***No***	***SP*[1, 2]***	***SP*[1, 2]***	***SP*[1]***
38D. Marijuana Cultivators **** Permitted by special permit pursuant to Section 4.13, Marijuana Establishments***	***No***	***No***	***No***	***No***	***No***	***SP*[1, 2]***	***SP*[1, 2]***	***SP*[1, 2]***	***SP*[1]***

46B. Marijuana Product Manufacturers **** Permitted by special permit pursuant to Section 4.13, Marijuana Establishments***	***No***	***No***	***No***	***No***	***No***	***No***	***No***	***No***	***SP*[1]***
Accessory Uses	**Residence**					**Business**			**Ind.**
	S	**SC**	**T**	**F**	**M**	**L**	**G**	**O**	**I**
65A. Marijuana Manufacturer Residential Uses	***No***	***No***	***No***	***No***	***No***	***No***	***No***	***No***	***No***

FOOTNOTES:

1. **Allowed use by Special Permit unless a Town-wide vote bans this use.**
2. **No manufacturing of Marijuana is permitted in these districts.**

And further, by creating a new §4.13, Marijuana Establishments with the following requirements:

§4.13 -Marijuana Establishments

1. *Purpose*

   The intent of this section is to permit Marijuana Establishments to operate in locations and pursuant to local requirements that ensure safe and appropriate implementation of Chapter 334 of the Acts of 2016 (Question #4 on the November 8, 2016 ballot), legalizing recreational Marijuana, within the community.

   If any provisions of this section shall be held to be invalid, those provisions shall be severable and the remaining sections shall be valid.

2. *Definitions*

   See Massachusetts General Laws Chapter 94G, Section 1, Chapter 94I, Section 1, and the regulations promulgated thereunder, as they may be amended, as well as Section 2, Definitions, of the Zoning By-Law for further definitions of applicable terms.

3. *Medical Marijuana Treatment Centers*

   Medical Marijuana Treatment Centers licensed prior to July 1, 2017 shall be subject to §2.13(1) ("Medical Marijuana Treatment Center"), §4.07, Use 20B, and §4.12 ("Registered Marijuana Dispensary (RMD)") of the Zoning By-Laws and not this section, subject to the following: In the event that the medical Marijuana licensing process by the Select Board pursuant to Article 8.34 of the General By-Laws is discontinued in whole or in part, a medical Marijuana treatment center not subject to Select Board licensing pursuant to Article 8.34 shall then be subject to the requirements established for Storefront Marijuana Retailers.

4. *Cap on the Number of Special Permits for Marijuana Retailers*

The Zoning Board of Appeals shall not grant a special permit if doing so would result in a total number of outstanding special permits granted to Marijuana Retailers that exceeds any cap set by a General By-Law on the number of Select Board Marijuana Establishment licenses that can be issued to Marijuana Retailers.

If no such General By-Law is in effect at the time of a vote by the Zoning Board of Appeals on a special permit application, the Zoning Board of Appeals shall not issue a special permit if doing so would result in a total number of outstanding special permits that exceeds the following limitations: The Zoning Board of Appeals shall not issue more special permits in each of the following categories of Marijuana Establishment licenses 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: a) Storefront Marijuana Retailers; b) Delivery-Only Marijuana Retailers; and c) Social Consumption Marijuana Retailers.

5. *General Requirements for Marijuana Establishments*

Marijuana Establishments shall comply with the following requirements:

A. <u>General</u>

1. Marijuana Establishments shall comply with applicable State and local laws, regulations, by-laws, codes, conditions and agreements with the Town, including, but not limited to, M.G.L. c. 94G, M.G.L. c. 94I, 935 CMR 500, the Town of Brookline's General By-Laws, the Town of Brookline's Zoning By-Laws, all applicable Town building, fire prevention, police, and health codes, regulations and standards, any conditions imposed on licenses and permits held by the Marijuana Establishment (including, but not limited to, the Town's Zoning Board of Appeals special permit), and agreements between the Marijuana Establishment and the Town, including host community agreements.

2. Marijuana Establishments shall maintain all permits and licenses required by State and local laws. Any laws voiding of the Cannabis Control Commission's license by operation of law (including due to cessation of operations, failure to become operational within the permitted time, or relocation without Cannabis Control Commission approval), and any revocation or suspension of the Marijuana Establishment's Cannabis Control Commission license shall result in an automatic suspension of the special permit pending hearing or the opportunity therefore afforded to the Marijuana Establishment and pending further determination by the Zoning Board of Appeals.

3. All taxes and charges owed to the Town must be paid on a current basis. The Town may place a lien on the property of any person who has an outstanding

balance due the Town from any fee, charge or tax, which balance is at least six (6) months past due.

B. Operational Requirements

1. All Marijuana Establishments' licensed operations shall be conducted within a building at a fixed location.

2. No Marijuana Establishment shall allow cultivation, processing, manufacture, sale or display of Marijuana or Marijuana Products to be visible from a public place without the use of binoculars, aircraft, or other optical aids.

3. Marijuana Establishments may cultivate, process, test, store and manufacture Marijuana or Marijuana Products only within an area that is enclosed and secured in a manner that prevents access by persons not permitted by the Marijuana Establishment to access the area.

4. The hours of operation of Marijuana Establishments shall be those that are set by the Marijuana Establishment's host community agreement with the Town or a Select Board-issued license.

5. Marijuana Establishments shall ensure that their hours and methods of transportation of product shall not be a detriment to the surrounding area and nearby uses.

6. Marijuana Establishments shall not permit any disorder, disturbance, or illegality under State or local law of any kind on the premises.

7. Marijuana Establishment operations shall not result in illegal redistribution under State or local law of Marijuana obtained from the Marijuana Establishment, or in use of Marijuana in any manner that violates State or local law.

8. Marijuana Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties. "Nuisance" includes, but is not limited to, disturbances of the peace, open public consumption of Marijuana, excessive pedestrian or vehicular traffic, odors emanating from the Marijuana Establishment's premises, electrical lighting, illegal drug activity under State or local law, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, excessive citation for violations of State traffic laws and regulations and/or Transportation Division Rules and Regulations, queuing of patrons (vehicular or pedestrian) in or other obstructions of the public way (sidewalks and streets), collisions between vehicles, bicyclists, and pedestrians, lewd conduct or police detentions and arrests.

9. Marijuana Establishments shall equip the premises and otherwise conduct their operations in such a manner that (a) no pesticides or other chemicals or products

are dispersed into the outside atmosphere, and (b) no odor of Marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the facility or at any adjoining use or property.

10. A Marijuana Establishment shall be required to remove all Marijuana and Marijuana Products by the earlier of:
    a) prior to surrendering its State-issued license; or
    b) within six (6) months of ceasing operations.

11. Marijuana Establishments shall comply with 527 CMR and with Chapter 38 of the NFPA 1 (2018), as they may be amended, and as applicable.

12. Marijuana Establishments are prohibited from use of on-site self-service displays. Self-service displays are defined to mean displays from which customers may select Marijuana or Marijuana Products without assistance from an employee or store personnel, and include vending machines.

13. Consumption of Marijuana in the interior or exterior of the premises is not permitted except as follows. Duly-licensed Social Consumption Marijuana Retailers may permit on-premises consumption of Marijuana and Marijuana Products which they are licensed to sell to customers purchasing their products who are aged 21 years and older in the event that on-premises consumption is approved by the Town pursuant to and in the manner provided by M.G.L. c. 94G, § 3(b). In the event that on-premises consumption is approved by the Town in such manner, Social Consumption Marijuana Retailers must abide by all State and local requirements for Marijuana Establishments. Social Consumption Marijuana Retailers shall comply with all legal requirements pertaining to verification that a patron is at least 21 years of age utilizing acceptable forms of proof of age, including any proof-of-age verification requirements established by the Select Board in connection with the local licensing of Marijuana Establishments. In no event shall Social Consumption Marijuana Retailers permit the smoking of Marijuana or Marijuana Products on the premises. Smoking is defined to mean the lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette or other similar device shall be considered smoking.

C. <u>Security-Specific Requirements</u>

1. Marijuana Establishments shall maintain compliance with any Town Police Department-approved security and public safety plans as the Police Department may require, which plan may include measures relating to alarms, fencing, gates, limited access areas, delivery procedures, police details, specification of video and lighting locations, notifications to the Police Department in the event of any known or suspected violation of criminal law that has taken place on or near the location of the establishment.

2. Marijuana Establishments shall secure every entrance to the Marijuana Establishment so that access to areas containing the storage of Marijuana products are restricted to employees and others permitted by the Marijuana Establishment to access the area and to Cannabis Control Commission or state and local law enforcement officers, agents and emergency personnel.

3. Marijuana Establishments shall secure their inventory and equipment during and after operating hours to deter and prevent theft of Marijuana, Marijuana Products and Marijuana accessories.

4. Marijuana Establishments shall file an emergency response plan with the Town's Fire, Police and Health Departments and share with these Departments their security plan and procedures and any updates to them in the event they are modified.

D. Access to Premises and Information/Reporting/Record-Keeping

1. Marijuana Establishments shall consent to unannounced, unscheduled, periodic inspections of its premises by the Building Commissioner or designee, including an agent from the Building, Health, Police and Fire Departments (which, when conducted by the Police Department, shall be by a sworn police officer holding the rank of Sergeant or higher) on week-days during normal business hours to determine the Marijuana Establishment's compliance with the requirements of applicable state and local laws, regulations, codes, license and permit conditions, and this section. In addition, routine inspections may be made on week-days during regular Town business hours by authorized inspectional departments to determine compliance with applicable state and local laws, regulations, codes and license and permit conditions. Inspections by the authorized inspectional departments may be made at other times to investigate complaints or suspected non-compliance issues. Inspections may include all areas occupied, used or controlled by the Marijuana Establishment. Facilities requiring re-inspection are subject to applicable re-inspection fees. Inspections shall be conducted in conformity with applicable federal, state and local law.

2. Marijuana Establishments shall cooperate and comply with requests for information made by the Building Commissioner or designee, including agents from the Planning, Building, Health, Police, Fire and Public Works Departments.

3. Within twenty-four (24) hours of receipt of notice of it, a Marijuana Establishment shall file with the Town Administrator, Director of Public Health and the Building Commissioner any summary cease and desist order, cease and desist order, quarantine order, suspension order, revocation order, order limiting sales, deficiency statement, plan of correction, notice of a hearing, notice of any other administrative process or legal action, denial of a license, denial of a renewal of a license, or final action issued by a state or federal agency (including, but not limited to, the Cannabis Control Commission

and Massachusetts Department of Public Health) regarding the Marijuana Establishment, the Cannabis Control Commission license, or the Department of Public Health Certificate of Registration.

E. Additional Location Requirements for Marijuana Establishments

1. Marijuana Establishments shall not be located in a building that contains a pre-existing daycare center.

2. Marijuana manufacturing or extraction shall not be done in any building containing assembly, educational, health care, ambulatory health care, residential board and care, residential, or detention and correctional facilities.

3. Delivery-Only Marijuana Retailers and Marijuana Transporters shall not occupy street-level space in Local or General Business districts.

4. The required distance from schools that serve Kindergarten through 12th grade, public or private, shall be:

    a. 500 feet for i) Social Consumption Marijuana Retailers issued a primary use license; and ii) Storefront Marijuana Retailers.

    b. No distance requirement applicable to i) Marijuana Research Facilities that do not hold a Marijuana Retailer license; ii) Marijuana Independent Testing Laboratories; and iii) Marijuana Standards Laboratories.

    c. 200 feet for all other Marijuana Establishments.

    d. Measured from lot boundary to lot boundary.

5. Density requirements for Social Consumption Marijuana Retailers issued a primary use license and Storefront Marijuana Retailers shall be:

    a. A minimum of 200 feet from another Social Consumption Marijuana Retailer issued a primary use license or Storefront Marijuana Retailer if any portion of the establishment is located at street-level.

    b. Allowed within 200 feet from another Social Consumption Marijuana Retailer issued a primary use license or Storefront Marijuana Retailer above or below street-level as long as the Zoning Board of Appeals determines that doing so will not have a detrimental impact on the vibrancy of the streetscape and all other applicable requirements are satisfied (applicable to uses 29A and 29B).

    c. Measured from lot boundary to lot boundary.

6. Store Size Limitations for Social Consumption Marijuana Retailers issued a primary use license and Storefront Marijuana Retailers shall:

a. Not exceed a total gross floor area of 5,000 square feet per establishment.

b. Not exceed a gross floor area of 3,500 square feet and no more than 5,000 square feet total gross floor area per establishment if any portion of the establishment is located at street-level.

c. Not apply to Medical Marijuana Treatment Centers licensed to operate prior to July 1, 2017, who receive a State Storefront Marijuana Retailer license or Delivery-Only Marijuana Retailer license pursuant to M.G.L. c. 94G and the regulations promulgated thereunder, unless a licensed Medical Marijuana Treatment Center expands the licensed premises or building.

6. Site Plan Review for Marijuana Establishments

The following describes requirements for a Marijuana Establishment site plan review process to precede the Marijuana Establishment's application for a building permit and a special permit:

A. Prior to applying for a building permit, the Marijuana Establishment shall have an initial informal meeting with the Planning Director and the Building Commissioner or designees to discuss development plans and relevant Zoning By-Law requirements.

B. The appropriate site plan review process shall be determined at the initial meeting consistent with the Zoning By-Laws, which may include, but is not limited to, the process for Major Impact Projects and Design Advisory Teams.

C. In addition, at the discretion of the Planning Director or designee, the Marijuana Establishment Site Plan Review process may entail submission of reports from all relevant departments and divisions, which may include the Health Department, the Police Departments, the Fire Department, the Building Department, the Department of Public Works (*e.g.*, the Transportation Division in the event that a Transportation Demand Management Plan may be contemplated, the Water Division, the Highway and Sanitation Division, as applicable), and/or any other Department that the Planning Director or designee determines to be appropriate to the project.

D. The applicant is responsible for obtaining any Department report deemed necessary by the Planning Director or designee in connection with Marijuana Establishment Site Plan Review process and submitting the report to the Planning Department. The Planning Department will assist with identifying to the applicant information and documents that Departments may require in connection with issuing their reports. Departments responsible for reports may identify other needed information and documents needed from the applicant.

E. Each Department designated by the Planning Department to issue a report will make its report available to the applicant no later than forty-five (45) calendar days from the date the applicant has completed submission to the Department of all requested information and documents.

F. In the event a Department designated by the Planning Department to issue a report does not do so within 45 days of when the applicant submitted all requested information and documents to the Department, the applicant may submit to the Planning Department, in lieu of the report, a letter showing evidence of the applicant's submission of requested information and documents to the Department or stating that no documents or information was requested, as the case may be.

G. The Marijuana Establishment shall cooperate with requests for information or meetings by the Planning Director and/or by any of the Departments designated by the Planning Director to issue reports as part of the Marijuana Establishment Site Plan Review process, which information may include the Marijuana Establishment's application for a license from the Cannabis Control Commission or relevant State agency.

H. Marijuana Establishments may not apply for a building permit until the Planning Director and Building Commissioner have issued a written Notice of Completion of Marijuana Establishment Site Plan Review.

7. Special Permits

The following apply to special permits to operate a Marijuana Establishment, in addition to the requirements set forth in §9 of the Zoning By-Laws.

A. <u>Application requirements:</u> Marijuana Establishments shall include with their special permit application:

1. Copies of any required licenses and permits relating to the operation of the Marijuana Establishment, or, if an application for a required license or permit is pending, a copy of the application.

2. Evidence of the Marijuana Establishment's right to use the proposed site as a Marijuana Establishment, such as a deed or lease.

3. A copy of the Notice of Completion of Marijuana Establishment Site Plan Review Process for Marijuana Establishments.

4. Any other materials requested by the Special Permit application form, as well as any other additional materials the Planning Department determines is necessary for review, such as Department reports or transportation studies or a license application.

B. Special permit criteria: The Board of Appeals shall not approve any application for a special permit unless it finds that in its judgment all of the following conditions are met:

1. Issuance of the special permit would not contravene the cap on the number of special permits that may be granted (*see* subsection 4, *Cap on the Number of Special Permits for Storefront Marijuana Retailers* of this section) and any applicable density restrictions (*see* subsection 5, *General Requirements for Marijuana Establishments*, of this section). Issuance of a special permit must also comply with applicable State and local laws.

2. The location is compliant with Section 4.13 in its entirety.

3. The Board of Appeals is otherwise satisfied that the Marijuana Establishment has the ability to comply with the General Requirements for Marijuana Establishments set forth in Section 4.13, and 4.12 if applicable.

8. Submittal Requirements prior to issuance of a Certificate of Occupancy

The following information shall be provided to the Building Department:

A. Proof that the Brookline Police Department has been provided with the name, phone numbers and email addresses of all management staff, and with access to the facility when it is closed, to enable contact if operating problems should arise.

B. Proof that all security measures required by the special permit have been installed or implemented.

C. Proof that the applicant is compliant with implementing any required transportation mitigation measures.

9. Enforcement

This section of the Zoning By-Law shall be enforced by the Building Commissioner or the Building Commissioner's designee, as may be consistent with law. This Section, 9. Enforcement, shall supersede any conflicting provision of the Zoning By-Laws that would otherwise be applicable to the enforcement of this section.

10. Implementation

This section shall not be implemented in a manner that conflicts or interferes with the operation of M.G.L. c. 94G, 94I or the regulations promulgated thereunder, including 935 CMR 500,

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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 on-line 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 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.).

ADVISORY COUNCIL ON PUBLIC HEALTH REPORT AND RECOMMENDATION

On January 25, 2018 a public hearing was held to listen to citizens' concerns regarding recreational marijuana. Presentations were conducted by Town Counsel and the Planning Department. ACPH conducted a second meeting on February 12, 2018 to formally vote on recommendations to the Select Board in reference to recreational marijuana. ACPH voted 6-0 for the following recommendations:

- Support the General By-Laws proposed on marijuana establishments
- Recommend a cap on retail marijuana licenses to 3 to avoid saturation of the town
- Support the proposed Zoning By-Law
- Support the proposed Article on Marijuana, Hemp, and Hemp Products
- No onsite consumption of marijuana products
- Physical separation of medical and recreational marijuana establishments should occur
- No residual retailers
- No solvent-based extractions in residential neighborhoods
- Only organic pesticides should be used in the cultivation process
- Child proof containers for anything sold including candy
- Environmental inspections occurring every month for the first six months
- Hot-line for reporting if someone becomes poisoned
- Funds should be designated from Host Agreement and Community Impact Fee for patient education, community awareness campaign, and enforcement

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ECONOMIC DEVELOPMENT ADVISORY BOARD
REPORT AND RECOMMENATION

On April 9th, 2018, the Economic Development Advisory Board (EDAB) held a public hearing on Marijuana-related warrant articles resulting in a vote for support (6-0-2) of Warrant Article 17 with the following amendments:

1. In response to our understanding of the Planning & Regulation Subcommittee Advisory's vote on April 5th, we suggest that any school buffer near major corridors (defined as Commonwealth Avenue, Beacon Street, and Boylston Street) be simply truncated from extending across those corridors rather than reducing the buffer in distance to 200 feet as proposed by the Planning & Regulation Subcommittee.
2. Remove the 3,500 square foot maximum gross floor area at street level for Marijuana Retailers.
3. Replace the density restriction for Marijuana Retailers at street level of 200 feet with a limitation of no more than three Marijuana Retailers at street level to be allowed within 400 feet.

The Planning & Regulation Subcommittee voted on April 5th that school buffers be reduced from 500 feet to 200 feet in the case where schools and commercial properties are on opposite sides of major corridors. Our first amendment is suggested to simplify the Advisory Subcommittee's language.

The second and third amendments follow a long conversation with EDAB members about appropriate regulations relating to size and density of these new business types. Although EDAB members understand some residents and businesses may be wary of unknown impacts from this new business type, most EDAB members felt that retail Marijuana stores should be treated no differently than other retailers in Brookline. Additionally, we felt that the Special Permit process and Select Board local licensing are discretionary and would provide for a better regulatory tool for any site-specific concerns.

Currently, our zoning prohibits retailers greater than 5,000 square feet of gross floor area in Local Business Districts, so a majority of EDAB members felt comfortable with that maximum floor area for all retail Marijuana businesses at that same threshold, for any zoning district that it is allowed. On the other hand, we did not feel there was any compelling need to restrict first floor storefronts to 3,500 gross square feet.

Finally, the third amendment slightly loosens the distance between any two first floor retailers, providing a little more flexibility in locating a new business as storefronts become available. The recommended proposals stems from regulations created in the city of Boulder, who restricts density in a similar way.

EDAB appreciates the leadership that the Licensing Committee has provided in guiding the warrant article drafts related to retail Marijuana sales. We also understand the warrant articles proposed reflect a wide range of opinions from residents and existing businesses gathered through an extensive public outreach process conducted by Town staff outside of Committee/ Board venues regarding how much to regulate Marijuana Retailers, especially

at the beginning of this new regulatory phase. Please note that our two abstention votes were members serving and voting on other boards and committees related to this article.

SELECT BOARD'S RECOMMENDATION

Article 17 is a zoning amendment submitted by the Planning and Community Development Department with the unanimous support of the Select Board.

Article 17 seeks to create new zoning regulations for the adult-use Marijuana industry, and is a necessary article to protect the safety and welfare of residents in Brookline. Guidance for the proposed regulations was provided by the Licensing Review Committee, given their history in licensing medical Marijuana. This article represents the culmination of efforts across other Town Committees and Boards, multiple Town Departments, public meetings and hearings, and community outreach. This comprehensive zoning amendment is designed to work in conjunction with and, in some cases, as a safeguard to proposed General By-Laws (Articles 18-22) regarding adult-use Marijuana under consideration at the 2018 Annual Town Meeting.

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 Attorney General's Office approves amendments to the Table of Uses proposed in Article 17. However, the Attorney General's Office has stated publicly that there may be a question as to whether the Cannabis Control Commission (the State agency responsible for creating Marijuana regulations and issuing licenses to Marijuana Establishments) will honor moratoria when approving applications. Proposals included in Article 17 update the Table of Uses and incorporate Marijuana-related uses in appropriate business districts throughout Town for this reason. **Therefore, the Select Board recommends favorable action on Article 17 in order for the Town to have in place local regulations for this industry by the time the Cannabis Control Commission begins to issue licenses (as early as July 1, 2018).**

Further, the Select Board respectfully requests the consideration of the following when proposing certain changes to these amendments:

1) The proposed Zoning By-Law includes a default cap on the number of special permits issued by the Zoning Board of Appeals to Marijuana Retailers that will be in effect until both Town Meeting and the Attorney General's Office approves the proposed General By-Law cap (Zoning By-Laws are in effect upon Town Meeting vote, whereas General By-Laws do not take effect until Attorney General approval; this can take up to three (3) months or more). A cap of twenty percent (20%) of package store licenses[1] issued as to each anticipated category of marijuana retailer (Storefront, Social Consumption, Delivery Only) is proposed here. This cap can be increased or eliminated within the scope of the original Warrant Article 18. This cap can be decreased to as low as one (1) by vote as to each marijuana retailer category under the motion(s) set forth in

1 Package stores are those that sell alcohol as retail items and not for consumption on-site.

Warrant Article 19. By state law, a Zoning By-Law setting a cap for Marijuana Retailers below twenty percent (20%) of package store licenses issued would require A) Town Meeting approval by 2/3 vote (as with any Zoning By-Law); B) approval in a Town wide referendum of the same language voted by Town Meeting (under G.L. c. 94G, § 3); and 3) approval by the Attorney General's Office. Therefore, as detailed in the explanation to Warrant Article 19, those favoring a cap below the 20% should still vote favorably on the 20% both in the proposed Zoning By-Law (Warrant Article 17) and in the proposed General By-Law (Warrant Article 18) so that the By-Laws can be immediately sent for approval to the Attorney General's Office, pending a Town-wide vote in November on any lower cap Town Meeting votes in connection with Warrant Article 19 after the Warrant Article 17 and 18 votes. Otherwise, the Town will be subject to the State licensing process, which does not provide for any cap at all.

2) Removing business districts from potential location sites for Marijuana Retailer Establishments is allowed as within the scope of the original article (based on previous discussions with the Town Moderator). A proposal to remove Local Districts (L-Districts) for Marijuana Retailers only was approved by the Planning and Regulation subcommittee but not approved at the full at Advisory Committee. The proposal to leave in L-Districts as potential sites was approved by the Licensing Review Committee, Planning Board, Advisory Committee, and the Economic Development Advisory Board. The rationale to leave in L-Districts is to give opportunity for as much distance as possible between Marijuana Retailer Establishments in order to protect the vibrancy in our commercial areas and is based on community feedback, public comments, and smart practices learned from Colorado. The removal of L-Districts, as highlighted by Planning Department staff, could provide the unintended consequence of just the opposite of the original intent given that removing sites would, in turn, leave Marijuana Retailers with fewer options for locations and increase clustering in other districts around Town. After discussion and consideration of public comment, the Select Board (by a vote of 3-2) decided that L-Districts were appropriate use types for Use 29A, Storefront Marijuana Retailers, but were not appropriate business districts for Use 29B, Social Consumption Marijuana Retailers (also by a vote of 3-2). **Therefore, the Select Board voted to amend the Table of Uses to allow for Storefront Marijuana Retailers (Table of Use 29A) in L-Districts, but not allow Social Consumption Marijuana Retailers (Table of Use 29B) in L-Districts.**

3) The original article includes a buffer of 500 feet from any K-12 schools, public or private. Motions to decrease the buffer will be allowed by the Town Moderator, but motions to increase will not be allowed. After discussion at its hearing on April 24th, 2018, the Select Board discussed the Planning and Regulation subcommittee's proposal to amend Warrant Article 17 by allowing Marijuana Retailers to locate at parcels within the 500-foot buffer if the parcel intersects one of the three major corridors (defined as Boylston Street, Beacon Street and Commonwealth Avenue) and is located on the opposite side of the street from the K-12 school. **Therefore, the Select Board (by a vote of 3-2)**

voted to support the Planning & Regulation subcommittee's proposal as it would increase the number of available location sites throughout Brookline.

Note: a choice by Town Meeting which requires a Town-wide referendum (described above as in 1) without any default measure in place would delay the implementation of these zoning regulations (because of the State law requirement for a Town-wide vote) and subject Marijuana Establishments to Cannabis Control Commission action on applications without parameters being set for that decision-making by local by-laws (such as caps and density requirements).

If approved, the Select Board anticipates the proposed amendments would accomplish the following:

1) Provide for local regulatory measures for Marijuana Establishments, such as restrictions on the use of hazardous materials in the extraction process.

2) Create a comprehensive special permit application process to allow for the conditional use of Marijuana Establishments following a Site Plan Review process. This will provide the opportunity for the Zoning Board of Appeals and Planning Department to seek input from residents and relevant departments, including Police, Fire, and Health, about a special permit application. This process is otherwise not required prior to a business operating in an existing space.

3) Propose a cap on the number of special permits issued to Marijuana Retailers in the event a General By-Law cap is not in effect at the time of a special permit application.

The Select Board recommends Town Meeting vote favorably on Warrant Article 17 at the 2018 Annual Town Meeting in order to have regulatory measures in place that will shape the Zoning Board of Appeals' decision-making for issuing a special permit before the Town moratorium period concludes and the Cannabis Control Commission begins issuing licenses. A no-vote or disapproval of Article 17 at this upcoming Town Meeting would relinquish local zoning control over Marijuana Establishments and subject Marijuana Establishments to only the regulations in place by the Cannabis Control Commission (which does not have numerical caps or density regulations).

Therefore, the Select Board voted unanimously to recommend FAVORABLE ACTION on the following motion:

VOTED: To amend **Zoning By-law as follows:**

By amending §2.13, "M" Definitions, as follows (additions are denoted in **bold,** ***italicized text***, deletions are denoted in ~~stricken~~ text)**:**

~~1. MEDICAL MARIJUANA TREATMENT CENTER — Any medical marijuana treatment center, to be known as a Registered Marijuana Dispensary (RMD), as~~

~~defined under state law as a Massachusetts not-for-profit entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supposes, or educational materials to qualifying patients or their personal caregivers, which is properly licenses and registered by the Massachusetts Department of Public Health pursuant to all applicable state laws and regulations.~~

1. ***MARIJUANA — As defined or amended by State regulations, all parts of any plant of the genus Cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C; provided, however, that "Marijuana" shall not include (1) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks, fiber, oil or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (2) hemp; or (3) the weight of any other ingredient combined with Marijuana to prepare topical or oral administrations, food, drink or other products. Marijuana also includes Marijuana Products except where the context clearly indicates otherwise.***

    a. ***Marijuana, Hemp — As defined or amended by State regulations, the plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 per cent on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of Marijuana product, or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.***

2. ***MARIJUANA ESTABLISHMENT – As defined or amended by State regulations, a Marijuana Retailer, Marijuana Product Manufacturer, Marijuana Cultivator, Independent Testing Laboratory, or any other type of Marijuana-related business that has been duly licensed by the Massachusetts Cannabis Control Commission or relevant State agency.***

    a. ***Marijuana Establishment, Craft Marijuana Cultivator Cooperative — As defined or amended by State regulations, a Marijuana Cultivator comprised of residents of Massachusetts organized as a limited liability company or limited liability partnership under Massachusetts law, or an appropriate business structure as determined by the Massachusetts Cannabis Control Commission, and that is licensed by the Cannabis Control Commission to cultivate, obtain, manufacture, process, package, and brand Marijuana and Marijuana Products to deliver Marijuana to Marijuana Establishments but not to consumers. This definition includes***

the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

b. Marijuana Establishment, Marijuana Cultivator – As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to cultivate, process, and package Marijuana, to deliver Marijuana to Marijuana Establishments and to transfer Marijuana to other Marijuana Establishments, but not to consumers. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

c. Marijuana Establishment, Delivery-Only Marijuana Retailer — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission as a Marijuana Retailer that does not provide a retail location accessible to the public, but is authorized to deliver directly from a Marijuana Cultivator facility, Craft Marijuana Cultivator Cooperative facility, Marijuana Product Manufacturer facility, or Micro-Business.

d. Marijuana Establishment, Marijuana Independent Testing Laboratory — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission that is (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation Mutual Recognition Arrangement or that is otherwise approved by the Cannabis Control Commission; (ii) independent financially from any Medical Marijuana Treatment Center or any Cannabis Control Commission licensee or Marijuana Establishment of which it conducts a test; and (iii) qualified to test Marijuana in compliance with 935 CMR 500.160 and M.G.L. c. 94C, § 34. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

e. Marijuana Establishment, Marijuana Micro-Business — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to act as a co-located licensed Marijuana Cultivator in an area less than 5,000 square feet, a licensed Marijuana Product Manufacturer, and a licensed Marijuana Delivery Service, in compliance with operating procedures for each such license and siting requirements for each type of licensee.

f. Marijuana Establishment, Marijuana Product Manufacturer — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to obtain, manufacture, process and package Marijuana and Marijuana Products, to deliver Marijuana and Marijuana Products to Marijuana Establishments and to transfer Marijuana and Marijuana Products to other Marijuana Establishments, but not to consumers. This definition includes the

foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

g. Marijuana Establishment, Marijuana Research Facility — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to engage in research projects, including cultivation, purchase or acquisition otherwise of Marijuana for the purpose of conducting research regarding Marijuana and Marijuana Products or any analogous uses. A Marijuana Research Facility may be academic institutions, non-profit corporations and domestic corporations or entities authorized to do business in Massachusetts. A Marijuana Research Facility may hold a Cannabis Control Commission Marijuana Retailer License to sell Marijuana and Marijuana Products other than Marijuana cultivated under its research license. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

h. Marijuana Establishment, Marijuana Retailer — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to purchase and deliver Marijuana and Marijuana Products from Marijuana Establishments and to deliver, sell or otherwise transfer Marijuana and Marijuana Products to Marijuana Establishments and to consumers. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

i. Marijuana Establishment, Social Consumption Marijuana Retailer — As defined or amended by State regulations, a Marijuana Retailer licensed by the Massachusetts Cannabis Control Commission to purchase Marijuana and Marijuana Products from Marijuana Establishments and to sell Marijuana and Marijuana Products on its premises only to consumers or allow consumers to consume Marijuana and Marijuana Products on its premises only.

j. Marijuana Establishment, Marijuana Transporter — As defined or amended by State regulations, an entity, not otherwise licensed by the Massachusetts Cannabis Control Commission, that is licensed by the Cannabis Control Commission to purchase, obtain and possess Marijuana and Marijuana Products solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments, not for sale to consumers. This definition includes the foregoing uses described in this definition when conducted by Marijuana Establishments.

k. Marijuana Establishment, Medical Marijuana Treatment Center — As defined of amended by State regulations, an entity that acquires, cultivates, possesses, processes (including development of related products such as edible Marijuana-infused products, tinctures, aerosols,

oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers Marijuana, products containing Marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use, as otherwise defined by State law. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

l. Marijuana Establishment, Standards Laboratory — As defined or amended by State regulations, a laboratory meeting the requirements of the Independent Testing laboratory that is licensed by the Massachusetts Cannabis Control Commission as a Standards Laboratory to ensure consistent and compliant testing by the Independent Testing Laboratories.

m. Marijuana Establishment, Storefront Marijuana Retailer — As defined or amended by State regulations, a Marijuana Retailer providing a retail location accessible to consumers 21 years of age or older or in possession of a registration card demonstrating that the individual is a registered qualifying patient with the Medical Use of Marijuana Program.

3. MARIJUANA ESTABLISHMENT AGENT — As defined or amended by State regulations, a board member, director, employee, executive, manager, or volunteer of a Marijuana Establishment, who is 21 years of age or older. Employee includes a consultant who provides on-site services to a Marijuana Establishment related to the cultivation, harvesting, preparation, packaging, storage, testing, dispensing, or any other analogous uses of Marijuana.

4. MARIJUANA PRODUCTS — As defined or amended by State regulations, products that have been manufactured and contain Marijuana or an extract from Marijuana, including concentrated forms of Marijuana and products composed of Marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

5. MARIJUANA, MANUFACTURE — As defined or amended by State regulations, to compound, blend, extract, infuse or otherwise make or prepare a Marijuana product.

6. MARIJUANA, MARIJUANA MANUFACTURER RESIDENTIAL USE: Residential Marijuana Extraction by Non-licensed Establishments or Individuals utilizing extraction processes that pose an explosive or flammable danger, including solvent-based extraction and any method utilizing liquefied petroleum gas ("LPG", as may be defined by NFPA1, including propylene, propane, butane, butylenes, and mixtures thereof).

And further, by amending §4.07, Table of Use Regulations, as follows (all uses are new):

Principal Uses	Residence					Business			Ind.
	S	**SC**	**T**	**F**	**M**	**L**	**G**	**O**	**I**
20B. ***Medical Marijuana Treatment Centers (see Section 4.13 for applicable definition), and uses analogous to Marijuana Retailer Uses Only*** ~~Registered Marijuana Dispensary (RMD)*~~ * To be eligible for a special permit under Use 20B, the requirements under Sec. 4.12, Registered Marijuana Dispensary, ***and Sec. 4.13, Marijuana Establishments,*** shall be met***, as each may be applicable.***	No	No	No	No	No	No	SP*[2]	SP*[2]	SP*
20C. Delivery-Only Marijuana Retailers and Marijuana Transporters ****To be eligible for a special permit under Use 20C, the requirements under Sec. 4.13, Marijuana***	***No***	***No***	***No***	***No***	***No***	***SP*[1]***	***SP*[1]***	***SP*[1]***	***SP*[1]***

Establishments, shall be met.									
29A. Storefront Marijuana Retailers, stores of less than 5,000 square feet of gross floor area per establishment **** Permitted by special permit pursuant to Section 4.13, Marijuana Establishments***	***No***	***No***	***No***	***No***	***No***	***SP*[1, 2]***	***SP*[1, 2]***	***No***	***SP*[1]***
29B. Social Consumption Marijuana Retailers **** Permitted by special permit pursuant to Section 4.13, Marijuana Establishments, only in the event of a Town-wide vote approving on-site consumption pursuant to M.G.L c.94G,*** **§ 3(b).**	***No***	***No***	***No***	***No***	***No***	***No***	***SP*[1, 2]***	***No***	***SP*[1]***
36C. Marijuana Independent Testing Laboratories, Marijuana Standards Laboratories, and Marijuana Research Facilities **** To be eligible for a special permit under Use 36C, the requirements under***	***No***	***No***	***No***	***No***	***No***	***No***	***SP*[1, 2]***	***SP*[1, 2]***	***SP*[1]***

Sec. 4.13, Marijuana Establishments, and Use 36A. and 36B., restrictions on Marijuana Research Laboratories, shall be met.									
38D. Marijuana Cultivators **** Permitted by special permit pursuant to Section 4.13, Marijuana Establishments***	***No***	***No***	***No***	***No***	***No***	***SP*[1, 2]***	***SP*[1, 2]***	***SP*[1, 2]***	***SP*[1]***
46B. Marijuana Product Manufacturers **** Permitted by special permit pursuant to Section 4.13, Marijuana Establishments***	***No***	***No***	***No***	***No***	***No***	***No***	***No***	***No***	***SP*[1]***
Accessory Uses	**Residence**					**Business**			**Ind.**
	S	**SC**	**T**	**F**	**M**	**L**	**G**	**O**	**I**
65A. Marijuana Manufacturer Residential Uses	***No***	***No***	***No***	***No***	***No***	***No***	***No***	***No***	***No***

FOOTNOTES:

3. **Allowed use by Special Permit unless a Town-wide vote bans this use.**
4. **No manufacturing of Marijuana is permitted in these districts.**

And further, by creating a new §4.13, Marijuana Establishments with the following requirements:

§4.13 -Marijuana Establishments

1. *Purpose*

   The intent of this section is to permit Marijuana Establishments to operate in locations and pursuant to local requirements that ensure safe and appropriate implementation of

Chapter 334 of the Acts of 2016 (Question #4 on the November 8, 2016 ballot), legalizing recreational Marijuana, within the community.

If any provisions of this section shall be held to be invalid, those provisions shall be severable and the remaining sections shall be valid.

2. *Definitions*

See Massachusetts General Laws Chapter 94G, Section 1, Chapter 94I, Section 1, and the regulations promulgated thereunder, as they may be amended, as well as Section 2, Definitions, of the Zoning By-Law for further definitions of applicable terms.

3. *Medical Marijuana Treatment Centers*

Medical Marijuana Treatment Centers licensed prior to July 1, 2017 shall be subject to **§**2.13(1) ("Medical Marijuana Treatment Center"), **§**4.07, Use 20B, and **§**4.12 ("Registered Marijuana Dispensary (RMD)") of the Zoning By-Laws and not this section, subject to the following: In the event that the medical Marijuana licensing process by the Select Board pursuant to Article 8.34 of the General By-Laws is discontinued in whole or in part, a medical Marijuana treatment center not subject to Select Board licensing pursuant to Article 8.34 shall then be subject to the requirements established for Storefront Marijuana Retailers.

4. *Cap on the Number of Special Permits for Marijuana Retailers*

The Zoning Board of Appeals shall not grant a special permit if doing so would result in a total number of outstanding special permits granted to Marijuana Retailers that exceeds any cap set by a General By-Law on the number of Select Board Marijuana Establishment licenses that can be issued to Marijuana Retailers.

If no such General By-Law is in effect at the time of a vote by the Zoning Board of Appeals on a special permit application, the Zoning Board of Appeals shall not issue a special permit if doing so would result in a total number of outstanding special permits that exceeds the following limitations: The Zoning Board of Appeals shall not issue more special permits in each of the following categories of Marijuana Establishment licenses 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: a) Storefront Marijuana Retailers; b) Delivery-Only Marijuana Retailers; and c) Social Consumption Marijuana Retailers.

5. *General Requirements for Marijuana Establishments*

Marijuana Establishments shall comply with the following requirements:

A. General

1. Marijuana Establishments shall comply with applicable State and local laws, regulations, by-laws, codes, conditions and agreements with the Town, including, but not limited to, M.G.L. c. 94G, M.G.L. c. 94I, 935 CMR 500, the Town of Brookline's General By-Laws, the Town of Brookline's Zoning By-Laws, all applicable Town building, fire prevention, police, and health codes, regulations and standards, any conditions imposed on licenses and permits held by the Marijuana Establishment (including, but not limited to, the Town's Zoning Board of Appeals special permit), and agreements between the Marijuana Establishment and the Town, including host community agreements.

2. Marijuana Establishments shall maintain all permits and licenses required by State and local laws. Any laws voiding of the Cannabis Control Commission's license by operation of law (including due to cessation of operations, failure to become operational within the permitted time, or relocation without Cannabis Control Commission approval), and any revocation or suspension of the Marijuana Establishment's Cannabis Control Commission license shall result in an automatic suspension of the special permit pending hearing or the opportunity therefore afforded to the Marijuana Establishment and pending further determination by the Zoning Board of Appeals.

3. All taxes and charges owed to the Town must be paid on a current basis. The Town may place a lien on the property of any person who has an outstanding balance due the Town from any fee, charge or tax, which balance is at least six (6) months past due.

B. Operational Requirements

1. All Marijuana Establishments' licensed operations shall be conducted within a building at a fixed location.

2. No Marijuana Establishment shall allow cultivation, processing, manufacture, sale or display of Marijuana or Marijuana Products to be visible from a public place without the use of binoculars, aircraft, or other optical aids.

3. Marijuana Establishments may cultivate, process, test, store and manufacture Marijuana or Marijuana Products only within an area that is enclosed and secured in a manner that prevents access by persons not permitted by the Marijuana Establishment to access the area.

4. The hours of operation of Marijuana Establishments shall be those that are set by the Marijuana Establishment's host community agreement with the Town or a Select Board-issued license.

5. Marijuana Establishments shall ensure that their hours and methods of transportation of product shall not be a detriment to the surrounding area and nearby uses.

6. Marijuana Establishments shall not permit any disorder, disturbance, or illegality under State or local law of any kind on the premises.

7. Marijuana Establishment operations shall not result in illegal redistribution under State or local law of Marijuana obtained from the Marijuana Establishment, or in use of Marijuana in any manner that violates State or local law.

8. Marijuana Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties. "Nuisance" includes, but is not limited to, disturbances of the peace, open public consumption of Marijuana, excessive pedestrian or vehicular traffic, odors emanating from the Marijuana Establishment's premises, electrical lighting, illegal drug activity under State or local law, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, excessive citation for violations of State traffic laws and regulations and/or Transportation Division Rules and Regulations, queuing of patrons (vehicular or pedestrian) in or other obstructions of the public way (sidewalks and streets), collisions between vehicles, bicyclists, and pedestrians, lewd conduct or police detentions and arrests.

9. Marijuana Establishments shall equip the premises and otherwise conduct their operations in such a manner that (a) no pesticides or other chemicals or products are dispersed into the outside atmosphere, and (b) no odor of Marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the facility or at any adjoining use or property.

10. A Marijuana Establishment shall be required to remove all Marijuana and Marijuana Products by the earlier of:
    a) prior to surrendering its State-issued license; or
    b) within six (6) months of ceasing operations.

11. Marijuana Establishments shall comply with 527 CMR and with Chapter 38 of the NFPA 1 (2018), as they may be amended, and as applicable.

12. Marijuana Establishments are prohibited from use of on-site self-service displays. Self-service displays are defined to mean displays from which customers may select Marijuana or Marijuana Products without assistance from an employee or store personnel, and include vending machines.

13. Consumption of Marijuana in the interior or exterior of the premises is not permitted except as follows. Duly-licensed Social Consumption Marijuana Retailers may permit on-premises consumption of Marijuana and Marijuana Products which they are licensed to sell to customers purchasing their products who are aged 21 years and older in the event that on-premises consumption is

approved by the Town pursuant to and in the manner provided by M.G.L. c. 94G, § 3(b). In the event that on-premises consumption is approved by the Town in such manner, Social Consumption Marijuana Retailers must abide by all State and local requirements for Marijuana Establishments. Social Consumption Marijuana Retailers shall comply with all legal requirements pertaining to verification that a patron is at least 21 years of age utilizing acceptable forms of proof of age, including any proof-of-age verification requirements established by the Select Board in connection with the local licensing of Marijuana Establishments. In no event shall Social Consumption Marijuana Retailers permit the smoking of Marijuana or Marijuana Products on the premises. Smoking is defined to mean the lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette or other similar device shall be considered smoking.

C. Security-Specific Requirements

5. Marijuana Establishments shall maintain compliance with any Town Police Department-approved security and public safety plans as the Police Department may require, which plan may include measures relating to alarms, fencing, gates, limited access areas, delivery procedures, police details, specification of video and lighting locations, notifications to the Police Department in the event of any known or suspected violation of criminal law that has taken place on or near the location of the establishment.

6. Marijuana Establishments shall secure every entrance to the Marijuana Establishment so that access to areas containing the storage of Marijuana products are restricted to employees and others permitted by the Marijuana Establishment to access the area and to Cannabis Control Commission or state and local law enforcement officers, agents and emergency personnel.

7. Marijuana Establishments shall secure their inventory and equipment during and after operating hours to deter and prevent theft of Marijuana, Marijuana Products and Marijuana accessories.

8. Marijuana Establishments shall file an emergency response plan with the Town's Fire, Police and Health Departments and share with these Departments their security plan and procedures and any updates to them in the event they are modified.

D. Access to Premises and Information/Reporting/Record-Keeping

1. Marijuana Establishments shall consent to unannounced, unscheduled, periodic inspections of its premises by the Building Commissioner or designee, including an agent from the Building, Health, Police and Fire Departments (which, when conducted by the Police Department, shall be by a sworn police officer holding the rank of Sergeant or higher) on week-days during normal business hours to determine the Marijuana Establishment's compliance with the

requirements of applicable state and local laws, regulations, codes, license and permit conditions, and this section. In addition, routine inspections may be made on week-days during regular Town business hours by authorized inspectional departments to determine compliance with applicable state and local laws, regulations, codes and license and permit conditions. Inspections by the authorized inspectional departments may be made at other times to investigate complaints or suspected non-compliance issues. Inspections may include all areas occupied, used or controlled by the Marijuana Establishment. Facilities requiring re-inspection are subject to applicable re-inspection fees. Inspections shall be conducted in conformity with applicable federal, state and local law.

2. Marijuana Establishments shall cooperate and comply with requests for information made by the Building Commissioner or designee, including agents from the Planning, Building, Health, Police, Fire and Public Works Departments.

3. Within twenty-four (24) hours of receipt of notice of it, a Marijuana Establishment shall file with the Town Administrator, Director of Public Health and the Building Commissioner any summary cease and desist order, cease and desist order, quarantine order, suspension order, revocation order, order limiting sales, deficiency statement, plan of correction, notice of a hearing, notice of any other administrative process or legal action, denial of a license, denial of a renewal of a license, or final action issued by a state or federal agency (including, but not limited to, the Cannabis Control Commission and Massachusetts Department of Public Health) regarding the Marijuana Establishment, the Cannabis Control Commission license, or the Department of Public Health Certificate of Registration.

E. <u>Additional Location Requirements for Marijuana Establishments</u>

1. Marijuana Establishments shall not be located in a building that contains a pre-existing daycare center.

2. Marijuana manufacturing or extraction shall not be done in any building containing assembly, educational, health care, ambulatory health care, residential board and care, residential, or detention and correctional facilities.

3. Delivery-Only Marijuana Retailers and Marijuana Transporters shall not occupy street-level space in Local or General Business districts.

4. <u>The required distance from schools that serve Kindergarten through 12th grade, public or private, shall be:</u>

    a. 500 feet for i) Social Consumption Marijuana Retailers issued a primary use license; and ii) Storefront Marijuana Retailers with the following provisos:

1. Where a major corridor (as defined in subsection 2 immediately below) is measured to fall within this 500 foot buffer zone and the major corridor separates the school from the Marijuana Retailer, the buffer zone shall not include land on the opposite side of the major corridor from where the school is located.
2. For purposes of this section, "major corridors" are defined as Beacon Street, Commonwealth Avenue, and/or Route 9 (otherwise known as Boylston Street, including a portion of Boylston Street that converts to Washington Street).

b. No distance requirement applicable to i) Marijuana Research Facilities that do not hold a Marijuana Retailer license; ii) Marijuana Independent Testing Laboratories; and iii) Marijuana Standards Laboratories.

c. 200 feet for all other Marijuana Establishments.

d. Measured from lot boundary to lot boundary.

5. <u>Density requirements for Social Consumption Marijuana Retailers issued a primary use license and Storefront Marijuana Retailers shall be:</u>

a. A minimum of 200 feet from another Social Consumption Marijuana Retailer issued a primary use license or Storefront Marijuana Retailer if any portion of the establishment is located at street-level.

b. Allowed within 200 feet from another Social Consumption Marijuana Retailer issued a primary use license or Storefront Marijuana Retailer above or below street-level as long as the Zoning Board of Appeals determines that doing so will not have a detrimental impact on the vibrancy of the streetscape and all other applicable requirements are satisfied (applicable to uses 29A and 29B).

c. Measured from lot boundary to lot boundary.

6. <u>Store Size Limitations for Social Consumption Marijuana Retailers issued a primary use license and Storefront Marijuana Retailers shall:</u>

a. Not exceed a total gross floor area of 5,000 square feet per establishment.

b. Not exceed a gross floor area of 3,500 square feet and no more than 5,000 square feet total gross floor area per establishment if any portion of the establishment is located at street-level.

c. Not apply to Medical Marijuana Treatment Centers licensed to operate prior to July 1, 2017, who receive a State Storefront Marijuana Retailer

license or Delivery-Only Marijuana Retailer license pursuant to M.G.L. c. 94G and the regulations promulgated thereunder, unless a licensed Medical Marijuana Treatment Center expands the licensed premises or building.

6. *Site Plan Review for Marijuana Establishments*

The following describes requirements for a Marijuana Establishment site plan review process to precede the Marijuana Establishment's application for a building permit and a special permit:

A. Prior to applying for a building permit, the Marijuana Establishment shall have an initial informal meeting with the Planning Director and the Building Commissioner or designees to discuss development plans and relevant Zoning By-Law requirements.

B. The appropriate site plan review process shall be determined at the initial meeting consistent with the Zoning By-Laws, which may include, but is not limited to, the process for Major Impact Projects and Design Advisory Teams.

C. In addition, at the discretion of the Planning Director or designee, the Marijuana Establishment Site Plan Review process may entail submission of reports from all relevant departments and divisions, which may include the Health Department, the Police Departments, the Fire Department, the Building Department, the Department of Public Works (*e.g.*, the Transportation Division in the event that a Transportation Demand Management Plan may be contemplated, the Water Division, the Highway and Sanitation Division, as applicable), and/or any other Department that the Planning Director or designee determines to be appropriate to the project.

D. The applicant is responsible for obtaining any Department report deemed necessary by the Planning Director or designee in connection with Marijuana Establishment Site Plan Review process and submitting the report to the Planning Department. The Planning Department will assist with identifying to the applicant information and documents that Departments may require in connection with issuing their reports. Departments responsible for reports may identify other needed information and documents needed from the applicant.

E. Each Department designated by the Planning Department to issue a report will make its report available to the applicant no later than forty-five (45) calendar days from the date the applicant has completed submission to the Department of all requested information and documents.

F. In the event a Department designated by the Planning Department to issue a report does not do so within 45 days of when the applicant submitted all requested information and documents to the Department, the applicant may submit to the Planning Department, in lieu of the report, a letter showing evidence of the

applicant's submission of requested information and documents to the Department or stating that no documents or information was requested, as the case may be.

G. The Marijuana Establishment shall cooperate with requests for information or meetings by the Planning Director and/or by any of the Departments designated by the Planning Director to issue reports as part of the Marijuana Establishment Site Plan Review process, which information may include the Marijuana Establishment's application for a license from the Cannabis Control Commission or relevant State agency.

H. Marijuana Establishments may not apply for a building permit until the Planning Director and Building Commissioner have issued a written Notice of Completion of Marijuana Establishment Site Plan Review.

7. Special Permits

The following apply to special permits to operate a Marijuana Establishment, in addition to the requirements set forth in §9 of the Zoning By-Laws.

A. Application requirements: Marijuana Establishments shall include with their special permit application:

1. Copies of any required licenses and permits relating to the operation of the Marijuana Establishment, or, if an application for a required license or permit is pending, a copy of the application.

2. Evidence of the Marijuana Establishment's right to use the proposed site as a Marijuana Establishment, such as a deed or lease.

3. A copy of the Notice of Completion of Marijuana Establishment Site Plan Review Process for Marijuana Establishments.

4. Any other materials requested by the Special Permit application form, as well as any other additional materials the Planning Department determines is necessary for review, such as Department reports or transportation studies or a license application.

B. Special permit criteria: The Board of Appeals shall not approve any application for a special permit unless it finds that in its judgment all of the following conditions are met:

1. Issuance of the special permit would not contravene the cap on the number of special permits that may be granted (*see* subsection 4, *Cap on the Number of Special Permits for Storefront Marijuana Retailers* of this section) and any applicable density restrictions (*see* subsection 5, *General Requirements for Marijuana Establishments*, of this section). Issuance of a special permit must also comply with applicable State and local laws.

2. The location is compliant with Section 4.13 in its entirety.

3. The Board of Appeals is otherwise satisfied that the Marijuana Establishment has the ability to comply with the General Requirements for Marijuana Establishments set forth in Section 4.13, and 4.12 if applicable.

8. Submittal Requirements prior to issuance of a Certificate of Occupancy

The following information shall be provided to the Building Department:

A. Proof that the Brookline Police Department has been provided with the name, phone numbers and email addresses of all management staff, and with access to the facility when it is closed, to enable contact if operating problems should arise.

B. Proof that all security measures required by the special permit have been installed or implemented.

C. Proof that the applicant is compliant with implementing any required transportation mitigation measures.

9. Enforcement

This section of the Zoning By-Law shall be enforced by the Building Commissioner or the Building Commissioner's designee, as may be consistent with law. This Section, 9. Enforcement, shall supersede any conflicting provision of the Zoning By-Laws that would otherwise be applicable to the enforcement of this section.

10. Implementation

This section shall not be implemented in a manner that conflicts or interferes with the operation of M.G.L. c. 94G, 94I or the regulations promulgated thereunder, including 935 CMR 500.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 17 proposes to amend sections of the Brookline Zoning By-Law to create a new use called Marijuana Establishments, which would be inclusive of medical marijuana but expanded to also include the sale, cultivation, testing and social consumption of recreational marijuana, which became legal in the Commonwealth last year. The Zoning By-Law will control the siting, density and number of Marijuana Establishments within the Town, and includes several regulatory measures targeted toward the promotion of public health and safety.

The Advisory Committee recommends FAVORABLE ACTION on an amended motion under Article 17. The following amendment would make the proposed buffer zones slightly smaller by using major roadways (Beacon Street, Commonwealth Avenue, and

Route 9) as the boundaries of buffer zones that otherwise would include a small amount of land on the other side of the major roadway.

§4.13 – Marijuana Establishments

4. The required distance from schools that serve Kindergarten through 12th grade, public or private, shall be:

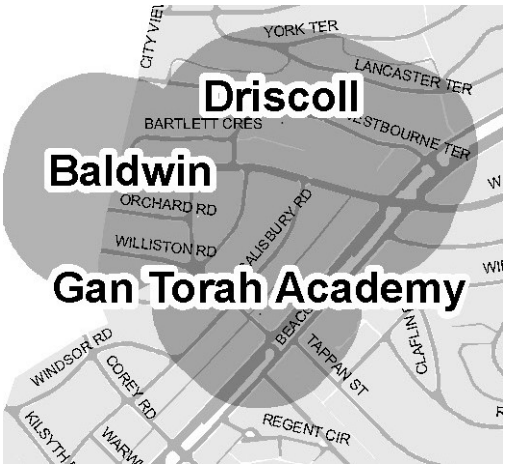
e. 500 feet for i) Social Consumption Marijuana Retailers issued a primary use license; and ii) Storefront Marijuana Retailers~~.~~ ***with the following provisos:***
   1. ***Where the 500-foot buffer intersects a major corridor (as defined in subsection 2 immediately below), the buffer zone shall not include land on the opposite side of the major corridor from where the school is located.***
   2. ***For purposes of this section, "major corridors" are defined as Beacon Street, Commonwealth Avenue, and/or Route 9 (otherwise known as Boylston Street, including a portion of Route 9 that converts to Washington Street).***

f. No distance requirement applicable to i) Marijuana Research Facilities that do not hold a Marijuana Retailer license; ii) Marijuana Independent Testing Laboratories; and iii) Marijuana Standards Laboratories.

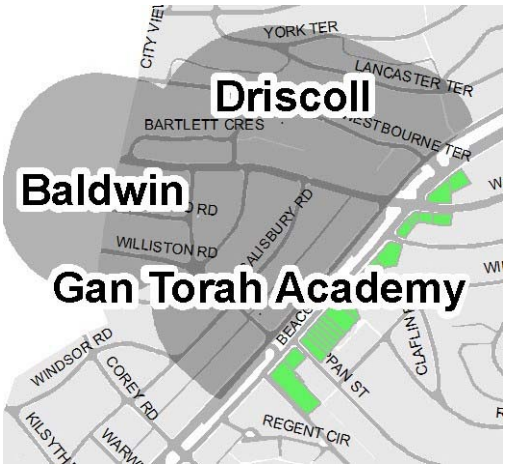
g. 200 feet for all other Marijuana Establishments.

h. Measured from lot boundary to lot boundary

This amendment would create the following change at the buffer zone around schools in Washington Square as follows:



Article 17 original language



Advisory Committee recommendation

BACKGROUND:

Articles 17 through 22 are an interrelated group of articles that seek to integrate and codify the sale, testing, growing and use of recreational marijuana into our Town's Zoning and General By-Laws, anticipating that the State's Cannabis Control Commission could begin issuing licenses as early as July 1, 2018–before the Town's self-imposed moratorium concludes at the end of this calendar year. These Articles are the result of significant public outreach and represent a coordinated effort between several Town departments, boards, and commissions. The Warrant Article Explanations provide a very detailed description and analysis of these complicated and interrelated Articles. Reference is made to that document for further background information. The following discussion principally focuses on those issues that have garnered public comment and debate within the Advisory Committee.

Specifically, Article 17 seeks to amend the Town's Zoning By-Law to create a new use called Marijuana Establishments, which would be inclusive of medical marijuana but expanded to also include the sale, cultivation, testing and social consumption of recreational marijuana, which became legal in the Commonwealth last year. The Zoning By-Law will control the siting, density and number of Marijuana Establishments within the Town via a Special Permit process, and includes several regulatory measures targeted toward the promotion of public health and safety.

Marijuana Establishments include Marijuana Retailers, Marijuana Product Manufacturers, Marijuana Cultivators, and Independent Testing Laboratories, and additional categories within each license type exist. For example, Marijuana Retailers include Delivery-Only Marijuana Retailers, Storefront Marijuana Retailers and Social Consumption Marijuana Retailers. A ban on any or all of the new Marijuana uses would be allowed, but, by law, would require a Town-wide referendum in addition to a two-thirds majority approval at Town Meeting.

While the Zoning By-Law contains provisions governing Social Consumption Marijuana Retailers, these uses are not anticipated to be licensed in Brookline until (1) the State's Cannabis Control Commission starts issuing these licenses (currently estimated to occur after February 2019), and (2) there is a favorable vote in a Town-wide referendum.

The proposed changes to our Zoning By-Law provide for multi-tiered local control of recreational marijuana:

- <u>Control #1: Limitation on number of licenses.</u>
  State law does not provide a cap on the number or type of Marijuana Establishments that the Cannabis Control Commission may license in a particular community. Article 17 proposes a Special Permit application process, with caps on the number of special permits that may be issued to Marijuana Retailers based upon the corresponding license caps proposed in Article 18's General By-Law amendment. In the event a General By-Law cap is not in effect at the time of a special permit application (e.g., because the Attorney General's Office has not yet approved the proposed General By-Law), Article 17 (which would become effective upon the date of Town Meeting's vote) provides for default caps for each marijuana retailer category at 20% of the number of package store licenses issued in the Town, rounded up to the next whole number. Based on the 2010 Census, the cap is

currently four. It is unclear if this cap will apply to each type of Marijuana Retailer category (Storefront, Delivery-Only, and Social Consumption), or be a cap for the sum total of all retail uses.

It is anticipated that New England Treatment Access (NETA) will receive Brookline's first Storefront Marijuana Retailer (SMR) license. NETA is exempt from complying with the maximum area limitation in Article 4.13 because they are grandfathered by State statute.

- Control #2: Limitation on locations (allowed zoning districts).
  Article 17 amends §4.07, Table of Uses, to list each type of Marijuana Establishment as a principal use, and to indicate by zoning district when such use is allowed by Special Permit. Marijuana Retailers are proposed to be allowed in a manner similar to that of medical marijuana (which is generally allowed in G, O and I districts by Special Permit) with the following exceptions:

  - Except for Independent Testing Laboratories, all new recreational marijuana uses will be allowed in L (Local Business) districts by Special Permit.
  - Storefront and Social Consumption Marijuana Retailers would be not allowed in O (Business and Professional Office) districts.

- Control #3: Limitation on density (spacing between retailers).
  Article 17 provides that Social Consumption Retailers and Storefront Marijuana Retailers shall be: (a) a minimum of 200 feet from another Social Consumption Retailer or Storefront Marijuana Retailer if any portion of the establishment is at street level, or (b) allowed within 200 feet from another Social Consumption Retailer or Storefront Retailer above or below street level if the ZBA determines that doing so will not have a detrimental impact on the vibrancy of the streetscape. The default State language contains no density requirements.

- Control #4: Limitation on proximity to K-12 schools (Buffer Zones).
  The State's default language provides for a 500-foot buffer zone around K-12 public and private schools in order to reduce the risk of underage interactions with Marijuana Retailers. Article 17 adopts this default buffer zone for Social Consumption Retailers and Storefront Marijuana Retailers, but proposes no buffer zone around less visible uses such as a marijuana testing laboratories. The Moderator has ruled that Article 17 could be amended to decrease or eliminate the 500-foot buffer zone, whereas motions to increase the size of the buffer zone are outside the scope of the Article.

DISCUSSION:
The Advisory Committee considered each of the controls and their potential impacts on our Town:

- Control #1: Limitation on number of licenses (caps).
  An overwhelming majority of the Advisory Committee favored the 20% cap proposed in Article 17. Town Counsel advised those that wished to further restrict

or ban recreational marijuana uses in town to vote favorably on both Article 17 (Zoning By-Law) and 18 (General By-Law), and additionally vote Favorable Action on the reduced caps in Article 19, which would supersede those in Articles 17 and 18. Otherwise, if 17 and 18 fail, the Town will be subject to the State licensing process, which does not provide for any cap at all.

- Control #2: Limitation on locations (allowed zoning districts).
  Although Article 17 as submitted allows Storefront Marijuana Retailers and Social Consumption Retailers in L (Local Business) districts, some members of the Advisory Committee felt strongly that L districts should be removed completely. This was not only a neighborhood concern expressed during public comment, but also was related to concerns about the effect on rents of other businesses in L districts (because of the significantly higher anticipated sales of marijuana businesses) which could drive out small neighborhood businesses, an increase in traffic and a lack of sufficient parking in these more residential neighborhoods, a potential increase in crime, and, perhaps most importantly, a belief that we should proceed cautiously in this new frontier, since L districts can always be added later but subsequently removing them could result in nonconforming uses that would be grandfathered. It was also noted that medical marijuana dispensaries are not permitted in L districts, for many of the same reasons cited above. Some members pointed out that, although removing the L districts would reduce the number of available sites, this limitation is offset by in the increased locations provided in the Advisory Committee's amendment to Control #4 below. The primary opposition to this amendment was that it would reduce the number of potential sites in Town, concentrate potential sites in specific areas rather than disperse them more widely throughout town, and prevent neighborhoods such as Putterham Village from having a marijuana retail store.

- Control #3: Limitation on density (minimum spacing between retailers).
  There were widespread differences on the Advisory Committee with regard to density requirements for street level retail uses—ranging from proposals to completely remove all density requirements to make more sites available, to implementing density requirements of 1000 feet which would prevent more than one retailer in any neighborhood. It was noted that Boston recently adopted a half-mile (2640-foot) radius between marijuana retailers, but a similar distance, if applied to Brookline, would effectively wipe out almost all potential sites. A majority of the Advisory Committee believes the 200-foot minimum spacing between retailers will prevent clustering and encourage these uses to be more widely dispersed throughout the allowed zoning districts, ultimately providing more options to marijuana businesses trying to locate in Brookline.

- Control #4: Limitation on proximity to K-12 schools (buffer zones).
  While the Advisory Committee was divided about the efficacy of buffer zones, there was more agreement that other factors—other distance alone—could serve as a "natural" buffer. To this end, the Advisory Committee proposed that the three major east-west arteries in Brookline (Commonwealth Avenue, Beacon Street and Route 9), because of the speed and amount of traffic, street width, and/or other physical impediments such as Green Line tracks, while not true barriers,

nevertheless tend to separate opposite sides of the street, and that it would unnecessarily reduce the number of potential retail marijuana establishments to extend a school-generated buffer zone across those major thoroughfares. (The concept of the three major arterial streets serving as natural buffers was, in turn, adopted by the Planning Board, the Economic Development Advisory Board, and the Select Board.) After a lengthy discussion of various proposals to alter the buffer zones, the Advisory Committee recommended that Article 17 be amended so that where the 500-foot buffer intersects one of these three major corridors, the buffer zone shall not include land on the opposite side of the major corridor from where the school is located. This amendment makes sixty-three more parcels, and an additional 600,000 square feet of land area, available for marijuana retailers.

RECOMMENDATION:
By a vote of 21–0–2, the Advisory Committee recommends FAVORABLE ACTION on the following motion under Article 17:

VOTED: That the Town amend the Brookline Zoning By-Law as proposed in Warrant Article 17 for the May 2018 Annual Town Meeting. The Zoning By-Law amendment shall be the same as in Article 17 as it appears in the Warrant, with the following amendment to the amended by-law as printed in the Warrant (new language in ***bold italics***):

4.13, Section 5.E.4.a of the Zoning By-Law shall read as follows:

4. The required distance from schools that serve Kindergarten through 12th grade, public or private, shall be:

e. 500 feet for i) Social Consumption Marijuana Retailers issued a primary use license; and ii) Storefront Marijuana Retailers. ***with the following provisos:***
    1. ***Where the 500-foot buffer intersects a major corridor (as defined in subsection 2 immediately below), the buffer zone shall not include land on the opposite side of the major corridor from where the school is located.***
    2. ***For purposes of this section, "major corridors" are defined as Beacon Street, Commonwealth Avenue, and/or Route 9 (otherwise known as Boylston Street, including a portion of Route 9 that converts to Washington Street).***

f. No distance requirement applicable to i) Marijuana Research Facilities that do not hold a Marijuana Retailer license; ii) Marijuana Independent Testing Laboratories; and iii) Marijuana Standards Laboratories.

g. 200 feet for all other Marijuana Establishments.

h. Measured from lot boundary to lot boundary.

XXX

ARTICLE 17

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

The Select Board's printed Recommendation included in the originally published Warrant Article book had inadvertently block-copied an earlier version of a proposed amendment by the Planning and Regulation of the Advisory Committee to the Warrant Article's buffer zone language (Section 5(E)(4)(a) of the proposed new §4.13), instead of the Subcommittee's final buffer zone amendment language that was then voted favorably by both the full Advisory Committee and the Select Board.

The following incorporates corrected buffer zone language as voted by the Select Board. It also corrects the footnote numbers that follow the Table of Uses (*see* § 4.07).

The Select Board's vote differed from the Advisory Committee's vote only in recommending that Social Consumption Marijuana Retailers be prohibited in L Districts. (*See* § 4.07, Use No. 29B.)

VOTED: To amend **Zoning By-law as follows:**

By amending §2.13, "M" Definitions, as follows (additions are denoted in **bold*, italicized text***, deletions are denoted in ~~stricken~~ text)**:**

~~1. MEDICAL MARIJUANA TREATMENT CENTER — Any medical marijuana treatment center, to be known as a Registered Marijuana Dispensary (RMD), as defined under state law as a Massachusetts not-for-profit entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supposes, or educational materials to qualifying patients or their personal caregivers, which is properly licenses and registered by the Massachusetts Department of Public Health pursuant to all applicable state laws and regulations.~~

1. MARIJUANA — As defined or amended by State regulations, all parts of any plant of the genus Cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C; provided, however, that "Marijuana" shall not include (1) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks, fiber, oil or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (2) hemp;

or (3) the weight of any other ingredient combined with Marijuana to prepare topical or oral administrations, food, drink or other products. Marijuana also includes Marijuana Products except where the context clearly indicates otherwise.

a. Marijuana, Hemp — As defined or amended by State regulations, the plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 per cent on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of Marijuana product, or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.

2. MARIJUANA ESTABLISHMENT – As defined or amended by State regulations, a Marijuana Retailer, Marijuana Product Manufacturer, Marijuana Cultivator, Independent Testing Laboratory, or any other type of Marijuana-related business that has been duly licensed by the Massachusetts Cannabis Control Commission or relevant State agency.

a. Marijuana Establishment, Craft Marijuana Cultivator Cooperative — As defined or amended by State regulations, a Marijuana Cultivator comprised of residents of Massachusetts organized as a limited liability company or limited liability partnership under Massachusetts law, or an appropriate business structure as determined by the Massachusetts Cannabis Control Commission, and that is licensed by the Cannabis Control Commission to cultivate, obtain, manufacture, process, package, and brand Marijuana and Marijuana Products to deliver Marijuana to Marijuana Establishments but not to consumers. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

b. Marijuana Establishment, Marijuana Cultivator – As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to cultivate, process, and package Marijuana, to deliver Marijuana to Marijuana Establishments and to transfer Marijuana to other Marijuana Establishments, but not to consumers. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

c. Marijuana Establishment, Delivery-Only Marijuana Retailer — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission as a Marijuana Retailer that does not provide a retail location accessible to the public, but is authorized to deliver directly from a Marijuana Cultivator facility, Craft

Marijuana Cultivator Cooperative facility, Marijuana Product Manufacturer facility, or Micro-Business.

d. Marijuana Establishment, Marijuana Independent Testing Laboratory — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission that is (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation Mutual Recognition Arrangement or that is otherwise approved by the Cannabis Control Commission; (ii) independent financially from any Medical Marijuana Treatment Center or any Cannabis Control Commission licensee or Marijuana Establishment of which it conducts a test; and (iii) qualified to test Marijuana in compliance with 935 CMR 500.160 and M.G.L. c. 94C, § 34. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

e. Marijuana Establishment, Marijuana Micro-Business — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to act as a co-located licensed Marijuana Cultivator in an area less than 5,000 square feet, a licensed Marijuana Product Manufacturer, and a licensed Marijuana Delivery Service, in compliance with operating procedures for each such license and siting requirements for each type of licensee.

f. Marijuana Establishment, Marijuana Product Manufacturer — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to obtain, manufacture, process and package Marijuana and Marijuana Products, to deliver Marijuana and Marijuana Products to Marijuana Establishments and to transfer Marijuana and Marijuana Products to other Marijuana Establishments, but not to consumers. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

g. Marijuana Establishment, Marijuana Research Facility — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to engage in research projects, including cultivation, purchase or acquisition otherwise of Marijuana for the purpose of conducting research regarding Marijuana and Marijuana Products or any analogous uses. A Marijuana Research Facility may be academic institutions, non-profit corporations and domestic corporations or entities authorized to do business in Massachusetts. A Marijuana Research Facility may hold a Cannabis Control Commission Marijuana Retailer License to sell Marijuana and Marijuana Products

other than Marijuana cultivated under its research license. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

h. Marijuana Establishment, Marijuana Retailer — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to purchase and deliver Marijuana and Marijuana Products from Marijuana Establishments and to deliver, sell or otherwise transfer Marijuana and Marijuana Products to Marijuana Establishments and to consumers. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

i. Marijuana Establishment, Social Consumption Marijuana Retailer — As defined or amended by State regulations, a Marijuana Retailer licensed by the Massachusetts Cannabis Control Commission to purchase Marijuana and Marijuana Products from Marijuana Establishments and to sell Marijuana and Marijuana Products on its premises only to consumers or allow consumers to consume Marijuana and Marijuana Products on its premises only.

j. Marijuana Establishment, Marijuana Transporter — As defined or amended by State regulations, an entity, not otherwise licensed by the Massachusetts Cannabis Control Commission, that is licensed by the Cannabis Control Commission to purchase, obtain and possess Marijuana and Marijuana Products solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments, not for sale to consumers. This definition includes the foregoing uses described in this definition when conducted by Marijuana Establishments.

k. Marijuana Establishment, Medical Marijuana Treatment Center — As defined of amended by State regulations, an entity that acquires, cultivates, possesses, processes (including development of related products such as edible Marijuana-infused products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers Marijuana, products containing Marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use, as otherwise defined by State law. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

l. Marijuana Establishment, Standards Laboratory — As defined or amended by State regulations, a laboratory meeting the requirements of the Independent Testing laboratory that is licensed by the Massachusetts

Cannabis Control Commission as a Standards Laboratory to ensure consistent and compliant testing by the Independent Testing Laboratories.

m. Marijuana Establishment, Storefront Marijuana Retailer — As defined or amended by State regulations, a Marijuana Retailer providing a retail location accessible to consumers 21 years of age or older or in possession of a registration card demonstrating that the individual is a registered qualifying patient with the Medical Use of Marijuana Program.

3. MARIJUANA ESTABLISHMENT AGENT — As defined or amended by State regulations, a board member, director, employee, executive, manager, or volunteer of a Marijuana Establishment, who is 21 years of age or older. Employee includes a consultant who provides on-site services to a Marijuana Establishment related to the cultivation, harvesting, preparation, packaging, storage, testing, dispensing, or any other analogous uses of Marijuana.

4. MARIJUANA PRODUCTS — As defined or amended by State regulations, products that have been manufactured and contain Marijuana or an extract from Marijuana, including concentrated forms of Marijuana and products composed of Marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

5. MARIJUANA, MANUFACTURE — As defined or amended by State regulations, to compound, blend, extract, infuse or otherwise make or prepare a Marijuana product.

6. MARIJUANA, MARIJUANA MANUFACTURER RESIDENTIAL USE: Residential Marijuana Extraction by Non-licensed Establishments or Individuals utilizing extraction processes that pose an explosive or flammable danger, including solvent-based extraction and any method utilizing liquefied petroleum gas ("LPG", as may be defined by NFPA1, including propylene, propane, butane, butylenes, and mixtures thereof).

And further, by amending §4.07, Table of Use Regulations, as follows (all uses are new):

Principal Uses	Residence					Business			Ind.
	S	**SC**	**T**	**F**	**M**	**L**	**G**	**O**	**I**
20B. ***Medical Marijuana Treatment Centers (see***	No	No	No	No	No	No	SP*[2]	SP*[2]	SP*

Section 4.13 for applicable definition), and uses analogous to Marijuana Retailer Uses Only ~~Registered Marijuana Dispensary (RMD)*~~ * To be eligible for a special permit under Use 20B, the requirements under Sec. 4.12, Registered Marijuana Dispensary, ***and Sec. 4.13, Marijuana Establishments,*** shall be met***, as each may be applicable.***									
20C. Delivery-Only Marijuana Retailers and Marijuana Transporters ****To be eligible for a special permit under Use 20C, the requirements under Sec. 4.13, Marijuana Establishments, shall be met.***	***No***	***No***	***No***	***No***	***No***	***SP*[1]***	***SP*[1]***	***SP*[1]***	***SP*[1]***
29A. Storefront Marijuana Retailers, stores of less than 5,000 square feet of gross floor area per establishment **** Permitted by special permit pursuant to Section 4.13, Marijuana Establishments***	***No***	***No***	***No***	***No***	***No***	***SP*[1, 2]***	***SP*[1, 2]***	***No***	***SP*[1]***
29B. Social Consumption Marijuana Retailers **** Permitted by special permit pursuant to***	***No***	***No***	***No***	***No***	***No***	***No***	***SP*[1, 2]***	***No***	***SP*[1]***

***Section 4.13, Marijuana Establishments, only in the event of a Town-wide vote approving on-site consumption pursuant to M.G.L c.94G,* § 3(b).**									
36C. Marijuana Independent Testing Laboratories, Marijuana Standards Laboratories, and Marijuana Research Facilities **** To be eligible for a special permit under Use 36C, the requirements under Sec. 4.13, Marijuana Establishments, and Use 36A. and 36B., restrictions on Marijuana Research Laboratories, shall be met.***	***No***	***No***	***No***	***No***	***No***	***No***	***SP* [1, 2]***	***SP* [1, 2]***	***SP*[1]***
38D. Marijuana Cultivators **** Permitted by special permit pursuant to Section 4.13, Marijuana Establishments***	***No***	***No***	***No***	***No***	***No***	***SP*[1, 2]***	***SP* [1, 2]***	***SP* [1, 2]***	***SP*[1]***
46B. Marijuana Product Manufacturers **** Permitted by special permit pursuant to Section 4.13, Marijuana Establishments***	***No***	***No***	***No***	***No***	***No***	***No***	***No***	***No***	***SP*[1]***
Accessory Uses	**Residence**					**Business**			**Ind.**
	S	**SC**	**T**	**F**	**M**	**L**	**G**	**O**	**I**
65A. Marijuana Manufacturer Residential Uses	***No***	***No***	***No***	***No***	***No***	***No***	***No***	***No***	***No***

FOOTNOTES:

1. **Allowed use by Special Permit unless a Town-wide vote bans this use.**
2. **No manufacturing of Marijuana is permitted in these districts.**

And further, by creating a new §4.13, Marijuana Establishments with the following requirements:

§4.13 -Marijuana Establishments

1. *Purpose*

   The intent of this section is to permit Marijuana Establishments to operate in locations and pursuant to local requirements that ensure safe and appropriate implementation of Chapter 334 of the Acts of 2016 (Question #4 on the November 8, 2016 ballot), legalizing recreational Marijuana, within the community.

   If any provisions of this section shall be held to be invalid, those provisions shall be severable and the remaining sections shall be valid.

2. *Definitions*

   See Massachusetts General Laws Chapter 94G, Section 1, Chapter 94I, Section 1, and the regulations promulgated thereunder, as they may be amended, as well as Section 2, Definitions, of the Zoning By-Law for further definitions of applicable terms.

3. *Medical Marijuana Treatment Centers*

   Medical Marijuana Treatment Centers licensed prior to July 1, 2017 shall be subject to §2.13(1) ("Medical Marijuana Treatment Center"), §4.07, Use 20B, and §4.12 ("Registered Marijuana Dispensary (RMD)") of the Zoning By-Laws and not this section, subject to the following: In the event that the medical Marijuana licensing process by the Select Board pursuant to Article 8.34 of the General By-Laws is discontinued in whole or in part, a medical Marijuana treatment center not subject to Select Board licensing pursuant to Article 8.34 shall then be subject to the requirements established for Storefront Marijuana Retailers.

4. *Cap on the Number of Special Permits for Marijuana Retailers*

   The Zoning Board of Appeals shall not grant a special permit if doing so would result in a total number of outstanding special permits granted to Marijuana Retailers that exceeds any cap set by a General By-Law on the number of Select Board Marijuana Establishment licenses that can be issued to Marijuana Retailers.

   If no such General By-Law is in effect at the time of a vote by the Zoning Board of Appeals on a special permit application, the Zoning Board of Appeals shall not issue a special permit if doing so would result in a total number of outstanding special permits that exceeds the following limitations: The Zoning Board of Appeals shall not issue more special permits in each of the following categories of Marijuana Establishment

licenses 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: a) Storefront Marijuana Retailers; b) Delivery-Only Marijuana Retailers; and c) Social Consumption Marijuana Retailers.

5. *General Requirements for Marijuana Establishments*

Marijuana Establishments shall comply with the following requirements:

A. General

1. Marijuana Establishments shall comply with applicable State and local laws, regulations, by-laws, codes, conditions and agreements with the Town, including, but not limited to, M.G.L. c. 94G, M.G.L. c. 94I, 935 CMR 500, the Town of Brookline's General By-Laws, the Town of Brookline's Zoning By-Laws, all applicable Town building, fire prevention, police, and health codes, regulations and standards, any conditions imposed on licenses and permits held by the Marijuana Establishment (including, but not limited to, the Town's Zoning Board of Appeals special permit), and agreements between the Marijuana Establishment and the Town, including host community agreements.

2. Marijuana Establishments shall maintain all permits and licenses required by State and local laws. Any laws voiding of the Cannabis Control Commission's license by operation of law (including due to cessation of operations, failure to become operational within the permitted time, or relocation without Cannabis Control Commission approval), and any revocation or suspension of the Marijuana Establishment's Cannabis Control Commission license shall result in an automatic suspension of the special permit pending hearing or the opportunity therefore afforded to the Marijuana Establishment and pending further determination by the Zoning Board of Appeals.

3. All taxes and charges owed to the Town must be paid on a current basis. The Town may place a lien on the property of any person who has an outstanding balance due the Town from any fee, charge or tax, which balance is at least six (6) months past due.

B. Operational Requirements

1. All Marijuana Establishments' licensed operations shall be conducted within a building at a fixed location.

2. No Marijuana Establishment shall allow cultivation, processing, manufacture, sale or display of Marijuana or Marijuana Products to be visible from a public place without the use of binoculars, aircraft, or other optical aids.

3. Marijuana Establishments may cultivate, process, test, store and manufacture Marijuana or Marijuana Products only within an area that is enclosed and secured in a manner that prevents access by persons not permitted by the Marijuana Establishment to access the area.

4. The hours of operation of Marijuana Establishments shall be those that are set by the Marijuana Establishment's host community agreement with the Town or a Select Board-issued license.

5. Marijuana Establishments shall ensure that their hours and methods of transportation of product shall not be a detriment to the surrounding area and nearby uses.

6. Marijuana Establishments shall not permit any disorder, disturbance, or illegality under State or local law of any kind on the premises.

7. Marijuana Establishment operations shall not result in illegal redistribution under State or local law of Marijuana obtained from the Marijuana Establishment, or in use of Marijuana in any manner that violates State or local law.

8. Marijuana Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties. "Nuisance" includes, but is not limited to, disturbances of the peace, open public consumption of Marijuana, excessive pedestrian or vehicular traffic, odors emanating from the Marijuana Establishment's premises, electrical lighting, illegal drug activity under State or local law, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, excessive citation for violations of State traffic laws and regulations and/or Transportation Division Rules and Regulations, queuing of patrons (vehicular or pedestrian) in or other obstructions of the public way (sidewalks and streets), collisions between vehicles, bicyclists, and pedestrians, lewd conduct or police detentions and arrests.

9. Marijuana Establishments shall equip the premises and otherwise conduct their operations in such a manner that (a) no pesticides or other chemicals or products are dispersed into the outside atmosphere, and (b) no odor of Marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the facility or at any adjoining use or property.

10. A Marijuana Establishment shall be required to remove all Marijuana and Marijuana Products by the earlier of:
    a) prior to surrendering its State-issued license; or
    b) within six (6) months of ceasing operations.

11. Marijuana Establishments shall comply with 527 CMR and with Chapter 38 of the NFPA 1 (2018), as they may be amended, and as applicable.

12. Marijuana Establishments are prohibited from use of on-site self-service displays. Self-service displays are defined to mean displays from which customers may select Marijuana or Marijuana Products without assistance from an employee or store personnel, and include vending machines.

13. Consumption of Marijuana in the interior or exterior of the premises is not permitted except as follows. Duly-licensed Social Consumption Marijuana Retailers may permit on-premises consumption of Marijuana and Marijuana Products which they are licensed to sell to customers purchasing their products who are aged 21 years and older in the event that on-premises consumption is approved by the Town pursuant to and in the manner provided by M.G.L. c. 94G, § 3(b). In the event that on-premises consumption is approved by the Town in such manner, Social Consumption Marijuana Retailers must abide by all State and local requirements for Marijuana Establishments. Social Consumption Marijuana Retailers shall comply with all legal requirements pertaining to verification that a patron is at least 21 years of age utilizing acceptable forms of proof of age, including any proof-of-age verification requirements established by the Select Board in connection with the local licensing of Marijuana Establishments. In no event shall Social Consumption Marijuana Retailers permit the smoking of Marijuana or Marijuana Products on the premises. Smoking is defined to mean the lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette or other similar device shall be considered smoking.

C. <u>Security-Specific Requirements</u>

1. Marijuana Establishments shall maintain compliance with any Town Police Department-approved security and public safety plans as the Police Department may require, which plan may include measures relating to alarms, fencing, gates, limited access areas, delivery procedures, police details, specification of video and lighting locations, notifications to the Police Department in the event of any known or suspected violation of criminal law that has taken place on or near the location of the establishment.

2. Marijuana Establishments shall secure every entrance to the Marijuana Establishment so that access to areas containing the storage of Marijuana

products are restricted to employees and others permitted by the Marijuana Establishment to access the area and to Cannabis Control Commission or state and local law enforcement officers, agents and emergency personnel.

3. Marijuana Establishments shall secure their inventory and equipment during and after operating hours to deter and prevent theft of Marijuana, Marijuana Products and Marijuana accessories.

4. Marijuana Establishments shall file an emergency response plan with the Town's Fire, Police and Health Departments and share with these Departments their security plan and procedures and any updates to them in the event they are modified.

D. Access to Premises and Information/Reporting/Record-Keeping

1. Marijuana Establishments shall consent to unannounced, unscheduled, periodic inspections of its premises by the Building Commissioner or designee, including an agent from the Building, Health, Police and Fire Departments (which, when conducted by the Police Department, shall be by a sworn police officer holding the rank of Sergeant or higher) on week-days during normal business hours to determine the Marijuana Establishment's compliance with the requirements of applicable state and local laws, regulations, codes, license and permit conditions, and this section. In addition, routine inspections may be made on week-days during regular Town business hours by authorized inspectional departments to determine compliance with applicable state and local laws, regulations, codes and license and permit conditions. Inspections by the authorized inspectional departments may be made at other times to investigate complaints or suspected non-compliance issues. Inspections may include all areas occupied, used or controlled by the Marijuana Establishment. Facilities requiring re-inspection are subject to applicable re-inspection fees. Inspections shall be conducted in conformity with applicable federal, state and local law.

2. Marijuana Establishments shall cooperate and comply with requests for information made by the Building Commissioner or designee, including agents from the Planning, Building, Health, Police, Fire and Public Works Departments.

3. Within twenty-four (24) hours of receipt of notice of it, a Marijuana Establishment shall file with the Town Administrator, Director of Public Health and the Building Commissioner any summary cease and desist order, cease and desist order, quarantine order, suspension order, revocation order, order limiting sales, deficiency statement, plan of correction, notice of a hearing, notice of any other administrative process or legal action, denial of a license, denial of a renewal of a license, or final action issued by a state or

federal agency (including, but not limited to, the Cannabis Control Commission and Massachusetts Department of Public Health) regarding the Marijuana Establishment, the Cannabis Control Commission license, or the Department of Public Health Certificate of Registration.

E. Additional Location Requirements for Marijuana Establishments

1. Marijuana Establishments shall not be located in a building that contains a pre-existing daycare center.

2. Marijuana manufacturing or extraction shall not be done in any building containing assembly, educational, health care, ambulatory health care, residential board and care, residential, or detention and correctional facilities.

3. Delivery-Only Marijuana Retailers and Marijuana Transporters shall not occupy street-level space in Local or General Business districts.

4. The required distance from schools that serve Kindergarten through 12th grade, public or private, shall be:

    a. 500 feet for i) Social Consumption Marijuana Retailers issued a primary use license; and ii) Storefront Marijuana Retailers with the following provisos:

        1. Where the 500-foot buffer intersects a major corridor (as defined in subsection 2 immediately below), the buffer zone shall not include land on the opposite side of the major corridor from where the school is located.
        2. For purposes of this section, “major corridors” are defined as Beacon Street, Commonwealth Avenue, and/or Route 9 (otherwise known as Boylston Street, including a portion of Boylston Street that converts to Washington Street).

    b. No distance requirement applicable to i) Marijuana Research Facilities that do not hold a Marijuana Retailer license; ii) Marijuana Independent Testing Laboratories; and iii) Marijuana Standards Laboratories.

    c. 200 feet for all other Marijuana Establishments.

    d. Measured from lot boundary to lot boundary.

5. Density requirements for Social Consumption Marijuana Retailers issued a primary use license and Storefront Marijuana Retailers shall be:

a. A minimum of 200 feet from another Social Consumption Marijuana Retailer issued a primary use license or Storefront Marijuana Retailer if any portion of the establishment is located at street-level.

b. Allowed within 200 feet from another Social Consumption Marijuana Retailer issued a primary use license or Storefront Marijuana Retailer above or below street-level as long as the Zoning Board of Appeals determines that doing so will not have a detrimental impact on the vibrancy of the streetscape and all other applicable requirements are satisfied (applicable to uses 29A and 29B).

c. Measured from lot boundary to lot boundary.

6. <u>Store Size Limitations for Social Consumption Marijuana Retailers issued a primary use license and Storefront Marijuana Retailers shall:</u>

a. Not exceed a total gross floor area of 5,000 square feet per establishment.

b. Not exceed a gross floor area of 3,500 square feet and no more than 5,000 square feet total gross floor area per establishment if any portion of the establishment is located at street-level.

c. Not apply to Medical Marijuana Treatment Centers licensed to operate prior to July 1, 2017, who receive a State Storefront Marijuana Retailer license or Delivery-Only Marijuana Retailer license pursuant to M.G.L. c. 94G and the regulations promulgated thereunder, unless a licensed Medical Marijuana Treatment Center expands the licensed premises or building.

6. Site Plan Review for Marijuana Establishments

The following describes requirements for a Marijuana Establishment site plan review process to precede the Marijuana Establishment's application for a building permit and a special permit:

A. Prior to applying for a building permit, the Marijuana Establishment shall have an initial informal meeting with the Planning Director and the Building Commissioner or designees to discuss development plans and relevant Zoning By-Law requirements.

B. The appropriate site plan review process shall be determined at the initial meeting consistent with the Zoning By-Laws, which may include, but is not limited to, the process for Major Impact Projects and Design Advisory Teams.

C. In addition, at the discretion of the Planning Director or designee, the Marijuana Establishment Site Plan Review process may entail submission of reports from all relevant departments and divisions, which may include the Health Department, the Police Departments, the Fire Department, the Building Department, the Department of Public Works (*e.g.*, the Transportation Division in the event that a Transportation Demand Management Plan may be contemplated, the Water Division, the Highway and Sanitation Division, as applicable), and/or any other Department that the Planning Director or designee determines to be appropriate to the project.

D. The applicant is responsible for obtaining any Department report deemed necessary by the Planning Director or designee in connection with Marijuana Establishment Site Plan Review process and submitting the report to the Planning Department. The Planning Department will assist with identifying to the applicant information and documents that Departments may require in connection with issuing their reports. Departments responsible for reports may identify other needed information and documents needed from the applicant.

E. Each Department designated by the Planning Department to issue a report will make its report available to the applicant no later than forty-five (45) calendar days from the date the applicant has completed submission to the Department of all requested information and documents.

F. In the event a Department designated by the Planning Department to issue a report does not do so within 45 days of when the applicant submitted all requested information and documents to the Department, the applicant may submit to the Planning Department, in lieu of the report, a letter showing evidence of the applicant's submission of requested information and documents to the Department or stating that no documents or information was requested, as the case may be.

G. The Marijuana Establishment shall cooperate with requests for information or meetings by the Planning Director and/or by any of the Departments designated by the Planning Director to issue reports as part of the Marijuana Establishment Site Plan Review process, which information may include the Marijuana Establishment's application for a license from the Cannabis Control Commission or relevant State agency.

H. Marijuana Establishments may not apply for a building permit until the Planning Director and Building Commissioner have issued a written Notice of Completion of Marijuana Establishment Site Plan Review.

7. Special Permits

The following apply to special permits to operate a Marijuana Establishment, in addition to the requirements set forth in §9 of the Zoning By-Laws.

A. Application requirements: Marijuana Establishments shall include with their special permit application:

1. Copies of any required licenses and permits relating to the operation of the Marijuana Establishment, or, if an application for a required license or permit is pending, a copy of the application.

2. Evidence of the Marijuana Establishment's right to use the proposed site as a Marijuana Establishment, such as a deed or lease.

3. A copy of the Notice of Completion of Marijuana Establishment Site Plan Review Process for Marijuana Establishments.

4. Any other materials requested by the Special Permit application form, as well as any other additional materials the Planning Department determines is necessary for review, such as Department reports or transportation studies or a license application.

B. Special permit criteria: The Board of Appeals shall not approve any application for a special permit unless it finds that in its judgment all of the following conditions are met:

1. Issuance of the special permit would not contravene the cap on the number of special permits that may be granted (*see* subsection 4, *Cap on the Number of Special Permits for Storefront Marijuana Retailers* of this section) and any applicable density restrictions (*see* subsection 5, *General Requirements for Marijuana Establishments*, of this section). Issuance of a special permit must also comply with applicable State and local laws.

2. The location is compliant with Section 4.13 in its entirety.

3. The Board of Appeals is otherwise satisfied that the Marijuana Establishment has the ability to comply with the General Requirements for Marijuana Establishments set forth in Section 4.13, and 4.12 if applicable.

8. Submittal Requirements prior to issuance of a Certificate of Occupancy

The following information shall be provided to the Building Department:

A. Proof that the Brookline Police Department has been provided with the name, phone numbers and email addresses of all management staff, and with access to the facility when it is closed, to enable contact if operating problems should arise.

B. Proof that all security measures required by the special permit have been installed or implemented.

C. Proof that the applicant is compliant with implementing any required transportation mitigation measures.

9. Enforcement

This section of the Zoning By-Law shall be enforced by the Building Commissioner or the Building Commissioner's designee, as may be consistent with law. This Section, 9. Enforcement, shall supersede any conflicting provision of the Zoning By-Laws that would otherwise be applicable to the enforcement of this section.

10. Implementation

This section shall not be implemented in a manner that conflicts or interferes with the operation of M.G.L. c. 94G, 94I or the regulations promulgated thereunder, including 935 CMR 500,

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ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

At its May 10th, 2018 meeting, the Advisory Committee, upon learning that the Select Board's motion differed from the Advisory Committee's motion in the Combined Reports, voted 22–0–1 to reconsider its recommended motion under Article 17.

Because the Select Board had adopted the Advisory Committee's language regarding the "major corridors" with respect to the 500-foot buffer, the only difference between the Advisory Committee and Select Board motions was how they treated Social Consumption Marijuana Retailers in L (Local Business) districts. The Select Board's recommended motion would allow Storefront Marijuana Retailers in L districts (by special permit), but prohibit Social Consumption Marijuana Retailers in such districts. The Advisory Committee's previous recommended motion would allow both uses by special permit in L districts.

After the motion to reconsider passed, there was extensive discussion regarding the retail marijuana uses proposed in the original language of Article 17. Some members of the Advisory Committee felt strongly that Storefront Marijuana Retailers and Social Consumption Marijuana Retailers should not be permitted in L districts. This was not only a neighborhood concern expressed during public comment at the subcommittee's hearing, but also related to concerns about the effect on rents of other businesses in L districts (because of the significantly higher anticipated sales of marijuana businesses) which could drive out small neighborhood businesses, an increase in traffic and a lack of sufficient

parking in these more residential neighborhoods near L districts, a potential increase in crime, and, perhaps most importantly, a belief that we should proceed cautiously in this new frontier, since L districts can always be added later but subsequently removing them could result in nonconforming uses that would be grandfathered.

The primary opposition to prohibiting marijuana establishments in L districts was that it would reduce the number of potential sites in Town, concentrate potential sites in specific areas rather than disperse them more widely throughout town, and prevent some neighborhoods from having a marijuana retail store. An amendment to ban all retail marijuana uses in L districts failed with 7 in favor and 16 opposed. By the same margin, the Advisory Committee also voted against recommending the Select Board's recommended motion, which would allow Storefront Marijuana Retailers in L districts by special permit, but ban Social Consumption Marijuana Retailers in such districts.

A vote was then taken on the motion that the Advisory Committee had recommended previously in the Combined Reports, which includes the amended language regarding the 500-foot buffer zones but does not change the original language of the Warrant with respect to retail marijuana uses in L districts. This motion passed overwhelmingly.

RECOMMENDATION:
By a vote of 20–0–3, the Advisory Committee recommends FAVORABLE ACTION on its motion under Article 17 as printed in its previous report in the Combined Reports.

ARTICLE 17

MOTION OFFERED BY NEIL WISHINSKY, SCOTT GLADSTONE TMM-16, ANGELA HYATT TMM-5, KATE SILBAUGH TMM-1, BETSY DEWITT TMM-5, AND CYNTHIA DRAKE TMM-5

VOTED: To amend Section 4.07, Table of Uses, for Local Districts ("L") by changing the allowed use by Special Permit ("SP") to "No" for use 29A. Storefront Marijuana Retailers, as follows:

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
29A. Storefront Marijuana Retailers, stores of less than 5,000 square feet of gross floor area per establishment * Permitted by special permit pursuant to Section 4.13, Marijuana Establishments	No	No	No	No	No	~~SP*[1, 2]~~ ***No***	SP*[1, 2]	No	SP*[1]

Explanation:

There has been much discussion about where various categories of newly licensed marijuana related establishments can be located. The Licensing Review Committee along with the Town Counsel and the Planning Department has done an admirable job crafting this zoning article along with the broader regulatory scheme that is before Town Meeting. The general rule they have put forth is to allow marijuana establishments in districts where alcohols sales are permitted. While that rule, on its face, sounds reasonable we must recognize that the sale of recreational marijuana is new, and we can't anticipate all the impacts and unintended consequences.

The one area that we believe Town Meeting should be permitted to explicitly vote on is whether to allow the most impactful uses in Local Business (L) Districts. Brookline's Zoning Bylaw states that establishments in Local Business districts "primarily serve the local retail business needs of the residents of the vicinity" or "primarily serve local needs." Examples of Local Business Districts are:

(1) The stretch of single story storefronts on Harvard Street known as Kennedy Crossing

(2) The commercial strip on Beacon St near St. Mary's Street

(3) Cypress Street by Kurkman's Market including the parcel known as Kendall Crescent extending to the former Sewall School, which is now a residential condominium

(4) The CVS at the Washington/Cypress intersection

(5) The shops at Putterham Circle

(6) Stop and Shop on Harvard Street

While some of these districts are on busy commercial thoroughfares and may serve more than local retail needs (for example, the Stop and Shop parcel), others are embedded in residential neighborhoods.

The two most impactful uses are uses 29A (Storefront retailers) and 29B (Social Consumption Retailers). The Select Board motion excludes 29B (Social Consumption Retailers). This motion would give Town Meeting the option of excluding use 29A (Storefront retailers) from L Districts. Both motions combined would exclude uses 29A and 29B from L Districts.

Lastly, no matter how you feel about whether these establishments should be allowed in L Districts, it is important for Town Meeting to pass a version of Article 17. Without the zoning in Article 17, the Town would be subject to the default of allowing marijuana establishments anywhere in Town. That, clearly, is an undesirable outcome.

ARTICLE 17

ADVISORY COMMITTEE'S MOTION

VOTED: To amend the Zoning By-law as follows:

By amending §2.13, "M" Definitions, as follows (additions are denoted in **bold**, ***italicized text***, deletions are denoted in ~~stricken~~ text)**:**

1. ~~MEDICAL MARIJUANA TREATMENT CENTER — Any medical marijuana treatment center, to be known as a Registered Marijuana Dispensary (RMD), as defined under state law as a Massachusetts not-for-profit entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supposes, or educational materials to qualifying patients or their personal caregivers, which is properly licenses and registered by the Massachusetts Department of Public Health pursuant to all applicable state laws and regulations.~~

1. MARIJUANA — As defined or amended by State regulations, all parts of any plant of the genus Cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C; provided, however, that "Marijuana" shall not include (1) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks, fiber, oil or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (2) hemp; or (3) the weight of any other ingredient combined with Marijuana to prepare topical or oral administrations, food, drink or other products. Marijuana also includes Marijuana Products except where the context clearly indicates otherwise.

   a. Marijuana, Hemp — As defined or amended by State regulations, the plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 per cent on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of Marijuana product, or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.

2. ***MARIJUANA ESTABLISHMENT – As defined or amended by State regulations, a Marijuana Retailer, Marijuana Product Manufacturer, Marijuana Cultivator, Independent Testing Laboratory, or any other type of Marijuana-related business that has been duly licensed by the Massachusetts Cannabis Control Commission or relevant State agency.***

    a. ***Marijuana Establishment, Craft Marijuana Cultivator Cooperative — As defined or amended by State regulations, a Marijuana Cultivator comprised of residents of Massachusetts organized as a limited liability company or limited liability partnership under Massachusetts law, or an appropriate business structure as determined by the Massachusetts Cannabis Control Commission, and that is licensed by the Cannabis Control Commission to cultivate, obtain, manufacture, process, package, and brand Marijuana and Marijuana Products to deliver Marijuana to Marijuana Establishments but not to consumers. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.***

    b. ***Marijuana Establishment, Marijuana Cultivator – As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to cultivate, process, and package Marijuana, to deliver Marijuana to Marijuana Establishments and to transfer Marijuana to other Marijuana Establishments, but not to consumers. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.***

    c. ***Marijuana Establishment, Delivery-Only Marijuana Retailer — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission as a Marijuana Retailer that does not provide a retail location accessible to the public, but is authorized to deliver directly from a Marijuana Cultivator facility, Craft Marijuana Cultivator Cooperative facility, Marijuana Product Manufacturer facility, or Micro-Business.***

    d. ***Marijuana Establishment, Marijuana Independent Testing Laboratory — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission that is (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation Mutual Recognition Arrangement or that is otherwise approved by the Cannabis Control Commission; (ii) independent financially from any Medical Marijuana Treatment Center or any Cannabis Control Commission licensee or Marijuana Establishment of which it conducts a test; and (iii) qualified to test Marijuana in compliance with 935 CMR 500.160 and M.G.L. c.***

94C, § 34. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

e. Marijuana Establishment, Marijuana Micro-Business — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to act as a co-located licensed Marijuana Cultivator in an area less than 5,000 square feet, a licensed Marijuana Product Manufacturer, and a licensed Marijuana Delivery Service, in compliance with operating procedures for each such license and siting requirements for each type of licensee.

f. Marijuana Establishment, Marijuana Product Manufacturer — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to obtain, manufacture, process and package Marijuana and Marijuana Products, to deliver Marijuana and Marijuana Products to Marijuana Establishments and to transfer Marijuana and Marijuana Products to other Marijuana Establishments, but not to consumers. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

g. Marijuana Establishment, Marijuana Research Facility — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to engage in research projects, including cultivation, purchase or acquisition otherwise of Marijuana for the purpose of conducting research regarding Marijuana and Marijuana Products or any analogous uses. A Marijuana Research Facility may be academic institutions, non-profit corporations and domestic corporations or entities authorized to do business in Massachusetts. A Marijuana Research Facility may hold a Cannabis Control Commission Marijuana Retailer License to sell Marijuana and Marijuana Products other than Marijuana cultivated under its research license. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

h. Marijuana Establishment, Marijuana Retailer — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to purchase and deliver Marijuana and Marijuana Products from Marijuana Establishments and to deliver, sell or otherwise transfer Marijuana and Marijuana Products to Marijuana Establishments and to consumers. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

i. ***Marijuana Establishment, Social Consumption Marijuana Retailer — As defined or amended by State regulations, a Marijuana Retailer licensed by the Massachusetts Cannabis Control Commission to purchase Marijuana and Marijuana Products from Marijuana Establishments and to sell Marijuana and Marijuana Products on its premises only to consumers or allow consumers to consume Marijuana and Marijuana Products on its premises only.***

j. ***Marijuana Establishment, Marijuana Transporter — As defined or amended by State regulations, an entity, not otherwise licensed by the Massachusetts Cannabis Control Commission, that is licensed by the Cannabis Control Commission to purchase, obtain and possess Marijuana and Marijuana Products solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments, not for sale to consumers. This definition includes the foregoing uses described in this definition when conducted by Marijuana Establishments.***

k. ***Marijuana Establishment, Medical Marijuana Treatment Center — As defined of amended by State regulations, an entity that acquires, cultivates, possesses, processes (including development of related products such as edible Marijuana-infused products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers Marijuana, products containing Marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use, as otherwise defined by State law. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.***

l. ***Marijuana Establishment, Standards Laboratory — As defined or amended by State regulations, a laboratory meeting the requirements of the Independent Testing laboratory that is licensed by the Massachusetts Cannabis Control Commission as a Standards Laboratory to ensure consistent and compliant testing by the Independent Testing Laboratories.***

m. ***Marijuana Establishment, Storefront Marijuana Retailer — As defined or amended by State regulations, a Marijuana Retailer providing a retail location accessible to consumers 21 years of age or older or in possession of a registration card demonstrating that the individual is a registered qualifying patient with the Medical Use of Marijuana Program.***

3. ***MARIJUANA ESTABLISHMENT AGENT — As defined or amended by State regulations, a board member, director, employee, executive, manager, or volunteer of a Marijuana Establishment, who is 21 years of age or older. Employee includes a consultant who provides on-site services to a Marijuana Establishment related to the***

cultivation, harvesting, preparation, packaging, storage, testing, dispensing, or any other analogous uses of Marijuana.

4. ***MARIJUANA PRODUCTS — As defined or amended by State regulations, products that have been manufactured and contain Marijuana or an extract from Marijuana, including concentrated forms of Marijuana and products composed of Marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.***

5. ***MARIJUANA, MANUFACTURE — As defined or amended by State regulations, to compound, blend, extract, infuse or otherwise make or prepare a Marijuana product.***

6. **MARIJUANA, *MARIJUANA MANUFACTURER RESIDENTIAL USE: Residential Marijuana Extraction by Non-licensed Establishments or Individuals utilizing extraction processes that pose an explosive or flammable danger, including solvent-based extraction and any method utilizing liquefied petroleum gas ("LPG", as may be defined by NFPA1, including propylene, propane, butane, butylenes, and mixtures thereof).***

And further, by amending §4.07, Table of Use Regulations, as follows (all uses are new):

Principal Uses	Residence					Business			Ind.
	S	**SC**	**T**	**F**	**M**	**L**	**G**	**O**	**I**
20B. ***Medical Marijuana Treatment Centers (see Section 4.13 for applicable definition), and uses analogous to Marijuana Retailer Uses Only*** ~~Registered Marijuana Dispensary (RMD)*~~ * To be eligible for a special permit under Use 20B, the requirements under Sec. 4.12, Registered Marijuana Dispensary, ***and Sec.***	No	No	No	No	No	No	SP*[2]	SP*[2]	SP*

4.13, Marijuana Establishments, shall be met***, as each may be applicable.***									
20C. Delivery-Only Marijuana Retailers and Marijuana Transporters ****To be eligible for a special permit under Use 20C, the requirements under Sec. 4.13, Marijuana Establishments, shall be met.***	***No***	***No***	***No***	***No***	***No***	***SP*[1]***	***SP*[1]***	***SP*[1]***	***SP*[1]***
29A. Storefront Marijuana Retailers, stores of less than 5,000 square feet of gross floor area per establishment **** Permitted by special permit pursuant to Section 4.13, Marijuana Establishments***	***No***	***No***	***No***	***No***	***No***	***SP*[1, 2]***	***SP*[1, 2]***	***No***	***SP*[1]***
29B. Social Consumption Marijuana Retailers **** Permitted by special permit pursuant to Section 4.13, Marijuana Establishments, only in the event of a Town-wide vote approving on-site consumption pursuant to M.G.L c.94G,*** **§ 3(b).**	***No***	***No***	***No***	***No***	***No***	***SP*[1, 2]***	***SP*[1, 2]***	***No***	***SP*[1]***
36C. Marijuana Independent Testing Laboratories, Marijuana Standards Laboratories,	***No***	***No***	***No***	***No***	***No***	***No***	***SP*[1, 2]***	***SP*[1, 2]***	***SP*[1]***

and Marijuana Research Facilities **** To be eligible for a special permit under Use 36C, the requirements under Sec. 4.13, Marijuana Establishments, and Use 36A. and 36B., restrictions on Marijuana Research Laboratories, shall be met.***									
38D. Marijuana Cultivators **** Permitted by special permit pursuant to Section 4.13, Marijuana Establishments***	***No***	***No***	***No***	***No***	***No***	***SP*[1, 2]***	***SP*[1, 2]***	***SP*[1, 2]***	***SP*[1]***
46B. Marijuana Product Manufacturers **** Permitted by special permit pursuant to Section 4.13, Marijuana Establishments***	***No***	***No***	***No***	***No***	***No***	***No***	***No***	***No***	***SP*[1]***
Accessory Uses	**Residence**					**Business**			**Ind.**
	S	**SC**	**T**	**F**	**M**	**L**	**G**	**O**	**I**
65A. Marijuana Manufacturer Residential Uses	***No***	***No***	***No***	***No***	***No***	***No***	***No***	***No***	***No***

FOOTNOTES:

1. **Allowed use by Special Permit unless a Town-wide vote bans this use.**
2. **No manufacturing of Marijuana is permitted in these districts.**

And further, by creating a new §4.13, Marijuana Establishments with the following requirements:

§4.13 -Marijuana Establishments

1. Purpose

The intent of this section is to permit Marijuana Establishments to operate in locations and pursuant to local requirements that ensure safe and appropriate implementation of Chapter 334 of the Acts of 2016 (Question #4 on the November 8, 2016 ballot), legalizing recreational Marijuana, within the community.

If any provisions of this section shall be held to be invalid, those provisions shall be severable and the remaining sections shall be valid.

2. *Definitions*

See Massachusetts General Laws Chapter 94G, Section 1, Chapter 94I, Section 1, and the regulations promulgated thereunder, as they may be amended, as well as Section 2, Definitions, of the Zoning By-Law for further definitions of applicable terms.

3. *Medical Marijuana Treatment Centers*

Medical Marijuana Treatment Centers licensed prior to July 1, 2017 shall be subject to **§**2.13(1) ("Medical Marijuana Treatment Center"), **§**4.07, Use 20B, and **§**4.12 ("Registered Marijuana Dispensary (RMD)") of the Zoning By-Laws and not this section, subject to the following: In the event that the medical Marijuana licensing process by the Select Board pursuant to Article 8.34 of the General By-Laws is discontinued in whole or in part, a medical Marijuana treatment center not subject to Select Board licensing pursuant to Article 8.34 shall then be subject to the requirements established for Storefront Marijuana Retailers.

4. *Cap on the Number of Special Permits for Marijuana Retailers*

The Zoning Board of Appeals shall not grant a special permit if doing so would result in a total number of outstanding special permits granted to Marijuana Retailers that exceeds any cap set by a General By-Law on the number of Select Board Marijuana Establishment licenses that can be issued to Marijuana Retailers.

If no such General By-Law is in effect at the time of a vote by the Zoning Board of Appeals on a special permit application, the Zoning Board of Appeals shall not issue a special permit if doing so would result in a total number of outstanding special permits that exceeds the following limitations: The Zoning Board of Appeals shall not issue more special permits in each of the following categories of Marijuana Establishment licenses 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: a) Storefront Marijuana Retailers; b) Delivery-Only Marijuana Retailers; and c) Social Consumption Marijuana Retailers.

5. *General Requirements for Marijuana Establishments*

Marijuana Establishments shall comply with the following requirements:

A. General

1. Marijuana Establishments shall comply with applicable State and local laws, regulations, by-laws, codes, conditions and agreements with the Town, including, but not limited to, M.G.L. c. 94G, M.G.L. c. 94I, 935 CMR 500, the Town of Brookline's General By-Laws, the Town of Brookline's Zoning By-Laws, all applicable Town building, fire prevention, police, and health codes, regulations and standards, any conditions imposed on licenses and permits held by the Marijuana Establishment (including, but not limited to, the Town's Zoning Board of Appeals special permit), and agreements between the Marijuana Establishment and the Town, including host community agreements.

2. Marijuana Establishments shall maintain all permits and licenses required by State and local laws. Any laws voiding of the Cannabis Control Commission's license by operation of law (including due to cessation of operations, failure to become operational within the permitted time, or relocation without Cannabis Control Commission approval), and any revocation or suspension of the Marijuana Establishment's Cannabis Control Commission license shall result in an automatic suspension of the special permit pending hearing or the opportunity therefore afforded to the Marijuana Establishment and pending further determination by the Zoning Board of Appeals.

3. All taxes and charges owed to the Town must be paid on a current basis. The Town may place a lien on the property of any person who has an outstanding balance due the Town from any fee, charge or tax, which balance is at least six (6) months past due.

B. Operational Requirements

1. All Marijuana Establishments' licensed operations shall be conducted within a building at a fixed location.

2. No Marijuana Establishment shall allow cultivation, processing, manufacture, sale or display of Marijuana or Marijuana Products to be visible from a public place without the use of binoculars, aircraft, or other optical aids.

3. Marijuana Establishments may cultivate, process, test, store and manufacture Marijuana or Marijuana Products only within an area that is enclosed and secured in a manner that prevents access by persons not permitted by the Marijuana Establishment to access the area.

4. The hours of operation of Marijuana Establishments shall be those that are set by the Marijuana Establishment's host community agreement with the Town or a Select Board-issued license.

5. Marijuana Establishments shall ensure that their hours and methods of transportation of product shall not be a detriment to the surrounding area and nearby uses.

6. Marijuana Establishments shall not permit any disorder, disturbance, or illegality under State or local law of any kind on the premises.

7. Marijuana Establishment operations shall not result in illegal redistribution under State or local law of Marijuana obtained from the Marijuana Establishment, or in use of Marijuana in any manner that violates State or local law.

8. Marijuana Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties. "Nuisance" includes, but is not limited to, disturbances of the peace, open public consumption of Marijuana, excessive pedestrian or vehicular traffic, odors emanating from the Marijuana Establishment's premises, electrical lighting, illegal drug activity under State or local law, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, excessive citation for violations of State traffic laws and regulations and/or Transportation Division Rules and Regulations, queuing of patrons (vehicular or pedestrian) in or other obstructions of the public way (sidewalks and streets), collisions between vehicles, bicyclists, and pedestrians, lewd conduct or police detentions and arrests.

9. Marijuana Establishments shall equip the premises and otherwise conduct their operations in such a manner that (a) no pesticides or other chemicals or products are dispersed into the outside atmosphere, and (b) no odor of Marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the facility or at any adjoining use or property.

10. A Marijuana Establishment shall be required to remove all Marijuana and Marijuana Products by the earlier of:
    a) prior to surrendering its State-issued license; or
    b) within six (6) months of ceasing operations.

11. Marijuana Establishments shall comply with 527 CMR and with Chapter 38 of the NFPA 1 (2018), as they may be amended, and as applicable.

12. Marijuana Establishments are prohibited from use of on-site self-service displays. Self-service displays are defined to mean displays from which customers may select

Marijuana or Marijuana Products without assistance from an employee or store personnel, and include vending machines.

13. Consumption of Marijuana in the interior or exterior of the premises is not permitted except as follows. Duly-licensed Social Consumption Marijuana Retailers may permit on-premises consumption of Marijuana and Marijuana Products which they are licensed to sell to customers purchasing their products who are aged 21 years and older in the event that on-premises consumption is approved by the Town pursuant to and in the manner provided by M.G.L. c. 94G, § 3(b). In the event that on-premises consumption is approved by the Town in such manner, Social Consumption Marijuana Retailers must abide by all State and local requirements for Marijuana Establishments. Social Consumption Marijuana Retailers shall comply with all legal requirements pertaining to verification that a patron is at least 21 years of age utilizing acceptable forms of proof of age, including any proof-of-age verification requirements established by the Select Board in connection with the local licensing of Marijuana Establishments. In no event shall Social Consumption Marijuana Retailers permit the smoking of Marijuana or Marijuana Products on the premises. Smoking is defined to mean the lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette or other similar device shall be considered smoking.

C. <u>Security-Specific Requirements</u>

1. Marijuana Establishments shall maintain compliance with any Town Police Department-approved security and public safety plans as the Police Department may require, which plan may include measures relating to alarms, fencing, gates, limited access areas, delivery procedures, police details, specification of video and lighting locations, notifications to the Police Department in the event of any known or suspected violation of criminal law that has taken place on or near the location of the establishment.

2. Marijuana Establishments shall secure every entrance to the Marijuana Establishment so that access to areas containing the storage of Marijuana products are restricted to employees and others permitted by the Marijuana Establishment to access the area and to Cannabis Control Commission or state and local law enforcement officers, agents and emergency personnel.

3. Marijuana Establishments shall secure their inventory and equipment during and after operating hours to deter and prevent theft of Marijuana, Marijuana Products and Marijuana accessories.

4. Marijuana Establishments shall file an emergency response plan with the Town's Fire, Police and Health Departments and share with these Departments their security plan and procedures and any updates to them in the event they are modified.

D. Access to Premises and Information/Reporting/Record-Keeping

1. Marijuana Establishments shall consent to unannounced, unscheduled, periodic inspections of its premises by the Building Commissioner or designee, including an agent from the Building, Health, Police and Fire Departments (which, when conducted by the Police Department, shall be by a sworn police officer holding the rank of Sergeant or higher) on week-days during normal business hours to determine the Marijuana Establishment's compliance with the requirements of applicable state and local laws, regulations, codes, license and permit conditions, and this section. In addition, routine inspections may be made on week-days during regular Town business hours by authorized inspectional departments to determine compliance with applicable state and local laws, regulations, codes and license and permit conditions. Inspections by the authorized inspectional departments may be made at other times to investigate complaints or suspected non-compliance issues. Inspections may include all areas occupied, used or controlled by the Marijuana Establishment. Facilities requiring re-inspection are subject to applicable re-inspection fees. Inspections shall be conducted in conformity with applicable federal, state and local law.

2. Marijuana Establishments shall cooperate and comply with requests for information made by the Building Commissioner or designee, including agents from the Planning, Building, Health, Police, Fire and Public Works Departments.

3. Within twenty-four (24) hours of receipt of notice of it, a Marijuana Establishment shall file with the Town Administrator, Director of Public Health and the Building Commissioner any summary cease and desist order, cease and desist order, quarantine order, suspension order, revocation order, order limiting sales, deficiency statement, plan of correction, notice of a hearing, notice of any other administrative process or legal action, denial of a license, denial of a renewal of a license, or final action issued by a state or federal agency (including, but not limited to, the Cannabis Control Commission and Massachusetts Department of Public Health) regarding the Marijuana Establishment, the Cannabis Control Commission license, or the Department of Public Health Certificate of Registration.

E. Additional Location Requirements for Marijuana Establishments

1. Marijuana Establishments shall not be located in a building that contains a pre-existing daycare center.

2. Marijuana manufacturing or extraction shall not be done in any building containing assembly, educational, health care, ambulatory health care, residential board and care, residential, or detention and correctional facilities.

3. Delivery-Only Marijuana Retailers and Marijuana Transporters shall not occupy street-level space in Local or General Business districts.

4. <u>The required distance from schools that serve Kindergarten through 12th grade, public or private, shall be:</u>

    a. 500 feet for i) Social Consumption Marijuana Retailers issued a primary use license; and ii) Storefront Marijuana Retailers~~.~~ ***with the following provisos:***
        1. ***Where the 500-foot buffer intersects a major corridor (as defined in subsection 2 immediately below), the buffer zone shall not include land on the opposite side of the major corridor from where the school is located.***
        2. ***For purposes of this section, "major corridors" are defined as Beacon Street, Commonwealth Avenue, and/or Route 9 (otherwise known as Boylston Street, including a portion of Route 9 that converts to Washington Street).***

    b. No distance requirement applicable to i) Marijuana Research Facilities that do not hold a Marijuana Retailer license; ii) Marijuana Independent Testing Laboratories; and iii) Marijuana Standards Laboratories.

    c. 200 feet for all other Marijuana Establishments.

    d. Measured from lot boundary to lot boundary.

5. <u>Density requirements for Social Consumption Marijuana Retailers issued a primary use license and Storefront Marijuana Retailers shall be:</u>

    a. A minimum of 200 feet from another Social Consumption Marijuana Retailer issued a primary use license or Storefront Marijuana Retailer if any portion of the establishment is located at street-level.

    b. Allowed within 200 feet from another Social Consumption Marijuana Retailer issued a primary use license or Storefront Marijuana Retailer above or below street-level as long as the Zoning Board of Appeals determines that doing so will not have a detrimental impact on the vibrancy of the streetscape and all other applicable requirements are satisfied (applicable to uses 29A and 29B).

    c. Measured from lot boundary to lot boundary.

6. Store Size Limitations for Social Consumption Marijuana Retailers issued a primary use license and Storefront Marijuana Retailers shall:

    a. Not exceed a total gross floor area of 5,000 square feet per establishment.

    b. Not exceed a gross floor area of 3,500 square feet and no more than 5,000 square feet total gross floor area per establishment if any portion of the establishment is located at street-level.

    c. Not apply to Medical Marijuana Treatment Centers licensed to operate prior to July 1, 2017, who receive a State Storefront Marijuana Retailer license or Delivery-Only Marijuana Retailer license pursuant to M.G.L. c. 94G and the regulations promulgated thereunder, unless a licensed Medical Marijuana Treatment Center expands the licensed premises or building.

6. Site Plan Review for Marijuana Establishments

The following describes requirements for a Marijuana Establishment site plan review process to precede the Marijuana Establishment's application for a building permit and a special permit:

A. Prior to applying for a building permit, the Marijuana Establishment shall have an initial informal meeting with the Planning Director and the Building Commissioner or designees to discuss development plans and relevant Zoning By-Law requirements.

B. The appropriate site plan review process shall be determined at the initial meeting consistent with the Zoning By-Laws, which may include, but is not limited to, the process for Major Impact Projects and Design Advisory Teams.

C. In addition, at the discretion of the Planning Director or designee, the Marijuana Establishment Site Plan Review process may entail submission of reports from all relevant departments and divisions, which may include the Health Department, the Police Departments, the Fire Department, the Building Department, the Department of Public Works (*e.g.*, the Transportation Division in the event that a Transportation Demand Management Plan may be contemplated, the Water Division, the Highway and Sanitation Division, as applicable), and/or any other Department that the Planning Director or designee determines to be appropriate to the project.

D. The applicant is responsible for obtaining any Department report deemed necessary by the Planning Director or designee in connection with Marijuana Establishment Site Plan Review process and submitting the report to the Planning Department. The Planning

Department will assist with identifying to the applicant information and documents that Departments may require in connection with issuing their reports. Departments responsible for reports may identify other needed information and documents needed from the applicant.

E. Each Department designated by the Planning Department to issue a report will make its report available to the applicant no later than forty-five (45) calendar days from the date the applicant has completed submission to the Department of all requested information and documents.

F. In the event a Department designated by the Planning Department to issue a report does not do so within 45 days of when the applicant submitted all requested information and documents to the Department, the applicant may submit to the Planning Department, in lieu of the report, a letter showing evidence of the applicant's submission of requested information and documents to the Department or stating that no documents or information was requested, as the case may be.

G. The Marijuana Establishment shall cooperate with requests for information or meetings by the Planning Director and/or by any of the Departments designated by the Planning Director to issue reports as part of the Marijuana Establishment Site Plan Review process, which information may include the Marijuana Establishment's application for a license from the Cannabis Control Commission or relevant State agency.

H. Marijuana Establishments may not apply for a building permit until the Planning Director and Building Commissioner have issued a written Notice of Completion of Marijuana Establishment Site Plan Review.

7. Special Permits

The following apply to special permits to operate a Marijuana Establishment, in addition to the requirements set forth in §9 of the Zoning By-Laws.

A. <u>Application requirements:</u> Marijuana Establishments shall include with their special permit application:

1. Copies of any required licenses and permits relating to the operation of the Marijuana Establishment, or, if an application for a required license or permit is pending, a copy of the application.

2. Evidence of the Marijuana Establishment's right to use the proposed site as a Marijuana Establishment, such as a deed or lease.

3. A copy of the Notice of Completion of Marijuana Establishment Site Plan Review Process for Marijuana Establishments.

4. Any other materials requested by the Special Permit application form, as well as any other additional materials the Planning Department determines is necessary for review, such as Department reports or transportation studies or a license application.

B. Special permit criteria: The Board of Appeals shall not approve any application for a special permit unless it finds that in its judgment all of the following conditions are met:

1. Issuance of the special permit would not contravene the cap on the number of special permits that may be granted (*see* subsection 4, *Cap on the Number of Special Permits for Storefront Marijuana Retailers* of this section) and any applicable density restrictions (*see* subsection 5, *General Requirements for Marijuana Establishments*, of this section). Issuance of a special permit must also comply with applicable State and local laws.

2. The location is compliant with Section 4.13 in its entirety.

3. The Board of Appeals is otherwise satisfied that the Marijuana Establishment has the ability to comply with the General Requirements for Marijuana Establishments set forth in Section 4.13, and 4.12 if applicable.

8. Submittal Requirements prior to issuance of a Certificate of Occupancy

The following information shall be provided to the Building Department:

A. Proof that the Brookline Police Department has been provided with the name, phone numbers and email addresses of all management staff, and with access to the facility when it is closed, to enable contact if operating problems should arise.

B. Proof that all security measures required by the special permit have been installed or implemented.

C. Proof that the applicant is compliant with implementing any required transportation mitigation measures.

9. Enforcement

This section of the Zoning By-Law shall be enforced by the Building Commissioner or the Building Commissioner's designee, as may be consistent with law. This Section, 9. Enforcement,

shall supersede any conflicting provision of the Zoning By-Laws that would otherwise be applicable to the enforcement of this section.

10. Implementation

This section shall not be implemented in a manner that conflicts or interferes with the operation of M.G.L. c. 94G, 94I or the regulations promulgated thereunder, including 935 CMR 500.

FAQs on Marijuana-related Warrant Articles 17-22

This pamphlet was created by the Brookline Planning and Community Development Department to answer the most frequently asked questions (FAQs) regarding Warrant Articles 17-22. For more information or information regarding any legal questions, please see the Warrant Explanation Section of the respective Warrant Article.

These are not suggestions on the way in which you should vote.

I'VE HEARD BROOKLINE IS A "YES" COMMUNITY- WHAT IS A "YES" COMMUNITY, AND HOW DOES LIVING IN A "YES" COMMUNITY IMPACT ME?

A majority (59.98%) of Brookline residents voted "Yes" to Question 4 during the 2016 election to legalize adult-use Marijuana, making Brookline a "Yes" community. "Yes" communities are required to follow processes in order to limit adult-use Marijuana that are, in some respects, different than "No" communities. "No" communities are where a majority of residents voted "No" to Question 4. **Brookline is a "Yes" community.**

In a "Yes" community, certain limitations cannot be placed on Marijuana Retailers (businesses that sell Marijuana directly to the consumer) unless they are approved BOTH by Town Meeting AND in a Town-wide referendum.

In preparation for the July 1st deadline, Town Boards, Committees, and Departments worked proactively to introduce a series of Warrant Articles to create a regulatory process for these Establishments, known as Warrant Articles 17-22, for consideration at the upcoming May 2018 Annual Town Meeting. Without the adoption of these regulations, there will be no local oversight and Marijuana Establishments will be subject only to the rules of the State of Massachusetts.

WHY DOESN'T THE TOWN IMPOSE A MORATORIUM?

The Town currently has a temporary moratorium that runs until December 31, 2018 or when the Town adopts by-laws in light of the marijuana regulations established by the CCC. The Marijuana Warrant Articles would effectively replace the moratorium, should they be adopted.

WHY DOESN'T THE TOWN EXTEND THE MORATORIUM?

Town Meeting of May 2017 attempted to extend the moratorium, but the Attorney General's Office denied the request. Please visit the Town's Marijuana Information website for more information: www.brooklinema.gov/marijuana.

WHAT ARE THE RULES FOR MARIJUANA ESTABLISHMENTS?

The State regulations are extensive and complex, compiled in an 88-page document that governs various use types (grow, sell, etc.). State regulations do not give much local control over Marijuana Establishments, which is why we've proposed the regulatory scheme included in Warrant Articles 17-22. You can find a copy of the regulations by the Cannabis Control Commission (known as the "CCC," the agency responsible for creating the State regulations) on its website: https://mass-cannabis-control.com/

HOW WAS THE BY-LAW DRAFTED?

Feedback and recommendations from various public safety departments, including Police, Fire, and Health, were instrumental in informing all of the proposed warrant articles, which were vetted through the Select Board's Licensing Review Committee. A combination of public meetings, hearings, surveys, and other tools were utilized to understand the pulse of the community when drafting regulatory proposals. For a complete archive of meeting agendas and minutes, please visit the Marijuana Information website: www.brooklinema.gov/marijuana

WHY ARE THERE 6 WARRANT ARTICLES FOR MARIJUANA?

Each Warrant Article accomplishes a specific goal. A brief summary is included here:

WA 17: Amend the Zoning By-law to add Marijuana regulations (including pertaining to siting and density) and introduces a default cap on the number of Special Permits to be issued to Marijuana Retailers (which sunsets when Article 18 is approved).

WA 18: Accomplishes three things: (1) creates a licensing scheme to allow the Select Board to issue annual licenses and review Marijuana Establishments; (2) sets a cap for the total number of licenses for Marijuana Retailers by type; and (3) regulates Marijuana through the use of our General By-Laws.

WA 19: Allows for a motion at Town Meeting to decrease the number of Select Board licenses (see WA-18) to a number that is 1, 2, or 3.

WA 20: Regulates personal Marijuana use (*e.g.,* no public consumption or cultivation within the public view, no at-home extraction using combustible materials).

WA 21: Assigns enforcement authority for WAs 18 and 20 to specific Departments (in addition to the Police Department, which can enforce any General By-Law).

WA 22: Adopts a sales tax of 3% on Marijuana and Marijuana products, similar to a local meals tax**.**

Warrant Article 17:
Marijuana Zoning By-Law

Function of the Article: Amends the Town's Zoning By-law to add Marijuana regulations and regulates zoning characteristics like allowable location sites, appropriate districts, and retail store size restrictions.

WHAT IS THE CAP PROPOSED IN WARRANT ARTICLE 17?

The cap included in Warrant Article 17 applies to Marijuana Retailers and is the maximum number of Special Permits to be issued by the Zoning Board of Appeals. This cap is set to mirror the number of Select Board licenses (see Articles 18 and 19).

WHY IS THERE ANOTHER CAP INCLUDED IN THE GENERAL BY-LAW (WARRANT ARTICLE 18)?

The Zoning By-law references the cap in the General By-law. A default cap was included in the zoning by-law to have something in place in case the CCC does not honor the Town's moratorium. Zoning By-laws are effective the day of the vote (potentially at Town Meeting). We do expect the CCC to honor the moratorium based on its recent guidance, therefore, the cap will be as Town Meeting votes in connection with Articles 18 and 19 (see above)

Reminder: A different cap can be proposed at Town Meeting, including a whole number (instead of a percentage, except that a whole number that rounds down from the 20% number will require a Town-wide vote) or elimination of the cap (this means we would allow an unlimited number of Marijuana Retailers), but if we adopt a cap on the number of Marijuana Retailers fewer than 20% of our package store licenses **issued** (we currently have 19 package store licenses issued, but can issue as many as 24), we must go to a Town-wide vote.

WHERE CAN MARIJUANA ESTABLISHMENTS LOCATE?

Marijuana Establishments will be subject to several layers of regulations proposed in WA-17. These include distance from schools, distance from one another, limitations on having space in a building with a daycare, store size limitations, and siting in appropriate business districts depending on the type of use

WHAT DOES A "NO" VOTE ON WARRANT ARTICLE 17 MEAN?

A "No" vote on Warrant Article 17 **DOES NOT** mean no Marijuana in Brookline. You would actually be voting to reject the proposed local regulations. If a "No" vote passes at Town Meeting, there will be no local zoning regulations in place specific to Marijuana and Marijuana Establishments would be subject to State laws, which have fewer regulations and no cap on the number of licenses.

Function of the Article: Accomplishes three things: *(1)* creates a licensing scheme for the Select Board to issue licenses and *review Marijuana Establishments on an annual basis; (2) sets a cap for the total number of Marijuana Retailer licenses the Select Board can issue; and (3) regulates Marijuana through the use of our General By-Laws.*

WHAT DOES A LICENSING SCHEME DO?

A licensing scheme allows the Select Board to issue licenses and review Marijuana Establishments on an annual basis similar to the way we do with alcohol establishments, like restaurants and package stores. This adds local control under the Select Board. A license may also be revoked or not renewed under certain conditions, and requires the Marijuana Establishment to appear before the Select Board on a yearly basis for license renewal.

WHAT IS THE CAP FOR MARIJUANA RETAILERS?

The cap proposed in WA-18 is for a number equal to 20% of package store licenses issued (rounded up) as to each category of Marijuana Retailers, namely, Storefront retailers ("take-out", which the CCC will begin licensing this summer), Social Consumption retailers (on-site consumption, which the CCC has said it will begin licensing early next year), and Delivery-Only retailers (an Amazon.com-type model, which the CCC has said it will begin licensing early next year). Currently, the Town has 19 package store licenses issued and can issue up to 24 in total. That means, if the cap of 20% is approved, we could issue 4 or 5 licenses to each type of Marijuana Retailers.

Note: The number of package store licenses is decided by the census and based on the Town's population. This means the number of package store licenses can vary.

WHY SET A CAP OF 20% FOR MARIJUANA RETAILERS?

Setting a cap at 20% allows for the integration of the industry, while avoiding a proliferation of these business types so that the Town can better adapt to them and respond with any additional needed regulations over time. By law, the municipality has the authority to establish a cap, and we may increase or decrease the cap of Marijuana licenses accordingly (subject to limitations applicable to "Yes" communities, see above).

Increasing or eliminating the cap requires favorable approval (50% plus 1 vote) of this Warrant Article at Town Meeting.

Decreasing the cap below 20% of package stores licenses issued would require a favorable vote (50% plus 1 vote) on this Warrant Article AND a favorable vote l (50% plus 1 vote) on Warrant Article 19. Note: any cap on Marijuana Retailers below 20% of package store licenses issued also requires approval by the voters in a Town-wide referendum, as required by State law for "Yes" communities (see above).

Once adopted, the cap can be changed at a future Town Meeting by amending the General By-Laws.

FAQs about Warrant Article 19:
Motion to Reduce the Cap to a number lower than 20%

Function of the Article: Allows for a motion to go below the 20% of package store licenses issued as to each category of Marijuana Retailers (Storefront, Social Consumption, Delivery only, see above), to a number that is 1, 2, or 3 and within each category (e.g., 2 Storefront Marijuana Retailer licenses, and 1 in each of the remaining two categories). Again, a cap on the number of Marijuana Retailers below 20% of outstanding package store licenses would also require approval from the voters in a Town-wide referendum (because this is a "Yes" community, see above).

WHY CAN'T WE BAN ALL MARIJUANA ESTABLISHMENTS?

The articles do not propose a ban given that 60% of Brookline voters voted in favor of Question 4. In addition, the law is gray about whether a community with an existing medical marijuana dispensary can ban its expansion into retail marijuana sales.

FAQs about Warrant Article 20:
Marijuana General By-Law

Function of the Article: This article regulates personal marijuana use and includes a ban on home extraction using dangerous combustible materials.

CAN PEOPLE CONSUME MARIJUANA IN PUBLIC?

No. The General By-law proposed in Article 20 clearly states "no person shall smoke, ingest, consume…Marijuana or Marijuana Products while in or upon any public street, sidewalk… playground…" and other locations. This is consistent with the State law and provides a local by-law enforcement mechanism. For a complete list and additional definitions, please see WA-20.

WILL THIS BAN MY USE OF MARIJUANA IN MY HOME?

No, Article 18 only bans consumption of Marijuana in public places and cultivation of Marijuana and Hemp (which look the same) in public view. In addition, it restricts residential personal manufacture and extraction at home to non-solvent based extraction methods, since methods which use combustible materials can be dangerous. With these exceptions, the proposed Articles are generally aimed to regulate businesses, not residents.

FAQs about Warrant Article 21:
Prosecution and Enforcement

Function of the Article: This article assigns the Town Departments that will be enforcing the by-laws proposed by Warrant Articles 18 and 20. These are in addition to the Police Department (which has general enforcement authority for General By-Law enforcement).

FAQs about Warrant Article 22:
Local Tax Option

Function of the Article: Adopts a sales tax of 3% on Marijuana and Marijuana products**.**

CAN PEOPLE CONSUME MARIJUANA IN RESTAURANTS?

Not with the Warrant Articles proposed here. The CCC will not begin licensing "Social Consumption" Marijuana Retailers (businesses selling marijuana for on-site consumption) until early next year. In addition, under State law, a community must "opt in" before the CCC will license Social Consumption establishments there, through a Town-wide referendum. The law details the procedures for this. We include this Use by Special Permit now in anticipation of CCC licensing of these establishments beginning in 2019, in order to have measures in place.

CAN AN EXISTING STORE ALSO SELL MARIJUANA?

If an existing store is compliant with all the zoning regulations and able to obtain a license from the Select Board and the CCC, then yes. However, there are additional State laws that regulate how this will look in practice. For example, alcohol and Marijuana cannot be sold together per State laws; Marijuana products must be separated from other non-Marijuana products and not accessible to those under the age of 21; other rules apply.

CAN I JUST WALK IN AND BUY RECREATIONAL MARIJUANA?

Recreational Marijuana will not be available to consumers until July 1, 2018, at the earliest, and not before Retailers have obtained all necessary State and local licenses and permits. The State regulations have requirements for checking ID's at the door and other measures, which the Town proposals have incorporated.

WILL MARIJUANA ESTABLISHMENTS FACILITIES BE SECURE?

Marijuana facilities, regardless of the type of use, are required to be secured by State law. For example, the Marijuana product must be kept separate from consumers and even certain employees in a secure location. To read all the State regulations, please visit the Cannabis Control Commission's website.

WHAT WILL BE THE TOWN APPLICATION PROCESS TO OBTAIN A LICENSE TO OPEN A MARIJUANA ESTABLISHMENT?

All Marijuana Establishments will go through a two-step process with multiple opportunities for public comment.

1) If WA-18 is approved, the Select Board license application process will follow current practices (similar to that for liquor licenses) to determine whether an applicant should be issued a license.
2) If WA-17 is approved, as part of the application process for a special permit, the applicant will obtain reports from Fire, Health, and other necessary departments with any specified conditions for that particular Marijuana Establishment and its specific location. The Departments will generate reports to the Zoning Board of Appeals based on their expertise and any pertinent public feedback. The Zoning Board of Appeals will consider the reports in determining whether or not to issue a special permit.

If Articles 17 and 18 are approved, the applicant cannot open for business without a Select Board license, a Special Permit from the Zoning Board of Appeals, and a State license.

WHAT DO WE KNOW ABOUT CRIME RELATED TO THE LEGALIZATION OF MARIJUANA?

Based on research and communication with communities in Colorado, data is limited and not easily trackable. We understand that due to its Federal designation as a narcotic, data on Marijuana is bundled with other narcotics. So, researchers are left to sift through a large amount of data to identify Marijuana crimes. We also understand that Marijuana crimes are not consistently recorded as isolated reports and are often bundled with other crimes for a given "Marijuana-related incident," which is to say the crime cannot be attributed to Marijuana use alone. We have found significant bodies of work that support arguments both in support of and against the impacts of Marijuana on crime, but many of these reports seem biased based on the perspective of the writer or funder, and therefore may not be reliable for making policy or data decisions.

Relevant to Brookline are the proactive steps our local law enforcement are undertaking to prepare for the introduction of this industry, which includes anticipated training for officers to better identify when an individual is under the influence of Marijuana.

ARE THERE TESTS TO SEE IF PEOPLE ARE DRIVING UNDER THE INFLUENCE OF MARIJUANA?

We understand that technology to measure whether an individual is Operating Under the Influence (OUI) of alcohol is being worked on to measure an individual's use of Marijuana. Other tests include specific training programs for law enforcement to better identify signs of Marijuana use.

HOW DO I STAY INFORMED THROUGH THE PUBLIC PROCESS IN RESPECT TO FUTURE MARIJUANA LICENSES?

Sign up for notifications by utilizing the "Notify Me" notification system. You should consider signing up for notifications from the Planning Board, Advisory Council of Public Health, or others.

ARTICLE 18

EIGHTEENTH ARTICLE
Submitted by: Select Board

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

ARTICLE 8.37 MARIJUANA ESTABLISHMENTS

Section 8.37.1 PURPOSE

The intent of this section is to permit Marijuana Establishments to operate pursuant to local requirements to ensure safe and appropriate implementation of Chapter 334 of the Acts of 2016 (Question #4 on the November 8, 2016 ballot), legalizing recreational Marijuana, within the community.

If any provisions of this section shall be held to be invalid, those provisions shall be severable and the remaining sections shall be valid.

Section 8.37.2 DEFINITIONS

See also Massachusetts General Laws Chapter 94G, Section 1, Chapter 94I, Section 1, and the regulations promulgated thereunder, as they may be amended. In the event of a conflict between the following definitions and those contained in the foregoing State laws and regulations, the definitions contained in the foregoing State laws and regulations shall govern.

a. Cannabis Control Commission — the Massachusetts Cannabis Control Commission.

b. Delivery-Only Marijuana Retailer — a Marijuana Retailer that does not provide a retail location accessible to the public, but is authorized to deliver directly from a Marijuana Cultivator facility, Craft Marijuana Cultivator Cooperative facility, Marijuana Product Manufacturer facility, or Marijuana Micro-Business.

c. Hemp — the plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 per cent on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of Marijuana Product, or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.

d. Manufacture — to compound, blend, extract, infuse or otherwise make or prepare a Marijuana Product.

e. Marijuana — all parts of any plant of the genus Cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C; provided, however, that "Marijuana" shall not include (1) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks, fiber, oil or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (2) Hemp; or (3) the weight of any other ingredient combined with Marijuana to prepare topical or oral administrations, food, drink or other products. Marijuana also includes Marijuana Products except where the context clearly indicates otherwise.

f. Marijuana Cultivator — an entity licensed by the Cannabis Control Commission to cultivate, process, and package Marijuana, to deliver Marijuana to Marijuana Establishments and to transfer Marijuana to other Marijuana Establishments, but not to consumers.

g. Marijuana Establishment — a Marijuana Retailer, Marijuana Product Manufacturer, Marijuana Cultivator, Marijuana Independent Testing Laboratory, or any other type of Cannabis Control Commission-licensed Marijuana-related business or entity.

h. Marijuana Establishment Agent — a board member, director, employee, executive, manager, or volunteer of a Marijuana Establishment, who is 21 years of age or older. Employee includes a consultant who provides on-site services to a Marijuana Establishment related to the cultivation, harvesting, preparation, packaging, storage, testing, or dispensing of Marijuana.

i. Marijuana Independent Testing Laboratory — an entity licensed by the Cannabis Control Commission that is (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation Mutual Recognition Arrangement or that is otherwise approved by the Cannabis Control Commission; (ii) independent financially from any Medical Marijuana Treatment Center or any Cannabis Control Commission licensee or Marijuana Establishment of which it conducts a test; and (iii) qualified to test Marijuana in compliance with 935 CMR 500.160 and M.G.L. c. 94C, § 34.

j. Marijuana Product Manufacturer—an entity licensed by the Cannabis Control Commission to obtain, manufacture, process and package Marijuana and Marijuana Products, to deliver Marijuana and Marijuana Products to Marijuana Establishments and to transfer Marijuana and Marijuana Products to other Marijuana Establishments, but not to consumers.

k. Marijuana Products — products that have been manufactured and contain Marijuana or an extract from Marijuana, including concentrated forms of Marijuana and products composed of Marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

l. Marijuana Retailer— an entity licensed by the Cannabis Control Commission to purchase and deliver Marijuana and Marijuana Products from Marijuana Establishments and to deliver, sell or otherwise transfer Marijuana and Marijuana Products to Marijuana Establishments and to consumers.

m. Medical Marijuana Treatment Center— an entity that acquires, cultivates, possesses, processes (including development of related products such as edible Marijuana-infused products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers Marijuana, products containing Marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use.

n. Mixed Use Social Consumption Marijuana Retailer — a Marijuana Retailer that is in possession of a Cannabis Control Commission Mixed Use Social Consumption Marijuana Retailer license (as may be further provided by 935 CMR, any commercial enterprise for which 50% or less of average monthly revenue shall be derived from the sale of marijuana products to be consumed on the premises).

o. Social Consumption Marijuana Retailer — a Marijuana Retailer licensed by the Cannabis Control Commission to purchase Marijuana and Marijuana Products from Marijuana Establishments and to sell Marijuana and Marijuana Products on its premises only to consumers or allow consumers to consume Marijuana and Marijuana Products on its premises only.

p. Primary Use Social Consumption Marijuana Retailer — a Marijuana Retailer that is in possession of a Cannabis Control Commission Primary Use Social Consumption Marijuana Retailer license (as may be further provided by935 CMR, any commercial enterprise for which 51% or more of average monthly revenue shall be derived from the sale of marijuana products to be consumed on the premises).

q. Storefront Marijuana Retailer — a Marijuana Retailer providing a retail location accessible to consumers 21 years of age or older or in possession of a registration card demonstrating that the individual is a registered qualifying patient with the Massachusetts Medical Use of Marijuana Program.

Section 8.37.3 MEDICAL MARIJUANA TREATMENT CENTERS

Medical Marijuana Treatment Centers licensed prior to July 1, 2017 may be licensed pursuant to Section 8.37. 6 below or under Article 8.34 of the General By-Laws, as the Select Board may determine in conformity with applicable State and local laws.

Section 8.37.4 CAPS ON THE NUMBER OF SELECT BOARD LICENSES FOR MARIJUANA RETAILERS

The Select Board shall not issue more Marijuana Establishment licenses in each of the following categories of Marijuana Establishment licenses 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: a) Storefront Marijuana Retailers, b) Delivery-Only Marijuana Retailers; and c) Social Consumption Marijuana Retailers.

Section 8.37.5 GENERAL REQUIREMENTS FOR MARIJUANA ESTABLISHMENTS

Marijuana Establishments shall comply with the following requirements:

A. General

1. Marijuana Establishments shall comply with applicable State and local laws, regulations, by-laws, codes, conditions and agreements with the Town, including, but not limited to, M.G.L. c. 94G, M.G.L. c. 94I, 935 CMR 500, the Town of Brookline's General By-Laws, the Town of Brookline's Zoning By-Laws, all applicable Town building, fire prevention, police, and health codes, regulations and standards, any conditions imposed on licenses and permits held by the Marijuana Establishment (including, but not limited to, the Town's Zoning Board of Appeals special permit).

2. Marijuana Establishments shall execute and maintain a Host Community Agreement with the Town which shall include the conditions for having the Marijuana Establishment within the Town in conformity with applicable law.

3. Marijuana Establishments shall maintain all permits and licenses required by State and local laws, including, but not limited to, a valid, current license in good standing from the Cannabis Control Commission. Any voiding of the Cannabis Control Commission's license by operation of law (including due to cessation of operations, failure to become operational within the permitted time, or relocation without Cannabis Control Commission approval), and any revocation or suspension of the Marijuana Establishment's Cannabis Control Commission license, shall result in an automatic suspension of the Select Board license pending hearing or the opportunity therefore afforded to the Marijuana Establishment.

4. All taxes and charges owed to the Town must be paid on a current basis. The Town may place a lien on the property of any person who has an outstanding

balance due the Town from any fee, charge or tax, which balance is at least six (6) months past due.

5. Any Marijuana Establishment licensee wishing to close a place of business or cease operations , whether on a temporary or permanent basis, may do so only if permitted by State law and must submit to the Select Board a written request for the Select Board's permission to do so, stating the reason for and length of such closing or inactivity. Failure to provide such notice and to obtain such permission may, after hearing or reasonable opportunity therefor, result in cancelation of the license.

B. Operational Requirements

1. All Marijuana Establishments' licensed operations shall be conducted within a building or fixed structure.

2. No Marijuana Establishment shall allow cultivation, processing, manufacture, sale or display of Marijuana or Marijuana Products to be visible from a public place without the use of binoculars, aircraft or other optical aids.

3. Marijuana Establishments may cultivate, process, test, store and manufacture Marijuana or Marijuana Products only within an area that is enclosed and secured in a manner that prevents access by persons not permitted by the Marijuana Establishment to access the area.

4. No Marijuana Establishment shall allow any person under 21 years of age to volunteer or work for the Marijuana Establishment.

5. The hours of operation of Marijuana Establishments shall be set by the Select Board. The licensee shall not change its hours of operation without Board approval.

6. Marijuana Establishments shall ensure that their hours and methods of transportation of product shall not be a detriment to the surrounding area and nearby uses.

7. Marijuana Establishments shall not permit any disorder, disturbance, or illegality under State or local law of any kind on the premises.

8. Marijuana Establishment operations shall not result in illegal redistribution under State or local law of Marijuana obtained from the Marijuana Establishment, or in use of Marijuana in any manner that violates State or local law.

9. Marijuana Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties. "Nuisance" includes, but is not limited to, disturbances of the peace, open public consumption of Marijuana, excessive pedestrian or

vehicular traffic, odors emanating from the Marijuana Establishment's premises, electrical lighting, illegal drug activity under State or local law, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, excessive citation for violations of State traffic laws and regulations and/or Transportation Department Rules and Regulations, queuing of patrons (vehicular or pedestrian) in or other obstructions of the public way (sidewalks and streets), collisions between vehicles, bicyclists, and pedestrians, lewd conduct or police detentions and arrests.

10. Marijuana Establishments shall equip the premises and otherwise conduct their operations in such a manner that (a) no pesticides or other chemicals or products are dispersed into the outside atmosphere, and (b) no odor of Marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the facility or at any adjoining use or property.

11. A Marijuana Establishment shall be required to remove all Marijuana and Marijuana Products by the earlier of:
    a) prior to surrendering its State-issued license; or
    b) within six (6) months of ceasing operations.

12. Marijuana Establishments shall comply with 527 CMR and with Chapter 38 of the NFPA 1 (2018), as they may be amended, and as applicable.

13. Marijuana Retailers are required to engage in patron age verification using legally-acceptable proof of age as may be further specified by the Select Board license.

14. Marijuana Retailers shall not sell or offer for sale Marijuana or Marijuana Products in a quantity that exceeds the limits established by 935 CMR 500.

15. Marijuana Establishments shall not supply Marijuana or Marijuana Products free of charge or in connection with a commercial or promotional endeavor within the Town of Brookline. Such endeavors include, but are not limited to, product "giveaways", or distribution of Marijuana or Marijuana Products as an incentive, prize or bonus in a game, contest or tournament involving skill or chance.

16. Marijuana Retailers are prohibited from use of on-site self-service displays. Self-service displays are defined to mean displays from which customers may select Marijuana or Marijuana Products without assistance from an employee or store personnel, and include vending machines.

17. Consumption of Marijuana in the interior or exterior of the premises is not permitted except as follows. Duly-licensed Social Consumption Marijuana Retailers may permit on-premises consumption of Marijuana and Marijuana Products which they are licensed to sell to customers purchasing their products who are aged 21 years and older in the event that on-premises consumption is

approved by the Town pursuant to and in the manner provided by M.G.L. c. 94G, § 3(b). In the event that on-premises consumption is approved by the Town in such manner, Social Consumption Marijuana Retailers must abide by all State and local requirements for Marijuana Establishments. Social Consumption Marijuana Retailers shall comply with all legal requirements pertaining to verification that a patron is at least 21 years of age utilizing acceptable forms of proof of age, including any proof-of-age verification requirements established by the Select Board in connection with the local licensing of Marijuana Establishments. In no event shall Social Consumption Marijuana Retailers permit the smoking of Marijuana or Marijuana Products on the premises. Smoking is defined to mean the lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette or other similar device shall be considered smoking.

C. Security-Specific Requirements

1. Marijuana Establishments shall maintain compliance with any Town Police Department-approved security and public safety plan as the Police Department may require, which plan may include measures relating to alarms, fencing, gates, limited access areas, delivery procedures, police details, specification of video and lighting locations, notifications to the Police Department in the event of any known or suspected violation of criminal law that has taken place on or near the location of the establishment (related or unrelated to the business or the establishments), providing access to and transfer of video footage from the establishment's video surveillance system to the Police Department when the Police Department so requests (which request may be made when the Police Department has a reason to believe that such footage may be of assistance in an ongoing investigation related or non-related to the business of the establishment), a requirement to connect an alarm system to a third party monitoring system and to notify the Town's Chief of Police about said third party monitoring system, and any other notifications and security-related measures as may be required by the Police Department and the Select Board.

2. Marijuana Establishments shall secure every entrance to the Marijuana Establishment so that access to areas containing Marijuana is restricted to employees and others permitted by the Marijuana Establishment to access the area and to agents of the Cannabis Control Commission or state and local law enforcement officers and emergency personnel.

3. Marijuana Establishments shall secure their inventory and equipment during and after operating hours to deter and prevent theft of Marijuana, Marijuana Products and Marijuana accessories.

4. Marijuana Establishments shall file an emergency response plan with the Town's Fire, Police and Health Departments and share with these Departments their security plan and procedures and any updates to them in the event they are modified.

D. Access to Premises and Information/Reporting/Record-Keeping

1. Marijuana Establishments shall consent to unannounced, unscheduled, periodic inspections of its premises by the Select Board and agents of the Select Board from the Building, Health, Police and Fire Departments (which, when conducted by the Police Department, shall be by a sworn police officer holding the rank of Sergeant or higher) on week-days during normal business hours to determine the Marijuana Establishment's compliance with the requirements of applicable state and local laws, regulations, codes, license and permit conditions, and this section. In addition, routine inspections may be made on week-days during regular Town business hours by authorized inspectional departments to determine compliance with applicable state and local laws, regulations, codes and license and permit conditions. Inspections by the authorized inspectional departments may be made at other times to investigate complaints or suspected non-compliance issues. Inspections may include all areas occupied, used or controlled by the Marijuana Establishment. Facilities requiring re-inspection are subject to applicable re-inspection fees. Inspections shall be conducted in conformity with applicable federal, state and local law.

2. Marijuana Establishments shall cooperate and comply with requests for information made by the Select Board and its agents from the Planning, Building, Health, Police, Fire and Public Works Departments.

3. Within twenty-four (24) hours of receipt of notice of it, a Marijuana Establishment shall file with the Town Administrator, Director of Public Health and the Building Commissioner any summary cease and desist order, cease and desist order, quarantine order, suspension order, revocation order, order limiting sales, deficiency statement, plan of correction, notice of a hearing, notice of any other administrative process or legal action, denial of a license, denial of a renewal of a license, or final action issued by a state or federal agency (including, but not limited to, the Cannabis Control Commission and Massachusetts Department of Public Health (DPH)) regarding the Marijuana Establishment, the Cannabis Control Commission license, or the DPH Certificate of Registration.

Section 8.37.6 MARIJUANA ESTABLISHMENT SELECT BOARD LICENSE

a. No person shall operate a Marijuana Establishment or sell Marijuana within the Town unless licensed to do so by the Select Board. Unless the Select Board license states a different duration, a Marijuana Establishment license shall be valid for a term of one year from the first day of January. Each day of operation without a Select Board license shall constitute a separate violation.

b. A Select Board license shall be subject to the Marijuana Establishment's compliance with this Article 8.37 and with any conditions placed on the Marijuana Establishment's license. An applicant's or licensee's violation of this Article 8.37 and applicable State and local law shall be good cause for and may result in the Select Board's denial of an application or sanction of a license to the extent permitted by law, including, but not limited to, the imposition of additional conditions on a license, a reduction or modification of the licensee's approved hours of operations, or a suspension, non-renewal, revocation, forfeiture, or cancellation of a license. No sanction shall be made except after notice and opportunity for hearing.

c. The Select Board may issue regulations for the implementation of this By-Law.

d. The Select Board shall specify the process and forms to be used by applicants for new and renewed licenses.

e. All license applications must contain complete and truthful information. Submission of an application containing material false information may be cause for refusing the application or for suspending, canceling or revoking a license already granted. No application will be accepted for filing by the Select Board until it is fully complete. Annual license fees shall be payable immediately upon approval of the license by the Select Board. License fees shall not be prorated and are not refundable. Application and license fees shall be in an amount established by the Select Board pursuant to M.G.L. c. 40, § 22F.

f. No Select Board licensee may transfer a license to another person or entity, or transfer the license or operations to another location, without Select Board approval. A Select Board licensee must obtain Select Board approval for a change to or addition of Board Member, Executive, Director and/or Managers, as may be determined by the Select Board. Any transfer shall be subject to the terms and conditions of the original license, unless otherwise stipulated by the Board.

g. A Select Board licensee must apply for and obtain the approval of the Select Board or its designee prior to making any structural change to the premises.

h. The Select Board licensee shall display its license on the premises in a conspicuous place where it can be easily read.

i. The Select Board or its designee may inspect a Marijuana Establishment and affiliated vehicles prior to the issuance of a Marijuana Establishment license or renewal of a license.

j. All areas of a Marijuana Establishment may be subject to inspection consistent with applicable law.

k. The Select Board may, to the extent permitted under applicable law, consider whether an applicant for a license is a suitable and responsible license candidate and other aspects of the application as may be necessary to implement the

purposes of this By-Law. An applicant's non-compliance with applicable Massachusetts laws and regulations (including 935 CMR 500), Town by-laws (including this Article and applicable sections of the Town's Zoning By-Law), Town regulations and codes, and any conditions on a license may be cause for denial of an application for a new or renewed Marijuana Establishment license.

Section 8.37.8 FINES

Any person violating this By-Law shall be fined in the amount of $100 for each violation. Each day of a continuing violation shall count as a separate violation.

Section 8.37.8 IMPLEMENTATION

This By-Law shall not be implemented in a manner that conflicts or interferes with the Massachusetts General Laws Chapter 94G or Chapter 94I, or with the regulations promulgated thereunder, including 935 CMR 500.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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. <u>Select Board Licensing Scheme (in addition to Zoning Board of Appeals Special Permit Scheme).</u> 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.

SELECT BOARD'S RECOMMENDATION

Article 18 is a proposed amendment to the Town's General By-Laws that would allow the Town to create a local regulatory scheme for marijuana establishments. The language in

this article is similar to what is found in article 17, and serves as a backstop in case Article 17 fails to gain the 2/3 voted needed to pass zoning legislation. Article 18 also proposes a limitation on the number of various types of Marijuana Retailers that tracks certain language in the new Massachusetts recreational Marijuana law. The by-law proposes that the Town adopt the state's minimum cap necessary to avoid a Town-wide referendum for Marijuana Retailers at 20% of the number of package store licenses issued in the Town. 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). The Board is supportive of this article and the regulatory protections provided to the community. The Board is also comfortable with the caps offered in the article, especially given the community support for these type of establishments.

A unanimous Select Board voted FAVORABLE ACTION on the following motion:

VOTED: That the Town amend the General By-Laws by adding the following article:

ARTICLE 8.37 MARIJUANA ESTABLISHMENTS

Section 8.37.1 PURPOSE

The intent of this section is to permit Marijuana Establishments to operate pursuant to local requirements to ensure safe and appropriate implementation of Chapter 334 of the Acts of 2016 (Question #4 on the November 8, 2016 ballot), legalizing recreational Marijuana, within the community.

If any provisions of this section shall be held to be invalid, those provisions shall be severable and the remaining sections shall be valid.

Section 8.37.2 DEFINITIONS

See also Massachusetts General Laws Chapter 94G, Section 1, Chapter 94I, Section 1, and the regulations promulgated thereunder, as they may be amended. In the event of a conflict between the following definitions and those contained in the foregoing State laws and regulations, the definitions contained in the foregoing State laws and regulations shall govern.

a. Cannabis Control Commission — the Massachusetts Cannabis Control Commission.

b. Delivery-Only Marijuana Retailer — a Marijuana Retailer that does not provide a retail location accessible to the public, but is authorized to deliver directly from a Marijuana Cultivator facility, Craft Marijuana Cultivator Cooperative facility, Marijuana Product Manufacturer facility, or Marijuana Micro-Business.

c. Hemp — the plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 per cent on a dry weight basis of any part of the plant of the genus

Cannabis, or per volume or weight of Marijuana Product, or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.

d. Manufacture — to compound, blend, extract, infuse or otherwise make or prepare a Marijuana Product.

e. Marijuana — all parts of any plant of the genus Cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C; provided, however, that "Marijuana" shall not include (1) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks, fiber, oil or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (2) Hemp; or (3) the weight of any other ingredient combined with Marijuana to prepare topical or oral administrations, food, drink or other products. Marijuana also includes Marijuana Products except where the context clearly indicates otherwise.

f. Marijuana Cultivator — an entity licensed by the Cannabis Control Commission to cultivate, process, and package Marijuana, to deliver Marijuana to Marijuana Establishments and to transfer Marijuana to other Marijuana Establishments, but not to consumers.

g. Marijuana Establishment — a Marijuana Retailer, Marijuana Product Manufacturer, Marijuana Cultivator, Marijuana Independent Testing Laboratory, or any other type of Cannabis Control Commission-licensed Marijuana-related business or entity.

h. Marijuana Establishment Agent — a board member, director, employee, executive, manager, or volunteer of a Marijuana Establishment, who is 21 years of age or older. Employee includes a consultant who provides on-site services to a Marijuana Establishment related to the cultivation, harvesting, preparation, packaging, storage, testing, or dispensing of Marijuana.

i. Marijuana Independent Testing Laboratory — an entity licensed by the Cannabis Control Commission that is (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation Mutual Recognition Arrangement or that is otherwise approved by the Cannabis Control Commission; (ii) independent financially from any Medical Marijuana Treatment Center or any Cannabis Control Commission licensee or Marijuana Establishment of which it conducts a test; and (iii) qualified to test Marijuana in compliance with 935 CMR 500.160 and M.G.L. c. 94C, § 34.

j. Marijuana Product Manufacturer—an entity licensed by the Cannabis Control Commission to obtain, manufacture, process and package Marijuana and Marijuana Products, to deliver Marijuana and Marijuana Products to Marijuana Establishments and to transfer Marijuana and Marijuana Products to other Marijuana Establishments, but not to consumers.

k. Marijuana Products — products that have been manufactured and contain Marijuana or an extract from Marijuana, including concentrated forms of Marijuana and products composed of Marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

l. Marijuana Retailer— an entity licensed by the Cannabis Control Commission to purchase and deliver Marijuana and Marijuana Products from Marijuana Establishments and to deliver, sell or otherwise transfer Marijuana and Marijuana Products to Marijuana Establishments and to consumers.

m. Medical Marijuana Treatment Center— an entity that acquires, cultivates, possesses, processes (including development of related products such as edible Marijuana-infused products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers Marijuana, products containing Marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use.

n. Mixed Use Social Consumption Marijuana Retailer — a Marijuana Retailer that is in possession of a Cannabis Control Commission Mixed Use Social Consumption Marijuana Retailer license (as may be further provided by 935 CMR, any commercial enterprise for which 50% or less of average monthly revenue shall be derived from the sale of marijuana products to be consumed on the premises).

o. Social Consumption Marijuana Retailer — a Marijuana Retailer licensed by the Cannabis Control Commission to purchase Marijuana and Marijuana Products from Marijuana Establishments and to sell Marijuana and Marijuana Products on its premises only to consumers or allow consumers to consume Marijuana and Marijuana Products on its premises only.

p. Primary Use Social Consumption Marijuana Retailer — a Marijuana Retailer that is in possession of a Cannabis Control Commission Primary Use Social Consumption Marijuana Retailer license (as may be further provided by935 CMR, any commercial enterprise for which 51% or more of average monthly revenue shall be derived from the sale of marijuana products to be consumed on the premises).

q. Storefront Marijuana Retailer — a Marijuana Retailer providing a retail location accessible to consumers 21 years of age or older or in possession of a

registration card demonstrating that the individual is a registered qualifying patient with the Massachusetts Medical Use of Marijuana Program.

Section 8.37.3 MEDICAL MARIJUANA TREATMENT CENTERS

Medical Marijuana Treatment Centers licensed prior to July 1, 2017 may be licensed pursuant to Section 8.37. 6 below or under Article 8.34 of the General By-Laws, as the Select Board may determine in conformity with applicable State and local laws.

Section 8.37.4 CAPS ON THE NUMBER OF SELECT BOARD LICENSES FOR MARIJUANA RETAILERS

The Select Board shall not issue more Marijuana Establishment licenses in each of the following categories of Marijuana Establishment licenses 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: a) Storefront Marijuana Retailers, b) Delivery-Only Marijuana Retailers; and c) Social Consumption Marijuana Retailers.

Section 8.37.5 GENERAL REQUIREMENTS FOR MARIJUANA ESTABLISHMENTS

Marijuana Establishments shall comply with the following requirements:

A. General

1. Marijuana Establishments shall comply with applicable State and local laws, regulations, by-laws, codes, conditions and agreements with the Town, including, but not limited to, M.G.L. c. 94G, M.G.L. c. 94I, 935 CMR 500, the Town of Brookline's General By-Laws, the Town of Brookline's Zoning By-Laws, all applicable Town building, fire prevention, police, and health codes, regulations and standards, any conditions imposed on licenses and permits held by the Marijuana Establishment (including, but not limited to, the Town's Zoning Board of Appeals special permit).

2. Marijuana Establishments shall execute and maintain a Host Community Agreement with the Town which shall include the conditions for having the Marijuana Establishment within the Town in conformity with applicable law.

3. Marijuana Establishments shall maintain all permits and licenses required by State and local laws, including, but not limited to, a valid, current license in good standing from the Cannabis Control Commission. Any voiding of the Cannabis Control Commission's license by operation of law (including due to cessation of operations, failure to become operational within the permitted time, or relocation without Cannabis Control Commission approval), and any revocation or suspension of the Marijuana Establishment's Cannabis Control Commission license, shall result in an automatic suspension of the Select Board

license pending hearing or the opportunity therefore afforded to the Marijuana Establishment.

4. All taxes and charges owed to the Town must be paid on a current basis. The Town may place a lien on the property of any person who has an outstanding balance due the Town from any fee, charge or tax, which balance is at least six (6) months past due.

5. Any Marijuana Establishment licensee wishing to close a place of business or cease operations , whether on a temporary or permanent basis, may do so only if permitted by State law and must submit to the Select Board a written request for the Select Board's permission to do so, stating the reason for and length of such closing or inactivity. Failure to provide such notice and to obtain such permission may, after hearing or reasonable opportunity therefor, result in cancelation of the license.

B. Operational Requirements

1. All Marijuana Establishments' licensed operations shall be conducted within a building or fixed structure.

2. No Marijuana Establishment shall allow cultivation, processing, manufacture, sale or display of Marijuana or Marijuana Products to be visible from a public place without the use of binoculars, aircraft or other optical aids.

3. Marijuana Establishments may cultivate, process, test, store and manufacture Marijuana or Marijuana Products only within an area that is enclosed and secured in a manner that prevents access by persons not permitted by the Marijuana Establishment to access the area.

4. No Marijuana Establishment shall allow any person under 21 years of age to volunteer or work for the Marijuana Establishment.

5. The hours of operation of Marijuana Establishments shall be set by the Select Board. The licensee shall not change its hours of operation without Board approval.

6. Marijuana Establishments shall ensure that their hours and methods of transportation of product shall not be a detriment to the surrounding area and nearby uses.

7. Marijuana Establishments shall not permit any disorder, disturbance, or illegality under State or local law of any kind on the premises.

8. Marijuana Establishment operations shall not result in illegal redistribution under State or local law of Marijuana obtained from the Marijuana Establishment, or in use of Marijuana in any manner that violates State or local law.

9. Marijuana Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties. “Nuisance” includes, but is not limited to, disturbances of the peace, open public consumption of Marijuana, excessive pedestrian or vehicular traffic, odors emanating from the Marijuana Establishment’s premises, electrical lighting, illegal drug activity under State or local law, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, excessive citation for violations of State traffic laws and regulations and/or Transportation Department Rules and Regulations, queuing of patrons (vehicular or pedestrian) in or other obstructions of the public way (sidewalks and streets), collisions between vehicles, bicyclists, and pedestrians, lewd conduct or police detentions and arrests.

10. Marijuana Establishments shall equip the premises and otherwise conduct their operations in such a manner that (a) no pesticides or other chemicals or products are dispersed into the outside atmosphere, and (b) no odor of Marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the facility or at any adjoining use or property.

11. A Marijuana Establishment shall be required to remove all Marijuana and Marijuana Products by the earlier of:
    a) prior to surrendering its State-issued license; or
    b) within six (6) months of ceasing operations.

12. Marijuana Establishments shall comply with 527 CMR and with Chapter 38 of the NFPA 1 (2018), as they may be amended, and as applicable.

13. Marijuana Retailers are required to engage in patron age verification using legally-acceptable proof of age as may be further specified by the Select Board license.

14. Marijuana Retailers shall not sell or offer for sale Marijuana or Marijuana Products in a quantity that exceeds the limits established by 935 CMR 500.

15. Marijuana Establishments shall not supply Marijuana or Marijuana Products free of charge or in connection with a commercial or promotional endeavor within the Town of Brookline. Such endeavors include, but are not limited to, product “giveaways”, or distribution of Marijuana or Marijuana Products as an incentive, prize or bonus in a game, contest or tournament involving skill or chance.

16. Marijuana Retailers are prohibited from use of on-site self-service displays. Self-service displays are defined to mean displays from which customers may select Marijuana or Marijuana Products without assistance from an employee or store personnel, and include vending machines.

17. Consumption of Marijuana in the interior or exterior of the premises is not permitted except as follows. Duly-licensed Social Consumption Marijuana Retailers may permit on-premises consumption of Marijuana and Marijuana Products which they are licensed to sell to customers purchasing their products who are aged 21 years and older in the event that on-premises consumption is approved by the Town pursuant to and in the manner provided by M.G.L. c. 94G, § 3(b). In the event that on-premises consumption is approved by the Town in such manner, Social Consumption Marijuana Retailers must abide by all State and local requirements for Marijuana Establishments. Social Consumption Marijuana Retailers shall comply with all legal requirements pertaining to verification that a patron is at least 21 years of age utilizing acceptable forms of proof of age, including any proof-of-age verification requirements established by the Select Board in connection with the local licensing of Marijuana Establishments. In no event shall Social Consumption Marijuana Retailers permit the smoking of Marijuana or Marijuana Products on the premises. Smoking is defined to mean the lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette or other similar device shall be considered smoking.

C. <u>Security-Specific Requirements</u>

1. Marijuana Establishments shall maintain compliance with any Town Police Department-approved security and public safety plan as the Police Department may require, which plan may include measures relating to alarms, fencing, gates, limited access areas, delivery procedures, police details, specification of video and lighting locations, notifications to the Police Department in the event of any known or suspected violation of criminal law that has taken place on or near the location of the establishment (related or unrelated to the business or the establishments), providing access to and transfer of video footage from the establishment's video surveillance system to the Police Department when the Police Department so requests (which request may be made when the Police Department has a reason to believe that such footage may be of assistance in an ongoing investigation related or non-related to the business of the establishment), a requirement to connect an alarm system to a third party monitoring system and to notify the Town's Chief of Police about said third party monitoring system, and any other notifications and security-related measures as may be required by the Police Department and the Select Board.

2. Marijuana Establishments shall secure every entrance to the Marijuana Establishment so that access to areas containing Marijuana is restricted to employees and others permitted by the Marijuana Establishment to access the area and to agents of the Cannabis Control Commission or state and local law enforcement officers and emergency personnel.

3. Marijuana Establishments shall secure their inventory and equipment during and after operating hours to deter and prevent theft of Marijuana, Marijuana Products and Marijuana accessories.

4. Marijuana Establishments shall file an emergency response plan with the Town's Fire, Police and Health Departments and share with these Departments their security plan and procedures and any updates to them in the event they are modified.

D. Access to Premises and Information/Reporting/Record-Keeping

1. Marijuana Establishments shall consent to unannounced, unscheduled, periodic inspections of its premises by the Select Board and agents of the Select Board from the Building, Health, Police and Fire Departments (which, when conducted by the Police Department, shall be by a sworn police officer holding the rank of Sergeant or higher) on week-days during normal business hours to determine the Marijuana Establishment's compliance with the requirements of applicable state and local laws, regulations, codes, license and permit conditions, and this section. In addition, routine inspections may be made on week-days during regular Town business hours by authorized inspectional departments to determine compliance with applicable state and local laws, regulations, codes and license and permit conditions. Inspections by the authorized inspectional departments may be made at other times to investigate complaints or suspected non-compliance issues. Inspections may include all areas occupied, used or controlled by the Marijuana Establishment. Facilities requiring re-inspection are subject to applicable re-inspection fees. Inspections shall be conducted in conformity with applicable federal, state and local law.

2. Marijuana Establishments shall cooperate and comply with requests for information made by the Select Board and its agents from the Planning, Building, Health, Police, Fire and Public Works Departments.

3. Within twenty-four (24) hours of receipt of notice of it, a Marijuana Establishment shall file with the Town Administrator, Director of Public Health and the Building Commissioner any summary cease and desist order, cease and desist order, quarantine order, suspension order, revocation order, order limiting sales, deficiency statement, plan of correction, notice of a hearing, notice of any other administrative process or legal action, denial of a license, denial of a renewal of a license, or final action issued by a state or federal agency (including, but not limited to, the Cannabis Control Commission and Massachusetts Department of Public Health (DPH)) regarding the Marijuana Establishment, the Cannabis Control Commission license, or the DPH Certificate of Registration.

Section 8.37.6 MARIJUANA ESTABLISHMENT SELECT BOARD LICENSE

a. No person shall operate a Marijuana Establishment or sell Marijuana within the Town unless licensed to do so by the Select Board. Unless the Select Board

license states a different duration, a Marijuana Establishment license shall be valid for a term of one year from the first day of January. Each day of operation without a Select Board license shall constitute a separate violation.

b. A Select Board license shall be subject to the Marijuana Establishment's compliance with this Article 8.37 and with any conditions placed on the Marijuana Establishment's license. An applicant's or licensee's violation of this Article 8.37 and applicable State and local law shall be good cause for and may result in the Select Board's denial of an application or sanction of a license to the extent permitted by law, including, but not limited to, the imposition of additional conditions on a license, a reduction or modification of the licensee's approved hours of operations, or a suspension, non-renewal, revocation, forfeiture, or cancellation of a license. No sanction shall be made except after notice and opportunity for hearing.

c. The Select Board may issue regulations for the implementation of this By-Law.

d. The Select Board shall specify the process and forms to be used by applicants for new and renewed licenses.

e. All license applications must contain complete and truthful information. Submission of an application containing material false information may be cause for refusing the application or for suspending, canceling or revoking a license already granted. No application will be accepted for filing by the Select Board until it is fully complete. Annual license fees shall be payable immediately upon approval of the license by the Select Board. License fees shall not be prorated and are not refundable. Application and license fees shall be in an amount established by the Select Board pursuant to M.G.L. c. 40, § 22F.

f. No Select Board licensee may transfer a license to another person or entity, or transfer the license or operations to another location, without Select Board approval. A Select Board licensee must obtain Select Board approval for a change to or addition of Board Member, Executive, Director and/or Managers, as may be determined by the Select Board. Any transfer shall be subject to the terms and conditions of the original license, unless otherwise stipulated by the Board.

g. A Select Board licensee must apply for and obtain the approval of the Select Board or its designee prior to making any structural change to the premises.

h. The Select Board licensee shall display its license on the premises in a conspicuous place where it can be easily read.

i. The Select Board or its designee may inspect a Marijuana Establishment and affiliated vehicles prior to the issuance of a Marijuana Establishment license or renewal of a license.

j. All areas of a Marijuana Establishment may be subject to inspection consistent with applicable law.

k. The Select Board may, to the extent permitted under applicable law, consider whether an applicant for a license is a suitable and responsible license candidate and other aspects of the application as may be necessary to implement the purposes of this By-Law. An applicant's non-compliance with applicable Massachusetts laws and regulations (including 935 CMR 500), Town by-laws (including this Article and applicable sections of the Town's Zoning By-Law), Town regulations and codes, and any conditions on a license may be cause for denial of an application for a new or renewed Marijuana Establishment license.

Section 8.37.8 FINES

Any person violating this By-Law shall be fined in the amount of $100 for each violation. Each day of a continuing violation shall count as a separate violation.

Section 8.37.8 IMPLEMENTATION

This By-Law shall not be implemented in a manner that conflicts or interferes with the Massachusetts General Laws Chapter 94G or Chapter 94I, or with the regulations promulgated thereunder, including 935 CMR 500.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 18 proposes to amend the Town's General By-Laws to include a new Article 8.37 entitled "Marijuana Establishments," proposing a Select Board licensing scheme similar to that of the Registered Marijuana Dispensaries (RMDs). It adopts the state's minimum cap necessary to avoid a Town-wide referendum for Marijuana Retailers at 20% of the number of package store licenses issued in the Town rounded up to the next whole number, as well as many of the same regulatory provisions as Article 17, in the event that a two-thirds majority (required for zoning changes) is not reached at Town Meeting. The Advisory Committee believes the default caps proposed in Article 18 are acceptable at this time and, if ultimately found to be insufficient, can be adjusted by amending the Town's General By-Law in the future following a Town-wide referendum.

The Advisory Committee recommends FAVORABLE ACTION by a vote of 22–0–0.

BACKGROUND:
Article 18, when combined with the Zoning By-Law changes proposed in Article 17, is a "boots and suspenders" approach to implementing recreational marijuana uses in Brookline, requiring an applicant to comply with both Articles. Most of the content of Article 18 is also contained in 17, including the various definitions and proposed caps. (Article 17 caps the number of Special Permits that can be granted, whereas Article 18 has caps on the number of licenses.) Refer to Article 17 and the Warrant Article Explanations for a more complete explanation of Articles 17 through 22.

As with Article 17, a ban on any or all of the new Marijuana uses is allowed, but, by law, would require a Town-wide referendum in addition to a two-thirds majority approval at Town Meeting.

State law does not provide a cap on the number or type of Marijuana Establishments that the Cannabis Control Commission may license in a particular community. Article 17 proposes a Special Permit application process, with caps on the number of special permits that may be issued to Marijuana Retailers based upon the analogous license caps proposed in the General By-Law amendment proposed in Article 18. In the event a General By-Law cap is not in effect at the time of a special permit application (e.g., because the Attorney General's Office has not yet approved the proposed General By-Law), Article 17 (which would become effective upon the date of Town Meeting's vote) provides for default caps for each marijuana retailer category at 20% of the number of package store licenses issued in the Town, rounded up to the next whole number. Based on the 2010 Census, the cap is currently four. It is unclear if this cap will apply to each type of Marijuana Retailer category (Storefront, Delivery-Only, and Social Consumption), or be a cap for the sum total of all retail uses.

It is anticipated that New England Treatment Access (NETA) will receive Brookline's first Storefront Marijuana Retailer (SMR) license. They are exempt from complying with the maximum area limitation in Article 4.13 because they are grandfathered by State statute. The Select Board has drafted a Host Community Agreement (HCA) in anticipation of a successful vote on Articles 17 and 18.

DISCUSSION:
An overwhelming majority of the Advisory Committee favored the 20% license cap as proposed in Article 18. Town Counsel advised those that wished to further restrict or ban recreational marijuana uses in town to vote favorably on both Article 17 (Zoning By-Law) and 18 (General By-Law), and additionally vote Favorable Action on the reduced caps in Article 19, which would supersede those in Articles 17 and 18. Otherwise, if 17 and 18 fail, the Town will be subject to the State licensing process, which does not provide for any cap at all

RECOMMENDATION:
By a vote of 22–0–0, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Select Board.

XXX

ARTICLE 19

NINETEENTH ARTICLE
Submitted by: Select Board

To see if the Town will amend Article 8.37.4 of the General By-Laws to provide for a lower maximum number of marijuana retailers than that provided for in said section in language that follows, subject to Town approval in the manner and in conformity with the procedures specified by Massachusetts General Laws Chapter 94G, Section 3:

Section 8.37.4 CAPS ON THE NUMBER OF SELECT BOARD LICENSES FOR MARIJUANA RETAILERS

a) Storefront Marijuana Retailers. The Select Board shall not issue more Marijuana Establishment licenses to Storefront Marijuana Retailers pursuant to Section 8.37.6 than a number that is, or is between, 1 and 3.

b) Delivery-Only Marijuana Retailers. The Select Board shall not issue more Marijuana Establishment licenses to Delivery Only Marijuana Retailers pursuant to Section 8.37.6 than a number that is, or is between, 1 and 3.

c) Social Consumption Marijuana Retailers. The Select Board shall not issue more Marijuana Establishment licenses to Social Consumption Marijuana Retailers than a number that is, or is between, 1 and 3.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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 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.

SELECT BOARD'S RECOMMENDATION

Article 19 provides the mechanism for Town Meeting to decrease the caps on the number of various types of marijuana retailers that Section 8.37.4 of the General By-Laws created under Warrant Article 18. 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 Article 18, but motions to decrease the cap should be done under this Article.

The Board felt comfortable with the caps established under Article 18, and did not feel that an adjustment was necessary.

Therefore, a unanimous Select Board voted NO ACTION under Article 19.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 19 proposes to amend Article 8.37.4 of the General By-Laws to provide a lower maximum number of Marijuana Retailers than provided for in Article 18, rather than adopting the State's default minimum cap. The Advisory Committee believes the default caps proposed in Article 18 are acceptable at this time, and, if are later found to be insufficient, can be adjusted by amending the Town's General By-Law in the future following a Town-wide referendum.

The Advisory Committee recommends NO ACTION by a vote of 18–2–2.

BACKGROUND:
State law does not provide a cap on the number or type of Marijuana Establishments that the Cannabis Control Commission may license in a particular community. Article 19 provides a mechanism for a reduction in caps for marijuana retailers under Article 18 because amending Article 18 to reduce the caps is not permitted by the Moderator. Article 19, then, is reserved solely for this purpose, should a reduction in caps for marijuana retailers be desired. However, under state law, if Town Meeting reduces the caps below the State default, which would presently yield a cap of four retail marijuana licenses based on the 19 package store licenses that are outstanding, such a vote must be put to a Town-wide referendum. If all 24 available package store licenses were to be issued, the cap on the number of retail marijuana licenses would increase to five, based on the most recent U.S. census data.

A ban on any or all of the new Marijuana uses is allowed, but, by law, would also require a Town-wide referendum, in addition to a two-thirds majority approval at Town Meeting.

DISCUSSION:
An overwhelming majority of the Advisory Committee favored the 20% license cap as proposed in Article 18, rather than the reduced caps in Article 19. Town Counsel advised those that wished to further restrict or ban recreational marijuana uses in town to vote favorably on both Article 17 (Zoning By-Law) and 18 (General By-Law), and additionally vote Favorable Action on the reduced caps in Article 19, which would supersede those in Articles 17 and 18. Otherwise, if 17 and 18 fail, the Town will be subject to the State licensing process, which does not provide for any cap at all

RECOMMENDATION:
By a vote of 18–2–2, the Advisory Committee recommends NO ACTION.

ARTICLE 19

MOTION OFFERED BY REGINA M. FRAWLEY, TMM16

Voted: To amend Section 8.37 of the General By-laws by striking Sub-Section 8.37.4 and inserting the following new version of Sub-Section 8.37.4, subject to Town approval in the manner and in conformity with the procedures specified by Massachusetts General Laws Chapter 94G, Section 3:

[language in the warrant is revised with inserted language underlined and deleted language ~~stricken~~]

Section 8.37.4: CAPS ON THE NUMBER OF SELECT BOARD LICENSES FOR MARIJUANA RETAILERS

a) Storefront Marijuana Retailers. The Select Board shall not issue more than three (3~~) Marijuana Establishment licenses to a~~ Storefront Marijuana Retailer licenses pursuant to Section 8.37.6. ~~than a number that is, or is between, 1 and 3~~.

b) Delivery-Only Marijuana Retailers. The Select Board shall not issue more than three (3~~) Marijuana Establishment licenses to a~~ Delivery Only Marijuana Retailer licenses pursuant to Section 8.37.6. ~~than a number that is, or is between, 1 and 3~~.

c) Social Consumption Marijuana Retailers. The Select Board shall not issue more than three (3~~) Marijuana Establishment licenses to a~~ Social Consumption Marijuana Retailer licenses pursuant to Section 8.37.6. ~~than a number that is, or is between, 1 and 3~~.

Explanation:
Many Brookline residents who voted "Yes" on Ballot Question #4 in November 2016, understood their vote was intended to "decriminalize" recreational marijuana. Senior voters report they didn't want their children or grandchildren to be stigmatized by a criminal record for small amounts of marijuana.

They did **not** understand the details of the law, **because the law was not yet written** until summer 2017! And the **Regulations** only promulgated on March 15, 2018 (**2 months ago**)! Those laws mandated that any community that voted "yes" legalizing recreational marijuana HAD TO host pot shops and additional "social consumption" outlets (never defined until recently at meetings) in a ratio of 20% of that town's "Off-Premise Liquor Licenses". In Brookline, that meant "FIVE" pot shops, and "FIVE" "social consumption" outlets (any shop holding a Victualler's license and whose income is 51% derived from non-marijuana food products).

These resident-voters now state they feel deceived and manipulated, and wish to cast a more "informed" vote. They want a town-wide referendum offering them multiple choices as to how many and what kinds of marijuana-related establishments is "best" for Brookline. **A "yes" for Article 19 gives voters that opportunity.**

Two hundred and sixty-one cities and towns in Massachusetts voted "yes" for decriminalizing recreational marijuana. Yet, as of May 22, more than 200 of those communities have put a hold on meeting the July 1, 2018 date when applications will be accepted and granted. They have either already held a town-wide referendum, and voted "no" this time, OR are holding to the December 31, 2018 moratorium deadline acknowledged by the Attorney General's office as "likely" necessary time to understand and implement zoning. The Attorney General actually approved Brookline's request to hold a moratorium until December 31, 2018, and Town Meeting actually voted for this delay.

Instead, Brookline has plowed ahead at full steam, ignoring the April 2017 Town Meeting vote to wait, and despite the 2 year study of Medical Marijuana. Cities like Newton have voted to wait, and Planners there say they are watching Brookline, which often likes to trail-blaze, before they file their own zoning laws.

It is unwise to push ahead on marijuana. Further, other states' examples which would demand prudence, as crime has significantly increased, according to at least one state-wide Chiefs of Police Association, and the lowering of youth marijuana use, even to the lowest grades, are correlated to legalization. It has been "normalized" in those states. More and more kids are showing up for class zoned out.

In our Combined Reports, page 19-2, The Select Board wrote: **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 so BOTH a Town Meeting vote AND a Town-wide vote…."**

Indeed, the Select Board state, "**The reason for including this Warrant Article 19 (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."**

I don't know –any more than the Select Board or Town Meeting knows-- what the result of a well-structured Referendum will be, offering a plethora of choices, but unless Voters have a chance to express that "desire", we will have cheated them of that opportunity to tell US, what they want for the future of the Town.

We pride ourselves that Town Meeting is the most grassroots form of democracy. I disagree: A voter referendum trumps Town Meeting, which is designed to be "representative". Let us not fear what the voters' "desires" will be. Let's find out.

ARTICLE 20

TWENTYIETH ARTICLE
Submitted by: Select Board

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

ARTICLE 8.38 MARIJUANA AND HEMP, AND MARIJUANA AND HEMP PRODUCTS

SECTION 8.38.1 DEFINITIONS

See also Massachusetts General Laws Chapter 94G, Section 1, Chapter 94I, Section 1, and the regulations promulgated thereunder, as they may be amended. In the event of a conflict between the following definitions and those contained in the foregoing State laws and regulations, the definitions contained in foregoing State laws and regulations shall govern.

a. Hemp — the plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 per cent on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of Marijuana Product, or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.

b. Hemp Products — products that have been manufactured and contain Hemp or an extract from Hemp.

c. Manufacture — to compound, blend, extract, infuse or otherwise make or prepare a Marijuana Product.

d. Marijuana — all parts of any plant of the genus Cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C; provided, however, that "Marijuana" shall not include (1) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks, fiber, oil or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (2) Hemp; or (3) the weight of any other ingredient combined with Marijuana to prepare topical or oral administrations, food, drink or other products. Marijuana also includes Marijuana Products except where the context clearly indicates otherwise.

e. Marijuana Products — products that have been manufactured and contain Marijuana or an extract from Marijuana, including concentrated forms of Marijuana and products composed of Marijuana and other ingredients that are

intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

SECTION 8.38.2 GENERAL PROHIBITIONS

No person shall:

(1) smoke, ingest, consume, or otherwise use Marijuana or Marijuana Products while in or upon any public street, sidewalk, footway, passageway, stairs, bridge, park, playground, recreation area, building, school house, school grounds, cemetery, parking lot, or any area owned by or under the control of the Town, or while in or upon any private way to which the public has a right of access as invitees or licensees.

(2) possess an open container of Marijuana or Marijuana Products in the passenger area of any motor vehicle or in any bus or other passenger conveyance operated by a common carrier that is in or upon a public way or a private way to which the public has a right of access as invitees or licensees. For purposes of this section, "open container" shall mean that the package containing Marijuana or Marijuana Products has its seal broken or from which the contents have been partially removed or consumed and "passenger area" shall mean the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or passenger while in a seated position; provided however that the passenger area shall not include a motor vehicle's trunk, locked glove compartment or the living quarters of a house coach or house trailer, or if a motor vehicle is not equipped with a trunk, the area behind the last upright seat or an area not normally occupied by the driver or passenger.

(3) smoke Marijuana or Marijuana Products where smoking tobacco is prohibited by law. Smoking is defined to mean the lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette or other similar device shall be considered smoking.

(4) sell Marijuana or Marijuana Products, or test, Manufacture, or cultivate Marijuana or Marijuana Products to be sold, without being duly licensed in good standing by the Commonwealth of Massachusetts and the Town of Brookline, as applicable, to do so.

(5) cultivate, Manufacture, process, test, or sell Marijuana, Marijuana Products, Hemp or Hemp products in or upon any land or property owned by or under the control of the Town.

SECTION 8.38.3 PERSONAL CULTIVATION AND PROCESSING OF MARIJUANA AND HEMP AND MARIJUANA AND HEMP PRODUCTS

(1) No person shall Manufacture Marijuana or Hemp or engage in Marijuana or Hemp extraction utilizing any process that poses an explosive, combustible or flammable danger, including solvent-based extraction and extraction utilizing flammable

liquids (a liquid with a flash point below 100 degrees Fahrenheit) such as liquefied petroleum gases (*e.g.*, propylene, propane, butane, butylenes and mixtures thereof).

(2) The possession, growing, and processing of Marijuana or Hemp plants shall not be observable from the exterior of a residence, including, but not limited to:

a. Common visual observation;
b. Odors, smells, fragrances, or other olfactory stimulus associated with such activities;
c. Light pollution, glare, or brightness that disturbs others.

(3) Use of supplemental carbon dioxide and/or ozone is prohibited.

(4) The cultivation, manufacturing and testing of Marijuana, Hemp or Marijuana or Hemp Products may not occur outside of a building or structure that is secured with a lock or other security device to prevent unauthorized access.

(5) The possession, growing and processing of Marijuana and Hemp plants shall comply with applicable State and local laws, regulations, by-laws and codes.

SECTION 8.38.4 FINES

Any person violating this By-Law shall be fined in the amount of $100 for each violation, except that a person violating Section 8.38.3(1) of this By-Law shall be fined in the amount of $300. Each day of a continuing violation shall count as a separate violation.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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.

SELECT BOARD'S RECOMMENDATION

Article 20 will create a General By-Law to regulate personal consumption of marijuana and hemp. The Article creates a local enforcement mechanism for prohibitions against public consumption of marijuana that are part of State law. Consumption of marijuana will be banned on public property, in a motor vehicle, on public transportation and on town property. The Article also prohibits public cultivation of marijuana and hemp (which are almost identical in appearance) and personal manufacturer of marijuana utilizing hazardous methods that have caused fires and explosions around the country (e.g., using flammable, combustible materials). Civil fines are established for violations of the by-law.

The Select Board supports the enforcement mechanisms created by this by-law and unanimously voted FAVORABLE ACTION on the following motion:

VOTED: That the Town amend the General By-Laws by adding the following article:

ARTICLE 8.38 MARIJUANA AND HEMP, AND MARIJUANA AND HEMP PRODUCTS

SECTION 8.38.1 DEFINITIONS

See also Massachusetts General Laws Chapter 94G, Section 1, Chapter 94I, Section 1, and the regulations promulgated thereunder, as they may be amended. In the event of a conflict between the following definitions and those contained in the foregoing State laws and regulations, the definitions contained in foregoing State laws and regulations shall govern.

a. Hemp — the plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 per cent on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of Marijuana Product, or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.

b. Hemp Products — products that have been manufactured and contain Hemp or an extract from Hemp.

c. Manufacture — to compound, blend, extract, infuse or otherwise make or prepare a Marijuana Product.

d. Marijuana — all parts of any plant of the genus Cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C; provided, however, that "Marijuana" shall not include (1) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks, fiber, oil or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (2) Hemp; or (3) the weight of any other ingredient combined with Marijuana to prepare topical or oral administrations, food, drink or other products. Marijuana also includes Marijuana Products except where the context clearly indicates otherwise.

e. Marijuana Products — products that have been manufactured and contain Marijuana or an extract from Marijuana, including concentrated forms of Marijuana and products composed of Marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

SECTION 8.38.2 GENERAL PROHIBITIONS

No person shall:

(1) smoke, ingest, consume, or otherwise use Marijuana or Marijuana Products while in or upon any public street, sidewalk, footway, passageway, stairs, bridge, park, playground, recreation area, building, school house, school grounds, cemetery, parking lot, or any area

owned by or under the control of the Town, or while in or upon any private way to which the public has a right of access as invitees or licensees.

(2) possess an open container of Marijuana or Marijuana Products in the passenger area of any motor vehicle or in any bus or other passenger conveyance operated by a common carrier that is in or upon a public way or a private way to which the public has a right of access as invitees or licensees. For purposes of this section, "open container" shall mean that the package containing Marijuana or Marijuana Products has its seal broken or from which the contents have been partially removed or consumed and "passenger area" shall mean the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or passenger while in a seated position; provided however that the passenger area shall not include a motor vehicle's trunk, locked glove compartment or the living quarters of a house coach or house trailer, or if a motor vehicle is not equipped with a trunk, the area behind the last upright seat or an area not normally occupied by the driver or passenger.

(3) smoke Marijuana or Marijuana Products where smoking tobacco is prohibited by law. Smoking is defined to mean the lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette or other similar device shall be considered smoking.

(4) sell Marijuana or Marijuana Products, or test, Manufacture, or cultivate Marijuana or Marijuana Products to be sold, without being duly licensed in good standing by the Commonwealth of Massachusetts and the Town of Brookline, as applicable, to do so.

(5) cultivate, Manufacture, process, test, or sell Marijuana, Marijuana Products, Hemp or Hemp products in or upon any land or property owned by or under the control of the Town.

SECTION 8.38.3 PERSONAL CULTIVATION AND PROCESSING OF MARIJUANA AND HEMP AND MARIJUANA AND HEMP PRODUCTS

(1) No person shall Manufacture Marijuana or Hemp or engage in Marijuana or Hemp extraction utilizing any process that poses an explosive, combustible or flammable danger, including solvent-based extraction and extraction utilizing flammable liquids (a liquid with a flash point below 100 degrees Fahrenheit) such as liquefied petroleum gases (*e.g.*, propylene, propane, butane, butylenes and mixtures thereof).

(2) The possession, growing, and processing of Marijuana or Hemp plants shall not be observable from the exterior of a residence, including, but not limited to:

a. Common visual observation;
b. Odors, smells, fragrances, or other olfactory stimulus associated with such activities;

c. Light pollution, glare, or brightness that disturbs others.

(3) Use of supplemental carbon dioxide and/or ozone is prohibited.

(4) The cultivation, manufacturing and testing of Marijuana, Hemp or Marijuana or Hemp Products may not occur outside of a building or structure that is secured with a lock or other security device to prevent unauthorized access.

(5) The possession, growing and processing of Marijuana and Hemp plants shall comply with applicable State and local laws, regulations, by-laws and codes.

SECTION 8.38.4 FINES
Any person violating this By-Law shall be fined in the amount of $100 for each violation, except that a person violating Section 8.38.3(1) of this By-Law shall be fined in the amount of $300. Each day of a continuing violation shall count as a separate violation.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 20 seeks to amend the Town's General By-Laws to include a new Article 8.38 pertaining to general marijuana-and hemp-related conduct within the Town and on Town property, much of which is a reflection of State law. This includes a ban on public consumption of marijuana and use of marijuana on public property.

The Advisory Committee recommends FAVORABLE ACTION by a vote of 22–0–0.

BACKGROUND:
Article 20 makes clear that smoking of marijuana will not be permitted on public property, in any private car, public transportation, or town property, and also in places where smoking is otherwise prohibited by local By-Law. It also proposes to regulate personal marijuana and hemp cultivation and manufacturing by prohibiting hazardous extraction methods. Offenders would be assessed a civil fine for willful violations of this By-Law, with additional enforcement for violations for public consumption and open containers.

DISCUSSION:
A unanimous Advisory Committee favored the local enforcement mechanisms proposed in Article 20.

RECOMMENDATION:
By a vote of 22–0–0, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Select Board.

XXX

ARTICLE 21

TWENTY-FIRST ARTICLE
Submitted by: Select Board

To see if the Town will amend Article 10.2 (Prosecutions and Enforcement) of the General By-Laws as follows (additions are in bold underlining):

ARTICLE 10.2
PROSECUTIONS AND ENFORCEMENT

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

DEPARTMENT HEAD	**ARTICLE**	
BUILDING COMMISSIONER		
….	……	
Part VIII-Public Health & Safety	Articles	8.3, 8.6, 8.7, 8.8, 8.9, 8.11, 8.13, 8.14, 8.15, 8.16, **8.37**
DIRECTOR OF HEALTH & HUMAN SERVICES		
….	….	
Part VIII-Public Health & Safety	Articles	8.1, 8.2, 8.3, 8.4, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11, 8.12, 8.13, 8.14, 8.15, 8.16, 8.22, 8.23, 8.32, **8.37, 8.38**
FIRE CHIEF		
Part VIII – Public Health & Safety	**Articles**	**8.37, 8.38**

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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.

SELECT BOARD'S RECOMMENDATION

Article 21 establishes the departmental enforcement responsibilities for the new General By-Laws proposed under articles 18, 19 and 20. Local oversight of marijuana establishments is proposed across multiple code-enforcement Town departments, in the same manner that the Town provides under other licensees such as restaurants, lodging houses, and hotels. The Fire Department is also added in recognition that the THC extraction process can involve hazardous materials and processes utilizing combustible, explosive materials.

The Select Board unanimously voted FAVORABLE ACTION on the following motion:

VOTED: that the Town will amend Article 10.2 (Prosecutions and Enforcement) of the General By-Laws as follows (additions are in bold underlining):

ARTICLE 10.2
PROSECUTIONS AND ENFORCEMENT

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

DEPARTMENT HEAD	**ARTICLE**

BUILDING COMMISSIONER

….	……	
Part VIII-Public Health & Safety	Articles	8.3, 8.6, 8.7, 8.8, 8.9, 8.11, 8.13, 8.14, 8.15, 8.16, **8.37**

DIRECTOR OF HEALTH & HUMAN SERVICES

….	….	
Part VIII-Public Health & Safety	Articles	8.1, 8.2, 8.3, 8.4, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11, 8.12, 8.13, 8.14, 8.15, 8.16, 8.22, 8.23, 8.32, **8.37, 8.38**

FIRE CHIEF

Part VIII – Public Health & Safety	**Articles**	**8.37, 8.38**

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 21 seeks to amend certain sections of Article 10.2 of the Town's General By-Laws designating the Town Departments responsible for enforcement of the proposed new marijuana-related Articles.

The Advisory Committee recommends FAVORABLE ACTION by a vote of 23–0–0.

BACKGROUND:
Article 21 stipulates that the Building Commissioner, The Director of Health and Human Services, and the Fire Chief, or any designees thereof, are responsible for enforcement of the General By-Law amendments proposed in Articles 18, 19 and 20.

DISCUSSION:
While questions of additional staff time that the new marijuana uses would require were unanswered, nevertheless a unanimous Advisory Committee supported the local enforcement provisions proposed in Article 21.

RECOMMENDATION:
By a vote of 23–0–0, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Select Board.

XXX

ARTICLE 22

TWENTY-SECOND ARTICLE
Submitted by: Select Board

To see if the Town will accept the provisions of General Laws Chapter 64N, Section 3, "Local Tax Option," at the maximum rate permitted by law.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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.

ECONOMIC DEVELOPMENT ADVISORY BOARD
REPORT AND RECOMMENATION

During our April 9th meeting, the Economic Development Advisory Board (EDAB) voted in support of Warrant Article 22 (6-0-2).

[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.

The two abstention votes were members that serve and vote on other boards and committees related to this article.

EDAB members fully agreed that if the Town has retail marijuana businesses, we should adopt the highest possible local options tax allowed under State regulation.

SELECT BOARD'S RECOMMENDATION

Article 22 would introduce a new local option tax on the retail sale of recreational marijuana. The article concerns the adoption of the provisions of 2016 General Laws Chapter 64N, Section 3, "Local Tax Option." (which was later revised in 2017 Chapter 55 "An Act to Ensure Safe Access to Marijuana.) This would allow the Town to impose a sales tax of up to 3% on local sales of marijuana products by licensed marijuana retailers operating within the community. This article is intended to follow the additional marijuana related articles in the 2018 Annual Town Meeting.
Section 3 reads as follows:

a) A city or town that accepts this section in the manner provided in section 4 of chapter 4 may impose a local sales tax upon sale or transfer of marijuana or marijuana products by a marijuana retailer operating within the city or town to anyone other than a marijuana establishment at a rate not greater than 3 per cent of the total sales price received by the marijuana retailer as a consideration for the sale of marijuana or marijuana products. The marijuana retailer shall pay the local sales tax imposed under this section to the commissioner at the same time and in the same manner as the sales tax due to the commonwealth.
b) All sums received by the commissioner under this section shall, at least quarterly, be distributed, credited and paid by the treasurer and receiver-general upon certification of the commissioner to each city or town that has accepted this section in proportion to the amount of the sums received in that city or town. Any city or town seeking to dispute the commissioner's calculation of its distribution under this subsection shall notify the commissioner, in writing, not later than 1 year from the date the tax was distributed by the commissioner to the city or town.
c) This section shall take effect in a city or town on the first day of the calendar quarter following 30 days after its acceptance by the city or town or on the first day of a later calendar quarter that the city or town may designate.

The Select Board appreciates the opportunity to generate new revenue. Although the projected sales seem promising, but it is difficult to predict how the sales will be for any recreational retailer located in Brookline. Recreational sales are an unknown market, we have limited knowledge of the supply side or demand based issues, and a close to 20% tax could dissuade consumers (state excise tax, plus the local option). The Board cautioned that the revenue is not accounted for in the FY19 Financial Plan, but that the revenue could be adjusted at the Special Town Meeting in the fall. In the longer term, projected revenue from marijuana sales will help offset budget shortfalls.

A unanimous Select Board voted FAVORABLE ACTION, on May 1, 2018, on the following motion:

VOTED: That the Town of Brookline accept G.L. c. 64N, § 3 to impose an excise on the retail sales of marijuana for adult use at the rate of 3 percent.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 22 seeks to adopt a local tax option on recreational marijuana sales at the maximum rate (3%) permitted by State law, as proposed by the Select Board.

The Advisory Committee recommends FAVORABLE ACTION by a vote of 22–0–1.

BACKGROUND:
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. Brookline is seeking the maximum as permitted by statute.

DISCUSSION:
The Advisory Committee, cognizant of the long-term fiscal outlook for the Town and aware of the need to seek revenue from sources other than property taxes, overwhelmingly supported the maximum local tax option proposed in Article 21. Although currently tax exempt as a Registered Marijuana Dispensary, New England Treatment Access (NETA) stated that their company is anticipated to generate $2-3 million in local tax revenues alone with the conversion to retail use.

RECOMMENDATION:
By a vote of 22–0–1 the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Select Board. The Committee understands that the Select Board will make a new motion explicitly stipulating the 3% maximum tax figure.

XXX

ARTICLE 23

TWENTY-THIRD ARTICLE

Submitted by: Deborah Brown, Anne Greenwald

To see if the Town will change the name of the Edward Devotion School to the Roland B. Hayes School, or other appropriate name consistent with 21st century values and the Town's commitment to diversity and inclusion by September 1, 2018.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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. 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 21th 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.

MOTION TO BE OFFERED BY THE PETITIONERS

Voted: That the Town change the name of the Edward Devotion School to a name to be selected by the School Committee after receiving public input through a process to be determined by the School Committee. Town Meeting hereby requests the Naming Committee to consider the name so selected by the School Committee and make a recommendation to Town Meeting with respect thereto at the 2019 Annual Town Meeting. In the interim, the name of the School shall be Coolidge Corner School.

ADDITIONAL EXPLANATION OFFERED BY THE PETITIONERS

Petitioners submitted the Warrant Article in order to accurately reflect history in its context and to acknowledge that Edward Devotion's name should not rest above a school when applying the Town's and 21st century values. We expect that removing Edward Devotion's name and renaming the School will happen in an open and transparent manner.

Slavery as an institution cruelly dehumanized and discriminated against
people of African Ancestry and Native Americans in our nation. By 1700, leaders like Samuel Sewall were decrying slavery and calling for its abolition in a document called "The Selling of Joseph: A memorial." Despite protestations by Sewall and John Eliot, the abomination continued.

Slavery was legal in Massachusetts from 1638 until around 1800. "The enslavement of Africans began soon after the start of English colonization proving to be the mirror process of Indian removal. The first documented shipment of enslaved Africans arrived in 1638, eighteen years after the Mayflower's journey.

In 1744, upon the death of the second Edward Devotion, his will, executed the year before his death, decreed that any money left over after payment of his debts and funeral expenses and other bequests be used "towards building or maintaining a School as near the centre of the said town as shall be agreed upon by the town." If a site for a new school could not be agreed upon, the money was to be used to purchase a wood lot for use by the town to support the town's school and church. An inventory of his property compiled after his death included land, livestock, household goods, and "one Negrow" valued at 30 pounds. "New England colonists wrote wills when they had an idea that death was approaching, and they wrote with at least one eye looking towards prosperity. Their careful dispersal of their human property underscores how even a single slave could loom large in an owner's understanding of his or her own estate.

The former Devotion land and house on Harvard Street reverted to Devotion's widow Mary upon the failure of Solomon Hill to pay the mortgage on the property in 1762. It was then sold, and the town, as stipulated in the will, received funds. In 1837, these funds were recorded as amounting to $2,281.01. The town added additional funds received from the Federal government, bringing the total amount to just over $4,500.

The Town did not ignore or forget Edward Devotion's gift. As in 1844, the money in the Edward Devotion Fund was allocated toward the construction of the new Brookline Town Hall on Prospect Street, near the location of the current Town Hall. The building contained two rooms used as schoolrooms. Again in 1884, the Town Meeting, apparently considering the use of the funds for the Town Hall not to have fulfilled Devotion's bequest, voted to add $5,000 to the Devotion Fund to be put toward expansion of the Brookline High School on School Street. A large hall in the school was named the Edward Devotion Hall in recognition of Devotion's bequest, and a plaque commemorating his gift was placed in the school. (The plaque was lost when the old Brookline High School was replaced by a new building on Greenough Street in 1893.)

It was not until 1891 that a large portion of the former Edward Devotion property, including the Edward Devotion House, was purchased by the Town from the estate of a later owner, Nahum Smith, for $61,000. The property had passed through several owners after 1762, including William Marshall, Israel Thorndike, and George Babcock.

Finally, or approximately 150 years later in 1892 a new school named the Edward Devotion School was built on the site. (No record of a discussion of the naming at the time has been found.) Other buildings were added in 1898 and 1913. The 1892 and 1898 buildings were later replaced.

In 2006, the Hidden Brookline Committee was established by the Town to bring to light the history of slavery and freedom in Brookline.

In 2012, the Hidden Brookline Committee put forward a warrant article on slavery acknowledging the history and pledging "vigilance against all practices and institutions that dehumanize and discriminate against people." It was the first time since the 18th century that slavery in Brookline was discussed in Brookline Town Meeting. On May 24,

2012, the Town passed the resolution called "A Resolution Regarding Slavery in Brookline."

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.

Moreover, hat is also arguably true about Edward Devotion is that he would not meet today's naming standards. Records do not indicate that Devotion set an example of outstanding citizenship; made an exemplary contribution of time, service, or resources to or on behalf of the community; represents a core value of the school system; and demonstrated lengthy and/or exemplary service to the students of Brookline. Who was he? Edward Devotion collected funds for the church and encouraged people to attend church. He also held for a brief period some public employment. He did value education and he died childless. As described above the Town has recognized Devotion's contributions to the Town, but going forward his contributions will have to be better contextualized. Tools like the yellow historic house; the Hidden Brookline materials and tour, Brookline Historic Commission materials and the School's curriculum provide forums and vehicles for everyone to learn more about Edward Devotion and the Town's history of enslaving Africans and Native Americans.

Knowing what we now know in 2018, it is unconscionable that a Brookline elementary school would continue to be named after a slave-owner, as to do so undermines the core values of equality and mutual respect that our educational system strives to impart to our children, and that form the foundation of our democracy.

Since 2006, the Town of Brookline has grappled with how best to acknowledge the history of slavery and racism in Brookline and to understand its impact on the present. Hidden Brookline has provided a great deal of education and advocacy, but many issues remain. This warrant calls for changing the name of a public school named after a slaveholder, Edward Devotion. Removing Edward Devotion's name from the grade school is the first step.

We are advocating for an open, transparent and robust public involvement process. Finally, no later than March 2019, petitioners will submit a warrant article with a new name for the school that Town meeting will vote to approve or not.

The School Committee will support the Town during this process. The School Committee has established an Ad Hoc Task Force to review the names of all of the buildings and spaces in the Public Schools of Brookline to ensure that they meet the School Committee and the Town's naming criteria. They will solicit feedback from historians and community members, including students, teachers, alumni and citizens at large. They will also review legal aspects of removing a name from a building. The Task Force will present their findings and recommendations to the School Committee and provide a written report by Labor Day 2018, with an interim update to the School Committee in early May 2018. Once the process has been completed, the School Committee will recommend a new name to the Naming Committee.

This entire process will enable the Town to better uphold its stated values by not only removing the name of a slaveholder, but also approving a process and name consistent with our values. Moreover, we can send a message to our students, their parents and the Town's ethnically diverse residents that we are willing to change according to the knowledge we have now. Let us identify the name and values of someone whom all can admire and perhaps even wish to emulate. Finally, let us acknowledge the enormous contributions made by African Americans and other People of Color in building this community and this nation.

SELECT BOARD'S RECOMMENDATION

A report and recommendation by the Select Board under Article 23 will be provided in the Supplemental Mailing. The Board is aware that a potential motion was still in flux when they met on May 1, and will take a position on a finalized motion at their meeting on May 15, 2018.

ADVISORY COMMITTEE'S RECOMMENDATION

RECOMMENDATION:
A report and recommendation by the Advisory Committee on Article 23 will be provided in the Supplemental Mailing.

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ARTICLE 23

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Article 23 is a petitioned article that, as revised, asks Town Meeting to rename the Edward Devotion School to a name chosen by the School Committee after a thorough public process has garnered community input to choose a permanent name for the school. In the interim this article asks Town Meeting to name the School the Coolidge Corner School until that process has been completed and a permanent name can be presented to Town Meeting. At such time the Naming Committee would also be asked for input on the name and make a recommendation in time for the 2019 Annual Town Meeting.

Although the School Committee has formed an Ad Hoc subcommittee on School Names to begin working on the effort to rename the School the Board is appreciative that the revised motion allows a more formal process to inform the name. The Naming Committee reviewed the original article at the beginning of April and recommended referral to the School Committee, via their newly established Ad Hoc Subcommittee on School Names. The Naming Committee guidelines call for a vote from the School Committee before they make a recommendation on such any proposal for the name of a school.

The Board is supportive of this article and notes that the effort to bring the history of Edward Devotion to light has been part of the ongoing efforts of Hidden Brookline, which seeks to acknowledge Brookline's history with slavery and freedom. Hidden Brookline hosts walking tours and has sponsored resolutions at Town Meeting to acknowledge this history. A plaque was installed at the Old Burial Ground to celebrate the African-American enslaved men, women and child buried there. The Board sees this proposal as a continuation of that effort.

The Board supports the revised motion and unanimously voted FAVORABLE ACTION on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:
Warrant Article 23 asks Town Meeting to adopt a resolution that removes the name "Edward Devotion School" from the school currently bearing that name and asks for a robust public process to choose a new permanent name for the school. The Article is based on the premise that a school should not be named after a man who was a slaveholder.

By a vote of 12 in favor, 2 opposed, with 9 abstentions, the Advisory Committee recommends FAVORABLE ACTION on the petitioners' revised Article 23 motion.

BACKGROUND:
In 1744, Edward Devotion, a Brookline resident and slave owner, bequeathed property to the Town for the building of a new school. In 1892 the Edward Devotion School was named in his honor.

It has not been widely known that Edward Devotion was a slaveholder. Despite the proximity of the Edward Devotion House to the school, it appears as if very little attention was paid to him over the years as part of the school's curriculum. (This is often contrasted with the attention shown to Amos A. Lawrence, namesake of the Lawrence School. Many graduates of the Lawrence School cite Lawrence's affiliation with the abolitionist movement as something they know about the history of their school.)

In recent years the Town has begun to pay more attention to the history of slavery in Brookline, establishing the Hidden Brookline Committee in 2006 to examine and bring to light the "hidden histories of slavery and freedom in Brookline." The May 2012 Annual Town Meeting by an overwhelming margin voted Favorable Action on Warrant Article 27, which acknowledged Brookline's history with slavery, called upon the people of Brookline to recognize contributions of Native-Americans and African-Americans, and pledged vigilance against practices and institutions that dehumanize and discriminate against people. It was through the work of the Hidden Brookline Committee that Devotion's slaveholding past came to light.

DISCUSSION:
There was strong support on the Advisory Committee for the spirit of this Warrant Article. Members of the Committee commented on both the ugly quality of slaveholding and the unique roles that schools and school names play in the lives of their students. Although there were members who expressed concern that the totality of Edward Devotion's life was being reduced to that of "slaveholder," most agreed from the supplied testimony that other than making a significant donation to the Town, Devotion was not a particularly distinguished resident and would not likely have qualified under our contemporary criteria for naming.

Opposition to the idea that history was somehow "being rewritten" was expressed, with Committee members pointing out that if this Article passes, there would still be an Edward Devotion House and a Devotion Street in Brookline.

Concerns were raised regarding whether the Article properly followed the process for changing the name of the school. For example, the Article, as submitted, instructed the Naming Committee to hold public hearings to select a name, failing to recognize that school names come from the School Committee. The responsibility of the Naming Committee is to review and report its recommendations on proposals for naming public facilities. It does not have the staff or the resources to organize a process for changing the

name of a school. The School Committee was consulted and has embraced this process, and the Advisory Committee amended the Article accordingly. The revised motion took the form of a resolution that included multiple "whereas" clauses and called upon the School Committee to hold public hearings, obtain public input, and recommend a new school name to the Naming Committee, which would then report to Town Meeting. The proposed resolution, particularly its "whereas" clauses was considered to be an expansion of scope of the Article and an inappropriate hybrid of a motion and a resolution. Thus, with the support of the Moderator, the petitioners are offering a new motion to reflect the Advisory Committee feedback, the Moderator's ruling, and input from the School Committee. The revised motion has been recommended by the Advisory Committee.

RECOMMENDATION:
By a vote of 12–2–9, the Advisory Committee recommends FAVORABLE ACTION on the following motion:

VOTED: That the Town change the name of the Edward Devotion School to a name to be selected by the School Committee after receiving public input through a process to be determined by the School Committee. Town Meeting hereby requests the Naming Committee to consider the name so selected by the School Committee and make a recommendation to Town Meeting with respect thereto at the 2019 Annual Town Meeting. In the interim, the name of the School shall be Coolidge Corner School.

ARTICLE 23

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS RECOMMENDATION

The Commission for Diversity, Inclusion and Community Relations voted unanimously for favorable action for Article 23.

Vote was as follows: 9 in favor, 0 no actions and 0 abstentions.

ARTICLE 23

SUBSTITUTE MOTION OFFERED BY STANLEY SPIEGEL, TMM2

VOTED: That the Town hereby requests that the School Committee propose a new name for the Edward Devotion School after receiving public input through a process to be determined by the School Committee, and hereby requests the Naming Committee to consider the name so selected by the School Committee and make a recommendation to Town Meeting with respect thereto at the 2019 Annual Town Meeting. In the interim, the name of the School shall be the Coolidge Corner School.

ARTICLE 24

TWENTY_FOURTH ARTICLE
Submitted by: David Lescohier, TMM11

To see if the Town will authorize and empower the Select Board, on such date and in such manner as required by the House Clerk, to file a petition for legislation to establish a Brookline Land Bank, which will be considered in the legislative session opening on the first Wednesday in January in the year 2019, provided that the General Court adopts this bill precisely as set forth below. The General Court may make only clerical or editorial changes of form to the bill, unless the Select Board approves amendments to the bill before enactment by the General Court. The Select Board is hereby authorized to approve amendments which shall be within the scope of the general public objectives of this petition.

AN ACT TO ALLOW THE TOWN OF BROOKLINE, THROUGH ITS SELECT BOARD, TO IMPOSE A REAL ESTATE TRANSFER TAX FOR THE BROOKLINE LAND BANK

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. For purposes of this act, the words and phrases set forth in this section shall have the following meanings:

"Affordable housing restriction", a recorded instrument held by a qualified holder which encumbers or restricts a real property interest so that the real property interest is perpetually, or for a term of at least 30 years, limited to use as a residence occupied by a low or moderate income household. However, that a "qualified holder" shall be a governmental body or charitable corporation or trust that qualifies under the terms of chapter 184 of the General Laws to hold an affordable housing restriction complying with the definition and other requirements of said chapter 184.

The "Housing Trust Account" shall refer to a discrete fund or account, established by the Brookline Town treasurer under the provisions Town of Brookline General Bylaws, section 3.13.3.

"Commission", the Brookline Land Bank Commission established in section 3.

"Fund", shall refer to the Brookline Land Bank Fund, established under the provisions of section eight.

"Institutional lender", any bank defined in section one of chapter one hundred and sixty-seven of the General Laws, any insurance company defined in section one of chapter one hundred and seventy-five of the General Laws, and any mortgage company or investment company that made more than twenty mortgages in the calendar year preceding the year of the relevant mortgage for the purposes of subsection (-m-) of section twelve, and any national bank, federal savings and loan association, federal savings bank, bank holding company, or state or federally chartered credit union.

"Land bank", the Brookline Land Bank, established by Section two.

“Land”, shall be construed to include the land and any buildings or other improvements located on such land.

"Purchaser", is the transferee, grantee or recipient of any real property interests.

"Purchase price", all consideration paid or transferred by or on behalf of a purchaser to a seller or his nominee, or for his benefit, for the transfer of any real property interest, and shall include, but not be limited to, all cash or its equivalent so paid or transferred; all cash or other property paid or transferred by or on behalf of the purchaser to discharge or reduce any obligation of the seller; the principal amount of all notes or their equivalent, or other deferred payments, given or promised to be given by or on behalf of the purchaser to the seller or his nominee; the outstanding balance of all obligations of the seller which are assumed by the purchaser or to which the real property interest transferred remains subject after the transfer, determined at the time of transfer, but excluding real estate taxes and other municipal liens or assessments which are not overdue at the time of transfer; the fair market value, at the time of transfer, of any other consideration or thing of value paid or transferred by or on behalf of the purchaser, including, but not limited to, any property, goods or services paid, transferred or rendered in exchange for such real property interest.

"Real property interest", any present or future legal or equitable interest in or to real property, and any beneficial interest therein, including the interest of any beneficiary in a trust which holds any legal or equitable interest in real property, the interest of a partner or member in a partnership or limited liability company, the interest of a stockholder in a corporation, the interest of a holder of an option to purchase real property, the interest of a buyer or seller under a contract for purchase and sale of real property, and the transferable development rights created under chapter 183A of the General Laws; but shall not include any interest which is limited to any of the following: the dominant estate in any easement or right of way; the right to enforce any restriction; any estate at will or at sufferance; any estate for years having a term of less than 30 years; any reversionary right, condition, or right of entry for condition broken; and the interest of a mortgagee or other secured party in any mortgage or security agreement.

"Seller", is the transferor, grantor, or immediate former owner of any real property interests.

"Time of transfer", of any real property interest shall mean, the time at which such transfer is legally effective as between the parties thereto, and, in any event, with respect to a transfer evidenced by an instrument recorded with the appropriate registry of deeds or filed with the assistant recorder of the appropriate registry district, not later than the time of such recording or filing.

“Brookline Housing Advisory Board” shall refer to the board created by the Town of Brookline General Bylaws, section 3.13.1.

“Brookline Public Schools” shall refer to the school system, its property and programs, the Brookline School Committee manage under the terms of MGL Chapter 71.

“Town” shall refer to the Town of Brookline acting by and through the Select Board.

SECTION 2. There is hereby established a Brookline Land Bank, to be administered by a Commission established by section three, for the purpose of acquiring, holding and managing land and interests in land of the types set forth in section five, to acquire, hold, and manage land for the creation of housing which is, affordable to low, moderate and upper-moderate income persons and households and families, to enhance the Brookline Public Schools by the acquisition of land for educational purposes, and to promote economic development by the acquisition of land for development purposes. The land bank is hereby constituted a body politic and corporate and a public instrumentality and the exercise of powers herein conferred upon the land bank shall be deemed to be the performance of an essential governmental function.

SECTION 3. The Brookline Land Bank Commission shall be administered by the Brookline Select Board serving as the Brookline Land Bank Commissioners.

SECTION 4. The Commission shall, subject to the provisions of this act, have the power and authority to (-a-) purchase and acquire fee simple interests, and any lesser interests, in any land in Brookline, of the types set forth in section five, including any improvements thereon; (-b-) accept gifts of any such interests in land, or of funds to further the purposes of the Land bank; (-c-) dispose of all or any portion of its interests in any land or interests thereon held by it, subject to the provisions of Article XCVII (Article 97) of the articles of amendments to the Constitution of Massachusetts to the extent applicable; (-d-) incur debt, pledging the full faith and credit of the town of Brookline only after having been authorized to do so in each instance by a two-thirds vote of a town

meeting of the town of Brookline; (-e-) hire such staff and obtain such professional services as are necessary in order to perform its duties; (-f-) administer, maintain, and manage land and interests in land held by it in a manner which allows public use and enjoyment consistent with the natural and scenic resources thereof; (-g-) lease real property as may be held by the Land bank for purposes consistent with this act; (-h-) finance and construct recreational facilities, subject to the provisions of section six; (-i-) pay funds appropriated by Town Meeting into the Housing Trust Account subject to the terms in section 10 and not subject to the provisions of section six; (-j-) pay funds appropriated by Town Meeting into the Conservation Commission Fund account subject to the terms in section 10; (-k-) expend funds from the Land Bank revolving fund to acquire land for an educational and economic development purposes and meet other Land Bank Commission obligations appropriated by Town Meeting, subject to the terms of section eight, and not subject to the provisions of section six.

SECTION 4A. The Town of Brookline is hereby authorized to appropriate money to be deposited in the Brookline Land Bank Fund as provided in section eight and to provide funds to repay notes of the town issued pursuant to section four C and, when authorized by a two-thirds vote as defined in section one of chapter forty-four of the General Laws, to incur debt of the town for such purposes in accordance with the provisions of clause (3) of section seven of said chapter forty-four.

SECTION 4B. The land bank is hereby empowered to issue its bonds and notes, including notes in anticipation of bonds, for the purpose of acquiring land and interests in land as provided in section four. The proceeds of such bonds or notes may be used to pay, in whole or in part, acquisition costs; to provide reserves for debt service and other expenses; to pay consulting, appraisal, advisory and legal fees and costs incidental to the issuance and sale of such bonds or notes; to purchase, refund or renew bonds or notes previously issued; and to pay any other costs and expenses of the land bank necessary for the accomplishment of its purposes. Bonds or notes issued under this act shall be authorized by the Commission which shall have full power and authority to determine the amount, form, terms, conditions, provisions for the payment of interest and all other details thereof and to provide for their sale and issuance at such price and in such manner as the Commission shall determine, subject only to any limitations set forth in this act. Unless the town of Brookline shall have authorized by a two-thirds vote of a town meeting the pledging of the full faith and credit of the town of Brookline to secure an issue of bonds or notes of the land bank, all bonds or notes issued hereunder shall be payable solely from the taxes and other revenues of the land bank pledged to their payment and shall not be deemed a pledge of the full faith and credit of the town of Brookline, the commonwealth or any political subdivision thereof or therein.

The Commission may enter into any agreements, including without limitation a loan agreement and a trust agreement, necessary to effectuate and to secure any bonds or notes issued by the land bank. Such agreements may pledge or assign, in whole or in part, the revenues and other money held or to be received by the land bank. Such agreements may

contain such provisions for protecting and enforcing the rights, security and remedies of the holders of such bonds or notes, including, without limiting the generality of the foregoing, provisions defining defaults and providing for remedies in the event thereof which may include the acceleration of maturities and covenants setting forth the duties of, and limitations on, the land bank in relation to the custody, safeguarding, investment and application of money, the issuance of additional debt obligations, the use of any surplus proceeds of the borrowing, including any investment earnings thereon, and establishment of special funds and reserves.

The pledge of any such agreement shall be valid and binding and shall be deemed continuously perfected for the purposes of the Uniform Commercial Code from the time when the pledge is made; the revenues, money, rights and proceeds so pledged and then held or thereafter acquired or received by the land bank shall immediately be subject to the lien of such pledge without any physical delivery or segregation thereof or further act; and the lien of any such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the town, irrespective of whether such parties have notice thereof. No document by which a pledge is created need be filed or recorded except in the records of the land bank and no filing need be made under the Uniform Commercial Code.

The trustee with respect to any such trust agreement entered into pursuant to this section shall be a trust company or a bank having the powers of a trust company within the commonwealth. Any such trust agreement may provide that any money received thereunder may be held, deposited or invested by the trustee, notwithstanding the provisions of section eight, pending the disbursement thereof, in any deposits or investments which are lawful for the funds of savings banks and shall provide that any officer with whom or any bank or trust company with which such money shall be deposited shall act as trustee of such money and shall hold and apply the same for the purposes hereof and thereof, subject to such regulation or limitation as this act or such trust agreement may provide.

It shall be lawful for any bank or trust company within the commonwealth to act as depository of the proceeds of bonds or notes, revenues or other money hereunder and to furnish such indemnifying bonds or to pledge such security, if any, as may be required by the Commission. Any trust agreement entered into pursuant to this section may set forth the rights and remedies of the holders of any bonds or notes and of the trustee and may restrict the individual rights of action by any such holders. In addition to the foregoing, any such trust agreement may contain such other provisions as the Commission may deem reasonable and proper. All expenses incurred in carrying out the provisions of such trust agreement may be treated as part of the cost of operation of the land bank and paid from the revenues or other funds pledged or assigned to the payment of the principal of and the premium, if any, and interest on the bonds or notes or from any other funds available to the land bank. In addition to other security provided herein or otherwise by law, bonds or notes issued under this section may be secured, in whole or in part, by insurance or by letters or lines of credit or other credit facilities issued to the land bank by any bank, trust company or other financial institution, within or without the commonwealth, and the land bank may pledge or assign any of its revenues as security for the reimbursement by the

land bank to the issuers of such letters or lines of credit, insurance or credit facilities of any payments made thereunder.

SECTION 4C. If at any time any principal or interest is due or about to come due on any bonds or notes of the land bank to secure which the full faith and credit of the town of Brookline shall have been pledged and funds to pay the same are not available, the Commission shall certify to the town treasurer the amount required to meet such obligations and the town treasurer shall thereupon pay over to the land bank the amount so certified from any funds in the treasury. For the purpose of providing or restoring to the treasury the sums so paid over to the land bank, the town treasurer, with the approval of the Commission, is authorized to incur debt outside the town's debt limit and issue notes therefor for a period not exceeding two years and to renew or refund the same from time to time until the town shall have received from the land bank sufficient funds to repay such notes and the interest thereon in full. Whenever the town shall have been required to pay over any sums of money to the land bank under this section, the land bank shall be precluded from acquiring any additional property, or issuing any of its bonds or notes for purposes other than repaying the town, until the land bank shall have repaid the town in full for all sums paid to the land bank hereunder, including interest on any notes issued for such purpose, unless the town shall have appropriated sufficient funds for such purpose at a town meeting.

SECTION 4D. Bonds and notes issued under the provisions of this act are hereby made securities in which all public officers and public bodies of the commonwealth and its political subdivisions, all insurance companies, trust companies in their commercial departments, savings banks, cooperative banks, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds and notes are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the commonwealth for any purpose for which the deposit of bonds or obligations of the commonwealth is now or may hereafter be authorized by law.

SECTION 4E. Notwithstanding any of the provisions of this act or any recitals in any bonds or notes issued under this act, all such bonds and notes shall be deemed to be investment securities under the Uniform Commercial Code.

SECTION 4F. Bonds and notes may be issued under this act without obtaining the consent of any department, division, Commission, board, bureau or agency of the town of Brookline, except that the full faith and credit of the town of Brookline shall not be pledged for the payment of such bonds or notes unless such pledge shall have been authorized by a two-thirds vote as provided in section four, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required therefor by this act. The validity of and security for any bonds and notes issued by the land bank shall not be affected by the existence or nonexistence of any such consent or other proceedings, conditions or things.

SECTION 4G. The land bank and all its revenues, income and real and personal property used solely by the land bank in furtherance of its public purposes shall be exempt from taxation and from betterments and special assessments and the land bank shall not be required to pay any tax, excise or assessment to or for the commonwealth or any of its political subdivisions. Bonds and notes issued by the land bank, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be exempt from taxation within the commonwealth.

SECTION 5. Land to be acquired and held as part of the land bank, or interests in which are to be so acquired and held, shall be situated in Brookline, and may consist of any of the following types of land and interests therein; (-a-) pond frontage in the form of beaches and adjoining backlands; (-b-) land for pedestrian paths; (-c-) land for future public recreational facilities and use; (-d-) recreation land to protect existing wetlands, future wellfields, and aquifer recharge areas; (-e-) land used or to be used for agricultural purposes; (f) stream banks and adjoining land; (g) land preserved as scenic landscapes or unique environments; (h) land for passive recreational use; (h) land containing wildlife habitat; (i) land for future park facilities and use; and (-j-) land used by a governmental body for a municipal, affordable housing, economic development, or an educational purposes.

SECTION 6. The Commission shall retain any real property interest relating to land consistent with any public, state, regional or local comprehensive land use or development plans affecting the land, which shall include the approval of plans that accommodate proposals by a governmental body for use of the land for a municipal purpose, including conservation, recreation, affordable housing, educational, and economic development.

SECTION 7. The Commission shall produce annually a plan which shall be, as far as possible, consistent with the town master plan and with any regional or town planning relating to the area. The Commission may, from time to time, amend such plan. The plan shall show all real property interests then currently held by the Commission including a description of the use thereof, and all acquisitions, improvements or dispositions of real property interests held by the Commission at any time during the year, including the reasons for such acquisition, improvement or disposition.

SECTION 8. The Commission shall meet its financial obligations, subject to Town Meeting appropriation, by drawing upon a Brookline Land Bank Fund, to be set up as a revolving or sinking account within the treasury of Brookline. Deposits into the fund shall include (-a-) funds appropriated to be deposited into the fund by vote of a Town Meeting of the town of Brookline; (-b-) voluntary contributions of money and other liquid assets to the fund; (-c-) revenues from taxes imposed upon the transfer of real property interests as set forth in section ten occurring after the effective date of this act as set forth in section fifteen, together with payments of interest and penalties under section thirteen; (-d-) proceeds from disposal of real property or interests and; (-e-) funds received from any

federal, state, county, region, district or municipal source. The Commission is further authorized to accept state and federal funds to carry out the purposes of this Act as if the Commission were in fact a district, city, town, region, county, state, or state agency within the meaning of legislation authorizing any grant consistent with the purposes of this Act. All expenses lawfully incurred by the Commission in carrying out the provisions of this act shall be evidenced by proper vouchers and shall be paid by the treasurer only upon submission of warrants duly approved by the Commission. The treasurer shall prudently invest available assets of the fund, and all income thereon shall accrue to the fund. Real property held in the name of the Brookline land bank or its designee shall be exempt from property taxes as of the date of the acquisition of title by the Brookline land bank or its designee; and any taxes assessed against such real property interests shall be abated for that portion of any fiscal year during which the real property interests was owned by the Brookline land bank or its designee.

SECTION 9. (a) The Commission shall keep a full and accurate account of its actions including a record as to when, from or to whom, and on what account money has been paid or received relative to this act, and as to when, from and to whom and for what consideration real property interests have been acquired, improved, or disposed of.

The treasurer shall keep a full and accurate account stating when, from or to whom, and on what account money has been paid or received relative to the activities of the Commission and the land bank.

(b) Schedules of beneficiaries of trusts, list of stockholders of corporations and lists of partnerships filed with the Commission for the purpose of determining or fixing the amount of the tax imposed under section ten or for the purpose of determining the existence of any exemption under section twelve shall not be public records for the purposes of section ten of chapter sixty-six of the General Laws.

SECTION 10. There is hereby imposed a tax, equal to a percentage not to exceed 1%, determined by the Commission, effective July 1 of each year, based on a due analysis of the financial requirements and condition of the fund and after a public hearing, of the purchase price upon the transfer of any real property interest in any real property situated in Brookline. Said tax shall be the liability of the purchaser of such real property interest, and any agreement between the purchaser and the seller or any other person with reference to the allocation of the responsibility for bearing said tax shall not affect such liability of the purchaser. The tax shall be paid to the Commission, or its designee, and shall be accompanied by a copy of the deed or other instrument evidencing such transfer, if any, and an affidavit signed under oath or under the pains and penalties of perjury by the purchaser or his legal representative, attesting to the true and complete purchase price and the basis, if any, upon which the transfer is claimed to be exempt in whole or in part from the tax imposed hereby. The Commission, or its designee, shall promptly thereafter execute and issue a certificate indicating that the appropriate tax has been paid or that the transfer is exempt from the tax, stating the basis for the exemption. The register of deeds for Norfolk county, and the assistant recorder for the registry district of Norfolk county,

shall not record or register, or receive or accept for recording or registration, any deed, except a mortgage deed, to which has not been affixed such a certificate executed by the Commission or its designee. Failure to comply with this requirement shall not affect the validity of any instrument. The Commission shall deposit all taxes received hereunder with the Town treasurer. The treasurer shall, in accordance with Town Meeting appropriation, allocate such funds from the Brookline Land Bank revolving fund as follows: a portion in the Housing Trust Account administered by the Brookline Housing Advisory Board, a portion for acquisition of land for an educational purpose, a portion in the Conservation Commission Fund for the purchase of land/other interests in real estate and other conservation purposes, a portion for the purchase of land for economic development, and the remainder in the Land Bank Fund Account established in section eight for other municipal purposes. The Lank Bank Commissioners shall recommend allocations to Town Meeting annually, to be effective on July 1. The Brookline Land Commission is hereby granted the discretionary authority, to recommend allocations in any given year, after due analysis of the best interest of the Town, aiming to keep overall allocations equitable and balanced as circumstances require and permit, after a public hearing. The tax imposed hereunder shall be due simultaneously with the time of transfer of the transfer upon which it is imposed.

Notwithstanding the foregoing, whenever there is a conveyance of real property interests and a conveyance of personalty related thereto at or about the same time, the allocations of payments between real estate and personalty agreed to by the purchaser and seller shall not determine the amount of the tax due pursuant to this section; instead, the Commission may require payment of the tax referred to in real property interests so conveyed as determined by the Commission.

SECTION 11. At any time within seven days following the issuance of the certificate of payment of the tax imposed by section ten, the purchaser or his legal representative may return said certificate to the Commission or its designee for cancellation, together with an affidavit signed under oath or under the pains and penalties of perjury that the transfer, with respect to which such certificate was issued, has not been consummated, and thereupon the tax paid with respect to such transfer shall be forthwith returned to the purchaser or his legal representative.

SECTION 12. The following transfers of real property interests shall be exempt from the tax established by section ten. The burden of proof that any transfer hereunder is exempt belongs to the purchaser, except as otherwise provided. Any otherwise exempt transfer shall not be exempt in the event that such transfer, by itself or as part of a series of transfers, was made for the primary purpose of evading the tax imposed by section 10.

(-a-) Transfers to the government of the United States, the commonwealth, and any of their instrumentalities, agencies or subdivisions are exempt.

(-b-) Transfers which, without additional consideration, confirm, correct, modify or supplement a transfer previously made.

(-c-) Transfers made as gifts without consideration. In any proceeds to determine the amount of any tax due hereunder, it shall be presumed that any transfer for consideration of less than fair market value of the real property interests transferred was made as a gift without consideration to the extent of the difference between the fair market value of the real property interests transferred and the amount of consideration claimed by the purchaser to have been paid or transferred, if the purchaser shall have been at the time of transfer the spouse, the lineal descendant, or the lineal ancestor of the seller, by blood or adoption, and otherwise it shall be presumed that consideration was paid in an amount equal to the fair market value of the real property interests transferred, at the time of transfer.

(-d-) Transfer to the trustees of a trust in exchange for a beneficial interest received by the seller in such trust; distributions by the trustees of a trust to the beneficiaries of such trust.

(-e-) Transfers by operation of law without actual consideration, including but not limited to transfers occurring by virtue of the death or bankruptcy of the owner of a real property interest.

(-f-) Transfers made in partition of land and improvements thereto, under chapter two hundred and forty-one of the General Laws.

(-g-) Transfers to any charitable organization as defined in clause Third of section five of chapter fifty-nine of the General Laws, or any religious organization, provided that the real property interests so transferred will be held by the charitable or religious organization solely for its public charitable or religious purposes.

(-h-) Transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee, and transfers of the property subject to a mortgage to the mortgagee in consideration of the forbearance of the mortgagee from foreclosing said mortgage.

(-i-) Transfers made to a corporation or partnership or limited liability company at the time of its formation, pursuant to which transfer no gain or loss is recognized under the provisions of section three hundred and fifty-one or seven hundred and twenty-one of the Internal Revenue Code of 1986, as amended; provided, however, that such transfer shall be exempt only in the event that (i) with respect to a corporation, the transferor retains an interest in the newly formed corporation which is equivalent to the interest the transferor held prior to the transfer, or (ii) with respect to a partnership or limited liability company, the transferor retains after such formation rights in capital interests and profit interests within such partnership or limited liability company which are equivalent to the interest the transferor held prior to the transfer.

(-j-) Transfers made to a stockholder of a corporation in liquidation or partial liquidation of the corporation, and transfers made to a partner of a partnership or to a member of a limited liability company in dissolution or partial dissolution of the partnership or limited liability company; but the transfer shall be exempt only if (i) with respect to a corporation, the transferee receives property, including real property interests and other property received, which is the same fraction of the total property of the transferor corporation as the fraction of the corporation's stock owned by the transferee prior to the transfer, or (ii) with respect to a partnership or limited liability company, the transferee receives property, including real property interests and other property received, which is the same fraction of the property of the partnership or limited liability company

as the fraction of the capital and profit interests in the transferor formerly owned by the transferee.

(-k-) Transfers consisting of the division of marital assets under the provisions of section thirty-four of chapter two hundred and eight of the General Laws or other provisions of law are exempt.

(-l-) Transfers of property consisting in part of real property interests situated in Brookline and in part of other property interests, to the extent that the property transferred consists of property other than real property situated in Brookline; provided that the purchaser shall furnish the Commission with such information as it shall require or request in support of the claim of exemption and manner of allocation of the consideration for such transfers.

(-m-) An amount determined by the Land Bank Commission, effective July 1 of each year, after due analysis of the range of real estate prices and after a public hearing and in no event less than $500,000 of the purchase price of a transfer made to a purchaser as defined in section (1) when the purchaser shall make the real property interest which is the subject of the transfer the purchaser's actual domicile within 1 year of the time of transfer, and shall remain permanently or for an indefinite time and without any certain purpose to return to a former place of abode. In the event of a later transfer within 5 years of the transfer exempted from the tax under this paragraph, other than the transfer of a mortgage to an institutional lender, the tax exempted shall become due, together with the accumulated interest and penalties, and in addition to any tax otherwise due as a result of the later transfer. The purchaser shall certify as to the foregoing, and the Commission shall attach to the deed a certificate which shall recite the fact that there is running with the land a lien equal to the amount of the tax exempted plus accumulated interest and penalties until such time as all conditions of this subsection have been met.

(-n-) Transfers of minority interests in corporations, trusts, partnerships, or limited liability companies that are publicly traded, which trades are not part of a series of transfers which together constitute a transfer of control of a corporation, trust, partnership or limited liability company.

(-o-) Transfer of a real property interest that is subject to and used consistent with an affordable housing restriction; provided, however, that the affordable housing restriction has a term remaining at the time of the transfer of not less than 5 years; and provided further, that the purchaser shall make the real property interest, that is the subject of the transfer, the purchaser’s actual domicile within 2 years of the time of transfer and shall remain permanently or for an indefinite time and without any certain purpose to return to a former place of abode for a period lasting not less than the fifth anniversary of the transfer. Notwithstanding this paragraph, if the real property interest is transferred again within 5 years and the later transfer complies with this paragraph, a tax, interest or penalty shall not be due. If the holder of an affordable housing restriction determines within 5 years of the transfer that the real property interest to which it pertains is not being used consistent with the requirements of the affordable housing restriction or if a later transfer within 5 years does not comply with this paragraph, the tax exempted hereunder shall become due, together with the accumulated interest and penalties calculated from the date of the transfer exempted hereunder. The purchaser shall certify as to the foregoing and the Commission shall attach to the deed a certificate that shall recite the fact that there is

running with the land a lien equal to the amount of the tax exempted plus accumulated interest and penalties until such time as all conditions of this paragraph have been met.

(-p) Transfer of a real property interest when a purchaser provides evidence that the purchaser's actual domicile at the time of transfer and for at least five years prior to transfer has been in the Town of Brookline, provided that the purchaser shall make the real property interest, that is the subject of the transfer, the purchaser's actual domicile within 2 years of the time of transfer and shall remain permanently or for an indefinite time and without any certain purpose to return to a former place of abode for a period lasting not less than the fifth anniversary of the transfer. Notwithstanding this paragraph, if the real property interest is transferred again within 5 years and the later transfer complies with this paragraph, a tax, interest or penalty shall not be due.

SECTION 13. A purchaser who fails to pay all or any portion of the tax established by section ten on or before the time when the same is due shall be liable for the following additional payments in addition to said tax:

(-a-) Interest: The purchaser shall pay interest on the unpaid amount of the tax to be calculated from the time of transfer at a rate equal to fourteen per cent per annum.

(-b-) Penalties: Any person who, without fraud or willful intent to defeat or evade a tax imposed by this chapter, fails to pay all or a portion of the tax within thirty days after the time of transfer, shall pay a penalty equal to five per cent of the outstanding tax as determined by the Commission for each month or portion thereof thereafter that the tax is not paid in full; provided, however, that in no event shall the amount of any penalty imposed hereunder exceed twenty-five per cent of the unpaid tax due at the time of transfer. Whenever the Commission determines that all or a portion of a tax due under this chapter was unpaid due to fraud with intent to defeat or evade the tax imposed by this chapter, a penalty equal to the amount of said tax as determined by the Commission shall be paid by the purchaser in addition to said tax.

SECTION 14. (-a-) The Commission shall notify a purchaser by registered or certified mail of any failure to discharge in full the amount of the tax due under this Act and any penalty or interest assessed. The Commission shall grant a hearing on the matter of the imposition of said tax, or of any penalty or interest assessed, if a petition requesting such hearing is received by the Commission within thirty days after the mailing of said notice. The Commission shall notify the purchaser in writing by registered or certified mail of its determination concerning the deficiency, penalty or interest within fifteen days after said hearing. Any party aggrieved by a determination of the Commission concerning a deficiency, penalty or interest may, after payment of said deficiency, appeal to the district or superior court within three months after the mailing of notification of the determination of the Commission. Upon the failure to timely petition for a hearing, or appeal to said courts, within the time limits hereby established, the purchaser shall be bound by the terms of the notification, assessment or determination, as the case may be, and shall be barred from contesting the tax, and any interest and penalty, as determined by the Commission. All decisions of said courts shall be appealable. Every notice to be given under this section

by the Commission shall be effective if mailed by certified or registered mail to the purchaser at the address stated in a recorded or registered instrument by virtue of which the purchaser holds any interest in land, the transfer of which gives rise to the tax which is the subject of such notice; and if no such address is stated or if such transfer is not evidenced by an instrument recorded or registered in the public records in Brookline, such notice shall be effective when so mailed to the purchaser in care of any person appearing of record to have a tax interest in such land, at the address of such person as set forth in an instrument recorded or registered in Brookline.

(-b-) All taxes, penalties and interest required to be paid pursuant to this chapter shall constitute a personal debt of the purchaser and may be recovered in an action of contract or in any other appropriate action, suit or proceeding brought by the Commission; said action, suit or proceeding shall be subject to the provisions of chapter two hundred and sixty of the General Laws.

(-c-) If any purchaser liable to pay the tax established by this act neglects or refuses to pay the same, the amount, including any interest and penalty thereon, shall be a lien in favor of the Commission upon all property and rights to property, whether real or personal, belonging to such purchaser. Said lien shall arise at the time of transfer and shall continue until the liability for such amount is satisfied. Said lien shall in any event terminate not later than six years following the time of transfer. Said lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor unless notice thereof has been filed by the Commission (-a-) with respect to real property or fixtures, in the registry of deeds for Norfolk county, or (-b-) with respect to personal property, in the office in which a security or financing statement or notice with respect to the property would be filed in order to perfect a nonpossessory security interest belonging to the person named in the relevant notice, subject to the same limitations as set forth in section fifty of chapter sixty-two C of the General Laws.

In any case where there has been a refusal or neglect to pay any tax, interest or penalties imposed by this act, whether or not levy has been made, the Commission, in addition to other

modes of relief, may direct a civil action to be filed in a district or superior court of the commonwealth to enforce the lien of the Commission under this section with respect to such liability or to subject any property of whatever nature, of the delinquent, or in which he has any right, title or interest, to the payment of such liability.

The Commission may issue a waiver or release of any lien imposed by this section. Such waiver or release shall be conclusive evidence that the lien upon the property covered by the waiver or release is extinguished.

SECTION 14A. Upon termination or dissolution of the land bank, the title to all funds and other properties owned by it which remain after payment or the making of provision for payment of all bonds, notes and other obligations of the land bank shall vest in the town of Brookline.

SECTION 14B. This act, being necessary for the welfare of the town of Brookline and their inhabitants, shall be liberally construed to effect the purposes hereof.

SECTION 14C. The provisions of this act are severable, and if any provision hereof, including without limitation any exemption from the tax imposed hereby, shall be held invalid in any circumstances such invalidity shall not affect any other provisions or circumstances. This act shall be construed in all respects so as to meet all constitutional requirements. In carrying out the purposes and provisions of this act, all steps shall be taken which are necessary to meet constitutional requirements whether or not such steps are required by statute.

SECTION 14D. If the Commission has determined that a tax is due by asserting the application of the evasion of tax doctrine described in section 12, then the transferee shall have the burden of demonstrating by clear and convincing evidence as determined by the Commission that the transfer, or series of transfers, possessed both: (i) a valid, good faith business purpose other than avoidance of the tax set forth in section 10 and (ii) economic substance apart from the asserted tax avoidance benefit. In all such cases, the transferee shall also have the burden of demonstrating by clear and convincing evidence as determined by the Commission that the asserted non-tax-avoidance business purpose is commensurate with the amount of the tax pursuant to section 10 to be thereby avoided.

SECTION 15. Upon the passage of this special law, the act shall become effective by vote of a referendum of Brookline voters at the next regular municipal or state election. The town clerk or the state secretary shall place it on the ballot in the form of the following question: “Shall this town accept this special law?” The question shall set forth a fair, concise summary and purpose of the law to be acted upon, as determined by the town counsel, including in said summary the maximum allowable percentage of the real estate transfer tax to be imposed. If a majority of the voters voting on said question vote in the affirmative, then its provisions shall take effect in Brookline, but not otherwise.

or act on anything relative thereto.

PETITIONER’S ARTICLE DESCRIPTION

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).

	2010	2030 (Status Quo – Strong Model)	Average Annual Growth Rate
Population	58,732	65,951 – 69,110	0.58% - 0.82%
Housing Units	26,448	28,974 – 30,238	0.46% - 0.68%

(ftp://ftp.mapc.org/projections/Municipal PDF Reports/Brookline.pdf)

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.

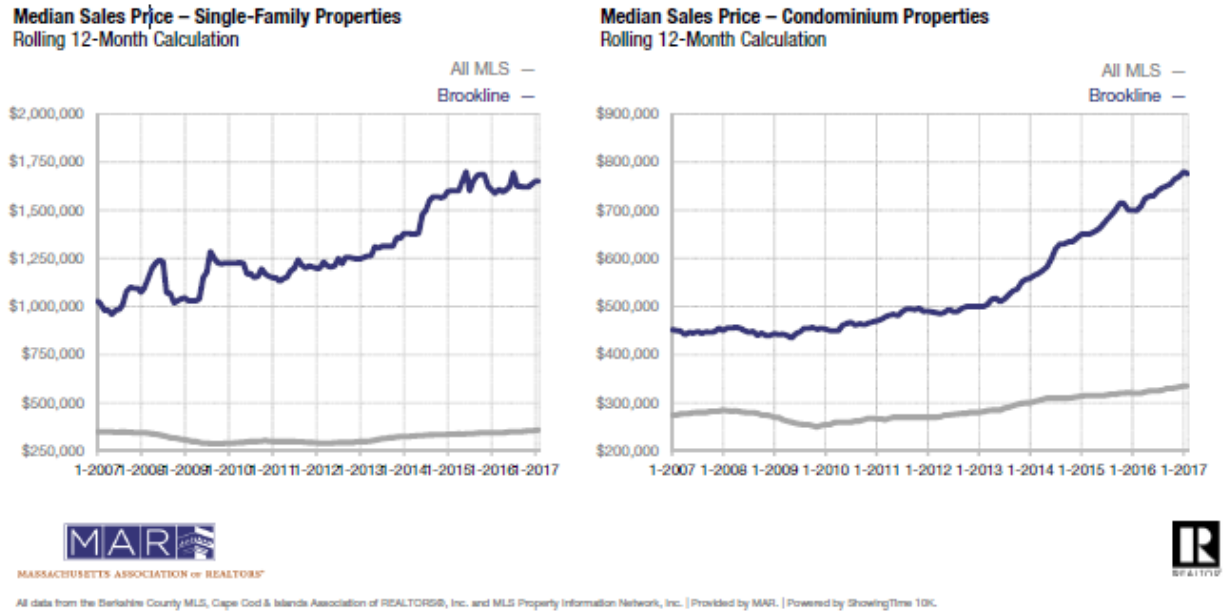
Many in Brookline are understandably concerned about the impact of increasing our tax burden. The BLB is not an override and will not increase property tax levy. It will not increase the automobile excise tax, the meals tax, the hotel occupancy tax, or other recurring taxes. It will not increase fees 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 $0.01per $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) (See "A Brookline Example", below)

Table 2. Brookline Real Estate Trends



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:

- Michigan (2004)

- 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

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

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.

May 22, 2018 Annual Town Meeting

24-22

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

	Community Preservation Act	Brookline Land Bank
4.1 Governance	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.	The Select Board
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	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)

	preserve. (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)
4.4 Community Housing	Housing for individuals and households with low and moderate incomes, including housing for seniors. (Acquisition, Creation, Preservation, Support, Rehabilitation, & 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 https://community-wealth.org/strategies/panel/clts/index.html) (Acquisition & Creation)
4.5 Public Schools and Commercial Development	n/a	Land for use by a governmental body for a municipal educational purpose or to foster economic development using public land trust, etc. (Acquisition & Creation)
4.6 Historic Resources	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, & Restoration)	n/a
4.7 Taxation	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.)	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.

4.8 State Matching Funds	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.	n/a
4.9 Exemptions	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.	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 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.
4.10 Funding Allocation Limits	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 & 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.	A portion for affordable housing, for education, for open space, or for economic development. Transfers to Conservation Commission, and Housing Fund accounts are allowable. No cap on administration. Hiring of personnel and maintenance and care of acquired open space is allowable. The BLB Commissioners have the power to set policies and guidelines regarding the BLB funding allocation criteria, framework, and proposal evaluation practices, consistent with the Brookline Comprehensive Plan, the Open Space

		Plan, the Housing Production Plan, the Major Parcel & Strategic Asset Plan, and other relevant documents, plans, and recommendations.
4.11 Project Approval Processes	CPC solicits and considers project proposals in coordination with the relevant departments & 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.
4.12 Hearings	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.
4.13 Potential Relief for the Brookline Capital Improvement Program (CIP) Budget	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 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.	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.
4.14 Impact on Property Tax Overrides	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.
4.15 Financial Impact	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.)

4.16 Final Acceptance	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.
4.17 Termination Requirements	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.
4.18 Administration	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 Meeting.
4.19 BLB Financial Policies and Fund Flow	n/a	(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.
4.20 Revenue Estimates	Assumes a 3% sur-charge, (Brookline Town Meeting	Assumes a 1% RETT rate, (Personal communication,

(Totals for CPA include state matching.)	$100,000 exemption, low income exemption.	Combined Reports, May 2006)		$500,000 exemption.	Gary McCabe, Assessor 2017)
	2007	$3.2 m			
	2008	$6.5 m		2007	$3.8 m
	2009	$6.0 m		2008	$2.3 m
	2010	$5.0 m		2009	$4.2 m
	2011	$5.3 m		2010	$3.6 m
	2012	$5.5 m		2011	$2.8 m
	2013	$1.6 m		2012	$4.5 M
				2013	$5.7 m
				2014	$5.8 m
				2015	$7.2 m
				2016	$7.0 m

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

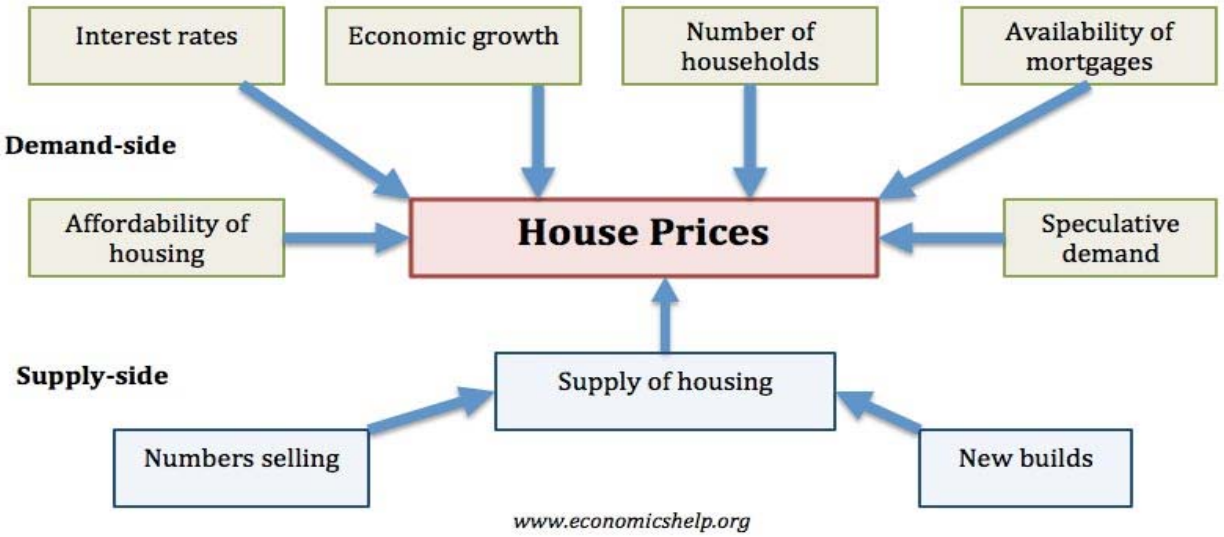
National Association of Realtors	Brookline Land Bank
5.1 The RETT is regressive.	BLB shifts the RETT burden to more expensive properties, making it more progressive because it exempts at least the first $500,000 of the sale price. Furthermore, lower income owners tend to stay put while more affluent owners move more frequently. (Sexton 2010) Also, the BLB exempts buyers who buy another property within Brookline.
5.2 The RETT is discriminatory because it is assessed against one asset, real estate, not other assets.	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 infrastructure maintenance and investment that, clearly, has added substantially to the sale price and value of the property. (Bahl 2010)
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)

Chart 1. A Simple Model of the Real Estate Market



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 Treasurer. 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)

American Land Title	ALTA Settlement Statement - Combined

File No./Escrow No.:	**Title Company Name**	Title Company Logo
Print Date & Time:	**ALTA Universal ID**	
Officer/Escrow Officer:	**Title Company Address**	
Settlement Location:		

Property Address:	1123 Derby Street, Brookline, MA 02446
Buyer:	James and Jane Silver
Seller:	Daniel and Deborah Henry
Lender:	Cash Only
Settlement Date:	1-Jul-18
Disbursement Date:	1-Jul-18
Additional dates per state requirements:	

Seller	Description	Borrower/Buyer

Debit	Credit		Debit	Credit
		Financial		
	$ 900,000.00	Sales Price of Property		$ 900,000.00
		Personal Property		
$ 90,000.00		Deposit including earnest money	$ 90,000.00	
		Loan Amount		
		Existing Loan(s) Assumed or Taken Subject to _____		
		Seller Credit		
		Excess Deposit		
		Cash Payment of Balance Due for Purchase	$ 810,000.00	
		Prorations/Adjustments		
		School Taxes from (date) to (date)		
		County Taxes from (date) to (date)		
		HOA dues from (date) to (date)		
		Seller Credit		
		Loan Charges to (lender co.)		
		Points		
		Application Fee		$ 400.00
		Origination Fee		
		Underwriting Fee		
		Mortgage Insurance Premium		
		Prepaid Interest		
		Other Loan Charges		
		Appraisal Fee to _____		$ 765.00
		Credit Report Fee to _____		$ 100.00
		Flood Determination Fee to _____		$ 9.00
		Flood Monitoring Fee to _____		
		Tax Monitoring Fee to _____		$ 125.00
		Tax Status Research Fee to _____		$ 11.00
		Impounds		
		Homeowner's Insurance___mo @ $_____/mo		
		Mortgage Insurance____mo @ $_____/mo		$ 86.00
		City/town taxes_____mo @ $_____/mo		
		County Taxes_____mo @ $_____/mo		
		School Taxes_____mo @ $_____/mo		
		Aggregate Adjustment		
		Title Charges & Escrow / Settlement Charges		

		Owner's Title Insurance ($ amount) to ____		$ 2,475.00
		Owner's Policy Endorsement(s) ____		
		Loan Policy of Title Insurance ($ amount) to _____		
		Loan Policy Endorsement(s) _____		
		Title Search to _____		
		Insurance Binder to _____		
		Escrow / Settlement Fee to _____		
		Notary Fee to _____		
		Signing Fee to _____		
		Commission		
$ 45,000.00		Real Estate Commission to _____		
		Real Estate Commission to _____		
		Other		
		Government Recording and Transfer Charges		
$ 75.00		Recording Fees (Deed) to __		$ 250.00
		Recording Fees (Mortgage/Deed of Trust) to _____		$ 25.00
		Recording Fees (Other) to ____		$ 100.00
		Transfer Tax to Land Bank_____		$ 4,000.00
$ 4,105.00		Transfer Tax to State Tax_____		
		Payoff(s)		
		Lender: Payoff Lender Co.		
		Principal Balance ($ amount)		
		Interest on Payoff Loan ($ amount/day)		
		Additional Payoff fees/Reconveyance Fee/Recording Fee/Wire Fee		
		Lender: Payoff Lender Co.		
		Principal Balance ($ amount)		
		Interest on Payoff Loan ($ amount/day)		
		Additional Payoff fees/Reconveyance Fee/Recording Fee/Wire Fee		
		Miscellaneous		

		Pest Inspection Fee to _____		
		Survey Fee to _____		
		Homeowner's insurance premium to ____		
		Home Inspection Fee to _____		
		Home Warranty Fee to _____		
		HOA dues to _____		
		Transfer fee to Management Co.		
		Special Hazard Disclosure		
		[Utility] Payment to _____		
		Assessments		
		School Taxes		
		City/town taxes		
		County Taxes/County Property taxes		
		Buyer Attorney fees to _____		$650.00
$650.00		Seller Attorney fees to _____		
Seller			**Borrower/Buyer**	
Debit	**Credit**		**Debit**	**Credit**
$ 139,830.00	$ 900,000.00	**Subtotals**	$ 900,000.00	$ 908,996.00
		Due From/To Borrower		$ 8,996.00
	$ 760,170.00	Due From/To Seller		
	$ 760,170.00	**Totals**		$ 8,996.00

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

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

References

Boston 2030. 2014. https://www.boston.gov/sites/default/files/boston2030_executive_summary.pdf

Bahl R, J Martinez-Vasquez, J Youngman. 2010. Whither the Property Tax: New Perspectives on a Fiscal Mainstay. in Bahl, R; Martines-Vasquez, J; Youngman, J eds. *Challenging the Conventional Wisdom on the Property Tax*. Lincoln Institute of Land Policy, Cambridge, MA.

Been V. 2005. Impact fees and housing affordability. *Cityscape: A Journal of Policy Development and Research*, 8(1):139-185.

Brookline Community Foundation. 2012. *Understanding Brookline: A Preliminary Report from the Brookline Community Foundation*. Brookline, MA.

Brookline Town Meeting Combined Reports: May 2002, November 2005

Brookline Public Schools. 2017. *2017 Preliminary Enrollment Projection: Public Schools of Brookline, MA.*

Center for Community Progress. 2018. http://www.communityprogress.net/land-bank-faq-pages-449.php
Combined Reports. ATM 2006. Report of the Community Preservation Act Study Committee May 5, 2006: Executive Summary.
Deskins J. 2010. Measuring the Behavioral Responses to the Property Tax. in Bahl R; Martines-Vasquez J; Youngman J eds. *Challenging the Conventional Wisdom on the Property Tax*. Lincoln Institute of Land Policy, Cambridge, MA.
Graves E. 2013. Modern Land Banking: Can it Work in Southern New England? *Federal Reserve Bank of Boston* Summer 2013.
Green R, S Malpezzi, S Mayo. 2005. Metropolitan-specific estimates of the price elasticity of supply of housing, and their sources. *American Economic Review*, 95(2):334-339.
Hensold B, C Freda, J Kollar, E Halvorsen, J Akbar, K Talente. *Brookline Strategic Asset Plan & Major Parcel Study*. Sasaki Consulting and RKG Associates. November 2017. (http://www.brooklinema.gov/1313/Strategic-Asset-Plan)
Lewinski, D., et. al. 2015. Open Space in Detroit: Key Ownership and Funding Considerations to Inform a Comprehensive Open Space Planning Process. *Center for Community Progress Report to Detroit Future City Implementation Office*. Center for Community Progress, Washington D.C.
National Association of Realtors. 2003. *Potential Impacts of Increases in Real Estate Transfer Taxes*. A Report from the Research Division of the National Association of Realtors.
Pehlke L, L Koff. 2013. *Brookline's Changing Households and Census Data Relevant to School Enrollments*. Brookline Community Foundation, Brookline, MA.
MAPC. 2017. http://www.mapc.org/wpcontent/uploads/2017/08/MAPCprojections_regional_1_14_2014-1.xlsx
McCabe G. 2017, 2018. Estimated Transfer Tax Revenue @ 1% Rate and estimated property tax rate redistribution impact. Personal Communication.
Sexton T. 2010. Taxing Property Transactions versus Taxing Property Ownership in Bahl R; J Martines-Vasquez; Youngman J eds. *Challenging the Conventional Wisdom on the Property Tax*. Lincoln Institute of Land Policy, Cambridge, MA.
Semuels A. 2015. Affordable Housing, Always. *The Atlantic*, July 6, 2015.
Split Rock Real Estate. 2017. What is The Martha's Vineyard Land Bank? *Split Rock Real Estate: Exclusive Representation FOR BUYERS ONLY with Over Two Decades of Martha's Vineyard Real Estate Knowledge and Experience*. http://splitrockre.com/marthas-vineyard-land-bank.shtml
Thaler R, C Sunstein. 2009. *Nudge: Improving Decisions About Health, Wealth, and Happiness.* Penguin Books.

Thornberg T, J Levine, V Kaluderovic. 2012. Transfer Taxes in the City of Los Angeles: An Empiracal Economics Analysis. Beacon Economics. in M Santana and G Miller. *Documentary Transfer Tax Ballot Measure*. City of Los Angeles. 2012.
Witten, J. *Adult Supervision Required: The Commonwealth of Massachusetts's Reckless Adventures with Affordable Housing and the Anti-Snob Zoning Act.* Boston College Environmental Affairs Law Review, Vol. 32, Issue 2, 2008.
Zieper M. 2010. The Massachusetts Community Preservation Act in Levitt, J, ed. in *Conservation Capital in the Americas.* Lincoln Institute of Land Policy, Cambridge, MA.

PLANNING BOARD REPORT AND RECOMMENDATION

Warrant Article 24 proposes to impose a real estate transfer tax of up to 1 percent on the purchase of real property to be transferred into a Transfer Tax Revolving Fund, or Land Fund. Land Fund monies will then be able to be deposited, when appropriated by Town Meeting, to the Housing Trust Fund, a Conservation Commission fund or for the purchase of land for public use or parks.

Although the Board feels that the specifics of the tax levy would be more aptly analyzed by other Town groups better suited to address finances, the Board did express concern that the proposed number of tax exemptions is too high and unnecessarily adds to the complexity of the taxing mechanism. The Board would particularly like to see exemptions (v) and (x) removed so as to not give undue preference to current Brookline residents.

The Planning Board supports the opportunity to establish a mechanism for allocating funds for increasing open and recreational space, creating affordable housing, and acquiring land for public purposes. The Board has consistently shared these common goals and emphasized them in the Capital Improvement Plan which it approves annually. Through its public meetings where it reviews zoning applications and major projects, the Board regularly sees the demand for new housing, businesses and schools and proposals for the development and intensification of parcels throughout the Town. The Board recognizes the Town's need to prioritize public and municipal amenities and goals as growth in Brookline continues and our existing facilities become insufficient.

The Planning Board recently completed a Major Parcel Study, an initiative that brought in consultants to catalog major public and private land parcels across the Town. The study sought to understand the intent of current owners and consider potential scenarios for these parcels' futures based on market and zoning conditions, including how they could potentially be utilized by the Town to meet existing needs. The Board would like to see the Major Parcel Study used as a framework to guide the future appropriation of land through this new fund to ensure that any actions made are aligned with the goals of the study. One of the key recommendations of the Major Parcel Study was the development of a Land Bank. This proposal is a means of implementing that recommendation that is clearly within the Town's ability to achieve.

In 2006, the Planning Board issued a report in favor of Warrant Article 9 that put forth a resolution to move forward with steps to implement the Community Preservation Act (CPA). This prior recommendation cited the Board's support of creating additional financial support for the goals of the CPA which include increasing affordable housing and open and recreational space, and preserving the historic character of the Town. The Board supports this article as a Brookline-specific alternative to the CPA with goals that are well-aligned with the needs of the Town.

Therefore, the Planning Board recommends FAVORABLE ACTION by a vote of 4-0, with 3 abstentions, on Article XXIV as submitted.

SELECT BOARD'S RECOMMENDATION

A report and recommendation by the Select Board under Article 24 will be provided in the Supplemental Mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Warrant Article 24, initiated by a citizen petitioner, proposes to authorize the Select Board to file a home rule petition for legislation that would establish a Brookline Land Bank, which would impose a real estate transfer tax on each property transaction to fund land or building acquisitions for Town use, affordable housing needs, conservation and open space, educational uses, and economic development. During the course of the Advisory Committee's review, it became clear that the proposal was extraordinarily complex and that the basic question of the impact of a real estate transfer tax deserved further analysis.

The petitioner, with the Moderator's agreement, has decided to offer a resolution to urge the Select Board to establish a committee to study the implementation of a Land Bank in Brookline and report back with a possible Warrant Article by March, 1, 2019. By a vote of 13–7–0, the Advisory Committee recommends FAVORABLE ACTION on the resolution.

BACKGROUND:
There are only two Land Banks in Massachusetts, one on Martha's Vineyard and one on Nantucket, both established in the 1980s. These Land Banks are primarily for the acquisition of land for open space and recreation use, although property acquisition for affordable housing is now being added.

The Brookline Land Bank proposed in Article 24 would be administered by the Select Board serving as the Brookline Land Bank Commissioners. The Land Bank would to raise funds through a real estate transfer tax or borrowing on the debt markets to purchase properties for a number of Town uses including open space expansion and economic development. A transfer tax of up to 1% would levied on real estate transactions. There would be many exemptions to the tax, such as a residential exemption of $500,000, exemption for first-time home buyers, and exemption for inter-Brookline moves, to reduce its burden. The petitioner and the Assessor estimate that such a tax with exemptions proposed would currently raise about $7 million annually.

DISCUSSION:
During Advisory Committee hearings and meetings, a number of organizations, such as the Economic Development Board, the Housing Advisory Board, the Brookline Chamber of Commerce, and the Green Space Alliance gave their opinions and suggestions.

There were concerns expressed about the economic impact and demand on property, the net effect being that it would take away land for commercial use thus diminish the tax base. Governance and how much Town Meeting would be involved in transactions were also concerns. Nearly all organizational input raised the concern that there were too many potential uses for the funds that would be raised by a real estate transfer tax: acquiring open space, financing economic development, creating affordable housing, and buying land for public purposes. Proponents of these various uses would come into conflict as they attempted to devote Land Bank funds to their preferred uses.

Most public input agreed that a Land Bank financed by a real estate transfer tax might be good and useful idea, but that it needed much further study.

The Advisory Committee raised many questions concerning how a Land Bank would work in practice, the effect of raising debt and the impact on the Town's credit rating, the complexity of the exemptions, the overall economic impact, and whether a transfer tax should help fund the Capital Improvements Program (CIP). The following list includes some of the questions that were raised.

- Why not just collect the real estate transfer tax and add it to the CIP? That would be much simpler.
- Could the Town afford the increased operating and maintenance expenses of properties acquired with Land Bank funding?
- Would Town Meeting's involvement slow the process of land acquisition considerably?
- Would it be challenging for the Land Bank to issue debt on its own? What effect would it have on Brookline's bond rating?
- Who would pay the real estate transfer tax? The buyer or the seller? What affect would it have on the real estate market?
- Would a real estate transfer tax substitute for Proposition 2½ overrides or would Brookline need both?
- Are the complex exemptions fair and equitable? Could they be administered?
- Should the Town use its funds to promote economic development or leave that task to the private sector?
- Would the state legislature approve such a home rule petition? What is the legislature looking for?
- Should there be a sunset provision?

The Advisory Committee's Subcommittee on Long-Term Planning and Policies concluded that the Land Bank idea, while interesting, was not ready to be sent to the Great and General Court of the Commonwealth of Massachusetts because it needed significantly more vetting. The subcommittee voted to recommend to refer the subject matter of Article 24 to a Select Board committee. Although the petitioner next offered a much simpler motion, the subcommittee concluded that the same questions applied to that motion, and continued to recommend referral.

The petitioner subsequently submitted a substitute motion, a resolution calling for referral to a Select Board committee to consider a General Court home rule petition that would authorize the Town of Brookline to impose a real estate transfer tax and establish a Brookline Land Bank.

The Advisory Committee debated whether the ideas of a real estate transfer tax and a Brookline Land Bank should be referred to a possible Long-Range Financial Review Committee that the Advisory Committee has recommended be appointed. Such a committee could examine these ideas in the context of an overall examination of Brookline's long-term fiscal outlook. On the other hand, a committee dedicated to studying the Land Bank concept might be able to report its conclusions sooner, possibly in time for the May 2019 Annual Town Meeting. The wording of the resolution leaves open the question of which type of committee should study the Land Bank and associated ideas.

RECOMMENDATION:
By a vote of 13–7–0, the Advisory Committee recommends FAVORABLE ACTION on the following motion:

VOTED: That the Town adopt the following resolution:

A RESOLUTION CALLING FOR REFERRAL TO A SELECT BOARD COMMITTEE TO CONSIDER A GENERAL COURT HOME RULE PETITION THAT WOULD AUTHORIZE THE TOWN OF BROOKLINE TO IMPOSE A REAL ESTATE TRANSFER TAX AND ESTABLISH A BROOKLINE LAND BANK

WHEREAS, there is evidence that Brookline's 2010 population will increase 12% – 17% by 2030;

WHEREAS, Town officials have pointed out that Brookline public land devoted to schools, parks, open space, recreational facilities, playgrounds, and conservation areas, is already insufficient to meet Brookline's current needs;

WHEREAS, Town officials have pointed out that there is a shortage of affordable housing in Brookline;

WHEREAS, Town officials have pointed out that it could be in the best interest of the Town to consider creative uses of acquired public land for economic development;

WHEREAS, if forecasted population growth materializes, it would be in the best interest of Brookline to establish a means for acquiring additional public land for these municipal purposes;

WHEREAS, in view of limits on Brookline's revenue growth and projected expense increases, there is unlikely to be sufficient funding from existing sources available for such land purchases;

WHEREAS, authorities on municipal taxation point out that a well-designed real estate transfer tax can be equitable, very low impact, inexpensive to administer, and therefore could be appropriate form of taxation to fund public land acquisition;

WHEREAS, a Brookline Land Bank, funded with a Real Estate Transfer Tax, would be a preferable alternative to proposition 2½ overrides;

WHEREAS, a Brookline Land Bank would be well suited to operate within the Town's organizational structure and financial policies and could be specifically adapted to and compatible with the unique combination of long established urban and suburban neighborhoods and commercial districts in Brookline.

NOW THEREFORE BE IT RESOLVED AS FOLLOWS:
That the Select Board appoint a committee to study the value to the Town of establishing a Brookline Land Bank, the specifics of funding the Bank, and other topics which the committee may determine to be relevant. The committee shall issue a report and make recommendations on or before March 1, 2019, accompanied by a possible warrant article.

XXX

ARTICLE 24

CONSERVATION COMMISSION RECOMMENDATION

The Conservation Commission supports referral of Article 24 to a Moderators Committee.

The Town of Brookline is the steward of exceptional open space resources—from grand historic parks to small public gathering spaces in commercial areas, from natural sanctuaries which are home to native wildlife and plants to parks managed for active and passive recreation, from pedestrian pathways to wildlife corridors, and from ponds and wetlands to a vital urban forest.

But, because most land in Brookline has already been developed, it is very difficult to acquire new open space. And, when remaining areas of private open space are lost, it often happens in increments so small as to go largely unnoticed. The Conservation Commission has been aware of this problem for decades, noting, for instance, in its 1994 Open Space Plan (p. 98) that answers were needed to questions about how the Town might acquire sites for conservation and recreation. Central among these questions has been how funds for acquisition can be obtained.

The Conservation Commission has advocated for identifying a source of revenue that would be used to build a fund exclusively for open space acquisition. Article 24 as originally drafted falls short of this goal, and yet, because it creates a mechanism that includes open space acquisition among other worthy public objectives, it is a positive step in that direction. The Commission therefore supports referral of Article 24 to a Moderators Committee for further review and refinement.

ARTICLE 24

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Article 24 proposes to implement a new real estate tax of up to 1% on the purchase of property to be received into a Transfer Tax Revolving Fund (a Brookline Land Bank). The money in the fund could then be appropriated by Town Meeting to the Housing Trust Fund, a Conservation Commission Fund or for the purchase of land for parks or public use.

The Select Board agrees with the notion that the Town should always be exploring new avenues to raise additional funds. Due to the pressures of overrides and debt exclusions, the Select Board is fully aware that there is a need to explore all potential funding sources, but the land bank would not be an alternative to overrides because it would produce an unknown amount of money. Earmarking those funds for open space or a school site is also commendable. However, the Board noted the complexity of the article as originally constructed, and agrees with the Advisory Committee's position that further study is needed.

The Board is supportive of the resolution proposed by the Advisory Committee. The Board's motion under this article is similar to the Advisory Committee's except for the following modification to the second to last whereas clause:

WHEREAS: A Brookline Real Estate Transfer Tax could be **an additional revenue source** ~~a preferable alternative revenue source to future Proposition 2½ overrides~~;

The Board did not want to draw the conclusion that the transfer tax could take the place of override funds and in case, that suggestion would jeopardize the reception of any proposed legislation that could come out of the study committee.

A unanimous Select Board offers the following motion under Article 24:

VOTED: That the Town adopt the following resolution:

A RESOLUTION CALLING FOR REFERRAL TO A SELECT BOARD COMMITTEE TO CONSIDER A GENERAL COURT HOME RULE PETITION THAT WOULD AUTHORIZE THE TOWN OF BROOKLINE TO IMPOSE A REAL ESTATE TRANSFER TAX AND ESTABLISH A BROOKLINE LAND BANK

WHEREAS: There is evidence that Brookline's 2010 population will increase 12%–17% by 2030;

WHEREAS: In view of limits on Brookline's revenue growth and projected expense increases to serve a growing population, there is unlikely to be sufficient funding from existing sources;

WHEREAS: Authorities on municipal taxation point out that a well-designed real estate transfer tax can be equitable, low impact, inexpensive to administer, and therefore could be an appropriate form of taxation to address currently underfunded needs of the Town;

WHEREAS: Currently underfunded needs of the Town include public land devoted to schools, parks, open space, recreational facilities, playgrounds, and conservation areas; also real estate that is suitable for affordable housing and for economic development to expand the Town's commercial tax base;

WHEREAS: A Brookline Real Estate Transfer Tax could be an additional revenue source;

WHEREAS: A Brookline Land Bank could be well suited to operate within the Town's organizational structure and financial policies and could be specifically adapted to and compatible with the unique combination of long established urban and suburban neighborhoods and commercial districts in Brookline.

NOW THEREFORE BE IT RESOLVED AS FOLLOWS: That the Select Board appoint a committee to study the value to the Town of seeking State approval for the adoption of a municipal level real estate transfer tax and for establishing a multipurpose Brookline Land Bank, the specifics of funding and operating the Land Bank, and other topics which the committee may determine to be relevant. The committee shall issue a report and make recommendations on or before March 1, 2019, accompanied by a possible warrant article.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:

Article 24, as published in the Warrant, proposed a Home Rule petition that would enable Brookline to establish a Land Bank to be funded by a real estate transfer tax. After discussions with the Advisory Committee, the petitioner, with the Moderator's agreement, decided to offer a resolution to urge the Select Board to establish a committee to study the implementation of a Land Bank in Brookline and report back with a possible warrant article by March 1st, 2019. The Advisory Committee voted to recommend Favorable Action on that resolution.

On May 10th, the Advisory Committee reconsidered its recommendation on the petitioner's resolution of March 19th, and, with agreement of the petitioner, voted to recommend an amended substitute resolution, which has been approved by the Moderator.

By a vote of 18–3–2 the Advisory Committee recommends FAVORABLE ACTION on the amended resolution, which appears below.

BACKGROUND:
As published in the Warrant, Article 24 proposes that the Town submit a Home Rule Petition to the Massachusetts General Court that would authorize the Town of Brookline to impose a real estate transfer tax and to establish a Brookline Land Bank with revenues to be earmarked for four designated uses. The four proposed earmarked uses include:

1. Public land devoted to schools;
2. Parks, open space, recreational facilities, playgrounds, and conservation areas;
3. Real estate that is suitable for affordable housing; and for
4. Real estate for economic development to expand the Town's commercial tax base;

For more details, and a summary of previous discussion, see the Advisory Committee's initial report in the Combined Reports.

DISCUSSION:
The Advisory Committee moved to reconsider the previous Article 24 resolution and to recommend an amended resolution that is clearer and simpler, as well as providing a more detailed explanation to guide the charge to the proposed Select Board Committee.

One key reason for amending the previous resolution is that it presupposes the answer to several distinct and significant policy questions that should be first addressed by a study committee prior to addressing the specifics of how to structure a transfer tax and how a hybrid multi-purpose Land Bank might work. Such policy questions include:

1. Do the inherent advantages of a municipal transfer tax justify its adoption in Brookline?
2. What are the optimal range of uses for revenues to be generated from a transfer tax?
3. Should a real estate transfer tax be permanently earmarked for certain designated uses?
4. What are the relative merits of the four proposed uses vs. other alternative needs?
5. Is a Land Bank the optimal vehicle for administering the revenues of a transfer tax?

More detailed investigation leading to specific recommendations by the committee will depend upon the results of its initial attention to these broad policy questions.

The Advisory Committee expects that the study committee will include individuals with skillsets and experience suitable to the committee's charge, including but not necessarily limited to: municipal budgeting and finance; real estate finance; real estate law; municipal land banking; public policy; and strategic planning.

The Advisory Committee members concurred that the revised resolution did provide clearer guidance to setting the charge to the proposed Select Board Committee and did not

presume to answer the questions that the proposed committee would study. The Advisory Committee noted that the changes to the "whereas" clauses were not material and were to provide for greater clarity and simplicity.

The Advisory Committee therefore reconsidered its previous recommendation and voted to recommend a revised resolution.

RECOMMENDATION:
By a vote of 18–3–2, the Advisory Committee recommends FAVORABLE ACTION on the following motion:

VOTED: That the Town adopt the following resolution:

A RESOLUTION CALLING FOR REFERRAL TO A SELECT BOARD COMMITTEE TO CONSIDER A GENERAL COURT HOME RULE PETITION THAT WOULD AUTHORIZE THE TOWN OF BROOKLINE TO IMPOSE A REAL ESTATE TRANSFER TAX AND ESTABLISH A BROOKLINE LAND BANK

WHEREAS: There is evidence that Brookline's 2010 population will increase 12%–17% by 2030;

WHEREAS: In view of limits on Brookline's revenue growth and projected expense increases to serve a growing population, there is unlikely to be sufficient funding from existing sources;

WHEREAS: Authorities on municipal taxation point out that a well-designed real estate transfer tax can be equitable, low impact, inexpensive to administer, and therefore could be an appropriate form of taxation to address currently underfunded needs of the Town;

WHEREAS: Currently underfunded needs of the Town include public land devoted to schools, parks, open space, recreational facilities, playgrounds, and conservation areas; also real estate that is suitable for affordable housing and for economic development to expand the Town's commercial tax base;

WHEREAS: A Brookline Real Estate Transfer Tax could be a preferable alternative revenue source to future Proposition 2½ overrides;

WHEREAS: A Brookline Land Bank could be well suited to operate within the Town's organizational structure and financial policies and could be specifically adapted to and compatible with the unique combination of long established urban and suburban neighborhoods and commercial districts in Brookline.

NOW THEREFORE BE IT RESOLVED AS FOLLOWS: That the Select Board appoint a committee to study the value to the Town of seeking State approval for the adoption of a municipal level real estate transfer tax and for establishing a multipurpose Brookline Land

Bank, the specifics of funding and operating the Land Bank, and other topics which the committee may determine to be relevant. The committee shall issue a report and make recommendations on or before March 1, 2019, accompanied by a possible warrant article.

For informational purposes, the changes to the Advisory Committee's previous recommended motion are shown below. Additions are underlined. Deletions are denoted by ~~strikethrough~~.

WHEREAS, there is evidence that Brookline's 2010 population will increase 12% – 17% by 2030;

~~WHEREAS, Town officials have pointed out that Brookline public land devoted to schools, parks, open space, recreational facilities, playgrounds, and conservation areas, is already insufficient to meet Brookline's current needs;~~

~~WHEREAS, Town officials have pointed out that there is a shortage of affordable housing in Brookline;~~

~~WHEREAS, Town officials have pointed out that it could be in the best interest of the Town to consider creative uses of acquired public land for economic development;~~

~~WHEREAS, if forecasted population growth materializes, it would be in the best interest of Brookline to establish a means for acquiring additional public land for these municipal purposes;~~

WHEREAS, in view of limits on Brookline's revenue growth and projected expense increases to serve a growing population, the Town needs to identify potential new revenue ~~there is unlikely to be sufficient funding from existing~~ sources ~~available for such land purchases~~;

WHEREAS, authorities on municipal taxation point out that a well-designed real estate transfer tax can be equitable, ~~very~~ low impact, inexpensive to administer, and therefore could be an appropriate form of taxation to address ~~fund~~ currently underfunded needs of the Town ~~public land acquisition~~;

WHEREAS, currently underfunded needs of the Town include public land devoted to schools, parks, open space, recreational facilities, playgrounds, and conservation areas; also real estate that is suitable for affordable housing and for economic development to expand the Town's commercial tax base;

WHEREAS, a Brookline ~~Land Bank, funded with a~~ Real Estate Transfer Tax, c~~w~~ould be a preferable alternative revenue source to future P~~p~~roposition 2½ overrides;

WHEREAS, a Brookline Land Bank would be well suited to operate within the Town's organizational structure and financial policies and could be specifically adapted to and compatible with the unique combination of long established urban and suburban neighborhoods and commercial districts in Brookline.

NOW THEREFORE BE IT RESOLVED AS FOLLOWS: That the Select Board appoint a committee to study the value to the Town of seeking State approval for the adoption of a municipal level real estate transfer tax and for establishing a multipurpose Brookline Land Bank, the specifics of funding and operating the Land Bank, and other topics which the committee may determine to be relevant. The committee shall issue a report and make recommendations on or before March 1, 2019, accompanied by a possible warrant article.

ARTICLE 24

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS RECOMMENDATION

The Commission for Diversity, Inclusion and Community Relations voted unanimously for favorable action for Article 24.

Vote was as follows: 8 in favor, 0 no actions and 0 abstentions.

ARTICLE 25

TWENTY-FIFTH ARTICLE
Submitted by: Susan Granoff, TMM7

To see if the Town will vote to authorize the Select Board to petition the Legislature for a special act authorizing the Town, with respect to Brookline senior homeowners who: (1) meet all the requirements and qualifications of the Massachusetts Senior Circuit Breaker Income Tax Credit ("CB"), pursuant to M.G.L. Chapter 62, Section 6(k), 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 (2) whose 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), to grant to said qualifying seniors an exemption from their principal residence's property tax assessment in the amount of the CB credit for which they would otherwise qualify if their principal residence had an assessed valuation at or below the CB's qualifying amount, or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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%).[1] 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,[2] This makes the decrease in the number of Brookline CB claim filers even more significant.

[1]"Senior Circuit Breaker Usage Report by Town," 2001-2015, Massachusetts Department of Revenue (2017).

[2]US Census 2010 and American Community Survey, 2009-2015.

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

LIMITS TAX YEAR (Joint)	# BROOKLINE CLAIM FILERS	TOTAL $ CLAIMED	AV. AMOUNT $ PER CLAIM ( ) = max allowed	CB PROP.ERTY VALUE LIMITS	CB INCOME (Single)
2001 $61,000	162	$ 56,704	$350 (385)	$412,000	$41,000
2002 $63,000	206	132,502	643 (790)	$425,000	$42,000
2003 $64,000	232	158,532	683 (810)	$432,000	$43,000
2004 $66,000	218	152,277	699 (820)	$441,000	$44,000
2005 $67,000	241	170,857	709 (840)	$600,000	$45,000
2006 $70,000	240	177,038	738 (870)	$684,000	$46,000
2007 $72,000	276	210,164	761 (900)	$772,000	$48,000
2008 $74,000	310	252,030	813 (930)	**$793,000** (peak)	$49,000
2009 $77,000	**360** (peak)	294,853	819 (960)	$788,000	$51,000
2010 $77,000	349	298,921	857 (970)	$764,000	$51,000
2011 $78,000	346	296,503	857 (980)	$729,000	$52,000
2012 $80,000	335	296,313	885 (1,000)	$705,000	$53,000
2013 $82,000	343	305,455	891 (1,030)	$700,000	$55,000
2014 $84,000	335	302,206	902 (1,050)	$691,000	$56,000
2015 $85,000	328	304,195	927 (1,070)	**$693,000**	$57,000

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.[3]

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.

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[3]Caro, Frank, "Financial Insecurity Among Brookline Seniors, 2018," Presentation to BrooklineCAN Livable Community Advocacy Committee, Feb. 5, 2018.

SELECT BOARD'S RECOMMENDATION

Article 25 is a home rule petition that would seek the General Court to alter the qualifying parameters of the Senior Circuit Breaker Income Tax Credit pursuant to M.G.L. Chapter 62, Section 6(k). As currently construed, the tax credit is for seniors who meet income requirements, and have a property that is assessed at no more than $747,000. The property value is a figure derived from a statewide average, which takes into account less expensive properties over the entire Commonwealth. The warrant article would alter the upper limit of the property value to qualify for the tax credit from $747,00, to an assessed valuation of not more than the average of all Brookline single-family residences plus 10 percent (this figure works out to approximately $1.2 million).

The Select Board has been presented with multiple articles that have sought property tax relief for the Town's senior community over the past few Town Meetings, and the Board remains sympathetic to the concerns of the community. These seniors are facing a unique problem, in that their property values have risen dramatically, and concurrently the required taxation, and they want to remain in their homes with their limited fixed incomes. The majority of seniors live in residences with an assessed value of more than $747,000. The increase in the assessed value cap would allow a limited number of additional seniors to qualify for the tax credit.

The Board questioned if there was a way to provide this relief without going to the State Legislature, but another option is not available. In addition, the Board presented the issue that the total property tax levy will remain the same within the Town, and this alteration will shift the tax burden onto other property owners. Although this is the case with many tax relief programs, the ramifications of the increase in assessed value would result in a small shift of the tax burden on the community.

On April 10, 2018, a unanimous Select Board voted FAVORABLE ACTION on the following motion:

VOTED: That the Town authorize and empower the Select Board to file a petition, in substantially the following form, with the State Legislature:

An Act Relative to Property Tax Relief for Low and Moderate Income Seniors in the Town of Brookline

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. Notwithstanding section 6(k) of Chapter 62 of the General Law or any other general or special law to the contrary, the Town of Brookline may provide property tax relief to senior homeowners who:

(1) meet all the requirements and qualifications of the Massachusetts Senior Circuit Breaker Income Tax Credit ("CB"), pursuant to M.G.L. Chapter 62, Section 6(k), except that their principal residence, which the senior must own and which must be located in the

Town of Brookline, has an assessed valuation that is greater than the CB qualifying amount, and

(2) whose principal residence has an assessed valuation of not more than the average of all Brookline single-family residences plus 10%.

Section 2. Said property tax relief shall be in the form of a property tax exemption on the principal residence of the qualifying senior in the amount of the CB credit for which the senior would otherwise qualify if their principal residence did not exceed the CB qualifying valuation in the applicable tax year.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Since 1999, the Commonwealth has given citizens 65 and older an income tax credit known as the Senior Circuit Breaker Income Tax Credit of up to $1,080 per year to offset the cost of real estate taxes. Article 25 proposes a home rule petition that would permit the Town to give Brookline seniors a real estate tax exemption even if they do not qualify for the state income tax credit. Seniors currently qualify for the state income tax credit if they have a maximum income of $57,000 per year for a senior filing alone or $86,000 for a couple filing jointly. Homeowners only qualify for the credit if their principal dwelling is assessed at no more than $747,000, a figure derived from average state-wide real estate values. The proposed change sought under this article would take into account the higher value of Brookline homes by allowing the Town to extend relief (in the form of an exemption from up to $1,080 in real estate taxes) to seniors whose residences "have an assessed valuation of not more than the average of all Brookline single-family residences plus 10 percent" ($1.2 million).

The Advisory Committee recommends FAVORABLE ACTION on Article 25 by a vote of 14–0–2.

BACKGROUND:
That $747,000 figure established by the state is based on average state-wide assessments for single-family homes. Brookline is not average when it comes to real estate, however, and home values have risen by an average of 5–10% annually over the last 10 years, while values across the state decreased annually between the 2008 market collapse and 2015, the last year for which the state's Department of Revenue has supplied figures. Town data indicates that 73% of 4,594 senior homeowners live in residences with an assessed value of more than $747,000. The petitioner believes that the drop in the number of Circuit Breaker tax credit claims in Brookline between 2009 (360 claims) and 2015 (328 claims)—which took place despite a parallel 28% increase in the number of Brookline seniors—is a consequence of high Brookline real estate values, which have kept income-qualified seniors from obtaining tax relief under section 6(k) of Chapter 62.

At this time, 56 Brookline seniors or households are availing themselves of property tax relief programs—most within the "Senior Tax Work Off Program." The petitioner estimates that 20 to 50 additional seniors might qualify for relief with the proposed change in the property tax ceiling. She estimates the revenue cost to the Town at some $55,000 annually, which could be funded from the Overlay Reserve. The Assessor's Office believes these estimates to be accurate and they may overestimate the cost of the additional tax relief.

DISCUSSION:

Among the issues that came up in Advisory Committee discussion was whether it was practical or prudent to have two home rule petitions on the same issue (tax relief for seniors) in the state legislature at the same time. A home rule petition was sent to Beacon Hill following the Fall 2017 Town Meeting—and at the suggestion of the Select Board's Committee on Senior Tax Policy—requesting permission to raise income limits for Brookline seniors who wish to participate in the Senior Real Estate Tax Deferral program. (The Committee had studied the changes sought in Article 25, but had chosen not to recommend them to the Town.) Other issues discussed by the Advisory Committee included the paucity of data on the incomes of senior residents, which makes it difficult to predict the consequences of any form of tax relief. It was also pointed out that the number of seniors in Town has grown substantially in recent years and is likely to continue to increase, which will put more and at this time unpredictable financial pressure on other segments of the population who will continue to pay taxes without the tax relief available to seniors.

These concerns initially motivated the Advisory Committee to recommend an amended motion that would stipulate that the amount of tax relief granted by Brookline to qualifying seniors would not exceed the amount of the state Circuit Breaker Tax Credit instead of being set at an amount equal to that credit. Having heard arguments about the possible complexity of administering a tax relief program that allowed for varying degrees of tax relief, however, the Committee reconsidered and voted to recommend the motion offered by the Select Board and the petitioner.

RECOMMENDATION:

The Advisory Committee, by a vote of 14–0–2, recommends FAVORABLE ACTION on the motion offered by the Select Board.

XXX

ARTICLE 25

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS RECOMMENDATION

The Commission for Diversity, Inclusion and Community Relations voted unanimously for favorable action for Article 25.

Vote was as follows: 9 in favor, 0 no actions and 0 abstentions.

ARTICLE 26

TWENTY-SIXTH ARTICLE

Submitted by: Yolanda M. Rodriguez, Rhoda S. Goodwin

To see if the Town will vote to authorize the Board of Selectmen to petition the Legislature for a special act creating a new clause within M.G.L. Chapter 59, Section 5, allowing Brookline residents who are 65 years of age or older and whose income is less than or equal to the amount of income determined by the commissioner of revenue for the purposes of subsection (k) of Section 6 of Chapter 62 for a husband and wife filing jointly, regardless of resident's marital status, for the purposes of offering an exemption from future Town overrides and debt exclusions,

or take any other action relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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.

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.

MOTION OFFERED BY THE PETITIONERS

VOTED: to refer the subject matter of Article 26 to a committee to be appointed by the Moderator, with a request that such committee report back to Town Meeting at or prior to the 2018 Fall Town Meeting.

ADDITIONAL EXPLANATION OFFERED BY THE PETITIONERS

We are asking for a motion to refer Article 26 to a Moderator's Committee because people have asked questions that need further study. You know the details about Brookline's income disparities. They were included with Warrant Article 26 when originally filed.

This warrant article is designed to address the needs of some of those seniors who are 70 years of age or older (changed from age 65), 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. It is means tested, using the income cap used by the State for the Senior Circuit Breaker Credit.

Some of the questions that need to be answered are:
What will it cost the town in future years?
How many seniors will apply for this?
How will it be administered?
We hope that members of a Moderators Committee will be able to find the data that will help to answer these and other questions.

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 multiple overrides a reality for the future, it becomes more difficult for vulnerable seniors 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.

To Age in Place means that you will be remaining in your own home
for the later years of your life,
not moving into a smaller home, assisted living or a retirement community, etc.

Seniors Resource Guide-www.seniorsresourceguide.com

SELECT BOARD'S RECOMMENDATION

Article 26 is a petitioned article that asks the Town to authorize the Select Board to petition the Legislature for a special act to allow for an exemption from future overrides and debt exclusions to seniors who are 65 years of age or older who meet certain income restrictions. Seniors who seek to qualify for the program would have to meet the income levels required of a married household under the senior circuit breaker tax credit as currently construed under M.G.L. Chapter 62, Section 6(k); (Warrant Article 25 is also covering a similar topic and could alter the local qualifications for the tax credit).

As with Article 25, the Select Board is amendable to tax relief for fixed income seniors. With the rise in local property values, and the limited expansion of the fixed incomes that this community faces, it is difficult for some seniors to afford local property taxes and stay in their homes. The Board also recognizes that the median senior income falls below the median income within the Town, and the income of senior women living alone is even lower.

However, the Board also acknowledges that there are a multitude of challenges with the proposed program. The largest issue that this article presents is the verification of income, which the Town does not collect. Due to the lack of information, there is no way to accurately assess the impact of the program. The program would also not take the value of the property into account, which is one of the main qualifying factors of M.G.L. Chapter 62, Section 6(k).

The Board also stressed the nature of shifting the tax burden within the community. As with Article 25, the property tax levy will not change. Instead, the taxes would be shifted from the seniors that qualify for the program to other property owners in the Town. The debt exclusions and overrides encompass more than the services provided by one department within the Town, which is why the increase in property tax is spread over the entire Town. Exempting one group of taxpayers from the burden of overrides and debt exclusions could present many unforeseen consequences. While the Board appreciates the intent of the petitioner, the legislation proposed under Article 25 made more sense to present to the legislature as a means to provide relief to low income taxpayers.

Therefore, the Board voted NO ACTION by a vote of 4-0-1 on article 26.

ROLL CALL VOTE:

Aye:	Abstain:
Wishinsky	Heller
Franco	
Greene	
Hamilton	

[The petitioner made a referral motion after the Board took their vote on Article 26. The Board will consider this motion at their next scheduled meeting.]

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

Article 26 proposes a home rule petition that would permit the Town to exempt a subset of seniors, in future, from paying taxes that support overrides and debt exclusions. Seniors who obtain such tax relief could not have an income of more than $86,000 annually, which is the limit set out by the Commonwealth for married couples seeking property tax relief under section 6(k) of Chapter 62. By vote of 11–5–3, the Advisory Committee recommends NO ACTION on Article 26.

BACKGROUND:

Article 26 was brought forward by citizen petitioners, prompted by the prospect of the Town approving its third property tax override in seven years. The petitioners are concerned about the cumulative financial impact these serial increases would have on seniors in Brookline. Seniors, by and large, are at greater financial risk than are younger cohorts, particularly in Massachusetts, and particularly in Norfolk County, according to federal data. While under section 6(k) of Chapter 62 of state law some seniors are eligible to take advantage of property tax relief programs that are tied to ceilings on income and home values (see the report on Article 25), an indeterminate number of Brookline seniors are ineligible for such programs because their home values have risen steadily in recently years and exceed the state limit of $747,000 in assessed value. The petitioners, therefore, propose that Brookline should offer real estate tax relief to seniors of low and moderate income, as defined by section 6(k) of Chapter 62, but without consideration of the value of

the home they own—with that relief to consist of an exemption from annual increases in the tax levy that exceed the limits imposed by Proposition 2½.

DISCUSSION:
The Advisory Committee is favorably disposed to tax relief for moderate and low-income seniors so as to enable them to remain in their Brookline homes even as their incomes level out or decrease. That said, the Committee raised a number of issues and questions regarding Article 26.

First, because Brookline does not collect income data, it is not known how many seniors would be eligible to take advantage of the change supported by Article 26. And so it is not known what effect the change would have on Town finances or on the financial burden of necessity transferred to other citizens, today and in the future.

Second, the Committee was worried about the long-term consequences of giving some taxpayers an exemption from the tax increases due to Proposition 2½ overrides. As the burden of overrides and debt exclusions grows, the consequences will be borne by a smaller, and perhaps decreasing, group of taxpayers. This may threaten the Town's valued tradition of mutual concern—seniors vote in support of schools in which they no longer have children, and parents of schoolchildren vote in support of Senior Center programs they do not (yet) utilize. The increased taxes support services utilized by a wide variety of citizens.

Finally, the Article 26 might have the political effect of enabling voters who would not be subject to override-related tax increases to vote to increase taxes for the remainder of Brookline's residents. Overrides might become easier to pass, because many voters would not have to worry about paying higher taxes, but the increase in the tax burden would fall on other voters. This raises issues of fairness and democracy.

Among questions raised that could not be answered at the Advisory Committee hearing: Have other municipalities in the Commonwealth obtained and used a tax exclusion such as the one recommended by the petitioners, and what have been the consequences? What financial effect would the shift in tax burden have on young families, which, like seniors, are an important part of the Brookline mosaic? How will existing Town tax relief programs—e.g., for widows and veterans—be integrated with the new Town exemptions advanced in the Article 26? How would one deal with determining the tax levy for a senior who qualifies for the exemption during an initial override year, but not in the following year? On what base would his or her taxes be calculated? How often would the exemption need to be renewed (annually, it was suggested), and at what resource cost?

RECOMMENDATION:
The ADVISORY COMMITTEE, by a vote of 11–5–3, recommends NO ACTION under Article 26.

After the vote, the Advisory Committee was informed that the petitioners will offer a different motion under Article 26. The Advisory Committee will address any new motion(s) in a supplemental report.

XXX

ARTICLE 26

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

After the Advisory Committee had voted to recommend NO ACTION on Article 26, the petitioners offered a revised motion, which would "refer the subject matter of Article 26 to a committee to be appointed by the Moderation, with a request that such committee report back to Town Meeting at or prior to the 2018 Fall Town Meeting."

On May 3, 2018, the Advisory Committee met to reconsider Article 26 and discussed the proposed referral motion.

The petitioners reminded the Advisory Committee of the rationale for Article 26, which was placed on the Warrant as a home rule petition. Brookline seniors who are 70 years or older (the petitioners increased the age cut-off from 65 to 70) often do not qualify for means-tested tax relief programs. Exempting such seniors from future Proposition 2½ overrides and debt exclusions would reduce the tax burden on these Brookline residents and might enable them to "age in place." A Moderator's Committee could study the issues and answer questions about the cost and administration of any such program.

Although Advisory Committee members were generally sympathetic to the idea of offering tax relief to Brookline's seniors and appreciated the petitioners' efforts to address this issue, many members felt that it was not clear what another study committee would do or how it would add to the work of the Selectmen's Committee on Senior Tax Policy. The Selectmen's Committee studied issues of senior tax relief in depth, held many meetings, and issued its report in October 2017. Town Meeting voted to implement the Committee's recommendations. What will the proposed committee do that the Selectmen's Committee did not do? Moreover, the Assessor is committed to publicizing the existing tax relief programs; the Town is already working to address the petitioners' concerns.

In addition, some Advisory Committee members pointed out that Article 25 already would send one senior tax relief home rule petition to the state legislature. Article 26 contemplated another home rule petition and such a recommendation might emerge from a Moderator's Committee. It might be wise to wait to see if the Article 25 home rule petition is approved before initiating a process that could generate another home rule petition on a related topic.

Finally, it was noted that it may be unwise to convene too many Moderator's or Select Board Committees to study the issues raised by Warrant Articles. Every such committee requires an investment of time and resources, and there are limited supplies of each.

RECOMMENDATION:
By a vote of 11–5–5 the Advisory Committee recommends NO ACTION on the petitioners' referral motion under Article 26.

ARTICLE 26

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS RECOMMENDATION

The Commission for Diversity, Inclusion and Community Relations voted unanimously for favorable action for Article 26.

Vote was as follows: 8 in favor, 0 no actions and 0 abstentions.

ARTICLE 27

TWENTY-SEVENTH ARTICLE
Submitted by: Patricia Connors, TMM3

To see if the Town will amend Section 4.8.5 of Article 4.8, the Living Wage By-Law, of the General By-laws, as follows (addition appears in underlined bold text):

SECTION 4.8.5 EXCEPTIONS

The town shall not be required to pay the living wage to the following persons:

(a) seasonal employees who work less than six months in any twelve-month cycle;

(b) employees participating in a work-study or cooperative educational program;

(c) employees whose positions are funded, in full or in part, by Community Development Block Grant or State Elder Services Grant monies;

(d) town library Junior Library Pages;

(e) Putterham Meadows Golf Course rangers;

(f) town junior, part-time positions funded by a Recreation revolving fund, specifically, Jr. Swim Coach, Jr. Swim Instructor, Jr. Lifeguard, Jr. Skate Guard, Jr. Referee, Jr. Assistant Recreation Leader, Jr. Camp Counselor, Jr. Camp Instructor, Jr. Skate Concessions;

(g) volunteers and all persons appointed or elected to town committees;

(h) elected officers of the town.

The town's annual financial plan shall set forth the position titles and salary ranges of all employees exempted from the living wage under subsections (a), (b), (c), (d) and (f) of this Section 4.8.5.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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.

SELECT BOARD'S RECOMMENDATION

Article 27 is a proposed by-law amendment that asks 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. The Board does not favor a change to the by-laws that requires this change and believes the resolution offered by the Advisory Committee is an acceptable compromise that will allow the Town to present the information the petitioner is looking for. The Town is in compliance with the living wage by-law, and understands the desire of the petitioner to see the rates listed in the financial plan regardless of whether or not there is funding behind each title. The resolution gives town staff the flexibility to determine the best way to present this information.

The Select Board voted 4-0 FAVORABLE ACTION on the motion offered by the Advisory Committee.

ROLL CALL VOTE:

Aye:	Absent:
Wishinsky	Hamilton
Franco	
Heller	
Greene	

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

Warrant Article 27 was originally submitted as an amendment to section 4.8.5 of the Town's General Bylaws that would require that the Town's annual Financial Plan list the details of all Recreation Department positions that are exempt from Brookline's Living

Wage By-Law. The petitioner feels this information is necessary to allow Town Meeting to monitor compliance with the bylaw. However, the Advisory Committee concluded that a bylaw amendment was not the appropriate vehicle for achieving the petitioner's goal and recommended No Action. The petitioner then offered a motion under Article 27 in the form of a resolution that recommends that the Town Administrator direct all Department Heads to include in the annual Financial Plan those staff positions that are exempt from the Town's living wage under the Living Wage By-Law, including the high-to-low range of compensation for each exempt position and the approximate full-time equivalents (FTEs).

By a vote of 12–0–5, the Advisory Committee recommends FAVORABLE ACTION on Article 27 as amended by the petitioner.

DISCUSSION:

The petitioner reviews the Financial Plan (also known as the "budget book") each year to monitor the Town's compliance with the Living Wage Bylaw. In 2015, the bylaw was amended to include an exemption for junior part-time positions funded by the Recreation Revolving Fund. Since then, the petitioner has, to no avail, requested that the specific positions enumerated in subsection (f) of the bylaw be listed in the Financial Plan, despite the fact that exempt positions in other departments are clearly delineated. Consequently, the petitioner would like to amend the bylaw to require that the detail of Recreation position titles and salary ranges be shown in the Financial Plan. The petitioner initially felt that a bylaw amendment would be the only way to ensure that staff automatically provide her with the information she is seeking.

Town staff claim that there is a disconnect between what the petitioner is asking for and her objective of monitoring compliance with the living wage exemptions. The Financial Plan includes an estimate of the positions to be filled but actual hires vary from year to year depending on how many junior staff are promoted to the next level and the demand for various programs. Staff believe it would be more meaningful to provide actual payroll data as of a specific date or range of dates which could be included in the budget narrative along with a projection of hires for the coming year.

Deputy Town Administrator Melissa Goff expressed concern that amending the bylaw would hardwire one small piece of the Financial Plan format that could then not be changed without further bylaw amendments. This would limit staff's flexibility without providing any meaningful information for the petitioner.

Members of the Advisory Committee agreed with the petitioner that the Financial Plan contains many estimates and that consistency in format would be desirable. However, the Advisory Committee concluded that amending the bylaw was not the appropriate vehicle to achieve the desired changes, and voted to recommend No Action by a vote of 16–1–2. The Advisory Committee agreed to consider making a formal recommendation to the Town Administrator regarding the petitioner's request.

Subsequently, the petitioner submitted a resolution as her motion under Article 27. Though no Town staff were present when the Article was reconsidered, the Advisory Committee relied on comments by Town staff at a public hearing that the information requested by the petitioner was available. The disconnect was over format and the utility of the data for

achieving the petitioner's goal. Consequently, the Advisory Committee changed its vote and recommended Favorable Action on the petitioner's proposed resolution under Article 27.

RECOMMENDATION:
By a vote of 12–0–5, the Advisory Committee recommends FAVORABLE ACTION on the following motion under Article 27:

VOTED: That that the Town adopt the following Resolution:

RESOLUTION CONCERNING THE INCLUSION OF LIVING WAGE EXEMPT EMPLOYEES IN THE TOWN'S ANNUAL FINANCIAL PLAN

WHEREAS, the Town of Brookline, Massachusetts (the Town) has a proclaimed public policy to provide transparency in its administration of Town government; and

WHEREAS, Brookline Town Meeting enacted the Living Wage By-Law to insure fair and equitable wages for the Town's lowest paid employees; and

WHEREAS, the Town's annual Financial Plan is a public document which sets forth the lowest wages of some town positions but not others;

NOW THEREFORE, BE IT HEREBY RESOLVED THAT the Town Meeting of Brookline:

Recommends that the Town Administrator instruct all Town Departments to include in the Town's annual Financial Plan their staff positions that are exempt from the Town's living wage under the Living Wage By-Law. The Financial Plan should include the high-to-low range of compensation for each exempt position. In addition, the Financial Plan should include the approximate number of FTEs (full time equivalent) for each exempt position.

XXX

ARTICLE 27

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS RECOMMENDATION

The Commission for Diversity, Inclusion and Community Relations voted unanimously for favorable action for Article 27.

Vote was as follows: 8 in favor, 0 no actions and 0 abstentions.

ARTICLE 28

TWENTY-EIGHTH ARTICLE

Submitted by: C. Scott Ananian, TMM 10

To see if the Town will adopt the following version of a new Article 4.10 of the Town By-laws,

or act on anything relative thereto.

ARTICLE 4.10
Community Control Over Police Surveillance and Militarization

SECTION 4.10.1 TOWN APPROVAL MANDATORY FOR MILITARY AND SURVEILLANCE EQUIPMENT FUNDING, ACQUISITION, OR DEPLOYMENT

A Town entity must obtain Select Board approval, subsequent to a mandatory, properly-noticed, germane, public Board hearing at which the public is afforded a fair and adequate opportunity to provide online, written, and oral testimony, prior to engaging in any of the following:

(1) Seeking funds for new military or surveillance equipment, including but not limited to applying for a grant, or soliciting or accepting state or federal funds or in-kind or other donations or transfers;
(2) Acquiring or borrowing new military or surveillance equipment, whether or not that acquisition is made through the exchange of monies or for other or no consideration;
(3) Deploying or using new or existing military or surveillance equipment for a purpose or in a manner not previously approved by the Select Board in accordance with this Article, including the sharing of surveillance data therefrom; or
(4) Soliciting proposals for or entering into an agreement with any other person or entity to acquire, share, or otherwise use military or surveillance equipment or its surveillance data.

SECTION 4.10.2 MILITARY/SURVEILLANCE EQUIPMENT IMPACT REPORT AND USE POLICY SUBMISSION

As a part of the process of seeking Select Board approval, pursuant to Section 4.10.1, to fund, acquire, or deploy military or surveillance equipment or to enter into an agreement concerning such funding, acquisition, or deployment, a Town entity shall submit to the Select Board and make publicly available a Military/Surveillance Equipment Impact Report and Military/Surveillance Equipment Use Policy concerning the military or surveillance equipment at issue.

(1) No use of military or surveillance equipment by a Town entity pursuant to Section 4.10.1, including the continuing use of previously acquired military or surveillance equipment, shall be permitted without the Select Board's express approval of the related Military/Surveillance Equipment Impact Report and Military/Surveillance Equipment Use Policy submitted by the Town entity pursuant to Section 4.10.2 and 4.10.5.

(2) Prior to approving or rejecting a Military/Surveillance Equipment Impact Report or Military/Surveillance Equipment Use Policy submitted pursuant to Section 4.10.2, the Select Board may request revisions be made by the submitting Town entity.

SECTION 4.10.3 MILITARY/SURVEILLANCE EQUIPMENT IMPACT REPORT

A Military/Surveillance Equipment Impact Report submitted pursuant to Section 4.10.2 shall be a publicly-released, legally enforceable written report that includes, at a minimum, the following:

(1) Information describing the military or surveillance equipment and how it works, including product descriptions from manufacturers;
(2) Information on the proposed purpose(s) of the military or surveillance equipment;
(3) If the military or surveillance equipment will not be uniformly deployed or targeted throughout the Town, what factors will be used to determine where the technology is deployed or targeted;
(4) The fiscal impact of the military or surveillance equipment, including a comparison to alternatives; and
(5) An assessment identifying with specificity:
    (a) Any potential discriminatory, disparate, or other adverse impacts the military or surveillance equipment, if deployed, might have on the public's welfare, civil liberties, and civil rights; and
    (b) What specific, affirmative measures will be implemented to safeguard the public from the potential adverse impacts identified pursuant to Section 4.10.3(5)(a).

SECTION 4.10.4 MILITARY/SURVEILLANCE EQUIPMENT USE POLICY

A Military/Surveillance Equipment Use Policy submitted pursuant to Section 4.10.2 shall be a publicly-released, legally enforceable written policy governing the Town entity's use of the military or surveillance equipment that, at a minimum, includes and addresses the following:

(1) Purpose: What specific purpose(s) the military or surveillance equipment is intended to advance.
(2) Authorized Use: For what specific capabilities, deployments, and uses of the military or surveillance equipment is authorization being sought, and
    (a) What legal and procedural rules will govern each authorized use;
    (b) What potential deployments and uses of the military or surveillance equipment will be expressly prohibited; and
    (c) Where applicable, how and under what circumstances will surveillance data that was collected, captured, recorded, or intercepted by the surveillance equipment be analyzed and reviewed.
(3) Training: What course of training must be completed before any Town entity employee is permitted to use the specific type of military or surveillance equipment, so as to ensure the public's safety, civil rights, and civil liberties are fully protected and the provisions of the relevant Military/Surveillance Equipment Use Policy are fully adhered to, and what the annual cost of operating the training program are anticipated to be.
(4) Data Collection:
    (a) Where applicable, what types of surveillance data will be collected, captured, recorded, intercepted, or retained by the surveillance equipment;

(b) Where applicable, what surveillance data may be inadvertently collected during the authorized uses of the surveillance equipment, and what measures will be taken to minimize the inadvertent collection of data; and
(c) Where applicable, how inadvertently collected surveillance data will be expeditiously identified and deleted.

(5) Data Protection: Where applicable, what safeguards will be used to protect surveillance data from unauthorized access, including encryption and access control mechanisms.

(6) Data Retention: Where applicable, insofar as the privacy of the public can be severely compromised by the long-term storage of mass surveillance data, what rules and procedures will govern the retention of surveillance data, including those governing:
(a) For what limited time period, if any, surveillance data will be retained. Such information shall include a statement explaining why the designated retention period is no greater than that which is absolutely necessary to achieve the specific purpose(s) enumerated in the Military/Surveillance Equipment Use Policy;
(b) What specific conditions must be met to retain surveillance data beyond the retention period stated in Section 4.10.4(6)(a);
(c) By what process surveillance data will be regularly deleted after the retention period stated in Section 4.10.4(6)(a) elapses and what auditing procedures will be implemented to ensure data is not improperly retained;

(7) Surveillance Data Sharing: Where applicable, if a Town entity is seeking authorization to share access to surveillance data with any other governmental agencies, departments, bureaus, divisions, or units, it shall detail:
(a) How it will require that the collection, retention, and storage of surveillance data be conducted in compliance with the principles set forth in 28 C.F.R. Part 23, including but not limited to 28 C.F.R. Part 23.20(a), which states that a government entity operating a surveillance program "shall collect and maintain criminal intelligence information concerning an individual only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity."
(b) Which governmental agencies, departments, bureaus, divisions, or units will be approved for surveillance data sharing;
(c) How such surveillance data sharing is necessary for the stated purpose and use of the surveillance equipment;
(d) How it will ensure any entity receiving access to the surveillance data complies with the applicable Military/Surveillance Equipment Use Policy and does not further disclose the surveillance data to unauthorized persons and entities; and
(e) What processes will be used to seek approval of future surveillance data sharing agreements from the Town entity and Select Board.

(8) Demands for Access to Surveillance Data: Where applicable, what legal standard must be met by government entities or third parties seeking or demanding access to surveillance data.

(9) Auditing and Oversight: What mechanisms will be implemented to ensure the Military/Surveillance Equipment Use Policy is followed, including what independent persons or entities will be given oversight authority, and what legally enforceable sanctions will be put in place for violations of the policy.

(10) Complaints: What procedures will be put in place by which members of the public can register complaints or concerns, or submit questions about the deployment or use of a specific type of military or surveillance equipment, and how the municipal entity will ensure each question and complaint is responded to in a timely manner.

SECTION 4.10.5. REVIEW OF PREEXISTING USES MANDATORY

No later than one hundred twenty (120) days following the effective adoption of this Article, any Town entity seeking to continue the use of any military or surveillance equipment that was acquired prior to the effective date of adoption of this Article, or the sharing of surveillance data therefrom, must commence a Select Board approval process in accordance with Section 4.10.1(3). If the Select Board has not approved the continuing deployment of the military or surveillance equipment, including the Military/Surveillance Equipment Impact Report and Military/Surveillance Equipment Use Policy submitted pursuant to Section 4.10.2, within one hundred eighty (180) days of their submission to the Select Board, the Town entity shall cease its use of the military or surveillance equipment and the sharing of any surveillance data therefrom until such time as Select Board approval is obtained in accordance with this Article.

SECTION 4.10.6 LEAD ENTITY IDENTIFICATION

If more than one Town entity will have access to the military or surveillance equipment or its surveillance data, a lead Town entity shall be identified. The lead Town entity shall be responsible for maintaining the military or surveillance equipment and ensuring compliance with all related laws, regulations and protocols.

SECTION 4.10.7 STANDARD FOR APPROVAL

The Select Board shall only approve a request to fund, acquire, or use military or surveillance equipment if it determines the benefits of the military or surveillance equipment outweigh its costs, that the proposal will safeguard the public's welfare, civil liberties, and civil rights, and that the uses and deployments of the military or surveillance equipment will not be based upon discriminatory or viewpoint-based factors or have a disparate impact on any community or group. To assist the public in participating in such an analysis, all approved Military/Surveillance Equipment Impact Reports and Military/Surveillance Equipment Use Policies shall be made available to the public, at a designated page on the relevant Town entity's public website, for as long as the related military or surveillance equipment is available for deployment. An approval for the funding, acquisition and/or deployment of any military or surveillance equipment by the Select Board, where the risk of potential adverse impacts on the public's welfare, civil rights,or civil liberties has been identified in the Military/Surveillance Equipment Impact Report pursuant to Section 4.10.3(5)(a), shall not be interpreted as an acquiescence to such impacts, but rather as an acknowledgement that a risk of such impacts exists and must be proactively avoided.

SECTION 4.10.8 ANNUAL MILITARY/SURVEILLANCE EQUIPMENT REPORT

(A) A Town entity that obtains approval for the funding, acquisition, or deployment of any military or surveillance equipment must submit to the Select Board, and make available

on its public website, an Annual Military Equipment Report for each specific military-grade law enforcement equipment acquired or deployed by the Town entity within twelve (12) months of Select Board approval, and annually thereafter on or before January 15. The Annual Military/Surveillance Equipment Report shall, at a minimum, include the following information for the previous calendar year for each type of military or surveillance equipment:

(1) A summary of how the military or surveillance equipment was used;
(2) Whether and how often collected surveillance data was shared with any external persons or entities, the name(s)of any recipient person or entity, the type(s) of data disclosed, under what legal standard(s) the information was disclosed, and the justification for the disclosure(s);
(3) Where applicable, a breakdown of where the military or surveillance equipment was deployed geographically, by individual census tract as defined in the relevant year by the United States Census Bureau. For each census tract, the municipal entity shall report how many individual days the military or surveillance equipment was deployed and what percentage of those daily-reported deployments were subject to (A) a warrant, and (B) a non-warrant form of court authorization;
(4) Where applicable, and with the greatest precision that is reasonably practicable, the amount of time the surveillance equipment was used to monitor Internet activity, the number of people affected, and what percentage of the reported monitoring was subject to (A) a warrant,and (B) a non-warrant form of court authorization;
(5) A summary of complaints or concerns that were received about the military or surveillance equipment;
(6) The results of any internal audits, any information about violations of the Military/Surveillance Equipment Use Policy, and any actions taken in response;
(7) An analysis of any discriminatory, disparate, and other adverse impacts the use of the military or surveillance equipment may have had on the public's safety, civil rights, and civil liberties, including but not limited to those guaranteed by the Massachusetts Declaration of Rights and the First, Fourth, and Fourteenth Amendment to the United States Constitution;and
(8) Total annual costs for the military or surveillance equipment, including operating personnel, maintenance, and other ongoing costs, and what source of funding will fund the military or surveillance equipment in the coming year.

(B) Within thirty (30) days of submitting and publicly releasing an Annual Military/Surveillance Equipment Report pursuant to Section 4.10.8(A), the Town entity shall hold one or more well-publicized and conveniently located community engagement meetings at which the general public is invited to discuss and ask questions regarding the Annual Military/Surveillance Equipment Report and the Town entity's acquisition and/or deployment of military and surveillance equipment.

(C) Based upon information provided in the Annual Military/Surveillance Equipment Report, the Select Board shall determine whether each type of military or surveillance equipment identified in response to Section 4.10.8(A), as used by the report-submitting entity, has met the standard for approval set forth in Section 4.10.7. If it has not, the Select Board shall direct the use of the military or surveillance be discontinued or shall require

modifications to the Military/Surveillance Equipment Use Policy that will resolve the observed failures.

SECTION 4.10.9 ANNUAL PUBLIC REPORT

The Annual Report of the Town shall containing the following information for the preceding calendar year:

(A) The number of requests for approval submitted to the Select Board under this Article for the funding, acquisition, or new deployment of military and surveillance equipment;
(B) The number of times the Select Board approved requests submitted under this Article for the funding, acquisition, or new deployment of military and surveillance equipment;
(C) The number of times the Select Board rejected requests submitted under this Article for the funding, acquisition, or new deployment of military and surveillance equipment;
(D) The number of times the Select Board requested modifications be made to Military/Surveillance Equipment Impact Reports and Military/Surveillance Equipment Use Policies before approving the funding, acquisition, or new deployment of military and surveillance equipment;
(E) The total annual cost of all military and surveillance equipment, pursuant to Section 4.10.8(A)(8); and
(F) All Annual Military/Surveillance Equipment Reports submitted pursuant to Section 4.10.8. Printed copies of the public report may contain pinpoint references to online locations where the Annual Military/Surveillance Equipment Reports are located, in lieu of reprinting the full reports.

SECTION 4.10.10 REMEDIES; PENALTIES; WHISTLEBLOWER PROTECTIONS

(A) Any violation of this Article, including but not limited to funding, acquiring, or deployment of military or surveillance equipment that has not been approved pursuant to this Article or utilizing military or surveillance equipment in a manner or for a purpose that has not been approved pursuant to this Article, constitutes an injury and any citizen of the Town may institute proceedings for injunctive relief, declaratory relief, writ of mandate, or evidence suppression in any court of competent jurisdiction to enforce this Article.
(B) Town employees or agents shall not use any military or surveillance equipment except in a manner consistent with policies approved pursuant to the terms of this Article, and may in no circumstances utilize military or surveillance equipment in a manner which is discriminatory, viewpoint-based, or violates the Massachusetts State Constitution or United States Constitution. Any Town employee who violates the provisions of this Article, or any implementing rule or regulation, may be subject to disciplinary proceedings and punishment. For Town employees who are represented under the terms of a collective bargaining agreement, this Article prevails except where it conflicts with the collective bargaining agreement, any memorandum of agreement or understanding signed pursuant to the collective bargaining agreement, or any recognized and established practice relative to the members of the bargaining unit.
(C) Any person who knowingly violates this Article may be punished by a fine not exceeding $300 per violation.

(D) Whistleblower protections: No municipal entity or anyone acting on behalf of a municipal entity may take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment, including but not limited to discriminating with respect to compensation, terms, conditions, access to information, restrictions on due process rights, privileges of employment, or civil or criminal liability, because the employee or applicant was perceived to, about to, or assisted in any lawful disclosure of information concerning the funding, acquisition, or deployment of military or surveillance equipment or sharing of surveillance data to any relevant municipal agency, municipal law enforcement, prosecutorial, or investigatory office, or Select Board Member, based upon a good faith belief that the disclosure evidenced a violation of this Article.

SECTION 4.10.11 CONFLICTING CONTRACTUAL AGREEMENTS PROHIBITED

It shall be unlawful for the Town or any Town entity to enter into any contract or other agreement that conflicts with the provisions of this Article, and any conflicting provisions in such contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable. Conflicting provisions in contracts or agreements signed prior to the adoption of this Article shall be deemed void and legally unenforceable to the extent permitted by law.

SECTION 4.10.12 CERTAIN PUBLIC-PRIVATE CONTRACTS PROHIBITED

It shall be unlawful for the Town or any Town entity to enter into any contract or other agreement that facilitates the receipt of military or surveillance equipment from, or provision of surveillance data to any non-governmental entity in exchange for any monetary or any other form of consideration from any source, including the assessment of any additional fees, interest,or surcharges on unpaid fines or debts. Any contracts or agreements signed prior to the adoption of this Article that violate this section shall be terminated as soon as is legally permissible.

SECTION 4.10.13 DEFINITIONS

(A) “Discriminatory” shall mean (1) disparate treatment of any individual(s) because of any real or perceived traits, characteristics, or status as to which discrimination is prohibited under the Constitution or any law of the United States, or the constitution or any law of the State of Massachusetts, or because of their association with such individual(s), or (2) disparate impact on any such individual(s) having traits, characteristics, or status as described in subsection (1).
(B) “Disparate impact” shall mean an adverse effect that is disproportionately experienced by individual(s) having any traits, characteristics, or status as to which discrimination is prohibited under the Constitution or any law of the United States, or the constitution or any law of the State of Massachusetts than by similarly situated individual(s) not having such traits, characteristics, or status.
(C) “Military equipment” shall mean tactical equipment regularly acquired, maintained, or used by the United States military, including, but not limited to: (a) manned aircraft; (b) unmanned aerial vehicles; (c) wheeled or tracked armored vehicles, including mine-

resistant and/or ambush-protected vehicles; (d) tactical vehicles and vessels; (e) command and control vehicles; (f) firearms and ammunition with a caliber of .50 caliber or higher; (g) firearms and ammunition under .50 caliber, other than service weapons, and ammunition therefor, issued to local police officers; (h) bayonets; (i) grenade launchers; (j) grenades, including stun and flash-bang; (k) explosives and pyrotechnics; (l) silencers; (m) breaching apparatus; (n) riot batons, helmets, and shields; (o) long-range acoustic devices (p) night-vision devices; and (q) camouflage uniforms. The enumeration of military equipment examples in this subsection shall not be interpreted as an endorsement or approval of their use by any Town entity

(D) "Town entity" shall mean any agency, department, bureau, division, or unit of the Town of Brookline ("Town").

(E) "Surveillance data" shall mean any electronic data collected, captured, recorded, retained, processed, intercepted, analyzed, or shared by surveillance equipment.

(F) "Surveillance equipment" shall mean an electronic surveillance device, hardware, or software that is capable of collecting, capturing, recording, retaining, processing, intercepting, analyzing, monitoring, or sharing audio, visual, digital, location, thermal, biometric, or similar information or communications specifically associated with, or capable of being associated with, any specific individual or group; or any system, device, or vehicle that is equipped with an electronic surveillance device, hardware, or software.

(1) "Surveillance equipment" includes, but is not limited to: (a) international mobile subscriber identity (IMSI) catchers and other cell site simulators; (b) automatic license plate readers; (c) electronic toll readers; (d) closed-circuit television cameras; (e) biometric surveillance technology, including facial, voice, iris, and gait-recognition software and databases; (f) mobile DNA capture technology; (g) gunshot detection and location hardware and services; (h) x-ray vans; (i) video and audio monitoring and/or recording technology, such as surveillance cameras, wide-angle cameras, and wearable body cameras; (j) surveillance enabled or capable light bulbs or light fixtures; (k) tools, including software and hardware, used to gain unauthorized access to a computer, computer service, or computer network; (l) social media monitoring software; (m) through-the-wall radar or similar imaging technology, (n) passive scanners of radio networks, (o) long-range Bluetooth and other wireless-scanning devices, (p) radio-frequency I.D. (RFID) scanners, and (q) software designed to integrate or analyze data from Surveillance Technology, including surveillance target tracking and predictive policing software. The enumeration of surveillance technology examples in this subsection shall not be interpreted as an endorsement or approval of their use by any municipal entity.

(2) "Surveillance equipment" does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a surveillance technology as defined in Section 4.10.13(F): (a) routine office hardware, such as televisions, computers, and printers, that is in widespread public use and will not be used for any surveillance or surveillance-related functions; (b) Parking Ticket Devices (PTDs); (c) manually-operated, non-wearable, handheld digital cameras, audio recorders, and video recorders that are not designed to be used surreptitiously and whose functionality is limited to manually capturing and manually downloading video and/or audio recordings;

(d) surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars; (e) Town databases that do not and will not contain any data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by surveillance technology; and (f) manually-operated technological devices that are used primarily for internal Town entity communications and are not designed to surreptitiously collect surveillance data, such as radios and email systems.

(G) "Viewpoint-based" shall mean targeted at any community or group or its members because of their exercise of rights protected under the First Amendment of the United States Constitution or the Massachusetts Declaration of Rights.

SECTION 4.10.14 SEVERABILITY

The provisions in this By-law shall be deemed to be severable. If any part or provision of this Article, or the application of this Article to any person or circumstance, is held invalid, the remainder of this Article, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

PETITIONER'S ARTICLE DESCRIPTION

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 pursing 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.

SELECT BOARD'S RECOMMENDATION

A report and recommendation by the Select Board under Article 28 will be provided in the Supplemental Mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Along with Articles 29 and 30, Article 28 is one of three Warrant Articles (two proposed bylaws and one resolution) addressing the same set of issues. Article 28 would establish a reporting process to study both surveillance and military technology before they are acquired by the Town, oversight, and an annual review. Article 29 proposed an Advisory Committee on Military and Surveillance Equipment. It is intended to assist the Select Board in an oversight role. The goals are for more transparent reporting and accountability to Town citizens. Article 30 is a resolution the petitioner proposes should there be legal or technical issues with Articles 28 and 29.

Article 28 would require that the Police Department (and all other Town departments) receive permission from the Select Board before acquiring or using any surplus military equipment or surveillance equipment. They would also be required to maintain logs of each piece of equipment, and all times and situations the equipment is used. Exceptions may be granted, and there is a provision for use in emergency situations. The Advisory Committee believes that many questions need to be answered before the Town adopts the policies proposed in Article 28. By a vote of 13–9–2, the Advisory Committee recommends NO ACTION.

BACKGROUND:
Article 28 is derived from an initiative of the American Civil Liberties Union (ACLU): the Community Control over Police Surveillance and Militarization (CCOPS+M). The federal government started a program in 1989 known as the 1033 program, under which surplus military items would be offered to local and state governments to help in the war on drugs. Since 2006, through the Pentagon's Law Enforcement Support Office, 79,288 assault rifles, 205 grenade launchers, 11,959 bayonets, 422 helicopters, and other equipment has been distributed. It should be noted that Brookline has not applied to get any of the aforementioned equipment. However, the weapons are only a small part of the program. The list includes flashlights, night vision goggles, laptop computers, medical equipment, and even musical instruments. Actual weapons account for only 3% of the total value of goods distributed.

After unflattering news reports of military-grade weapons and equipment being used by local police forces across the country, President Obama signed Executive Order 13688 in 2015 to limit and prohibit certain types of equipment. However, in 2017 the White House reversed that decision, allowing more equipment to be handed out. The ACLU has produced proposed boilerplate legislation that local communities can adopt to monitor the

acquisition and use of such equipment. The petitioner adapted this language for Article 28. Article 28 also deals with surveillance technologies, and the use by the Town of such technology. Somerville's mayor ordered the adoption of similar language to this, but much more limited, with no new committee, and Arlington and Cambridge are studying it.

DISCUSSION:

The Town has not acquired nor is there any intention by the Town to acquire any surplus military equipment. This has been the policy since the program was initiated, so the concern of the petitioner in this regard seems unwarranted.

The Select Board would have to give permission or waivers for every piece of equipment the Town uses that would qualify under the Article's definitions, along with every possible use for every piece of equipment. This would all have to be reviewed annually. The amount of oversight proposed is extensive, excessively detailed and would take huge amounts of time and effort by Town departments and the new commission that would be formed under Article 29.

There were many issues that concerned the Advisory Committee, public safety officials, and Town Counsel. Going through the Article itself, here are a few examples of the problems of Article 28 as written:

- Section 4.10.3—What is a "legally enforceable" written report?
- Section 4.10.10—"any citizen of the Town" may institute proceedings for relief. This, however, means that a resident of, say, Boston, may not. Having two different standards as to who could file complaints based on where you live may create legal problems. The Advisory Committee and the Police Department were concerned over the use of the words "evidence suppression."
- Section 4.10.11—This section was particularly confusing, regarding conflicting provisions in contracts.
- Section 4.10.12—It would appear that it would become illegal to receive or return equipment from any shipping company.
- The legal definition of the term "Disparate Impact," one of the major concerns prompting the petitioner to file these articles, was also extensively discussed.

There were other issues, such as the written policy for every possible use of every piece of equipment, making for a potential paperwork nightmare that would overburden town departments and require significant Town resources. The Advisory Committee's Public Safety Subcommittee received comments from the Police Department, which did not support the Article. Town Counsel pointed out that there were many legal issues with Article 28, including that the Massachusetts General Laws contain provisions that conflict with the proposed bylaw. There are also federal guidelines regarding the listing of surplus equipment that conflict with the provisions of Article 28. There was discussion of investigatory exemption and security measures, two exceptions explicitly written into the Public Records Law.

Other departments have equipment that would fall under Article 28: the Fire Department uses breaching apparatus (jaws of life); the Department of Public Works (DPW) uses a drone to inspect the Town's water tank; and the Library uses Radio-Frequency

Identification (RFID) to check out books. (The doors in Town Hall are also opened with RFID technology.) Tracking devices are used by the Police Department to deter thefts of packages from people's porches and also to apprehend bicycle thieves (bait bikes). The command and control vehicle used during the Boston Marathon also would be included.

The Police Department offered numerous examples of how their investigations would be hampered and their officers subject to fines for doing their jobs if the article were adopted. There also could be problems with interagency collaboration to apprehend perpetrators of crimes. This includes cases in which a Boston Police Officer or MBTA Officer were to show a Brookline officer a photograph of a suspect on a cell phone or security camera footage from another community, or vice versa. That would also include images from camera systems in stores and private homes. The Police Department already has a robust reporting policy where much of the information that the petitioner wants is already available. There are existing checks and balances in place where the Police must go to a court to get permission for surveillance only after showing probable cause. The passive surveillance of public spaces in Brookline is less intrusive than almost all commercial monitoring currently being used, and the Town's cameras have resulted in the solving of crimes.

The Police Department's 2014 Year End Report states:
"In fact, in May, the Washington Post published a piece about a study that was conducted by a researcher at San Diego State University on police department transparency. The researcher looked at 300 departments across the United States and cited Brookline as ranking first among city and county police departments whose websites were studied, evaluating such things as whether the department provided information about contacting the department, filing complaints, using force and any other insight into how the departments operate. "Lots of departments don't measure up well. But some are leaps ahead of others. The highest ranking department is Brookline, Mass., a small, tiny Boston suburb.""

Much of the debate at the Advisory Committee involved whether to send the subject matter of articles 28–30 to a committee to study it, or recommend No Action. Given the lack of military equipment in town, and the legal and logistical issues in Articles 28 and 29, the Advisory Committee decided that there was no need to refer these topics to a committee now. The Advisory Committee commends the petitioner for wanting a transparent process and accountability regarding Police policy and surveillance equipment used in Town. The current CIMS committee could certainly be updated to reflect current concerns and to seek a coordinated Town policy on all security cameras in use by all Town locations without the need for a new bylaw. The issue with military equipment, however, does not exist in Brookline. The Town has no intention of acquiring any surplus equipment from the military, and some of it, notably flashlights, rugged laptops, medical items, jaws of life, surplus wire, etc. should not need to be tracked in any case. It was felt that Warrant Articles 28–30, given the significant legal conflicts and legitimate concerns of the Police Department and Town Counsel need significant work and are not ready to be acted upon by Town Meeting. The petitioner's intent of using DICR resources to fund the implementation of the proposed bylaw does not appear to be possible without increasing the department's budget significantly.

In addition, it is imperative that the head of DICR, the Police, Fire, and all the other departments that would have to provide and analyze copious amounts of data be brought into the conversation long before such a committee is set up. It was also felt that with a new Police Chief coming in, that the new Chief should have input on Articles 28–30.

RECOMMENDATION:
By a vote of 13–9–2, the Advisory Committee recommends NO ACTION on Article 28.

After the vote, the Advisory Committee was informed that the Committee on Town Organization and Structure will offer a referral motion on Articles 28, 29, and 30. The Advisory Committee will address any new motion(s) in a supplemental report.

XXX

ARTICLE 28

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

The following report and motion is intended to cover the Board's position on articles 28-30:

Articles 28-30 are petitioned articles from Town Meeting Member Scott Ananian seeking regulation of the Town's acquisition and use of "military and surveillance" equipment. Article 28 proposes a lengthy by-law that requires the Select Board's approval of any application for funding, acquisition, deployment and use, or solicitation of a third party on behalf of the Town, to use military or surveillance equipment. The by-law would require the submission of an "impact report" and "use policy" for such equipment and would require the Board to conduct a public hearing. Article 29 would establish a committee to advise the Select Board about the acquisition and use of such military and surveillance equipment. Article 30 is a proposed non-binding resolution covering the goals in Articles 28 and 29 in the event that these binding by-law proposals are defeated or have technical and/or legal problems.

For most of the reasons that are effectively communicated in the Advisory Committee and the Committee on Town Organization and Structure (CTOS) reports, the Select Board does not support these articles. The Board considers the by-law proposal under Article 28, taking up ten pages of single spaced text within the Warrant, overly complicated, impractical and detached from the realities of how Town departments use standard and modern technology to meet their responsibilities in the 21st century. The permitted use of technologies by the Police Department is already outlined in its Policies and Procedures which were reviewed and approved just last year by the Select Board and are available to the general public on its website. In addition, the Brookline Police Department is an MPAC accredited agency, and as such has been found to be in compliance with all standards regarding surveillance transparency as mandated by the Massachusetts Police Accreditation Commission, as well as all laws and regulations including, but not limited to, the Massachusetts Public Records Laws, the Massachusetts Municipal Records Retention schedule, the Massachusetts Declaration of Rights, 28 CFR 23 and, most importantly, the Constitution of the United States.

However, in the spirit of acknowledging that the use of military and surveillance equipment is a legitimate concern in our society, we will support a referral of this general matter to a Select Board appointed study committee. Led by Board Member Bernard Greene, the scope of this committee would be consistent with the approach identified by CTOS. This referral should start with a "clean slate" rather than an assumption that the flawed proposal under Article 28 be a starting point to "tweak".

The Board unanimously offers the following motion under articles 28-30:

RESOLVED: That the Select Board appoint a committee to study and report to it on the acquisition, deployment and use of surveillance equipment, and military equipment if any, by Town Departments and by the School Department, and on the policies, procedures and oversight regulating such acquisition, deployment and use and regulating the acquisition, retention, use and dissemination of surveillance data by Town Departments and the School Department. Further, that the Select Board consider including a representative of the CIMS Oversight Committee, the Commission for Diversity Inclusion & Community Relations, the Advisory Committee, Public Safety Departments of the Town, and members of the public and/or Town or School Departments with relevant technical expertise. The work product should include, but not be limited to, inventories of all surveillance equipment and military equipment and, after at least one public hearing, recommendations for any improvements and best practices to be adopted.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

After the Advisory Committee had voted to recommend NO ACTION on Article 28 (and Articles 29 and 30), the Committee on Town Organization and Structure (CTO&S) issued a report on Articles 28, 29, and 30, and offered a resolution to refer the issues raised by the three Articles to a committee to be appointed by the Select Board. Marty Rosenthal, a member of CTO&S, dissented from that Committee's referral motion and offered an alternative motion that would refer the subject matter of Articles 28–30 to the Commission for Diversity, Inclusion, and Community Relations. The Commission would consult with the Select Board and form a working group that would assist the Select Board in preparing proposals for a future Town Meeting

On May 10, 2018, the Advisory Committee met to possibly reconsider Article 28 (and Articles 29 and 30), and discussed the proposed referral motions.

Like the Advisory Committee, CTO&S had serious concerns about the language and unintended legal issues in Articles 28–30. The Advisory Committee discussed many serious concerns about the proposed CTO&S referral motion. That motion would have the Select Board appoint a committee to study, among other things, the issue of military equipment use, even though the Town of Brookline apparently is not using military equipment. The Advisory Committee noted that the report of CTO&S on Articles 28–30 raises questions about whether referral is necessary or appropriate. For example, the CTO&S report argues that Articles 28–30 include "accusatory terminology and burdensome requirements that are inapplicable to Brookline and that could jeopardize public safety."

The motion filed by a single member of CTO&S would have the Commission for Diversity, Inclusion, and Community Relations form a working group to study the issues raised by

the three Warrant Articles. The Advisory Committee had already expressed concern about the limited resources the Commission has to work with. Most members of the Advisory Committee did not think the Commission for Diversity, Inclusion, and Community Relations should take the lead in studying, for example, the issues of the Town's use of static cameras or acquisition of military equipment (of which we have none). One Advisory Committee member expressed the hope that the petitioner would not move the Articles and come back in the future with a proposal more suited to Brookline's actual situation.

Many members of the Advisory Committee questioned whether every Article that does not receive a Favorable Action vote needs to be referred to a Moderator's or Select Board committee.

It also was noted that the Commission for Diversity, Inclusion, and Community Relations does not need a referral motion in order to consider the subject matter of Articles 28, 29, and 30. The Commission, which has an important perspective, could take up these questions, study the issues, and, potentially, offer its own Warrant Article(s) for a future Town Meeting.

RECOMMENDATION:
By a vote of 3–18–2, a motion to reconsider Article 28 failed. The Advisory Committee therefore continues to recommend NO ACTION on Article 28.

ARTICLE 28-30

MOTION OFFERED BY MARTIN ROSENTHAL, TMM9[1]

RESOLVED: to refer the general subject matters of arts. 28-30, including inventory of and prospective policies for the acquisition and use of surveillance and military equipment, as they pertain to all Town and School Departments -- including related policies, such as existing or future surveillance cameras, and the future use of body and cruiser cameras -- to the Commission on Diversity, Inclusion, & Community Relations to consult with the Select Board and form a working group -- including appropriate technical expertise, departmental members, and community representatives -- to hold at least one public hearing, to assist the Select Board in reporting back proposal(s) as soon as reasonably feasible for a future Town Meeting warrant.

Explanation:

First, and respectfully, the long too conservative Advisory Committee should be ashamed for voting, 1st, that 28-30 need to simply go back to the petitioners' drawing board, and 2nd, essentially/implicitly (a) that the petitioners alone should bear that entire onus, and (b) not explicitly disputing, but implicitly minimizing, art. 28-30's important issues.

I have, since March, promoted referral of these articles, which in fact raise some important issues, but are too complex for constructive TM debate, and contain much that's indeed not pertinent here. As the dissenter to the thoughtful CTOS proposal, my reasons -- for both referral and the above alternative approach -- follow.

Going back to the unanimously adopted 1987 *Selectmen's Report On Police And Community Relations* (that I co-authored), the most important overall issue is that BPD "policy" issues need not only (and obviously) BPD input, but also -- for effective civilian control by the S/Bd (now officially "police commissioners" by my 2010 by-law amendment) -- more ongoing and institutionalized procedures for *public input*, which has sometimes been unfortunately neglected. See from the 1987 Report, e.g. (emphasis now added):

> By [a 1921] vote of T/M, Brookline adopted c. 41, § 97, mandating that "the Selectmen may make suitable regulations governing the police department and the officers thereof" -- as opposed to [§97A] wherein a chief makes regulations, subject only to approval by the Selectmen. We have, and wish to have, a Chief who is "strong" in many ways, e.g., energy, professionalism, managerial and administrative initiative; but by law it is the selectmen who should make significant policy decisions. It is important that [they] not meddle in the daily

[1] Co-Chair of Brookline PAX and a member of CTOS, but dissenting from their referral motion. *The Diversity Commission, after a May 9th hearing, considered CTOS' motion, and voted to recommend this one instead.*

> administrative and managerial activities of the Department. For "policy" issues, it is important not only that the Selectmen invite, receive, and accord some deference to the advice of the Chief but also that t*he community have an opportunity to provide input*. … Law enforcement in America is premised on the theory that police derive their authority from, and are part of, the people. Not only should community input be institutionalized, but police policies and activities must be explained to the public. The [S/B & BPD] must earn the trust and support of the community through, in part, positive and open communication to citizens directly and through the media. … The Selectmen and the Chief should make efforts, including those made pursuant to our other recommendations, to identify all unwritten practices which should be codified as written policies. All such policy issues should be docketed for preliminary discussion by the Selectmen after input and recommendations from the Chief relative to background and alternative strategies. After further research or investigation, s*uch issues should generally be decided only after a public hearing.* Broad community input should be solicited, particularly from groups, agencies, or individuals known to have interest or knowledge in such issues.

As for the specifics of 28-30, yes, it has many details that are merely hypothetical -- or irrelevant -- for Brookline. Yet there *are* several very serious issues that are either existing, imminent, or proliferating in many communities. For example, now needing attention are: (a) use of body and cruiser cameras, which is (fortunately) proliferating elsewhere, but raises some tricky -- and surmountable-- issues (e.g. funding, privacy, bargaining, public access); (b) proliferating use of license plate scanners, also raising various issues[2]; and (c) a better & more expanded focus on townwide surveillance issues, broader than the Camera Oversight Committee has been doing.

As usual, *CTOS'* [May 1st draft] *MOTION*, is thoughtful, raising some valid issues. BUT it:

- has a too restrictive/specific subject matter , saying "the Articles should not form a starting point, because they could compromise public safety… [and] 'military equipment' may not even be at issue in Brookline, but a reference is included for the sake of completeness." Such over-generalizations (a) are premature; (b) like the A/C, implicitly denigrate the seriousness of the most pertinent issues; and (c) should not preempt -- or color -- the referral study. The scope and topics should be discussed by the study committee as an early discussion item, including both lots of narrowing and some clarifying. For instance, we have urged that both *body/cruiser cameras* and also *taser/stun guns* -- the latter (thankfully) rejected by our two recent Chiefs -- should be included in the study.[3];
- is also too specific in naming various entities as members, maybe unprecedented. With only T/M's more general guidance, the appointing officials should -- and will -- decide what expertise and entities should be on it;

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[2] See http://www.bostonglobe.com/metro/2018/05/06/boston-police-resume-using-license-plate-readers-after-accidental-release-data/gZrC8ozxad9GxcymIxtLfO/story.html.

[3] See Globe editorial, 4/29/18, "Hey, Beacon Hill: Stun guns too lethal to ignore."; see also Globe, March 14th, "Taser use rising fast." The Supreme Court says tasers are "arms" within the 2nd Amendment. They're used by the Army; & art 28 includes "tactical equipment … used by the US military, including, but not limited to: … (g) firearms … other than service weapons… issued to local police officers"

- proposes an unnecessary, wholly new committee -- presumably with either no, new, or re-assigned staff. Goodness knows Brookline has (too) many already. Instead, we propose a working group supervised by the (staffed) Diversity Comm'n; and
- does n*ot mandate any public hearing.*

The Diversity Commission did great work with a similar working group, collaborating with the BPD & Select Board on *sanctuary* policies that may be the state's best. Petitioners, Brookline PAX, and I are confident the Commission has both the appropriate mission and now-proven priorities -- including *both* safety of the public *and* of our police officers. Their by-law, which I & S/B/M Greene helped draft, includes numerous references to "*human and civil rights*," which includes both privacy rights and preventing (excessive) "militarization." And, fears that the Commission would downplay safety or BPD concerns are clearly misplaced. Conversely, we trust them more than a totally unknown new committee to take seriously arts. 28-30.

ARTICLES 28-30

REPORT OF THE COMMITTEE ON TOWN ORGANIZATION AND STRUCTURE

Despite the deeply flawed nature of Articles 28, 29 and 30, CTO&S recognizes that a number of Town Meeting Members and citizens, including some CTO&S members, may believe that the time has come to reexamine (or, in some cases, examine for the first time) the actual deployment and use of surveillance equipment by the Town and the Schools as well as Town and School procedures regarding surveillance. **If** these articles are to be referred, CTO&S by a 5-1 vote recommends the following referral motion:

> RESOLVED: That the Select Board appoint a committee to study and report to it on the acquisition, deployment and use of surveillance equipment, and military equipment if any, by Town Departments and by the School Department, and on the policies, procedures and oversight regulating such acquisition, deployment and use and regulating the acquisition, use and dissemination of surveillance data by Town Departments and the School Department. Further, that the Select Board consider including a representative of the CIMS Oversight Committee, the Commission for Diversity Inclusion & Community Relations, the Advisory Committee, Public Safety Departments of the Town, and members of the public and/or Town or School Departments with relevant technical expertise. The work product should include, but not be limited to, inventories of all surveillance equipment and military equipment and recommendations for any improvements and best practices to be adopted.

Member Rosenthal dissented, presenting the draft of an alternative referral motion that he is planning to finalize and offer to Town Meeting.

CTO&S recommends that the study committee be appointed by the Select Board and that the report be made to the Select Board, for the following reasons:

- It has been argued that the Commission for Diversity Inclusion & Community Relations ("CDICR") should form a "working group" (with some ill-defined "consultation" with the Select Board) because this is a civil rights issue.
- The best interests of the Town, however, require that surveillance not be viewed through a single lens. There is a difficult balancing act between the recognition that surveillance can be used for the wrong purposes -- most notably invading privacy and creating racial, religious or other injustice -- and the recognition that it also can be used to deter, to thwart and, if all else fails, to find and apprehend criminals.
- There is no set formula to achieve this balance between civil rights and public safety, but it requires judgment responsive to both sides of the issue. The Select

Board is the single Town entity equipped to achieve this balance by its position, duties, breadth of responsibilities and direct accountability to the citizens of Brookline.

- The Select Board, as the Town's Police Commissioners, is obligated not only to protect civil rights but also charged with protecting public safety. It is, moreover, the entity vested with authority to implement any changes with regard to the Police and other Town departments.
- The elected Select Board is the entity that must answer to Town voters for the way competing concerns are balanced.
- While the CTO&S motion suggests some committee members, the Select Board has the authority <u>and</u> the visibility to cast a wider net seeking the most qualified individuals to serve on a study committee. If these issues are important enough to study, they should be studied by a committee with the greatest breadth of experience and expertise.

CTO&S also believes that the appointed committee should start with a clean slate. These matters should have a robust local study and discussion with recommendations based on local conditions and concerns. The provisions of Articles 28, 29 and 30 should not be a starting point for any consideration of "military equipment," surveillance equipment or surveillance data in Brookline, because those Articles cannot simply be "tweaked" to form the basis of action in Brookline. The Articles appropriate language from a national campaign highlighting abuses in other communities, incorporating accusatory terminology and burdensome requirements that are inapplicable to Brookline and that could jeopardize public safety. For example,

- So-called "military equipment" may not even be at issue in Brookline, yet "military equipment" is referred to in section after section of the Articles.
- Even the resolution (Article 30) copies language from a national campaign and thoughtlessly pastes it into a Brookline resolution: "throughout history, military and surveillance equipment has been used to intimidate and oppress … those that are defined by a common race, ethnicity, religion, national origin, income level, sexual orientation, or political perspective." No example has been given of any such conduct by Town or School Departments.
- Article 29 likewise repeatedly refers to the "disparate impacts" of military and surveillance equipment on "individual(s) having any traits, characteristics, or status as to which discrimination is prohibited," calling for "research [on] local issues" with regard to such "disparate impacts" and "mechanisms to report disparate impacts," as well creating a complicated committee structure and annual reporting to deal with any such impacts. Again, there was no example of any such disparate treatment in the use of surveillance equipment (to say nothing of military equipment) by Brookline Town Departments or the Brookline Schools.

Moreover, the Articles should not form a starting point because they could compromise public safety. Under Article 28, for example,

- The Police Department would be prohibited from "using … surveillance equipment for a purpose … not previously approved by the Select Board," and the Article requires a "mandatory … public Board hearing" prior to such approval. By its terms, there is no exception even when a court has issued a warrant for surveillance – the Department would then also have to reveal the anticipated surveillance in a public Select Board hearing. The reporting requirements of the Article make clear that it is indeed intended to encompass surveillance even when there has been a warrant or non-warrant form of court approval.
- Similarly, the Police Department would be prohibited from "entering into an agreement with any other person or entity to acquire … surveillance data" without the "mandatory … public Board hearing" and approval. During the public hearings on these Articles, the Department provided an example of its ability to quickly arrest suspects in a robbery and stabbing through the use of information received from private cameras, phone records and the MBTA. Article 28 would by its terms foreclose such quick and effective investigatory work.
- The Article cites 28 C.F.R. Part 20e with approval, but then ignores exemptions included in that federal regulation. The federal regulation includes broad exemptions for the dissemination of information for law enforcement activity and for imminent danger to life and property. 28 C.F.R. §§23.20(e), (f)(2). The warrant articles contain no such exemptions.
- The Article would undermine judicial process. It provides that "any citizen of the Town may institute proceedings for injunctive relief, declaratory relief, writ of mandate or evidence suppression in any court of competent jurisdiction to enforce this article." This suggests that even if electronic surveillance were conducted pursuant to a valid search warrant, a defendant – or, indeed, any citizen (including even one not the object of surveillance) – could bring an action to suppress evidence for violation of any of the myriad technical requirements of the Article.

There is also a significant question of the authority of Town Meeting and the Select Board over the School Department. Article 28 would require Select Board approval before any "Town entity" either "deploy[s] or us[es] new or existing … surveillance equipment for a purpose or in a manner not previously approved by the Select Board in accordance with this Article, including the sharing of surveillance date therefrom." The term "Town entity" is defined to mean any department or unit of the Town of Brookline, which would include the School Department. In fact, petitioners made clear in a PowerPoint presentation their intent to focus these Articles on the School Department as well as Town Departments, because they believe that the Schools (and libraries) lack the good practices of the Police Department with regard to surveillance:

- "This does not single out the police. Community members are equally concerned about surveillance cameras in the libraries and schools."
- "If anything, the oversight provided by this bill [sic] is more critical on these non-police technologies, since the other departments lack the good prior practices demonstrated by BPD for CIMS audits, etc."

The Select Board, which would have to implement any recommendations with the guidance of Town Counsel, is best equipped to deal with the question of its legal authority vis-à-vis the School Committee.

If Town Meeting is inclined to refer Articles 28, 29 and 30, CTO&S therefore recommends that the referral be in the form set forth above.

ARTICLE 28-30

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS RECOMMENDATION

The Commission for Diversity, Inclusion and Community Relations voted unanimously for favorable action for Articles 28-30 as presented in the Rosenthal Motion.

Vote was as follows: 9 in favor, 0 no actions and 0 abstentions.

ARTICLE 28-30

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

The Advisory Committee has three times taken up the question of referral for Warrant Articles 28–30, on May 10th, May 22nd and May 24th. Twice the Advisory Committee voted to recommend NO ACTION on the three Articles, citing many of the arguments addressed in the report of the Committee on Town Organization and Structure (CTO&S). These arguments cited technical problems with the language in Article 28 and the unintended legal consequences of writing into the Town's General By-Laws requirements that conflict with State and Federal statutes. The Advisory Committee also noted that the Town does not apply for surplus military equipment under the federal government program known as the 1033 program, so that many of the concerns specified in the American Civil Liberties Union (ACLU) suggested legislation upon which Article 28 is based may not apply to Brookline.

The majority of the Advisory Committee recognized that the Articles being brought to Town Meeting were deeply flawed and recommended a vote of No Action with the hope that the petitioner would bring back to Town Meeting Articles that were more relevant to the use of surveillance and military-style equipment in the Town of Brookline when considering the important subject matter the petitioner wants the Town to address.

Members of the Advisory Committee also explored the possibility of referral to a Moderator's Committee, but the Moderator ruled that it was too late to bring that third alternative to Town Meeting.

After thoughtful consideration, the Advisory Committee is now supporting the referral motion being offered by the Select Board, based on the following new information.

1. The Select Board motion focuses on the important issues raised in the Articles, rather than the Articles themselves, reflecting the concerns raised in the CTO&S motion;

2. Select Board Member Bernard Greene is willing to take the lead on the process that the Select Board motion would propel forward;

3. The Select Board may be better positioned to work with all the departments that need to be involved, including police, legal, library, and schools.

RECOMMENDATION:
At a meeting held on May 24th the Advisory Committee by a vote of 22–2–2 voted to recommend FAVORABLE ACTION on the Select Board's referral motion regarding the issues raised by Articles 28, 29 and 30.

ARTICLE 29

TWENTY-NINETH ARTICLE

Submitted by: C. Scott Ananian, TMM 10

To see if the Town will adopt the following version of a new Article 3.24 of the Town By-laws,

or act on anything relative thereto.

ARTICLE 3.24
Community Advisory Committee on Military and Surveillance Equipment

SECTION 3.24.1 ESTABLISHMENT AND PURPOSE
The purpose of this Article is to establish the Brookline Community Advisory Committee on Military and Surveillance Equipment (the "Committee") under the Town of Brookline's General By-laws, and to establish principles and procedures for the governance of the Committee. The purpose of the Committee is to provide the Select Board with broad principles to help guide decisions about if and how military and surveillance equipment should be acquired and deployed by the Town and its departments. The Committee shall work in conjunction with the Office of Diversity, Inclusion and Community Relations for purposes of resource allocation and administrative support.

SECTION 3.24.2: DEFINITIONS

(A) "Disparate impact" shall mean an adverse effect that is disproportionately experienced by individual(s) having any traits, characteristics, or status as to which discrimination is prohibited under the Constitution or any law of the United States, or the constitution or any law of the State of Massachusetts than by similarly situated individual(s) not having such traits, characteristics, or status.

(B) "Military equipment" shall mean tactical equipment regularly acquired, maintained, or used by the United States military, including, but not limited to: (a) manned aircraft; (b) unmanned aerial vehicles; (c) wheeled or tracked armored vehicles, including mine-resistant and/or ambush-protected vehicles; (d) tactical vehicles and vessels; (e) command and control vehicles; (f) firearms and ammunition with a caliber of .50 caliber or higher; (g) firearms and ammunition under .50 caliber, other than service weapons, and ammunition therefor, issued to local police officers; (h) bayonets; (i) grenade launchers; (j) grenades, including stun and flash-bang; (k) explosives and pyrotechnics; (l) silencers; (m) breaching apparatus; (n) riot batons, helmets, and shields; (o) long range acoustic devices (p) night vision devices; and (q) camouflage uniforms. The enumeration of military equipment examples in this subsection shall not be interpreted as an endorsement or approval of their use by any Town entity

(C) "Town entity" shall mean any agency, department, bureau, division, or unit of the Town of Brookline ("Town").

(D) "Surveillance data" shall mean any electronic data collected, captured, recorded, retained, processed, intercepted, analyzed, or shared by surveillance equipment.

(E) "Surveillance equipment" shall mean an electronic surveillance device, hardware, or software that is capable of collecting, capturing, recording, retaining, processing, intercepting, analyzing, monitoring, or sharing audio, visual, digital, location, thermal, biometric, or similar information or communications specifically associated with, or capable of being associated with, any specific individual or group; or any system, device, or vehicle that is equipped with an electronic surveillance device, hardware, or software.

(1) "Surveillance equipment" includes, but is not limited to: (a) international mobile subscriber identity (IMSI) catchers and other cell site simulators; (b) automatic license plate readers; (c) electronic toll readers; (d) closed-circuit television cameras; (e) biometric surveillance technology, including facial, voice, iris, and gait-recognition software and databases; (f) mobile DNA capture technology; (g) gunshot detection and location hardware and services; (h) x-ray vans; (i) video and audio monitoring and/or recording technology, such as surveillance cameras, wide-angle cameras, and wearable body cameras; (j) surveillance enabled or capable lightbulbs or light fixtures; (k) tools, including software and hardware, used to gain unauthorized access to a computer, computer service, or computer network; (l) social media monitoring software; (m) through-the-wall radar or similar imaging technology, (n) passive scanners of radio networks, (o) long-range Bluetooth and other wireless-scanning devices, (p) radio-frequency I.D. (RFID) scanners, and (q) software designed to integrate or analyze data from Surveillance Technology, including surveillance target tracking and predictive policing software. The enumeration of surveillance technology examples in this subsection shall not be interpreted as an endorsement or approval of their use by any municipal entity.

(2) "Surveillance equipment" does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a surveillance technology as defined in Section 3.24.2(E): (a) routine office hardware, such as televisions, computers, and printers, that is in widespread public use and will not be used for any surveillance or surveillance-related functions; (b) Parking Ticket Devices (PTDs); (c) manually-operated, non-wearable, handheld digital cameras, audio recorders, and video recorders that are not designed to be used surreptitiously and whose functionality is limited to manually capturing and manually downloading video and/or audio recordings; (d) surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars; (e) Town databases that do not and will not contain any data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by surveillance technology; and (f) manually-operated technological devices that are used primarily for internal Town entity communications and are not designed to surreptitiously collect surveillance data, such as radios and email systems.

SECTION 3.24.3 POWERS AND DUTIES

The Community Advisory Committee on Military and Surveillance Equipment shall have the following responsibilities:

1) Research local issues with the funding, acquisition, or deployment of military or surveillance equipment, including use by neighboring communities, disparate impacts of such equipment, and current and anticipated future development;
2) Work in cooperation with the departments and agencies of the Town of Brookline, including preparing Warrant Articles where appropriate, to ensure funding, acquisition, or deployment of military and surveillance equipment should not occur without strong consideration being given to the significant impact such equipment may have on the public's welfare, civil rights, and civil liberties, including those rights guaranteed by the Massachusetts Declaration of Rights and the First, Fourth, and Fourteenth Amendments to the United States Constitution;
3) Encourage public awareness of local use of military and surveillance equipment, including awareness of measures the public may take to ensure their rights are protected and of mechanisms to report disparate impacts of such equipment;
4) Compose a mission statement for the Committee. Review the statement every five (5) years, and revise it as needed. Post the statement on the Committee's website;
5) Prepare written long term goals that are specific, measurable and relevant to the Committee's mission. Review these goals every five (5) years and revise as needed. Prepare written short term goals annually;
6) File an annual report which shall be printed in the Town's annual report, listing current members, summarizing Committee accomplishments, and including a Military/Surveillance Equipment Community Equity Impact Assessment and Policy Guidance. This report shall address, at a minimum, the following:
    (A) What communities and groups in the Town, if any, are disproportionately impacted by the deployment of military and surveillance equipment, what disparities were perceived and/or experienced, and what were the resulting adverse impacts on the community's or group's safety, civil rights, and civil liberties;
    (B) With respect to each perceived or experienced disparity identified in response to Section 3.24.3(6)(A), what remedial adjustments to by-laws and policies, including but not limited to prior approvals of military and surveillance equipment, should be made so as to achieve a more just and equitable outcome in the future.
    (C) With respect to each remedial adjustment identified in response to Section 3.24.3(6)(B), what additional funding, implementation strategies, and/or accountability mechanisms would be needed to effectuate the adjustment; and
    (D) In light of the collective responses to Section 3.24.3(6)(A)-(C), what new approaches and considerations should the Town bring to future reviews of military and surveillance equipment.
7) When needed, and as an aid to the Select Board, the Committee may recommend prospective Committee members for appointment by the Select Board. The Committee shall endeavor especially to solicit nominations that reflect the diversity of the Town's residents, and special efforts should be made to ensure communities that have historically been disproportionately subjected to targeting by military and surveillance equipment are well-represented. Members of the public are welcome to apply directly to the Select Board for appointment. A recommendation for appointment from the Committee shall only be advisory and not necessary to receive appointment to the Committee;

8) Take such action as the Committee considers appropriate to ensure the purposes of this By-law are met.

SECTION 3.24.4 MEMBERSHIP
The Committee shall consist of seven (7) or nine (9) volunteer members appointed by the Select Board. The majority of members shall consist of people without direct ties to law enforcement or prosecutors. One member shall be a member of the Select Board or a Department Head. All members shall serve three-year terms. Terms shall be staggered to preserve continuity. Resignations shall be made by notifying the Select Board and Town Clerk in writing. The Select Board shall fill any vacancy for the remainder of the unexpired term in the same manner as an original appointment. Any members of said Committee may, after a public hearing if so requested, be removed for cause by the Select Board. No member shall undertake to speak or act on behalf of the Committee without the approval of the Committee. All members shall have full voting rights.

SECTION 3.24.5 OFFICERS
Officers of the Committee shall include a chairperson, deputy chairperson, secretary and treasurer. Officers shall be elected annually by a majority vote of the Committee. One member may hold more than one office. The chairperson shall: develop meeting agendas in coordination with the other officers and staff; preside over all meetings; appoint subcommittees as needed; and authorize expenditures as needed. The deputy chairperson shall: perform all the functions of the chairperson in the chairperson's absence. The secretary shall: create and maintain minutes of all meetings; maintain copies of correspondence; and make sure all meetings are posted. In absence of a secretary, other Committee members shall undertake these duties. The treasurer shall: regularly inform the Committee of the status of any funds from gifts received by the Committee (and approved by the Select Board), as well as the status of any other funding to which the Committee may have access, and prepare a financial report for inclusion in the annual report, as needed.

SECTION 3.23.6 MEETINGS
Regular meetings of the Committee shall be held at least three (3) times a year. A quorum for a nine (9) member Committee shall consist of five (5) members; a seven (7) member Committee quorum shall consist of four (4) members. Meeting minutes shall be reviewed approved, and posted in a timely manner. Special meetings may be called by the chairperson or by any three (3) members. Votes on all matters concerning the Committee shall be made by a majority of those members present.

Section 3.23.7 FIVE YEAR REVIEW
Beginning no later than July 1, 2023 and at least every five years thereafter, the Committee shall review this Bylaw and any other related Town by-laws, in consultation with other pertinent departments, and propose changes if necessary, by preparation of appropriate Warrant Articles for consideration by Town Meeting.

PETITIONER'S ARTICLE DESCRIPTION

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 Town police.

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.

SELECT BOARD'S RECOMMENDATION

A report and recommendation by the Select Board under Article 29 will be provided in the Supplemental Mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

Article 29 sets up a new committee to take over the role currently performed by the Critical Infrastructure Monitoring System (CIMS) Program Oversight Committee, and ambitiously broadens its mission to include issues of surveillance beyond monitoring the 11 fixed surveillance cameras along the evacuation route from Boston. In addition, it would research the funding, acquisition, and deployment of military equipment. The committee would also work to anticipate new technologies. The petitioner intends that committee to have independence to perform oversight of the Police Department in these areas. The proposed committee was largely adapted from the bylaw that established the DICR (Department of Inclusion and Community Relations). The committee would help guide the Select Board

regarding any military equipment acquired by the Town. The petitioner intends that resources from the DICR be used for administrative support of the new committee. The Advisory Committee felt that the changes proposed by Article 29 would not be workable in Brookline and, at the very least, would require further study. By a vote of 17–6–1, the Advisory Committee recommends NO ACTION.

BACKGROUND:

The Town currently has a committee that monitors the use of the 11 traffic cameras deployed in Brookline. Originally, the 12 cameras (one was transferred to Boston and is in Cleveland Circle) had shutters on them and after much debate, were authorized by the Select Board by Special Order 2010-4 to operate only during the nighttime hours, although they could be used during other times in an emergency. The cameras were recently upgraded, and the current cameras are operating without the CituCon shutters (which didn't fit the new cameras), which should have required a vote by the Select Board to revise the special order, but to date that has not happened. The cameras are passively monitored (the screens are installed in the lobby of the public safety building), and were placed along an evacuation route heading out of Boston. The current committee (CIMS) has five voting members who are all civilians. Other members include the Assistant Town Administrator and several members of the Brookline Police Department.

DISCUSSION:

The idea of updating the current committee to cover today's surveillance equipment is not unreasonable. Governments and private companies can monitor us in ways not imagined just five years ago. In addition to the traffic cameras, there are cameras in most Town buildings, including the Library, Town Hall, and our schools. It is unclear who is in charge of the Town Hall cameras, and there doesn't seem to be a uniform set of guidelines for all departments in Town that have security cameras. The petitioner's intent is for the proposed Committee to provide that uniform guidance. The Select Board, as police commissioners, would still maintain the authority to set policy and review all requests.

Most of the discussion at the Advisory Committee hearing regarded whether to refer Article 29 to a committee or to recommend No Action. There was general agreement that this Article, like Article 28, also had too many problems and is not ready to be approved by Town Meeting. Some members believe that the issue of surveillance is a conversation that we as a Town need to have, and wanted the subject matter to be sent to a Moderator's or Select Board's committee so that the discussion could start. A number of Advisory Committee members did not believe a new oversight committee is needed, and the Police already generate relevant data that is freely available. The Brookline Police Department is considered a leader in transparency (see the Advisory Committee's Recommendation under Article 28). There was also concern that the new commission created by Article 29 would try to manage police policy, which is the purview of the Select Board. There have been no reports of the misuse of the Town's traffic cameras since they were installed in 2009, and there have been no violations of procedure in the use or retention of footage. As far as the procurement of military equipment, there has not been any acquired by the Town nor are there plans to acquire any.

There were serious concerns about the administrative support coming from the DICR budget. The petitioner had conceived of the committee using DICR and CDICR

(Commission on Diversity, Inclusion and Community Relations) resources similar to the way the Commission for Women uses some department resources. The committee of seven or nine volunteers is expected to do much of the work (including oversight of the Police Department), but the greatly expanded mission of the new committee would require more resources than volunteers or the Town budget can presently provide. The Advisory Committee does not believe that the DICR currently has the resources to handle this. If Articles 28 and 29 were to become law, the amount of paperwork, tracking, and reports that would have to be produced and maintained is expected to be daunting. The Police Department believes it would need to add a Full-Time-Equivalent to its staff to deal with the new bureaucracy that Article 28 would require, and a similar amount of additional resources could be needed for implementation of Article 29.

The committee felt that, like Article 28, Article 29 is not ready to be approved. In addition, it is imperative that the head of DICR and all the other departments that would have to provide and analyze data be brought into the conversation long before such a committee was set up. It was also felt that with a new Police Chief coming in, that the new Chief should have input on these Articles.

RECOMMENDATION:
By a vote of 17–6–1, the Advisory Committee recommends NO ACTION on article 29.

After the vote, the Advisory Committee was informed that the Committee on Town Organization and Structure will offer a referral motion on Articles 28, 29, and 30. The Advisory Committee will address any new motion(s) in a supplemental report.

XXX

ARTICLE 29

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Please see the Board's report and recommendation under Article 28, which also applies to the subject matter of this article.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

After the Advisory Committee had voted to recommend NO ACTION on Article 29 (and Articles 28 and 30), the Committee on Town Organization and Structure (CTO&S) issued a report on Articles 28, 29, and 30, and offered a resolution to refer the issues raised by the three Articles to a committee to be appointed by the Select Board. Marty Rosenthal, a member of CTO&S, dissented from that Committee's referral motion and offered an alternative motion that would refer the subject matter of Articles 28–30 to the Commission for Diversity, Inclusion, and Community Relations. The Commission would consult with the Select Board and form a working group that would assist the Select Board in preparing proposals for a future Town Meeting

On May 10, 2018, the Advisory Committee met to possibly reconsider Article 29 (and Articles 28 and 30), and discussed the proposed referral motions.

Like the Advisory Committee, CTO&S had serious concerns about the language and unintended legal issues in Articles 28–30. The Advisory Committee discussed many serious concerns about the proposed CTO&S referral motion. That motion would have the Select Board appoint a committee to study, among other things, the issue of military equipment use, even though the Town of Brookline apparently is not using military equipment. The Advisory Committee noted that the report of CTO&S on Articles 28–30 raises questions about whether referral is necessary or appropriate. For example, the CTO&S report argues that Articles 28–30 include "accusatory terminology and burdensome requirements that are inapplicable to Brookline and that could jeopardize public safety."

The motion filed by a single member of CTO&S would have the Commission for Diversity, Inclusion, and Community Relations form a working group to study the issues raised by the three Warrant Articles. The Advisory Committee had already expressed concern about the limited resources the Commission has to work with. Most members of the Advisory Committee did not think the Commission for Diversity, Inclusion, and Community Relations should take the lead in studying, for example, the issues of the Town's use of static cameras or acquisition of military equipment (of which we have none). One Advisory

Committee member expressed the hope that the petitioner would not move the Articles and come back in the future with a proposal more suited to Brookline's actual situation.

Many members of the Advisory Committee questioned whether every Article that does not receive a Favorable Action vote needs to be referred to a Moderator's or Select Board committee.

It also was noted that the Commission for Diversity, Inclusion, and Community Relations does not need a referral motion in order to consider the subject matter of Articles 28, 29, and 30. The Commission, which has an important perspective, could take up these questions, study the issues, and, potentially, offer its own Warrant Article(s) for a future Town Meeting.

RECOMMENDATION:
By a vote of 3–18–2, a motion to reconsider Article 29 failed. The Advisory Committee therefore continues to recommend NO ACTION on Article 29.

ARTICLE 30

THIRTIETH ARTICLE

Submitted by: C. Scott Ananian, TMM 10

To see if the Town will adopt the following Resolution:

WHEREAS, the Town finds it is essential to have an informed public debate as early as possible about decisions related to the funding, acquisition, and deployment of military and surveillance equipment by local law enforcement;

WHEREAS, the Town finds that no decisions relating to the funding, acquisition, or deployment of military and surveillance equipment should occur without strong consideration being given to the significant impact such equipment may have on the public's welfare, civil rights,and civil liberties, including those rights guaranteed by the Massachusetts Declaration of Rights and the First, Fourth, and Fourteenth Amendments to the United States Constitution;

WHEREAS, the Town finds that, while the deployment of military and surveillance equipment may threaten everyone's safety and privacy, throughout history, military and surveillance equipment has been used to intimidate and oppress certain communities and groups more than others, including those that are defined by a common race, ethnicity, religion, national origin, income level, sexual orientation, or political perspective;

WHEREAS, the Town finds that the local acquisition of military and surveillance equipment and their deployment in our Town can adversely impact the public's welfare, including creating significant risks to their physical and psychological well-being;

WHEREAS, the Town finds that decisions regarding if and how military and surveillance equipment is funded, acquired or deployed should not be made until meaningful public input has been solicited and given significant weight;

WHEREAS, the Town finds that legally enforceable safeguards, including robust transparency, oversight, and accountability measures, must be in place to protect the public's welfare, civil rights, and civil liberties before any military or surveillance equipment is funded, acquired, or deployed; and

WHEREAS, the Town finds that, should the acquisition or deployment of any military or surveillance equipment be approved, data reporting measures must be adopted that empower the Town and public to verify that the public's welfare, civil rights, and civil liberties safeguards have been strictly adhered to;

NOW, THEREFORE, BE IT HEREBY RESOLVED that all Town entities shall obtain approval, subsequent to a mandatory, properly-noticed, germane, public hearing at which

the public is afforded a fair and adequate opportunity to provide online, written, and oral testimony, prior to engaging in any of the following:

(1) Seeking funds for new military or surveillance equipment, including but not limited to applying for a grant, or soliciting or accepting state or federal funds or in-kind or other donations or transfers;

(2) Acquiring or borrowing new military or surveillance equipment, whether or not that acquisition is made through the exchange of monies or for other or no consideration;

(3) Deploying or using new or existing military or surveillance equipment for a purpose or in a manner not previously approved by the Town in accordance with this Resolution, including the sharing of surveillance data therefrom; or

(4) Soliciting proposals for or entering into an agreement with any other person or entity to acquire, share, or otherwise use military or surveillance equipment or its surveillance data.

BE IT FURTHER RESOLVED that any Town entity seeking to continue the use of any military or surveillance equipment that was acquired prior to the passage of this Resolution, or the sharing of surveillance data therefrom, must commence a Town approval process; and,

BE IT FURTHER RESOLVED that Town shall only approve a request to fund, acquire, or use military or surveillance equipment if it determines the benefits of the military or surveillance equipment outweigh its costs, that the proposal will safeguard the public's welfare, civil liberties, and civil rights, and that the uses and deployments of the military or surveillance equipment will not be based upon discriminatory or viewpoint-based factors or have a disparate impact on any community or group; and,

BE IT FURTHER RESOLVED that the Town shall appoint a Community Advisory Committee to provide the Town with broad principles to help guide decisions about if and how military and surveillance equipment should be acquired and deployed by the Town. The membership of the Community Advisory Committee on Military and Surveillance Equipment should reflect the diversity of the Town's residents, and special efforts should be made to ensure communities that have historically been disproportionately subjected to targeting by military and surveillance equipment are well-represented.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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.

SELECT BOARD'S RECOMMENDATION

A report and recommendation by the Select Board under Article 30 will be provided in the Supplemental Mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 30 is a resolution brought forward by the petitioner in case there were technical issues with or other objections to Articles 28 and 29. Article 30 calls for Town Meeting to endorse and direct the Town to implement the goals and policies that are included in Articles 28 and 29. The Advisory Committee felt that the resolution posed the same problems and concerns as those Articles. The Town should not attempt to use a resolution to implement policies and programs that require further study. By a vote of 14–8–1, the Advisory Committee recommends NO ACTION.

BACKGROUND:
The background for Article 30 is covered in the Advisory Committee reports on Articles 28 and 29.

DISCUSSION:
The resolution is extremely specific in what it calls for, and the Advisory Committee felt that voting for specific recommendations in the resolution while the subject matter of Articles 28 and 29 had not been studied was premature. There are significant legal and logistical problems with both Articles 28 and 29, and adopting this resolution, which calls for the Town to implement the subject matter of the two proposed bylaws, thus makes no sense. The Committee also had problems with the language in most parts of the resolution, including vague phrases, questionable conclusions, and issues regarding the prohibition of law enforcement information sharing. The resolution repeatedly mentions the acquisition and use of military equipment, a problem that does not exist. The Town has neither the equipment nor any plans to acquire any.

RECOMMENDATION:
By a vote of 14–8–1, the Advisory Committee recommends NO ACTION on Article 30.

After the vote, the Advisory Committee was informed that the Committee on Town Organization and Structure will offer a referral motion on Articles 28, 29, and 30. The Advisory Committee will address any new motion(s) in a supplemental report.

XXX

ARTICLE 30

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Please see the Board's report and recommendation under Article 28, which also applies to the subject matter of this article.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

After the Advisory Committee had voted to recommend NO ACTION on Article 30 (and Articles 28 and 29), the Committee on Town Organization and Structure (CTO&S) issued a report on Articles 28, 29, and 30, and offered a resolution to refer the issues raised by the three Articles to a committee to be appointed by the Select Board. Marty Rosenthal, a member of CTO&S, dissented from that Committee's referral motion and offered an alternative motion that would refer the subject matter of Articles 28–30 to the Commission for Diversity, Inclusion, and Community Relations. The Commission would consult with the Select Board and form a working group that would assist the Select Board in preparing proposals for a future Town Meeting

On May 10, 2018, the Advisory Committee met to possibly reconsider Article 30 (and Articles 28 and 29), and discussed the proposed referral motions.

Like the Advisory Committee, CTO&S had serious concerns about the language and unintended legal issues in Articles 28–30. The Advisory Committee discussed many serious concerns about the proposed CTO&S referral motion. That motion would have the Select Board appoint a committee to study, among other things, the issue of military equipment use, even though the Town of Brookline apparently is not using military equipment. The Advisory Committee noted that the report of CTO&S on Articles 28–30 raises questions about whether referral is necessary or appropriate. For example, the CTO&S report argues that Articles 28–30 include "accusatory terminology and burdensome requirements that are inapplicable to Brookline and that could jeopardize public safety."

The motion filed by a single member of CTO&S would have the Commission for Diversity, Inclusion, and Community Relations form a working group to study the issues raised by the three Warrant Articles. The Advisory Committee had already expressed concern about the limited resources the Commission has to work with. Most members of the Advisory Committee did not think the Commission for Diversity, Inclusion, and Community Relations should take the lead in studying, for example, the issues of the Town's use of static cameras or acquisition of military equipment (of which we have none). One Advisory

Committee member expressed the hope that the petitioner would not move the Articles and come back in the future with a proposal more suited to Brookline's actual situation.

Many members of the Advisory Committee questioned whether every Article that does not receive a Favorable Action vote needs to be referred to a Moderator's or Select Board committee.

It also was noted that the Commission for Diversity, Inclusion, and Community Relations does not need a referral motion in order to consider the subject matter of Articles 28, 29, and 30. The Commission, which has an important perspective, could take up these questions, study the issues, and, potentially, offer its own Warrant Article(s) for a future Town Meeting.

RECOMMENDATION:
By a vote of 3–18–2, a motion to reconsider Article 30 failed. The Advisory Committee therefore continues to recommend NO ACTION on Article 30.

ARTICLE 31

THIRTY-FIRST ARTICLE
Submitted by: Solid Waste Advisory Committee, contact Clint Richmond

To see if the Town will amend Article 8.32 of the General By-Laws by deleting Article 8.32 in its entirety and replacing it with the following:

Article 8.32
Sustainable Food Containers and Packaging

Section 1: DEFINITIONS
The following words and phrases shall, unless context clearly indicates otherwise, have the following meanings:

BIODEGRADABLE Entirely made of organic materials such as wood, paper, bagasse or cellulose; or bioplastics that meet the American Society for Testing and Materials (ASTM) D7081 standard for Biodegradable Plastics in the Marine Environment or any other standard that may be developed specifically for an aquatic environment and are clearly labeled with the applicable standard.

CATERER Refers to a food establishment with a catering license issued by the Town that derives at least 50% of its revenues from catering orders.

COMPOSTABLE Refers to bioplastic materials certified to meet the American Society for Testing and Materials International Standards D6400 or D6868, as those standards may be amended. ASTM D6400 is the specification for plastics designed for compostability in municipal or industrial aerobic composting facilities. D6868 is the specification for aerobic compostability of plastics used as coatings on a compostable substrate. Compostable materials shall also include products that conform to ASTM or other third-party standards (such as Vinçotte) for home composting. Any compostable product must be clearly labeled with the applicable standard on the product.

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

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

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

PACKING MATERIAL Polystyrene foam used to hold, cushion, or protect items packed in a container for shipping, transport, or storage. This includes, without limitation, packing "peanuts"; and shipping boxes, coolers, ice chests, or similar containers made, in whole or in part, from polystyrene foam that is not wholly encapsulated or encased within a more durable material.

POLYSTYRENE There are two basic forms, Foam and Rigid Polystyrene. Foam includes without limitation blown, expanded (EPS), and extruded foams such as "Styrofoam," a Dow Chemical Co. trademarked form of insulation. Foam Polystyrene is generally used to make opaque cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. Rigid or oriented polystyrene is generally used to make clear clamshell containers, cups, plates, straws, lids and utensils.

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

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

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

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

Section 2. PROHIBITED USE AND DISTRIBUTION OF FOOD WARE AND PACKAGING

(a) Food establishments are prohibited from providing prepared food to customers using polystyrene or polyvinyl chloride food service ware. Catering orders provided by Caterers shall be exempt from the provisions of this paragraph (a).

(b) Food establishments using any disposable food service ware shall use biodegradable, compostable, reusable or recyclable food service ware. Catering orders provided by

Caterers shall be exempt from the provisions of this paragraph (b). All food establishments are strongly encouraged to use reusable food service ware in place of using disposable food service ware for all food served on premises.

(c) Retail establishments and caterers are prohibited from selling or distributing foam polystyrene food service ware to customers.

(d) Retail establishments are prohibited from selling or distributing polystyrene foam packing material to customers.

(e) Effective January 1, 2020, Food Establishments are prohibited from providing prepared food to customers using any food service ware made of polyethylene terephthalate. Catering orders provided by Caterers shall be exempt from the provisions of this paragraph (e).

Section 3. EXEMPTIONS

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

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

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

Section 4. PENALTIES AND ENFORCEMENT

(a) Each Food or Retail establishment as defined above, operating in the Town of Brookline shall comply with this by-law.
(1) If it is determined that a violation has occurred the Department of Health Director shall issue a warning notice to the Food or Retail establishment for the initial violation.

(2) If an additional violation of this by-law has occurred within one year after a warning notice has been issued for an initial violation, the Department of Health Director shall issue a notice of violation and shall impose a penalty against the Food or Retail establishment.
(3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:
A) $50 for the first offense
B) $100 for the second offense and all subsequent offenses. Payment of such fines may be enforced through civil action in the Brookline District Court as provided in Article 10.3 of the Town's General By-laws.
(4) No more than one (1) penalty shall be imposed upon a Food or Retail establishment within a seven (7) calendar day period.
(5) A Food or Retail establishment shall have fifteen (15) calendar days after the date that a notice of violation is issued to pay the penalty.

Section 5. SEVERABILITY

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

Section 6. EFFECTIVE DATE

The provisions of this By-law shall take effect on January 1, 2019, except the provisions of Section 2(e), which shall take effect on January 1, 2020.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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.

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MOTION OFFERED BY THE PETITIONER

Voted that the Town shall amend Article 8.32 of the General By-Laws by deleting Article 8.32 in its entirety and replacing it with the following:

Article 8.32
Sustainable Food Containers and Packaging

Section 1: DEFINITIONS
The following words and phrases shall, unless context clearly indicates otherwise, have the following meanings:

BIODEGRADABLE Entirely made of organic materials such as wood, paper, bagasse or cellulose; or bioplastics that meet the American Society for Testing and Materials (ASTM) D7081 standard for Biodegradable Plastics in the Marine Environment or any other standard that may be developed specifically for an aquatic environment and are clearly labeled with the applicable standard.

CATERER Refers to a food establishment with a catering license issued by the Town that derives at least 50% of its revenues from catering orders.

COMPOSTABLE Refers to bioplastic materials certified to meet the American Society for Testing and Materials International Standards D6400 or D6868, as those standards may be amended. ASTM D6400 is the specification for plastics designed for compostability in municipal or industrial aerobic composting facilities. D6868 is the specification for aerobic compostability of plastics used as coatings on a compostable substrate. Compostable materials shall also include products that conform to ASTM or other third-party standards (such as Vinçotte) for home composting. Any compostable product must be clearly labeled with the applicable standard on the product.

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

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

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

PACKING MATERIAL Polystyrene foam used to hold, cushion, or protect items packed in a container for shipping, transport, or storage. This includes, without limitation, packing "peanuts"; and shipping boxes, coolers, ice chests, or similar containers made, in whole or

in part, from polystyrene foam that is not wholly encapsulated or encased within a more durable material.

POLYSTYRENE There are two basic forms, Foam and Rigid Polystyrene. Foam includes without limitation blown, expanded (EPS), and extruded foams such as "Styrofoam," a Dow Chemical Co. trademarked form of insulation. Foam Polystyrene is generally used to make opaque cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. Rigid or oriented polystyrene is generally used to make clear clamshell containers, cups, plates, straws, lids and utensils.

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

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(a) Effective January 1, 2020, Food establishments are prohibited from providing prepared food to customers using polystyrene or polyvinyl chloride food service ware. Catering orders provided by Caterers shall be exempt from the provisions of this paragraph (a).

(b) Effective January 1, 2020, Food establishments using any disposable food service ware shall use biodegradable, compostable, reusable or recyclable food service ware. Catering orders provided by Caterers shall be exempt from the provisions of this paragraph (b). All food establishments are strongly encouraged to use reusable food service ware in place of using disposable food service ware for all food served on premises.

(c) Retail establishments and caterers are prohibited from selling or distributing foam polystyrene food service ware to customers.

(d) Retail establishments are prohibited from selling or distributing polystyrene foam packing material to customers.

(e) Effective January 1, 2020, Food Establishments are prohibited from providing prepared food to customers using any food service ware made of polyethylene terephthalate. Catering orders provided by Caterers shall be exempt from the provisions of this paragraph (e).

Section 3. EXEMPTIONS

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

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

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

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(2) If an additional violation of this by-law has occurred within one year after a warning notice has been issued for an initial violation, the Department of Health Director shall issue a notice of violation and shall impose a penalty against the Food or Retail establishment.
(3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:
A) $50 for the first offense

B) $100 for the second offense and all subsequent offenses. Payment of such fines may be enforced through civil action in the Brookline District Court as provided in Article 10.3 of the Town's General By-laws.
(4) No more than one (1) penalty shall be imposed upon a Food or Retail establishment within a seven (7) calendar day period.
(5) A Food or Retail establishment shall have fifteen (15) calendar days after the date that a notice of violation is issued to pay the penalty.

Section 5. SEVERABILITY

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

Section 6. EFFECTIVE DATE

The provisions of this By-law shall take effect on January 1, 2019, except the provisions of Section 2(a), 2(b) and 2(e), which shall take effect on January 1, 2020.

ADVISORY COUNCIL ON PUBLIC HEALTH REPORT AND RECOMMENDATION

On January 15, 2018, a public hearing was held to listen to citizens' concerns regarding warrant article 31. Presentations were conducted by the Planning Department and Brookline Public Health and Human Services. ACPH voted 6-0 for the supporting the warrant article as one that promotes the long-term public health of the planet. ACPH supports societal use of the precautionary principle, which holds that chemicals should be proven safe before being introduced into the environment. In addition, ACPH supports efforts to move towards a sustainable economy that requires recycling of all products of production. Use of polystyrene, and other plastics, when disposable options are available, violates both of these important public health concepts, and Brookline should be a leader in adopting healthy practices for all.

Furthermore, ACPH duly notes, however, that while there is some evidence that long term use of such chemicals over time may have direct health harm to individuals, there is as yet no scientific consensus on this matter, and the risk to any individual is likely to be small. In addition, we cannot say that polystyrene and other substances covered by the warrant article pose any direct or measurable health threat to the population of Brookline specifically. Therefore, we urge flexibility and the generous use of waivers to ensure that small Brookline businesses are not excessively burdened by the warrant article.

ECONOMIC DEVELOPMENT ADVISORY BOARD
REPORT AND RECOMMENATION

During our April 9th meeting, the Economic Development Advisory Board (EDAB) voted in support of Warrant Article 31 (5-2-1), with an amendment that the bylaw not be in effect until 2020.

EDAB recommends that the Select Board amend the warrant language as follows:

(i) Replace the first sentence under "Section 6. Effective Date" with, "The provisions of this By-law shall take effect on January 1, 2020."
(ii) Strike the first clause in Section 2(3) that reads "Effective January 1, 2020," for clarity purposes, since the whole bylaw would now commence on that same date.

This article was submitted by the Solid Waste Advisory Committee (SWAC), with Clint Richmond as the main point of contact. EDAB Co-Chair Anne Meyers and staff from the Divisions of Environmental Health and Economic Development & Long-Term Planning worked intermittently with Clint Richmond since the original article was submitted by citizens in Fall 2016. We met with individual restaurants, food vendors like Party Favors, caterers, grocery stores, restaurant suppliers, and business associations.

As a result of this significant outreach effort prior to this Town Meeting's deadline, Clint Richmond and SWAC were willing to make significant changes since the original Fall 2016 warrant article, including:

- Reducing the scope of banned plastics for food establishments, most importantly, polypropylene, which is frequently used in food service (e.g., #5 food containers often used for serving warm foods, like take-out containers with black bottoms and clear tops or the translucent soup containers)
- Removing the proposed prohibition of stores selling non-styrofoam plastic cups and serving ware (e.g., Solo Cups at grocery stores or plastic birthday party plates at Party Favors); and
- Providing an exemption for businesses that derive a majority of their revenue from catering activities (e.g., Catering by Andrew's).

Before and after the warrant article was submitted, Town staff communicated with every restaurant and food vendor by mail and many by email, including requesting information on potential financial impacts. EDAB held a public hearing before and after the warrant article was submitted for this Town Meeting. Many EDAB members were frustrated that most restaurants weren't able, or willing, to pull together total cost impacts or relate them to overall revenue or profit. Nonetheless, the public hearings gave EDAB a chance to hear about some estimated item cost variances as well as specific concerns to some business types. Thanks to staff visits at 28 individual businesses, our general sense is that most restaurants would likely pass on the additional cost to customers, and that additional cost is estimated to range from $0.05 to $0.28 per meal.

Not all restaurants feel comfortable passing on that cost to their customers, and some felt that the serial regulation changes affecting Brookline restaurants in recent years would bring a 'death by a thousand cuts' to smaller businesses. Most restaurants expressed a willingness to comply where they could, but wanted time to use the supply they had as well

as try out new materials and suppliers. Restaurants also wanted the flexibility to be able to appeal for an economic hardship and/or an exemption for items that do not yet have a reasonable alternative, for example larger diameter straws often used for bubble tea. At our first public hearing, EDAB heard about how these processes would work from Swannie Jett, Director of Health & Human Services and Pat Maloney, Director of Environmental Health. Although the cost impacts are not fully understood, most EDAB members felt more comfortable moving forward with this article because provisions were in place to allow for these types of exemptions.

EDAB appreciated that this warrant article was submitted by the Solid Waste Advisory Committee and voted favorably by the Advisory Council on Public Health. In addition to solid waste and health benefits, the lead petitioner explained that this article's sustainability goal is to reduce production of single-use plastic containers and packaging made from fossil fuels. EDAB members agreed that these were all good reasons as to why the Town should consider taking any action, although wished that this change could be customer demand driven rather than required by regulation.

EDAB members discussed at length the tradeoff of moving forward with a new regulation without fully understanding the implications, while understanding that more manufacturers and restaurant suppliers will be more likely to provide alternatives if and when regulations require them. During this process our staff has already received calls from manufacturers interested in tracking the potential new regulation. Secondly, EDAB noted that the Attorney General's office may not approve this bylaw until Fall 2018, thereby giving affected businesses only a couple months to change supplies and comply with the bylaw before January 1, 2019. Therefore, EDAB agreed that the warrant article was ready to move forward as long as it did not go into effect until January 1st of 2020.

SELECT BOARD'S RECOMMENDATION

A report and recommendation by the Select Board under Article 31 will be provided in the Supplemental Mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

RECOMMENDATION:
A report and recommendation by the Advisory Committee on Article 31 will be provided in the Supplemental Mailing.

XXX

ARTICLE 31

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Article 31 is a motion to amend Article 8.32 of the General By-Laws by deleting Article 8.32 in its entirety and replacing it with new language. The amended language focuses on the requirement that food and retail establishments are prohibited from using polystyrene, polyvinyl, foam polystyrene, or polyethylene terephthalate containers, and instead shall use biodegradable, compostable, reusable or recyclable materials or containers. There is an exemption for caterers and the Health Director may waive specific requirements for demonstrated hardships.

The Select Board is in favor of implementing thoughtful requirements of the business community concerning the waste produced by one-time packaging associated with the businesses. As a longtime leader in solid waste reduction, there has been a gradual enactment of rules that pertain to materials that will remain in the waste stream for years. Plastic bags, polystyrene cups and packaging, and plastic bottles have all been studied. In this case, the by-law would be revised to continue to push the high standards that the community has placed on becoming sustainable.

There were multiple discussions about caterers and the proposed exemptions. The Board heard from the local business community, which has expressed their concern that the proposed requirements would put them in a disadvantageous position by absorbing the higher costs of the sustainable packaging. The Board considered the amendments proposed by the Advisory Committee and rejected all changes except for those proposed in section 3 (c). The Board was not unanimous on the amendment which defined caterer (with Greene dissenting). In addition, there was a split vote concerning the exemption of medical facilities proposed by the Advisory Committee under section 3 (d) (with Wishinsky and Franco voting against that language).

Although this change cannot impact the materials of food packaged outside of the Town, it will still lead to a reduction of solid waste that will not biodegrade. Multiple businesses in Town already utilize containers that are biodegradable, compostable, reusable or recyclable; therefore, it is an attainable standard to set on all food and retail establishments.

After the Board took action on the amendments proposed by the Advisory Committee they unanimously voted FAVORABLE ACTION on the following motion:

VOTED: That the Town shall amend Article 8.32 of the General By-Laws by deleting Article 8.32 in its entirety and replacing it with the following:

Article 8.32
Sustainable Food Containers and Packaging

Section 1: DEFINITIONS
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REUSABLE Products that will be used more than once in its same form by a food establishment. Reusable food service ware includes: tableware, flatware, food or beverage containers, packages or trays, such as, but not limited to, soft drink bottles and milk containers that are designed to be returned to the distributor and customer that is provided take-out containers. Reusable materials include aluminum and glass. Reusable also includes cleanable durable containers, packages, or trays used on-premises or returnable containers brought back to the food establishment.

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(b) Effective January 1, 2020, Food establishments using any disposable food service ware shall use biodegradable, compostable, reusable or recyclable food service ware. Catering orders provided by Caterers shall be exempt from the provisions of this paragraph (b). All food establishments are strongly encouraged to use reusable food service ware in place of using disposable food service ware for all food served on premises.

(c) Retail establishments and caterers are prohibited from selling or distributing foam polystyrene food service ware to customers.

(d) Retail establishments are prohibited from selling or distributing polystyrene foam packing material to customers.

(e) Effective January 1, 2020, Food Establishments are prohibited from providing prepared food to customers using any food service ware made of polyethylene terephthalate. Catering orders provided by Caterers shall be exempt from the provisions of this paragraph (e).

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

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

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

Section 4. PENALTIES AND ENFORCEMENT

(a) Each Food or Retail establishment as defined above, operating in the Town of Brookline shall comply with this by-law.
(1) If it is determined that a violation has occurred the Department of Health Director shall issue a warning notice to the Food or Retail establishment for the initial violation.
(2) If an additional violation of this by-law has occurred within one year after a warning notice has been issued for an initial violation, the Department of Health Director shall issue a notice of violation and shall impose a penalty against the Food or Retail establishment.
(3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:

A) $50 for the first offense
B) $100 for the second offense and all subsequent offenses. Payment of such fines may be enforced through civil action in the Brookline District Court as provided in Article 10.3 of the Town's General By-laws.
(4) No more than one (1) penalty shall be imposed upon a Food or Retail establishment within a seven (7) calendar day period.
(5) A Food or Retail establishment shall have fifteen (15) calendar days after the date that a notice of violation is issued to pay the penalty.

Section 5. SEVERABILITY

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

Section 6. EFFECTIVE DATE

The provisions of this By-law shall take effect on January 1, 2019, except the provisions of Section 2(a), 2(b) and 2(e), which shall take effect on January 1, 2020.

ARTICLE 31

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:
Article 31 would replace the existing Article 8.32 of the Town By-Laws—which deals with the regulation of solid waste—with a version that would broaden the Town's ability to control and restrict the use of particular synthetic materials in food service and in retail sales. The original 8.32 cited polystyrene only and was limited to particular uses. The proposed article would extend the law's scope to virtually all food service businesses and would impose new restrictions on synthetic materials used in food service and delivery, as outlined below. The new by-law would also prevent retail stores from selling packing peanuts and "picnic ware" made of polystyrene foam. The goal is to reduce the volume of material utilized in Brookline that is known to be hazardous to health, or suspected of being hazardous—and to reduce the addition of such items to the waste stream. The Department of Health is the enforcement agency for this by-law and would provide relief in cases of hardship, such as a circumstance where no approvable product was available to substitute for a banned product. By a vote of 23–0–2, the Advisory Committee recommends FAVORABLE ACTION on the amended version of the petitioner's motion that is found below.

BACKGROUND:
Passed by Town Meeting in November 2012, the Town ban on polystyrene bags and containers went into effect in December 2013, affecting some 79 businesses that utilized disposable plastic bags and some 250 food service establishments. With Article 31, the Solid Waste Advisory Committee is petitioning the Town to widen its ban to additional polystyrene products as well as polyvinyl chloride products. The new bylaw would affect the use of cups, bowls, plates, trays, straws, and utensils, among other food service implements—and would ban the sale of polystyrene foam—used to create packing material and to insulate food for travel or picnics. Food service providers—including the public schools—would be required to use materials that were either biodegradable, compostable, recyclable, or reusable. This will add some expense to each product. In the case of the schools, for example, the estimated increased cost of a typical lunch would be $.05. According to the Health Department, the by law would effect 590 food establishments in Town. These would include 26 licensed caterers, 20 hospitals or elderly care providers, 3 day care centers, all public schools, and a dozen or so private schools.

These new regulations would not apply to food prepared and packaged outside the Town. Nor would the petitioner's article apply to food service businesses that derive 50 percent or more of their revenue from catering. The exemption recognizes that caterers often bid for work against competitors from outside the Town who are not subject to the Town's bylaws. (Catering, for which the Town requires a special license, involves the provision

and serving of food. It does not include simple delivery of prepared food.) Of the Town's 26 licensed caterers, 3 would meet the 50 percent or more rule. The warrant article also provides for exemptions where food service providers experience "undue hardship," such as financial hardship inability to find a source of required products that meet Town standards. These exemptions would need to be authorized by the Department of Public Health, which would have responsibility for enforcing the by-law.

The provisions of the by-law regarding foam polystyrene would go into effect on January 1, 2019, with other provisions enforced as of January 1, 2020.

DISCUSSION:

Two Town boards took positions on the article, as did the Chamber of Commerce, which noted that it had no objection in principle, but would prefer a state-wide ban so as not to place Brookline businesses at a disadvantage. The Chamber also voice its discomfort with the proposed catering exemption, noting that food preparers with catering revenues below 50 percent of gross income also faced competition from outside Brookline. The Advisory Council on Public Health strongly supported the warrant article, though noting that there was as yet "no scientific consensus" on any degree of harm posed by the used of materials that would be banned, and it therefore urged flexibility in the application of the by-law's measures so as to protect local businesses. The Economic Development Advisory Board endorsed the article, with the recommendation that the entire by-law not go into effect until January 2020. On behalf of EDAB, Town staff communicated with food service providers across the Town and heard general concern that the by-law would drive up costs that they would need to pass along to the customer. The Planning Department estimates that the additional cost for materials related to food service would range from $.05 to $.28 per meal. EDAB also interviewed Health Department staff regarding their approach to petitions for hardship exemptions, and most members were satisfied that provisions in the by-laws would offer appropriate relief.

The Advisory Committee discussion—over two meetings—ranged widely but ultimately focused on two particular issues: the exemption that limited relief to the small percent of licensed caterers who drew more than 50 percent of their revenue from catering; and the potential impact on medical and elderly facilities in the Town, where food service takes into account the needs of medicated or handicapped individuals.

In the first instance, the Advisory Committee, like the Chamber of Commerce, was concerned that Brookline businesses for whom catering is part of a business model, even if revenues did not reach, or did not yet reach 50 percent of gross, would be disadvantaged in competition from companies that were not resident in Brookline. The Advisory Committee therefore voted 20-3-0 to exempt all catering establishments from the by-law at this time. It is the expectation of the Advisory Committee that as laws such as the one proposed under Warrant Article 31 go into effect in the Commonwealth and elsewhere, and as manufacturers are incentivized to develop reasonably priced products to meet new demands, the exemption for caterers could be reduced or removed.

In regard to medical facilities, following discussion, the Committee narrowed its concern to flexible, plastic straws, which would be banned under the article but are the only means through which some individuals can take nourishment. The Committee voted 16–4–4 to amend Section 3 by adding subsection (d) as follows: "Licensed medical facilities including hospitals, nursing homes, skilled nursing facilities, and other similar operations shall be exempt with respect solely for straws."

RECOMMENDATION:

The Advisory Committee will not make the following motion at the Annual Town Meeting because the Moderator has determined that it did not meet the notice requirements in order to be moved on May 29, 2018.

By a vote of 23–0–2, the Advisory Committee recommends FAVORABLE ACTION on the following motion:

Motion submitted by the petitioners under Article 31, showing amendments voted by the Advisory Committee on May 3. Deletions in ~~strikethrough~~; additions in **bold**. Note that the changes to Section 3 (c) were introduced by the petitioner to correct errors. They were incorporated into the Advisory Committee motion.

Voted that the Town shall amend Article 8.32 of the General By-Laws by deleting Article 8.32 in its entirety and replacing it with the following:

Article 8.32

Sustainable Food Containers and Packaging

Section 1: DEFINITIONS

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

BIODEGRADABLE Entirely made of organic materials such as wood, paper, bagasse or cellulose; or bioplastics that meet the American Society for Testing and Materials (ASTM) D7081 standard for Biodegradable Plastics in the Marine Environment or any other standard that may be developed specifically for an aquatic environment and are clearly labeled with the applicable standard.

CATERER Refers to a food establishment with a catering license issued by the Town ~~that derives at least 50% of its revenues from catering orders~~.

COMPOSTABLE Refers to bioplastic materials certified to meet the American Society for Testing and Materials International Standards D6400 or D6868, as those standards may be amended. ASTM D6400 is the specification for plastics designed for compostability in municipal or industrial aerobic composting facilities. D6868 is the specification for aerobic compostability of plastics used as coatings on a compostable substrate. Compostable materials shall also include products that conform to ASTM or other third-party standards (such as Vinçotte) for home composting. Any compostable product must be clearly labeled with the applicable standard on the product.

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

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

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

PACKING MATERIAL Polystyrene foam used to hold, cushion, or protect items packed in a container for shipping, transport, or storage. This includes, without limitation, packing

"peanuts"; and shipping boxes, coolers, ice chests, or similar containers made, in whole or in part, from polystyrene foam that is not wholly encapsulated or encased within a more durable material.

POLYSTYRENE There are two basic forms, Foam and Rigid Polystyrene. Foam includes without limitation blown, expanded (EPS), and extruded foams such as "Styrofoam," a Dow Chemical Co. trademarked form of insulation. Foam Polystyrene is generally used to make opaque cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. Rigid or oriented polystyrene is generally used to make clear clamshell containers, cups, plates, straws, lids and utensils.

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

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

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

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

Section 2. PROHIBITED USE AND DISTRIBUTION OF FOOD WARE AND PACKAGING

(a) Effective January 1, 2020, Food establishments are prohibited from providing prepared food to customers using polystyrene or polyvinyl chloride food service ware. Catering orders provided by Caterers shall be exempt from the provisions of this paragraph (a).

(b) Effective January 1, 2020, Food establishments using any disposable food service ware shall use biodegradable, compostable, reusable or recyclable food service ware. Catering orders provided by Caterers shall be exempt from the provisions of this paragraph (b). All food establishments are strongly encouraged to use reusable food service ware in place of using disposable food service ware for all food served on premises.Retail establishments and caterers are prohibited from selling or distributing foam polystyrene food service ware to customers.

(c) Retail establishments are prohibited from selling or distributing polystyrene foam packing material to customers.

(d) Effective January 1, 2020, Food Establishments are prohibited from providing prepared food to customers using any food service ware made of polyethylene terephthalate. Catering orders provided by Caterers shall be exempt from the provisions of this paragraph (e).

Section 3. EXEMPTIONS

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

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

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

(d) Licensed medical facilities including hospitals, nursing homes, skilled nursing facilities, and other similar operations shall be exempt from this with respect solely for straws.

Section 4. PENALTIES AND ENFORCEMENT

(a) Each Food or Retail establishment as defined above, operating in the Town of Brookline shall comply with this by-law.

(1) If it is determined that a violation has occurred the Department of Health Director shall issue a warning notice to the Food or Retail establishment for the initial violation.

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

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

A) $50 for the first offense

B) $100 for the second offense and all subsequent offenses. Payment of such fines may be enforced through civil action in the Brookline District Court as provided in Article 10.3 of the Town's General By-laws.

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

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

Section 5. SEVERABILITY

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

Section 6. EFFECTIVE DATE

The provisions of this By-law shall take effect on January 1, 2019, except the provisions of Section 2(a), 2(b) and 2(e), which shall take effect on January 1, 2020.

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ARTICLE 32

THIRTY-SECOND ARTICLE
Submitted by: Brookline Justice League Mariela Ames, Scot Huggins, Brooks Ames

To see if the Town will amend the General by-laws to prohibit the Select Board from entering into or authorizing nondisclosure agreements relating to claims of discrimination, retaliation, and harassment and to require the Town to publicize the amounts paid to settle those claims. This proposal requires amending Section 3.1.3 to include the following language in bold:

SECTION 3.1.3 LITIGATION AND CLAIMS

The Select Board may institute, prosecute, defend, compromise and settle claims, actions, suits or other proceedings brought by, on behalf of, or against the town, provided, however, that it shall act upon advice of counsel when the amount to be paid in any settlement exceeds one thousand dollars ($1,000). It may employ special counsel in suits by or against the town whenever they deem it necessary.

The Select Board shall not enter into or authorize any agreement which has the purpose or effect of concealing the details relating to a claim of discrimination, retaliation, or harassment against the Town. The financial terms of any settlement agreement concerning such a claim shall be published in a newspaper of general circulation within the Town, shall be posted on the Town website, and shall be posted in ten public places in the Town within seven (7) days of the settlement.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

This article would bar the Select Board from using various legal devices (e.g. gag orders, nondisclosure 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.

SELECT BOARD'S RECOMMENDATION

Article 32 is a petition that asks the Town to amend the General By-Laws in order to prohibit the Select Board from entering into or authorizing nondisclosure agreements relating to claims of discrimination, retaliation, and harassment. The article also calls for

posting of settlement agreements in the newspaper, on the Town website, and in ten public places in the Town within seven days of the settlement.

The Select Board see a number of issues arising from the proposal. Town Counsel advised the Board that if passed, the amendment would be inconsistent with "a number of statutes aimed at protecting the privacy of citizens of the Commonwealth, such as the right to privacy found in M.G.L. c. 214, §1B and the exemption of private information from the definition of "public records" in M.G.L. c. 4, §7, clause 26(c)." There are several strategic reasons why it may be in the best interest of the Town, or the Claimant to enter into these kind of agreements. There are also circumstances where the Claimant may want to keep claim details private.

The Board voted 4-0-1 NO ACTION on April 10, 2018 on article 32.

ROLL CALL VOTE:

Aye:	Abstain:
Wishinsky	Hamilton
Franco	
Heller	
Greene	

ADVISORY COMMITTEE'S RECOMMENDATION

RECOMMENDATION:
A report and recommendation by the Advisory Committee on Article 32 will be provided in the Supplemental Mailing.

XXX

ARTICLE 32

MOTION OFFERED BY THE PETITIONERS

VOTED: That the Town amend the General by-laws, Section 3.1.3, to include the following language in bold:

SECTION 3.1.3 LITIGATION AND CLAIMS

The Select Board may institute, prosecute, defend, compromise and settle claims, actions, suits or other proceedings brought by, on behalf of, or against the town, provided, however, that it shall act upon advice of counsel when the amount to be paid in any settlement exceeds one thousand dollars ($1,000). It may employ special counsel in suits by or against the town whenever it deems it necessary.

The Select Board shall not enter into or authorize any agreement which has the purpose or effect of concealing the details relating to a claim of discrimination, retaliation, or harassment against the Town. The financial terms of any settlement agreement concerning such a claim shall be published in a newspaper of general circulation within the Town, shall be posted on the Town website, and shall be posted in ten public places in the Town within seven (7) days of the settlement.

Explanation:

This article would bar the Select Board from using various legal devices (e.g. gag orders, nondisclosure 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.

The following spreadsheet, which was provided by the Town, identifies the claims and settlements that would have been covered by the article over the past ten years.

DATE SETTLED	AMOUNT DISBURSED	ALLEGATIONS	CASE NAME	DEPARTMENT
2009-03-03	$5,000.00	Harassment	Citizen v Town of Brookline, et al	Police
2011-02-17	$250,000.00	Harassment	Citizen v Town of Brookline, et al	School
2011-10-14	$15,000.00	Discrimination/Retaliation	Employee v Town of Brookline	Parks & Recreation
2012-01-04	$3,000.00	Discrimination/Harassment	Employee v Town of Brookline, et al	Council on Aging
2012-08-31	$80,000.00	Discrimination/Retaliation	Employee v Public Schools of Brookline, et al	School & School Superintendant
2013-07-17	$122,500.00	Discrimination	Employee v Town of Brookline	Fire / HR
2015-12-24	$49,500.00	Discrimination/Retaliation	Employee v Town of Brookline	Information Technology
2017-02-01	$231,000.00	Discrimination/Retaliation	Employee v Town of Brookline, et al	Public Works
2017-10-31	$180,000.00	Discrimination/Retaliation	Employee v Town of Brookline, et al	Police

ARTICLE 32

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:
Warrant Article 32 would add the following language to section 3.1.3 of the Town's General Bylaws: "The Select Board shall not enter into or authorize any agreement which has the purpose or effect of concealing the details relating to a claim of discrimination, retaliation, or harassment against the Town. The financial terms of any settlement agreement concerning such a claim shall be published in a newspaper of general circulation within the Town, shall be posted on the Town website, and shall be posted in ten public places in the Town within seven (7) days of the settlement."

The petitioners described a two-fold purpose to their amendment: to provide more transparency about the use of public funds and to deter future acts of discrimination, retaliation or harassment through exposure of the details. In response to privacy concerns expressed by the Select Board, the petitioners suggested the language could be amended to allow such clauses if proposed by the claimant.

Town Counsel raised concerns about the need to retain non-disclosure as a litigation strategy which can be advantageous to both parties because it avoids the time and expense of a trial. The Town cannot compel anyone to settle or to enter into a non-disclosure agreement as part of a settlement. Publication of settlement amounts can lead to claimants overvaluing cases, or to copycat suits.

The Advisory Committee made a distinction between the proposed by-law amendment in Warrant Article 32 and the "Me Too" movement and related cases in which plaintiffs were silenced to prevent the incidents from ever being made public. The Town does not pursue non-disclosure agreements to prevent investigations from going forward. Claimants can and do publicize their experiences at any time prior to agreeing to a settlement which contains a non-disclosure clause.

By a vote of 23 in favor, 1 opposed, and no abstentions, the Advisory Committee recommends NO ACTION on Warrant Article 32.

DISCUSSION:
The petitioners feel that their proposed amendment allows the Town leeway in the administration of financial disclosure. The level of financial information to be published could be as de minimis as stating that the town entered into a financial settlement of X dollars to resolve a case of (type of case to be specified). Non-disclosure of the details of a settlement protect a serial harasser or particular Town department and paper over the underlying issues. Exposure acts as a deterrent to future bad acts. To address the Select Board's concerns about protecting privacy, the language could be changed to give only complainants the right to propose non-disclosure.

Town Counsel disagreed with the petitioners about the level of disclosure required by the language of the Warrant Article. Non-disclosure can benefit the complainant as well as the defendant by saving the time and expense of litigation and eliminating the uncertainty of a trial. A settlement is a negotiated agreement between the Town and an individual, and the Town cannot compel anyone to accept a non-disclosure clause. Complainants may prefer to do so to avoid embarrassment and reputational damage, or just to put the matter to rest. Eliminating the Town's ability to enter into these agreements would allow only the claimant's side of an issue to be told if the claimant chose to publicize it. The Town would be unable to respond because of limitations imposed under laws pertaining to privacy and personnel records.

The Town also has concerns that disclosure of settlement amounts could generate copycat lawsuits or provide a baseline for future litigants to try to reach. Some cases are without merit but would cost more to defend than to settle.

Non-disclosure and non-disparagement provisions are standard boilerplate in many types of agreements. Typically, both sides are represented by counsel which equalizes the power dynamic. Many cases are publicized while legal action is being considered which brings a degree of exposure to both parties.

The petitioners indicated that they had requested a list of discrimination, harassment or retaliation cases settled by the Town in the past ten years and the amounts of the settlements. Town Counsel responded that there had been nine settlements in that time period, and indicated that she believes that all plaintiffs in those cases were represented by counsel. The Town is in the process of responding to a public records request from the petitioners as to whether the Town or complainant had requested the non-disclosure terms. Some cases were handled by outside counsel and it is not clear whether the requested information is included in the case records.

Settlements are never reached before the facts are fully known, and Town Counsel stated that all nine of the reported settlements involved cases which had been filed at the Massachusetts Commission Against Discrimination (MCAD) and/or in court. The Advisory Committee would not approve the use of funds without understanding the underlying facts. Although the use of settlements can be abused, the Advisory Committee does not believe the Town has done so.

The Town has made great strides in dealing with discrimination complaints but can strive to do better. The Human Resources and Diversity, Inclusion and Community Relations Departments are working together to achieve change through training and by joining the Government Alliance on Race and Equity (GARE). Often the parties involved do not agree on what happened, and the ability to reach settlements which protect the privacy of all parties involved can be useful. Agreed-upon settlement amounts can be obtained upon request under the public records laws.

An amendment was proposed to include a line in the Town's annual Financial Plan that disclosed the total dollar amount of settlements reached in the prior year. Settlements can be funded either through the "claims and settlements" line in Town Counsel's budget or the Town's Liability/Catastrophe Fund. Some settlements also include non-monetary items. The amendment failed by a vote of 22–1–1.

In light of the "Me Too" movement, a second amendment was proposed to refer the subject matter of the Article to a Moderator's Committee to explore the pros and cons of non-disclosure and its effect on the injured party. A majority of the Advisory Committee felt that this would not lead to a productive result. The Town is not using non-disclosure to silence plaintiffs or to pretend that they don't exist. Plaintiffs can and do publicize their cases long before settlement is broached by either party. The amendment failed by a vote of 23–1–0.

RECOMMENDATION:
By a vote of 23–1–0, the Advisory Committee recommends NO ACTION on Warrant Article 32.

ARTICLE 33

THIRTY-THIRD ARTICLE
Submitted by: John Doggett, Neil Gordon, Dennis Doughty

To see if the Town will adopt the following resolution:

Resolution urging a review of the Town's practices regarding non-electronic communications

WHEREAS, the capacity of Brookline residents to receive electronic communications has increased over time and is now nearly universal; and

WHEREAS, despite this capability, the Town continues to expend substantial sums on printing, postage and other costs relating to the dissemination of information in non-electronic forms; and

WHEREAS, the annual cost to the Town of printing and mailing letters and materials for all departments is estimated to be more than $581,000; and

WHEREAS, it is not apparent, on inquiry of the Town's staff, which of these communications that are required by law, are required to be sent by non-electronic means; and

WHEREAS, substantial sums might be saved through a systematic reduction in non-electronic communications not required by law; and

WHEREAS the Town lacks an electronic system for efficient, timely and emergency communications, to the whole Town, or to precincts or to individual streets or to individual properties; and

NOW, THEREFORE, BE IT RESOLVED, that Town Meeting urges the Select Board to undertake a review of the Town's non-electronic communications to make:

1) recommendations as to savings through use of electronic communication systems; and
2) improvements for electronic communications with residents,

by charging an existing committee or establishing a new committee, accordingly; and

BE IT FURTHER RESOLVED, that such committee report its findings in a timely manner such that, if appropriate, Warrant Articles might be submitted for consideration at a Special Town Meeting to be held in November,2018,

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

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.

SELECT BOARD'S RECOMMENDATION

Article 33 is a petitioned resolution that asks this Board to undertake a review of the Town's non-electronic communications and make recommendations to reduce the cost of printing and postage associated with non-mandatory paper communications and improve current methods of electronic communication with residents.

The Board certainly applauds the intent of this resolution, but notes that past efforts at paper reduction have been met with staunch resistance at Town Meeting. The Board is willing to try again to see if there is low hanging fruit that would save the Town postage and mailing costs while improving communications with residents. The Board is appreciative that two of the petitioners are willing to serve on the study committee and looks forward to learning more about what can be done.

The Board unanimously voted FAVORABLE ACTION on April 10, 2018 on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

Warrant Article 33 as recommended by the Advisory Committee would urge the Select Board to undertake a review of the Town's non-electronic communications. The purpose of the review would be to make recommendations as to savings through use of electronic communication systems, and suggest improvements for electronic communications with residents, particularly in emergency situations. The Article calls for the recommendations to be published sufficiently in advance such that, if appropriate, Warrant Articles might be submitted for consideration at a Special Town Meeting to be held in November, 2018. By a vote of 22–0–1, the Advisory Committee recommends FAVORABLE ACTION.

BACKGROUND:

The members of the Advisory Committee's Administration and Finance Subcommittee, the petitioners of Article 33, are responsible for review of the departmental budgets of the Town Clerk, Information Technology, and the Finance Departments. A recurrent topic through the FY2019 review was Town expenditure for printing and postage.

Town and School Expenditures (from Purchasing Dept.)	
Postage (Acct #525022)	
2018	$325K
2017	$257K
2016	$309K
Printing (Acct # 525030)	
2018	$256K
2017	$174K
2016	$196K

How much of this printing and postage is mandatory? As electronic communication becomes more widespread, are there opportunities to increase use of electronic technology and thereby reduce these costs? We don't know. The aim of Article 33 is to urge the Select Board to undertake a review of the Town's non-electronic communication to determine whether the Town could realize savings through improved use of electronic technology. To what extent could electronic technology replace printed communication? Are there other ways to make improvements with electronic communication, including, for example, when sending notifications to residents?

The petitioners consulted the Finance Department, Town Clerk's office, Deputy Town Administrator, and the Information Technology Department during Warrant Article drafting. Melissa Goff spoke about an interdepartmental eGoverment Committee. The issue brought forward by this Warrant Article may suitably match the mission of that committee. She opined that the committee could very well work on this issue, though Article 33 is not specific about how the request is to be implemented, besides calling for a report in time for filing Warrant Articles for the November 2018 Town Meeting.

The Town staff members who were consulted were supportive of the aims of Article 33.

DISCUSSION:
The school department (Public Schools of Brookline) has achieved a lot in this regard, offering a platform enabling teachers, students, and families to communicate electronically, for parents to be informed about school events, students to submit homework, and for parents to learn about their child's progress, as well as many other functions.

Various departments maintain databases, but these databases often lack the capacity to exchange information. One question is, to what extent these databases may be linked in order to fashion a uniform platform that would contain and maintain up-to-date email addresses? The Town, currently, does not consistently collect email addresses and may not be able to engineer such a platform without changes to some database formats.

One possibility, to work around this, would be to create an opt-in platform. The resident opting in would, in the process of registering, provide their preferred email address. As with the e-notify system, the resident would then choose which communications they want to receive electronically, possibly including documents and/or notices. The listed choices would grow as the back end engineering to link databases was completed.

The group discussed confidentiality and whether some communications may be required by law to be sent by non-electronic means. Protecting confidentiality is very important, particularly for the school department.

RECOMMENDATION:
By a vote of 22–0–1, the Advisory Committee recommends FAVORABLE ACTION on the following motion with underlined text indicating additions to the original language of the resolution as it appeared in the Warrant and ~~strikethroughs~~ indicating deletions:

VOTED: That the Town adopt th**e** following resolution:

Resolution urging a review of the Town's practices regarding non-electronic communications

WHEREAS, the capacity of Brookline residents to receive electronic communications has increased over time and is now ~~nearly universal~~ widespread; and

WHEREAS, despite this capability, the Town continues to expend substantial sums on printing, postage and other costs relating to the dissemination of information in non-electronic forms; and

WHEREAS, the ~~annual cost to~~ FY 2019 budget of the Town of printing and mailing letters and materials for all departments is estimated to be more than $581,000 [1]; and

WHEREAS, substantial sums might be saved through a systematic reduction in non-electronic communications not required by law; and

WHEREAS, on inquiry of the Town's staff, it is not ~~apparent~~ clear, ~~on inquiry of the Town's staff~~, which of the ~~of these~~ communications ~~that are required by law, are~~ required by law must ~~to~~ be sent by non-electronic means; and

~~WHEREAS, substantial sums might be saved through a systematic reduction in non-electronic communications not required by law; and~~

WHEREAS the Town lacks a~~n~~ sufficient electronic system for efficient, timely and emergency communications, to the whole Town, or to precincts or to individual streets or to individual properties; and

NOW, THEREFORE, BE IT RESOLVED, that Town Meeting urges the Select Board to undertake a review of the Town's non-electronic communications to make:

1) recommendations as to savings through use of electronic communication systems; and
2) improvements for electronic communications with residents, particularly in emergency situations;

by charging an existing committee or establishing a new committee, accordingly; and

BE IT FURTHER RESOLVED, that such committee reports its findings in a timely manner such that, if appropriate, Warrant Articles might be submitted for consideration at a Special Town Meeting to be held in November, 2018.

[1] Town of Brookline FY 2019 Budget Line items: Printing Acct # 525030; Postage Acct # 525022

"CLEAN" VERSION OF THE RECOMMENDED MOTION:

VOTED: That the Town adopt th**e** following resolution:

Resolution urging a review of the Town's practices regarding non-electronic communications

WHEREAS, the capacity of Brookline residents to receive electronic communications has increased over time and is now widespread; and

WHEREAS, despite this capability, the Town continues to expend substantial sums on printing, postage and other costs relating to the dissemination of information in non-electronic forms; and

WHEREAS, the annual budget of the Town of printing and mailing letters and materials for all departments is estimated to be more than $581,000 [1]; and

WHEREAS, substantial sums might be saved through a systematic reduction in non-electronic communications not required by law; and

WHEREAS, on inquiry of the Town's staff, it is not clear which of the communications required by law must be sent by non-electronic means; and

WHEREAS the Town lacks a sufficient electronic system for efficient, timely and emergency communications, to the whole Town, or to precincts or to individual streets or to individual properties; and

NOW, THEREFORE, BE IT RESOLVED, that Town Meeting urges the Select Board to undertake a review of the Town's non-electronic communications to make:

1) recommendations as to savings through use of electronic communication systems; and
2) improvements for electronic communications with residents, particularly in emergency situations

by charging an existing committee or establishing a new committee, accordingly; and

BE IT FURTHER RESOLVED, that such committee reports its findings in a timely manner such that, if appropriate, Warrant Articles might be submitted for consideration at a Special Town Meeting to be held in November, 2018.

[1] Town of Brookline FY 2019 Budget Line Items: Printing Acct # 525030; Postage Acct # 525022

XXX

ARTICLE 34

THIRTY-FOURTH ARTICLE
Submitted by: Neil Gordon, on behalf of Brookline PAX

To see if the Town will adopt the following Resolution:

Resolution honoring the "Boys of Brookline" who died in service to their country during World War I

WHEREAS, World War I, also known as the Great War, was a global war, originating in Europe in 1914, and ending on November 11, 1918; and

WHEREAS, during the course of that war, more than seventy million military personnel were mobilized, and over nine million combatants and seven million civilians died; and

WHERAS, on April 6, 1917, the United States entered the conflict, mobilizing over four million military personnel and suffering one hundred and ten thousand deaths; and

WHEREAS, one hundred years later, as we take pause and remember all of those who served, and all of those who suffered, it is particularly appropriate that we take pause and remember those from our town, who gave so much; now

THEREFORE, BE IT RESOLVED, that Brookline Town Meeting hereby, and with reverence, honors the memory of Carlton C. Baker, Allan G. Barton, Albert E. Bower, Barron Brainerd, Harold Bromsoe, John J. Campbell, Elwin F. Chapman, Ralph E. Chapman, Harmon Craig, Albert L. Crocker, James F. Cromie, Martin Crowe, Thaddius C. DeFriese 2nd, Henry J. Devaney, Dennis F. Donahue, John F. Dugan, Patrick J. Dunn, Charles R. Ellis, Newton S. Frothingham, William B. Hagan, Kenneth E. Henderson, William F. Herrick, Robert W. Hill, Joseph W. Homer Jr., Edward A. Hooper, William H. Jarboe, Branton H. Kellogg, James A. King, Frederick A. Lincoln, Max M. Lustic, William D. Lyon, Charles W. McCarthy, George F. McGillen, Alfonsus J. McGrath, Kenneth D. McKenzie, James B. McClellan, Eugene D. Morse, Norman I. Moultrop, John L. Mulvey, John L. Norris 2nd, Frederic Owens, Edward C. Paine, Robert J. Palmer, Sturgis Pishon, Stephen Potter, Norbert E. Rigby, Newell W. Rogers, Mathew J, Rowley, Stephen F. Rutledge, George K. Sabine Jr., Thomas W. Saunders, Albert E. Scott, Charles L. Smith, Alexander Stewart, Gordon Stewart, Horace S. Stevens, Timothy B. Sullivan, Joseph J. Waters, Henry D. Webb, Hallek Wells Jr., Robert Williams, and Donald F. Wright, sixty-two "Boys of Brookline," who died in service to their country; and

BE IT FURTHER RESOLVED, that Town Meeting takes special note of Albert Edward Scott, "Scotty," a Brookline newsboy and a graduate of the Devotion School, a member of Company H, 101st United States Infantry, Allied Expeditionary Force, and a recipient of the Distinguished Service Cross, who was killed in action in France, on July 23rd, 1918, at the age of sixteen; and

BE IT FURTHER RESOLVED, that the Brookline Select Board, through the Town's Veterans Service Office, cause this Resolution to be read at the Town's forthcoming Memorial Day Service, to be held on May 28, 2018,

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

"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

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SELECT BOARD'S RECOMMENDATION

Article 34 is a petitioned resolution that asks the Town to honor sixty-two residents of Brookline who died in service to their country in World War I. The resolution also recognizes Albert Edward Scott, "Scotty," a Brookline newsboy and a graduate of the Devotion School who was the recipient of the Distinguished Service Cross, and was killed in action in France, on July 23rd, 1918. If passed, this resolution will be read at the Town's

Memorial Day Service on May 28, 2018. The Board fully supports this resolution and thanks the petitioner and Brookline PAX for bringing this to Town Meeting.

On April 10, 2018, the Board unanimously voted FAVORABLE ACTION on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Article 34 is a resolution honoring the 62 Brookline residents who died during World War I, with special note taken of the sacrifice of Albert Edward Scott, a recipient of the Distinguished Service Cross, who died in France at the age of 16. World War I, also called the Great War or the War to End All Wars, ended 100 years ago this year, on November 11, 1918. The Advisory Committee unanimously recommends FAVORABLE ACTION.

BACKGROUND:
This resolution was brought forward by Neil Gordon (TMM-1) to honor those who lost their lives 100 years ago in a war that has largely been overshadowed by other subsequent conflicts. Neil found the following passage from the Brookline Historical Society. It is copied below, and the last paragraph is particularly relevant:

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 forebears … but to the citizen living fifty or a hundred years hence, what a wonderful history the war and its possible results will make"

DISCUSSION:
Sixty-two "Boys of Brookline" died during World War 1. There is a memorial with their names next to Town Hall and a recently restored plaque hanging in the Town Hall lobby. While most of us today see only names carved on a memorial, in life these people touched a great many lives in Brookline and around the world. Most of those we've been able to find information on (so far) were only in their 20's (or younger), some were immigrants, some were married, some left behind young children and one, Albert Edward Scott, a graduate of Devotion School, lied about his age so he could enlist, and was killed in action at the age of 16.

Finding information on World War 1 military records has been difficult in the past, although more information is now being scanned and put online. Of the 62 men, 20 are known to have filled out draft registration cards, and some of the information from those records is below:

- Barron Brainerd 57 Monmouth St. Student, Harvard
- Harold Bromsoe 232 Summit Ave. Born-Denmark
- John J. Campbell 59 Brookline Ave. Occupation-Motor Driver
- Henry Devaney 370 Washington St. Citizen-Gr. Britain; Occupation-Salesman Dry Goods
- Dennis Donahue 11 Harvard Place Born-Ireland 22 years old; Occupation- "Fireman- Engine 2", Brookline Fire Department
- Newton Frothingham 1090 Beacon St
- William Jarboe 32 Milton Rd. Student
- Max Lustig 159 Coolidge St.
- Kenneth McKenzie 1202 Boylston St.
- Norman Moultrop 75 Winchester St.
- John Norris 2nd 108 Naples Rd.
- Robert Palmer 107 Brookline Ave. Occupation-Chauffeur- "Hayes Brookline Express" (White Place)
- Sturgis Pishon 45 St. Paul St.
- Newell Rogers 1213 Beacon St. Occupation-Auto Salesman- Becker Stutz Auto Co.
- Matthew Rowley 4 Kerrigan Place Born-Ireland
- Alexander Stewart 93 Harvard St. Citizen of Gr. Britain
- Joseph Waters 333 Boylston St.
- Henry Webb 1651 Beacon St. Occupation-Bank Clerk
- Donald Wright 1212 Boylston Occupation-Chauffeur for Mr. Adams of 464 Heath St.

More research is needed to reveal the lives of those Brookline residents who served and died in past wars. All the people who knew and remembered these heroes of World War I are gone. The responsibility to remember and honor them is now ours. It is altogether fitting that we remember those who answered the call, fought and died, and called Brookline home.

RECOMMENDATION:

By a unanimous vote of 18–0–0**,** the Advisory Committee recommends FAVORABLE ACTION on the following motion:

VOTED: That the Town Adopt the Following Resolution:

Resolution honoring the "Boys of Brookline" who died in service to their country during World War 1

WHEREAS, World War 1, also known as the Great War, was a global war, originating in Europe in 1914, and ending November 11, 1918; and

WHEREAS, during the course of that war, more than seventy million military personnel were mobilized, and over nine million combatants and seven million civilians died; and

WHEREAS, on April 6, 1917, the United States entered the conflict, mobilizing over four million military personnel and suffering one hundred and ten thousand deaths; and

WHEREAS, one hundred years later, as we take pause and remember all of those who served, and all of those who suffered, it is particularly appropriate that we take pause and remember those from our town, who gave so much; now

THEREFORE, BE IT RESOLVED, that Brookline Town Meeting hereby, and with reverence, honors the memory of Carlton C. Baker, Allan G. Barton, Albert E. Bower, Barron Brainerd, Harold Bromsoe, John J. Campbell, Elwin F. Chapman, Ralph E. Chapman, Harmon Craig, Albert L. Crocker, James F. Cromie, Martin Crowe, Thaddius C. DeFriese 2nd, Henry J. Devaney, Dennis F. Donahue, John F. Dugan, Patrick J. Dunn, Charles R. Ellis, Newton S. Frothingham, William B. Hagan, Kenneth E. Henderson, William F. Herrick, Robert W. Hill, Joseph W. Homer Jr., Edward A. Hooper, William H. Jarboe, Branton H. Kellogg, James A. King, Frederick A. Lincoln, Max M. Lustic, William D. Lyon, Charles W. McCarthy, George F. McGillen, Alfonsus J. McGrath, Kenneth D. McKenzie, James B. McClellan, Eugene D. Morse, Norman I. Moultrop, John L. Mulvey, John L. Norris 2nd, Frederic Owens, Edward C. Paine, Robert J. Palmer, Sturgis Pishon, Stephen Potter, Norbert E. Rigby, Newell W. Rogers, Mathew J, Rowley, Stephen F. Rutledge, George K. Sabine Jr., Thomas W. Saunders, Albert E. Scott, Charles L. Smith, Alexander Stewart, Gordon Stewart, Horace S. Stevens, Timothy B. Sullivan, Joseph J. Waters, Henry D. Webb, Hallek Wells Jr., Robert Williams, and Donald F. Wright, sixty-two "Boys of Brookline", who died in service to their country; and

BE IT FURTHER RESOLVED, that Town Meeting takes special note of Albert Edward Scott, "Scotty", a Brookline newsboy and a graduate of the Devotion School, a member of Company H, 101st United States Infantry, Allied Expeditionary Force, and a recipient of the Distinguished Service Cross, who was killed in action in France, on July 23rd, 1918, at the age of sixteen; and

BE IT FURTHER RESOLVED, that the Brookline Select Board, through the Town's Veterans Service Office, cause this resolution to be read at the Town's forthcoming Memorial Day service, to be held on May 28, 2018.

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ARTICLE 35

THIRTY-FIFTH ARTICLE
Submitted by: Cornelia van der Ziel, TMM15, Edward Loechler, TMM8

TO SEE IF THE TOWN WILL ADOPT THE FOLLOWING RESOLUTION:

RESOLUTION TO CALL FOR THE UNITED STATES TO "PULL BACK FROM THE BRINK" AND PREVENT NUCLEAR WAR—AN EXISTENTIAL THREAT TO THE FUTURE OF HUMANITY AND THE PLANET

WHEREAS, since the height of the Cold War, the United States and Russia have dismantled more than 50,000 nuclear warheads, but approximately 15,000 of these weapons still exist and, thus, still pose an intolerable risk to human survival[1]; and

WHEREAS, approximately 95 percent of these weapons are in the hands of the United States and Russia, while the remainder are held by 7 other countries, namely, China, France, India, Israel, North Korea, Pakistan, and the United Kingdom[2]; and

WHEREAS, nuclear war would directly kill hundreds of millions of people and cause unimaginable environmental damage[3]; and

WHEREAS, there is a high probability that such a nuclear war would lead to catastrophic climate disruption dropping temperatures across the planet to levels not seen since the last ice age, thus resulting in the starvation of the vast majority of the human race, quite possibly leading to our extinction and the extinction of multiple other species[4]; and

WHEREAS, even the use of a tiny fraction of these weapons would cause worldwide climate disruption and global famine; e.g., as few as a 100 Hiroshima-sized bombs (small by modern standards) would put at least 5 million tons of soot into the upper atmosphere and cause climate disruption across the planet, cutting food production and putting 2 billion people at risk of starvation[5]; and

WHEREAS, despite the popular notion that these arsenals exist solely to guarantee they will never be used, on multiple occasions nuclear armed states have proceeded to the brink of using these weapons, and their use was narrowly averted[6]; and

WHEREAS, nuclear weapons do not possess any magical qualities that prevents their use; and

WHEREAS, former Defense Secretary Robert McNamara—speaking about the Cuban Missile Crisis in The Fog of War—said, "It was luck that prevented nuclear war"; and

WHEREAS, U.S. nuclear policy must NOT be subject to the whims of "luck;" and

WHEREAS, the growing climate crisis is stressing communities around the world and intensifying the likelihood of conflict, and, thus, the danger of nuclear war[7]; and

WHEREAS, the planned expenditure of more than $1 trillion dollars to enhance the U.S. nuclear arsenal will not only increase the risk of nuclear disaster but also fuel a global arms race and divert crucial resources needed to assure the well-being of the American people and people all over the world[8]; and

WHEREAS, there is an alternative to increasing nuclear arms proliferation; e.g., in July 2017, 122 nations called for the elimination of all nuclear weapons by adopting the Treaty on the Prohibition of Nuclear Weapons[9].

BE IT RESOLVED THAT the Town of Brookline, Massachusetts, calls upon our federal leaders and our nation to embrace and sign the Treaty on the Prohibition of Nuclear Weapons and make nuclear disarmament a centerpiece of U.S. national security policy.

BE IT FURTHER RESOLVED that the Town Meeting of Brookline, Massachusetts, calls upon our federal leaders and our nation to spearhead a global effort to prevent nuclear war by:

- renouncing the option of using nuclear weapons first;
- ending the president's sole, unchecked authority to launch a nuclear attack;
- taking U.S. nuclear weapons off hair-trigger alert;
- cancelling all plans to add weapons to the U.S. nuclear arsenal that will make it more likely that leaders will initiate nuclear war; and
- actively pursuing a verifiable agreement among nuclear armed states to eliminate their nuclear arsenals.

BE IT FURTHER RESOLVED that the Town Clerk shall cause a copy of this resolution be sent to our U.S. Congressional Representative Joseph P. Kennedy, III, U.S. Senator Elizabeth Warren, U.S. Senator Edward J. Markey, and President Donald J. Trump.

Or act on anything relative thereto.

[1] https://fas.org/issues/nuclear-weapons/status-world-nuclear-forces/
[2] https://fas.org/issues/nuclear-weapons/status-world-nuclear-forces/
[3] http://www.psr.org/assets/pdfs/projected-us-casualties-and-destruction.pdf
[4] http://climate.envsci.rutgers.edu/pdf/RobockNW2006JD008235.pdf
[5] http://www.psr.org/assets/pdfs/two-billion-at-risk.pdf
[6] http://www.ucsusa.org/sites/default/files/attach/2015/04/Close%20Calls%20with%20 Nuclear%20Weapons.pdf
[7] https://www.scientificamerican.com/article/once-again-climate-change-cited-as-trigger-for-war/
[8] https://www.armscontrol.org/factsheets/USNuclearModernization
[9] www.ican.org/treaty-on-the-prohibition-of-nuclear-weapons/

PETITIONER'S ARTICLE DESCRIPTION

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.

Alarmingly, 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.

SELECT BOARD'S RECOMMENDATION

Article 35 is a Resolution addressing the proliferation and use of nuclear weapons. Though the world nuclear arsenal has fallen from 60,000 operational nuclear warheads down to 15,000, there is still a need to reduce that number. Treaties have been signed over the past 30 years, all with the intent to move towards a non-nuclear world. The reduction, and ultimately elimination, of nuclear weapons would ease the concerns of the world community and prevent the hair trigger usage of a weapon due to taunts between current world leaders. There are five points that the warrant article wants communicated with federal leaders to spearhead a global effort to prevent nuclear war by:

- renouncing the option of using nuclear weapons first;
- ending the president's sole, unchecked authority to launch a nuclear attack;
- taking U.S. nuclear weapons off "hair-trigger" alert;
- cancelling all plans to add weapons to the U.S. nuclear arsenal that will make it more likely that leaders will initiate nuclear war; and
- actively pursuing a verifiable agreement among nuclear armed states to eliminate their nuclear arsenals.

The Select Board agrees with the intent of the article. This article follows a 2009 Special Town Meeting resolution concerning the President of the United States and the pursuit of a verifiable treaty to eliminate nuclear weapons. It was expressed that Town Meeting has no control over the denuclearization of the country, a sentiment that has been shared in the past, but the Board acknowledges that it is good to go on record that the Town has expressed an opinion.

On April 10, 2018 Select Board voted 5-0 FAVORABLE ACTION on the following motion:

VOTED: That the Town adopt the following resolution:

RESOLUTION TO CALL FOR THE UNITED STATES TO "PULL BACK FROM THE BRINK" AND PREVENT NUCLEAR WAR—AN EXISTENTIAL THREAT TO THE FUTURE OF HUMANITY AND THE PLANET

WHEREAS, since the height of the Cold War, the United States and Russia have dismantled more than 50,000 nuclear warheads, but approximately 15,000 of these weapons still exist and, thus, still pose an intolerable risk to human survival[1]; and

WHEREAS, approximately 95 percent of these weapons are in the hands of the United States and Russia, while the remainder are held by 7 other countries, namely, China, France, India, Israel, North Korea, Pakistan, and the United Kingdom[2]; and

WHEREAS, nuclear war would directly kill hundreds of millions of people and cause unimaginable environmental damage[3]; and

WHEREAS, there is a high probability that such a nuclear war would lead to catastrophic climate disruption dropping temperatures across the planet to levels not seen since the last ice age, thus resulting in the starvation of the vast majority of the human race, quite possibly leading to our extinction and the extinction of multiple other species[4]; and

WHEREAS, even the use of a tiny fraction of these weapons would cause worldwide climate disruption and global famine; e.g., as few as a 100 Hiroshima-sized bombs (small by modern standards) would put at least 5 million tons of soot into the upper atmosphere and cause climate disruption across the planet, cutting food production and putting 2 billion people at risk of starvation[5]; and

WHEREAS, despite the popular notion that these arsenals exist solely to guarantee they will never be used, on multiple occasions nuclear armed states have proceeded to the brink of using these weapons, and their use was narrowly averted[6]; and

WHEREAS, former Defense Secretary Robert McNamara—speaking about the Cuban Missile Crisis in The Fog of War—said, “It was luck that prevented nuclear war”; and

WHEREAS, U.S. nuclear policy must NOT be subject to the whims of “luck;” and

WHEREAS, the growing climate crisis is stressing communities around the world thus intensifying the likelihood of conflict, and the danger of war, which increases the possibility of escalation to nuclear war[7;] and

WHEREAS, the planned expenditure of more than $1 trillion dollars to enhance the U.S. nuclear arsenal will not only increase the risk of nuclear disaster but also fuel a global arms race and divert crucial resources needed to assure the well-being of the American people and people all over the world[8]; and

WHEREAS, in July 2017, 122 nations called for the elimination of all nuclear weapons by adopting the Treaty on the Prohibition of Nuclear Weapons[9].

BE IT RESOLVED THAT the Town of Brookline, Massachusetts, calls upon our federal leaders and our nation to make nuclear disarmament a centerpiece of U.S. national security policy, and to work toward signing the Treaty on the Prohibition of Nuclear Weapons.

BE IT FURTHER RESOLVED that the Town Meeting of Brookline, Massachusetts, calls upon our federal leaders and our nation to spearhead a global effort to prevent nuclear war by:

- renouncing the option of using nuclear weapons first;
- ending the president's sole, unchecked authority to launch a nuclear attack;
- taking U.S. nuclear weapons off "hair-trigger" alert;
- cancelling all plans to add weapons to the U.S. nuclear arsenal that will make it more likely that leaders will initiate nuclear war; and
- actively pursuing a verifiable agreement among nuclear armed states to eliminate their nuclear arsenals.

BE IT FURTHER RESOLVED that the Town Clerk shall cause a copy of this resolution be sent to our U.S. Congressional Representative Joseph P. Kennedy, III, U.S. Senator Elizabeth Warren, U.S. Senator Edward J. Markey, and President Donald J. Trump.

[1] https://fas.org/issues/nuclear-weapons/status-world-nuclear-forces/
[2] https://fas.org/issues/nuclear-weapons/status-world-nuclear-forces/
[3] http://www.psr.org/assets/pdfs/projected-us-casualties-and-destruction.pdf
[4] http://climate.envsci.rutgers.edu/pdf/RobockNW2006JD008235.pdf
[5] http://www.psr.org/assets/pdfs/two-billion-at-risk.pdf
[6] http://www.ucsusa.org/sites/default/files/attach/2015/04/Close%20Calls%20with%20 Nuclear%20Weapons.pdf
[7] https://www.scientificamerican.com/article/once-again-climate-change-cited-as-trigger-for-war/
[8] https://www.armscontrol.org/factsheets/USNuclearModernization
[9] www.ican.org/treaty-on-the-prohibition-of-nuclear-weapons/

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:
Warrant Article 35 is a resolution that calls for our federal leaders and the nation to make nuclear disarmament a focus of U.S. national security policy and to spearhead global efforts to prevent nuclear war. The Advisory Committee voted to recommend FAVORABLE ACTION on Article 35 as amended by the petitioners by a vote of 11–1–3.

BACKGROUND:
The petitioners Kea van der Ziel, a member of the Greater Boston Chapter of Physicians for Social Responsibility (PSR) and Ed Loechler, Professor of Biology at Boston University, filed this Warrant Article to draw attention to the existential threat presented by nuclear weapons and to direct our Congressional delegation in Washington and our President to make nuclear disarmament a focus of our U.S. national security policy.

The resolution offers a number of concrete actions to accomplish this goal:

1. Renounce the option of a nuclear first strike;
2. End the president's sole authority to initiate a nuclear attack;
3. Take U.S. nuclear weapons off of "hair-trigger" alert;
4. Cancel all plans to add nuclear weapons to our existing nuclear stores;
5. Actively pursue a verifiable agreement among countries with nuclear weapons to eliminate them;
6. Work toward the objective of signing the July 7, 2017 U.N. Treaty on the Prohibition of Nuclear Weapons.

According to ICAN (International Campaign to Abolish Nuclear Weapons) the Treaty has already been agreed to by 122 nations, signed by 57 and ratified by 7. The Treaty will come into effect when 50 nations ratify it. According to the petitioners, no NATO nation supports the treaty; at this point the entire Southern hemisphere is non-nuclear. http://www.icanw.org/treaty-on-the-prohibition-of-nuclear-weapons/

The Advisory Committee discussed the issue, which nations are debating on a global level, of whether or not renouncing the option of a nuclear first strike would lead other nations with nuclear weapons to do the same, or whether that might, in fact, lead to other currently non-nuclear nations developing nuclear weapons. There was also some concern about ending the sole authority of the president of the United States to initiate a nuclear attack without having a clear alternative process that would accomplish the goal of preventing a nuclear war.

The petitioners noted that every President since Truman has considered using nuclear weapons. Since the Truman administration, the weapons have gotten more powerful and more lethal, so that even using a small fraction of these weapons would cause significant loss of life and significant climate disruption on this planet and lead to global famine, "putting 2 billion people at risk of starvation."

The urgency for acting on this resolution now, as presented by the petitioners, involves a number of concerns, including: (a) our existing nuclear weapons are being upgraded, at great expense; (b) President Trump's Nuclear Posture Review seeks to add to America's already large nuclear arsenal and expand its uses, and other governments are doing the same, which could lead to an arms race rather than the decrease in nuclear arsenals that we have seen in the past 30 years (in 1986 there were ~70,000 nuclear weapons, but there are fewer than 15,000 today, with about 2,000 on high alert); and (c) the new U.S. National Security Advisor John Bolton has expressed a belief in pre-emptive war and pre-emptive nuclear war.

A recent incident exemplifying concern over the risk of nuclear war happened on January 13, 2018, when there was a false alert sent by Hawaii's Emergency Management Agency on an incoming ballistic missile—a mistake, the petitioners noted, that can take a nuclear response to the edge. Residents of Hawaii received an alert on their cell phones that stated: "BALLISTIC MISSILE THREAT INBOUND TO HAWAII. SEEK IMMEDIATE SHELTER. THIS IS NOT A DRILL".

Nuclear weapons can be launched at a moment's notice, under what is called a "hair-trigger" alert. The United States can launch land-based missiles in 5 minutes and submarine-based missiles within 15 minutes. The president, under current nuclear launch procedures, is granted total authority to decide whether to start a nuclear war.

The petitioners presented data from the Research Center for Nuclear Weapons Abolition (RECNA) at Nagasaki University in Japan, that as of June 2017, the world's nuclear warhead count was 14,900. Russia had approximately 7,000, the United States had approximately 6,800, with the remaining nuclear warheads in France, China, the United Kingdom, Israel, Pakistan, India, and North Korea.

The petitioners stated that this is resolution should not be controversial. Newton, for example, voted a similar resolution over three years ago in January of 2015. The Mayors of Hiroshima and Nagasaki have been calling upon mayors in countries around the world to transcend national borders and join together as Mayors for Peace to put an end to nuclear weapons. Mayors from 213 cities in the United States, including Boston, have signed onto this effort.

RECOMMENDATION:
The Advisory Committee, by a vote of 11–1–3, recommends FAVORABLE ACTION on the following resolution as amended by the petitioners:

VOTED: That the Town Adopt the Following Resolution:

RESOLUTION TO CALL FOR THE UNITED STATES TO "PULL BACK FROM THE BRINK" AND PREVENT NUCLEAR WAR—AN EXISTENTIAL THREAT TO THE FUTURE OF HUMANITY AND THE PLANET

WHEREAS, since the height of the Cold War, the United States and Russia have dismantled more than 50,000 nuclear warheads, but approximately 15,000 of these weapons still exist and, thus, still pose an intolerable risk to human survival[1]; and

WHEREAS, approximately 95 percent of these weapons are in the hands of the United States and Russia, while the remainder are held by 7 other countries, namely, China, France, India, Israel, North Korea, Pakistan, and the United Kingdom[2]; and

WHEREAS, nuclear war would directly kill hundreds of millions of people and cause unimaginable environmental damage[3]; and

WHEREAS, there is a high probability that such a nuclear war would lead to catastrophic climate disruption dropping temperatures across the planet to levels not seen since the last ice age, thus resulting in the starvation of the vast majority of the human race, quite possibly leading to our extinction and the extinction of multiple other species[4]; and

WHEREAS, even the use of a tiny fraction of these weapons would cause worldwide climate disruption and global famine; e.g., as few as a 100 Hiroshima-sized bombs (small by modern standards) would put at least 5 million tons of soot into the upper atmosphere and cause climate disruption across the planet, cutting food production and putting 2 billion people at risk of starvation[5]; and

WHEREAS, despite the popular notion that these arsenals exist solely to guarantee they will never be used, on multiple occasions nuclear armed states have proceeded to the brink of using these weapons, and their use was narrowly averted[6]; and

WHEREAS, former Defense Secretary Robert McNamara—speaking about the Cuban Missile Crisis in The Fog of War—said, "It was luck that prevented nuclear war"; and

WHEREAS, U.S. nuclear policy must NOT be subject to the whims of "luck;" and

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WHEREAS, the growing climate crisis is stressing communities around the world and intensifying the likelihood of conflict, and, thus, the danger of war and the possibility of escalating to nuclear war[7]; and

WHEREAS, the planned expenditure of more than $1 trillion dollars to enhance the U.S. nuclear arsenal will not only increase the risk of nuclear disaster but also fuel a global arms race and divert crucial resources needed to assure the well-being of the American people and people all over the world[8]; and

WHEREAS, in July 2017, 122 nations called for the elimination of all nuclear weapons by adopting the Treaty on the Prohibition of Nuclear Weapons[9].

BE IT RESOLVED THAT the Town of Brookline, Massachusetts, calls upon our federal leaders and our nation to make nuclear disarmament a centerpiece of U.S. national security policy and to work toward the goal of signing the U.N. Treaty on the Prohibition of Nuclear Weapons.

BE IT FURTHER RESOLVED that the Town Meeting of Brookline, Massachusetts, calls upon our federal leaders and our nation to spearhead a global effort to prevent nuclear war by:

- renouncing the option of using nuclear weapons first;
- ending the president's sole, unchecked authority to launch a nuclear attack;
- taking U.S. nuclear weapons off "hair-trigger" alert;
- cancelling all plans to add weapons to the U.S. nuclear arsenal that will make it more likely that leaders will initiate nuclear war; and
- actively pursuing a verifiable agreement among nuclear armed states to eliminate their nuclear arsenals.

BE IT FURTHER RESOLVED that the Town Clerk shall cause a copy of this resolution be sent to our U.S. Congressional Representative Joseph P. Kennedy, III, U.S. Senator Elizabeth Warren, U.S. Senator Edward J. Markey, and President Donald J. Trump.

[1] https://fas.org/issues/nuclear-weapons/status-world-nuclear-forces/
[2] https://fas.org/issues/nuclear-weapons/status-world-nuclear-forces/
[3] http://www.psr.org/assets/pdfs/projected-us-casualties-and-destruction.pdf
[4] http://climate.envsci.rutgers.edu/pdf/RobockNW2006JD008235.pdf
[5] http://www.psr.org/assets/pdfs/two-billion-at-risk.pdf
[6] http://www.ucsusa.org/sites/default/files/attach/2015/04/Close%20Calls%20with%20Nuclear%20Weapons.pdf
[7] https://www.scientificamerican.com/article/once-again-climate-change-cited-as-trigger-for-war/
[8] https://www.armscontrol.org/factsheets/USNuclearModernization
[9] www.icanw.org/treaty-on-the-prohibition-of-nuclear-weapons/

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ARTICLE 36

THIRTY-SIXTH ARTICLE

Submitted by: Craig Bolon, TMM8

Resolution calling for consideration of renaming Washington Street

To see if the Town will adopt the following Resolution or will amend and adopt the Resolution or will act on anything relative thereto:

WHEREAS, Brookline has become increasingly concerned about slaveholding associated with people after whom Town features are named, and

WHEREAS, George Washington, after whom Washington Street was named, was a slaveholder during most of his life, including years when he served as our nation's first President,

NOW THEREFORE, BE IT HEREBY RESOLVED, AS FOLLOWS:
The Town calls on the Town's Naming Committee consider renaming all or parts of Washington Street, using the name or names of one or more notable people who have resided within the current area of the Town, and to report thereon to the next Special or Annual Town Meeting beginning on or after November 1, 2018.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

National trends of heightened partisanship have led, among other directions, to reconsiderations of longstanding social tensions. The greatest of these wove 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.

SELECT BOARD'S RECOMMENDATION

A report and recommendation by the Select Board under Article 36 will be provided in the Supplemental Mailing. The Board understands that a revised motion may be ready for their May 15, 2018 meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

RECOMMENDATION:
A report and recommendation by the Advisory Committee on Article 36 will be provided in the Supplemental Mailing.

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ARTICLE 36

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Article 36 is a petitioned resolution that asks the Town to direct the Naming Committee to consider renaming all or parts of Washington street given the George Washington's history as a slaveholder.

While the Board appreciates the question posed by the petitioner it was felt that the Devotion renaming process should have time to unfold before considering this type of proposal. The Board would like to see the community response to that article before posing a larger question. The Board also shares some of the concerns expressed by the Advisory Committee including the role of the Naming Committee and staff support needed to undertake this effort and what else might this lead to for other streets.

The Board voted 4-1 NO ACTION on Article 36.

Roll Call Vote:

Aye:	Nay:
Wishinsky	Heller
Franco	
Greene	
Hamilton	

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:

Warrant Article 36 as initially filed asked the Naming Committee to consider the renaming of Washington Street due to George Washington's history as a slaveholder.

The Advisory Committee first recommended Favorable Action on a revised motion that asked for consideration of renaming public features currently named after individuals whose actions could be considered unacceptable by current standards. After the Moderator ruled that this motion was beyond the scope of the Article, which is limited to Washington Street, the Committee reconsidered the original motion and, by a vote of 12–6–5, the Advisory Committee recommends NO ACTION.

BACKGROUND:

In recent years the Town has begun to pay special attention to the history of slavery in Brookline, establishing the Hidden Brookline Committee in 2006 to examine and bring to

light the "hidden histories of slavery and freedom in Brookline." In May 2012, Town Meeting by an overwhelming margin passed Warrant Article 27 which acknowledged Brookline's history with slavery, called upon the people of Brookline to recognize contributions of Native Americans and African-Americans, and pledged vigilance against practices and institutions that dehumanize and discriminate against people. Warrant Article 23 filed for this Town Meeting similarly seeks to strip the name of a slaveholder from an elementary school.

Brookline's Naming Committee follows a very specific process. When it is time for a street or public feature to be named, a proposal is submitted to the Naming Committee, which carefully considers the name (or names) according to a set of guidelines that were established, approved by the Select Board, and most recently updated in 2013. Specifically, these guidelines state:

> Before making a recommendation on a proposal for the naming or renaming of a Public Facility, the Committee will take into consideration the following naming criteria:
>
> A. A person/organization of excellent reputation and character who/which has set an example of outstanding citizenship and/or has made an exemplary contribution of time, service, or resources to or on behalf of the community.
> B. A national noteworthy public figure or official.
> C. An event of historical or cultural significance.
> D. A significant donation or bequest, establishment of a trust, or other similar action.

The Naming Committee does not proactively recommend names, nor does it—or any other Town board or committee—publish a list of buildings or other features that should be considered candidates for renaming.

<u>DISCUSSION:</u>
There was a great deal of concern over the scope of work being proposed by Article 36. Several Advisory Committee members remarked that the Naming Committee, as mentioned above, does not conduct proactive research and that given its lack of staff and other resources, it would be unrealistic and misdirected to place such a burden onto it. Other members expressed concerns about the practicality, cost, and public safety hazards of renaming streets. And a significant minority objected to the idea that names should be stripped simply because standards have changed. However, there was considerable public support at the subcommittee public hearing for Article 36, and it should be noted that the Advisory Committee recommended Favorable Action on Article 23, which proposes to rename the Edward Devotion School for reasons that are substantially similar to the rationale offered in Article 36.

During deliberations, the Advisory Committee initially revised the language of the resolution to remove its narrow singling out of slaveholding as the sole negative criterion and to clarify that this Article is in no way instructing any Town Committee to perform

an exhaustive proactive study. Rather, the amended resolution recommended that the Naming Committee use additional criteria when it receives a renaming request. In other words, if information brought forward reveals that the actions of the person memorialized in the naming of a public feature are "unacceptable by current standards," the Naming Committee would take this into consideration when making its recommendation on the name change.

The above changes were ultimately ruled by the Moderator to be an expansion of scope of the Article and thus rejected. Upon reconsideration of the original language, the objections that had been originally raised prevailed and the Petitioner's motion—a resolution based on the original language of Article 36—failed.

RECOMMENDATION:
By a vote of 12–6–5, the Advisory Committee recommends NO ACTION.

ARTICLE 36

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS RECOMMENDATION

The Commission for Diversity, Inclusion and Community Relations voted for favorable action for Article 36.

Vote was as follows: 7 in favor, 2 no actions and 0 abstentions.

ARTICLE 37

THIRTY SEVENTH ARTICLE

Reports of Town Officers and Committees

Select Board's Report on Public Documents

Article 16 was a petitioned article filed at the November, 2017 Special Town Meeting which looked to expand the Town's electronic notice requirements to include documents that are available in electronic form 48 hours or more before the meeting also posted along with the agenda. The article attempted to address a gap in information to the public and allow more information to be shared at and during public meetings. A number of issues were raised by the Committee on Town Organization and Structure surrounding the feasibility of implementing the proposed by-law changes and the unintended burden that may be placed on committees that do not have staff support. Ultimately, Town Meeting referred the matter to the Select Board and asked for an update at the 2018 Annual Town Meeting.

We understand the desire of Town Meeting and others to extend this level of information to other Town committees, and agree this information should be available to interested parties. The Board has had some experience with the distribution of documents as it has been voluntarily posting this information for several years. The Board has been using a software product that is specifically designed to manage the information distributed to public bodies. The same packet that is distributed to the Board is then posted online for public use. Since this implementation was voluntary, staff in the Select Board's Office have been able to make adjustments as needed to the documents that are posted; for example, personal information on license applications that is exempt from public disclosure under the public records law can be redacted. Also, a recent Supreme Judicial Court decision in the matter of *Boelter v. Board of Selectmen of Wayland* needs to be examined as it concerns the publication of documents in the context of the Open Meeting Law.

Shortly after the November Town Meeting, both Select Board staff and the Information Technology Department began exploring options for renewal of the current agenda management software product, which was due for an upgrade after being sold to a new company. The conclusion was renewal and upgrading of the system was the best option to continue to provide the information for the Board meetings that the public has come to expect. This timing has also lined up with the outcome of Article 16. It became clear that utilization of this product should expand to other committees. The agenda and meeting materials are connected and eventually linked with the minutes of a meeting, which provides a complete picture of the evolution of a meeting from topic to materials to outcome. The search feature of this product is also very useful when doing research on past votes of the Board on certain topics. We also foresee improvements in departmental workflow because of better coordination of meeting documents and the potential to allow for paperless meetings should tech savvy committee members choose this option.

The Planning Department has agreed to be an early adopter and plans are underway to offer a robust training program to staff when the Town upgrades the system. The upgrade is scheduled for July/August of 2018. The Board would like time to implement this product in a thoughtful manner, and hopes that these early adopters will help pave the way toward full compliance. This will also allow Town Counsel to provide guidance on the management of public documents and

consistent instruction as departments are trained on the new system. The Board is interested in extending this initial training to the Advisory Committee and Transportation Board with the goal of all major committees brought online by the end of FY19.

TOWN OF BROOKLINE
Massachusetts

SELECT BOARD'S CLIMATE ACTION COMMITTEE

Nancy Heller, Select Board
Werner Lohe, Conservation Commission
Co-Chairs

SELECT BOARD'S CLIMATE ACTION COMMITTEE REPORT TO TOWN MEETING SPRING 2018

The Select Board's Climate Action Committee (SBCAC) reports annually to Town Meeting on its activities of the past year and its goals and initiatives for the upcoming year. In formulating its plans for future committee activities, the SBCAC welcomes input from Brookline residents and businesses. Please direct comments and ideas to Senior Planner, Maria Morelli, Department of Planning and Community Development, at mmorelli@brooklinema.gov or 617-730-2670.

I. INTRODUCTION

The Select Board's Climate Action Committee (SBCAC) was established in 2008 by the Select Board, in conjunction with a Resolution passed by Town Meeting that May (Appendix 1). The SBCAC has fifteen members: twelve representatives of various boards and commissions and three citizens appointed by the Select Board (Appendix 2). The SBCAC has been reporting to Town Meeting annually since November 2009. This year's report builds upon the content of previous years' reports, presenting a summary of the committee's activities over the past year and identifying new goals and priorities.

The SBCAC meets monthly, and organizes itself into working subcommittees on an as-needed basis, in response to evolving goals and projects.

In February 2015, the SBCAC proposed a revised committee charge to the Select Board to better reflect the committee's efforts to be proactive and encouraging of actions that reduce greenhouse gas emissions and enable the Town to adapt to the effects of climate change. The Select Board approved the new charge, which is as follows:

"The responsibilities of the committee shall include:

- To promote a goal of achieving 80% reduction in greenhouse gas (GHG) emissions by 2050 in alignment with the Massachusetts' Global Warming Solutions Act;
- To promote and implement resiliency measures to better prepare the Brookline community to adapt to climate change;
- To develop a comprehensive strategic plan that includes, but is not limited to, reducing greenhouse gas emissions and promoting sustainable practices for home, school and businesses;
- To advance Brookline as a leader in diverse sustainable practices that contribute to environmental health and positive social impact and economic development;

- To promote greater awareness about sustainability and the need to reduce GHG emissions through citizen choices;
- To recommend and, where appropriate, implement programs that reduce the net production of GHG emissions in Brookline;
- To measure, assess and/or monitor the efforts of the Town to reduce net GHG emissions;
- To serve as liaison between the Town and the public with regard to information and programs related to reducing net production of greenhouse gases;
- To report annually to the Annual Town Meeting and to report from time to time to the Select Board, the Town of Administrator, and the public; and,
- Such other responsibilities as may be determined from time to time by the Select Board."

II. ACCOMPLISHMENTS AND INITIATIVES

1. Prepared Climate Action Plan 2018; Prioritizing Zero Emissions by 2050

The last Climate Action Plan (CAP) was prepared in 2012 and its action items updated in 2015. The 2015 revision advocated reducing greenhouse gas emissions by 80% over the baseline year by 2050, consistent with the state's Global Warming Solutions Act. In December 2017 the SBCAC approved a new Climate Action Plan, prepared by staff, that reflects best practices employed by municipalities as well as recommended by Carbon Neutral Cities, Mass Power Forward, and the Metropolitan Area Planning Council. The new CAP's objective is to reduce greenhouse gas emissions by 80% by 2050 over baseline year of 2008 and but now prioritizes Zero Emissions by 2050 planning.

The CAP 2018 spans five mitigation strategies (reducing climate-changing greenhouse gas emissions): Greater Energy Efficiency, Increased Renewable Energy, Improved Transportation Options, Reduced Waste, and Enhanced Tree Canopy. The sixth strategy, adaptation (preparing for extreme weather events due to climate impacts) addresses actions that impact public health, emergency management, infrastructure, the built environment, natural resources, and economics. The provisions include actions the Town can take to lead by example, Town initiatives to benefit the community, and actions that households, small businesses, and commercial properties can take to make a measurable impact.

Section IV of this report provides an overview of key action items across the six strategies.

The Town has also updated Climate Action webpages on its site www.brooklinema.gov to better communicate the CAP's strategies, the Town's progress, and resources available to the public. The Planning Department has a quick link on its landing page to Climate Action activities and the CAP.

2. Awarded $233,000 Green Communities Grant

The Town attained "Green Community" status in 2011, which affirmed the Town's commitment to sustainability. The Town secured a grant from the Massachusetts Department of Energy Resources for $233,000 for nine projects and an additional $38,000 in utility incentives:

- installed LED lights in two municipal buildings (the Coolidge Corner Library and the Putterham Library);
- retrofit 60 streetlights to LED in the Brookline Village neighborhood;
- Installed a dual port Level 2 charging station (EVSE) in three municipal lots: Centre Street East, Fuller Street, and Kent-Webster;
- upgraded kitchen exhausts systems at three public schools: Baker, Heath, and Brookline High School

With the exception of the three EVSE installations, the projects will save about $32,000 in energy costs per year and reduce electricity consumption by over 120,000 kWh annually.

Green Community designation must be maintained by continuing to satisfy the Green Community requirements (Appendix 3), including ensuring the town's fuel efficient vehicle purchasing policy is followed and that progress is made on the adopted Municipal Energy Reduction Plan. Annual reporting on the Town's Green Community status to the state is therefore required and was submitted in December 2017. A report on the 2017 grant projects was submitted in January 2017. A table of the Town's progress is on the last page of this report.

3. Launched Brookline Green Electricity Program

Working with a subcommittee, the Town contracted with energy broker Good Energy to submit a community choice aggregation plan to the Massachusetts Department of Public Utilities, which was approved in June 2017. The Town launched the program in late June 2017 and reports a 90% participation rate in the program. The program has three products with different amounts of additional renewable energy (0%, 25%, and 100%). Over 92% of the participating account holders are enrolled in the default 25% product, which helps the Town displace almost 34 million pounds of carbon dioxide annually.

The Town is a leader nationwide for providing a 25% default product. This leadership is having an impact locally. The Boston City Council invited staff to testify at a public hearing at which the Council voted unanimously to create legislation approving the launch of an aggregation-plus-renewables program. Boston University and Northeastern University graduate students in sustainability consulted with staff on their capstone projects, which involve advising Boston on its net zero carbon emissions planning.

The program is seeing a steady increase in participation in the 100% renewable option. In November 2017 Eversource raised its Jan-Jun 2018 supply rates for basic service, which

means that consumers can purchase Brookline Green's 100% product for about the same price as basic Eversource rates.

4. Participated on Greater Boston Climate Preparedness Taskforce

The SBCAC and Town staff also represented the Town at meetings of the Climate Preparedness Taskforce, a newly-formed coalition of municipalities in the Greater Boston region, which, with the assistance of MAPC, have agreed to work together to address the likely regional impacts of climate change. This taskforce is encouraging municipalities to develop individual climate vulnerability assessments.

5. Completed Brookline Vulnerability Assessment and Adaptation Plan; Awarded MVP Designation from State's Executive Office of Energy and Environmental Affairs

Through a partnership made possible by the American Geophysical Union, SBCAC members and Town staff worked with Northeastern University scientists to project extreme heat temperatures and the location of urban heat islands in 2030 and 2070 so that the Town can begin work on a mitigation and adaptation action plan. With the help of a $20,000 State Community Compact grant, the Town worked with Metropolitan Area Planning Council (MAPC) to incorporate Northeastern's research into resources that will be used to educate the public and policy makers and expand the study to flooding and precipitation.

The final report and action items was submitted to the State's Executive Office of Energy and Environmental Affairs (EEA), which awarded the Town the Municipal Vulnerability Preparedness (MVP) designation. Such designation makes the Town eligible for generous state funding to implement climate preparedness projects.

6. Presented Interim Report and Recommendations on Net Zero Schools

In collaboration with Climate Action Brookline, an SBCAC subcommittee chaired by Werner Lohe was formed to explore best practices, financial models, and challenges associated with the construction of Net Zero Energy (NZE) buildings. The subcommittee has worked with the Building Department and Planning Department to guide future policies around net zero initiatives. The report presented to the Select Board, Building Commission, Advisory Council, and School Committee, highlighting key actions to better achieve net zero:

- establishing an integrated team involving decision-makers, architects, sustainability consultant, engineers
- setting high-performance energy goals prior to the onset of the design process
- selecting appropriate benchmarks (EUI, LEED, etc.)
- obtaining early buy-in from decision-makers to make the energy goal as important as the budget

- considering not only capital costs in preparing cost-benefit analyses, but also life-cycle costs using Net Present Value analysis
- using a whole building design process, including more energy modeling
- institutionalizing NZE principles in the Town's construction process by establishing a staff function with such responsibility or by some other mechanism
- evaluating new goals or standards, particularly the ideas of Fossil Fuel Free Buildings or Zero Emissions

These principles are already being applied to the Brookline High School expansion project. The 120,000 sf Cypress Street building achieved an EUI of 29.5 kBtu/sf at schematic design, which will save an estimated 37% in annual energy costs and an estimated 42.7% reduction in greenhouse gas emissions (over the baseline).

The subcommittee in collaboration with Building and Planning staff will prepare a second interim report to describe recommended process adjustments on net zero projects.

7. Installing Solar Photovoltaic Panels

In conjunction with the Deputy Town Administrator and Town Counsel's Office, staff, with SBCAC oversight, worked hard to finalize contracts with Blue Wave Capital for solar photovoltaic panel installations on several municipal properties with the goal of installing the panels in 2017. However, the State had issues with the developer's net metering agreement for Melrose (on which the Brookline agreements would be based), and that means that the Town is not likely to complete the Blue Wave contracts.

Staff will examine other opportunities for installation of PV arrays on Town buildings, however. Until the landfill capping project at the transfer station is completed, scoping out a solar canopy project at the transfer station is on hold.

8. Promoting Installation of Electric Vehicle Charging Stations

Following a vote to refer several EV Charging Warrant Articles at the Fall 2016 Town Meeting, the SBCAC formed a study committee, chaired by Linda Olson Pehlke, on how best to encourage the installation of Level 2 charging stations for electric vehicles. The subcommittee in collaboration with Planning Department and Transportation Division staff and citizen petitioner Scott Ananian submitted a report to Town Meeting Spring 2017 that presented several paths and the mechanisms that would be required to implement the options. The most impactful and least complicated option involved updating the Town's Transportation Access Plan guidelines.

In January 2018 the Department of Public Works updated its TAP guidelines as follows:

> Projects at least 25,000 sf or 25 residential units are required to have either one parking space or 2% of parking spaces (whichever is greater) installed with electric

vehicle charging stations and that an additional 15% of parking spaces have conduit to accommodate the installation of electric vehicle charging stations in the future.

The provision was applied as a condition on a permitted Chapter 40B project on Babcock Street.

9. Hosting Public Hearings on Warrant Articles Related to Sustainability

The SBCAC members hosted public hearings and made recommendations to Town Meeting on warrant articles that address issues impacting sustainability, including an amendment to the erosion and sediment control bylaw to reduce indiscriminate clear cutting of trees on private property. Enhancing the Town's tree canopy is a key mitigation strategy of the Climate Action Plan 2018.

10. Updating Open Space Plan

Werner Lohe and Deborah Rivers have been serving on the Climate Change subcommittee for the Open Space Plan update during 2016-2017. The focus of this subcommittee has been to bring greater awareness of the potential impacts of climate change on the Town and the role that parks and open space can play in the mitigation of greenhouse gas emissions and adaptation to the effects of climate change. Specific topics include heat island effect, storm water management, and the effect of methane leaks on trees. It is anticipated that the final report will be issued in mid-2018, with a presentation to the public.

III. WORK PLAN

The SBCAC has identified the following tasks for the coming year:

1. Ask the Select Board to adopt the CAP 2018 and the recommendation to prioritize Zero Emissions by 2050 planning.
2. Prepare a roadmap for achieving Zero Emissions by 2050.
3. Formulate best practices to ensure that Net Zero measures are explored on future projects and to guide decision makers on future projects.
4. Communicate Climate Action Plan strategies and resources to constituency groups, especially public health impacts and energy savings opportunities.
5. Prepare an updated greenhouse gas inventory with projections and target reductions.
6. Prioritize climate preparedness actions identified in the Brookline Vulnerability Assessment and apply for state funding to implement key actions.
7. Prepare Green Building/Sustainable Site guidelines for the private sector.

8. Provide support for the Town's efforts to implement the Green Communities Act criteria and objectives, including the execution of the municipal energy reduction plan, and encouraging the pursuit of renewable energy generation alternatives.
9. Outreach to residents, small business owners, and commercial/multifamily property owners to share ways to improve energy efficiency and available resources and incentives.
10. Continue to support community groups, Town Boards and Commissions, and residents working on activities listed in the Climate Action Plan. The actions listed in the plan provide a road map and policy framework for the committee as it moves forward.
11. Assist as needed in the Town's efforts to install solar PV facilities on municipal buildings and properties.
12. Work with community and municipal partners to identify and implement climate change adaptation strategies. Pool resources with neighboring municipalities to build support for adaptation initiatives and develop best practices.
13. Continually promote the benefits of Brookline Green Electricity.
14. Pursue the installation of additional publicly accessible Level 2 charging stations for electric vehicles.

IV. EXCERPTS FROM CLIMATE ACTION PLAN (CAP) 2018

See next page

BROOKLINE CLIMATE ACTION PLAN 2018 **Overview of Selected, High-Priority Mitigation Action Items (greatest GHG reductions) and Critical Adaptation Action Items (see CAP 2018 for full list)**

GOAL Commit to Zero Emissions by 2050 and prepare road map with five-year milestones in 2018-2019

Objective of 2018 CAP To reduce greenhouse gas emissions community-wide by 80% by 2050 over baseline year level

Low-Carb(on) Diet Predicated on greater **Energy Efficiency**, increased **Renewable Energy** (decarbonization), progress toward **Electricity**-sourced systems

STRATEGY 1 **Greater Energy Efficiency**	STRATEGY 2 **Increased Renewable Energy**	STRATEGY 3 **Improved Transportation Options**	STRATEGY 4 **Reduced Waste**	STRATEGY 5 **Enhanced/Protected Tree Canopies and Open Space**	STRATEGY 6 **Adaptation and Climate Preparedness**
GHG Reductions X MMT CO_2e | Y%	**GHG Reductions** X MMT CO_2e | Y%	**GHG Reductions** X MMT CO_2e | Y%	**GHG Reductions** X MMT CO_2e | Y%	**GHG Reductions** X MMT CO_2e | Y%	
Actions 1. Adopt Green Building Guidelines for projects 25,000+ sf 2. Retrofit all street lights and facility lighting to LED 3. Create MOU with utilities to increase incentives for commercial properties to lower GHG emissions 4. Adopt BERDO/BEUDO for 25,000+ sf bldgs.; launch pilot first 5. Accelerate repair of gas/methane leaks by X% 6. Study applying Passivhaus standards to affordable housing	**Actions** 1. Achieve fossil-fuel-free (FFF) or net zero new school projects 2. Launch Community Solar Program 3. Launch Air Source Heat Pump Bulk Purchasing program 4. Install X megawatts of solar PV at municipal facilities 5. Study pro/con of conversion to electric heat 6. Expand solar regulations in conjunction with tree preservation policy	**Actions** 1. Obtain State certification for Complete Streets Prioritization Plan 2. Update Transportation Access Plan Guidelines with more sustainability provisions; for eg, EVSE installs in major impact projects 3. Install 50+ EVSE ports in optimal locations accessed by public (eg, Beacon St) 4. Work with state, private partners to implement clean energy shuttle bus services in commercial districts (Brookline Village-Coolidge; Route 9-Boylston Street)	**Actions** 1. Create Zero Waste plan 2. Launch composting / organics diversion program 3. Install permeable pavement on Town-owned properties to reduce runoff	**Actions** 1. Amend erosion control management bylaw 2. Adopt Site Plan Review with Tree Survey/Review component for private properties 3. Create tree inventory to compare with heat island, flooding maps; identify opportunities to plant X more trees in vulnerable areas for cooling effect, detaining water, and sequestering carbon 4. Participate in urban-forest carbon registry to fund planting and stormwater projects	**Actions** 1. Reach out to hospitals, nursing homes, and group homes to ensure they have Continuity of Operations (COOP) plans so they can perform essentials functions during emergencies. 2. Encourage use of microgrids, district energy, and battery storage to keep critical facilities functioning in the event of power loss. 3. Encourage depaving and use of permeable surfaces in areas vulnerable to flooding. 4. Expand communication infrastructure
Mechanisms / Policy Docs **educate / incentivize / mandate** ▪ Amendments to Zoning Bylaw ▪ Green Communities grant funding (ongoing) ▪ Technical assistance to create MOU	**Mechanisms / Policy Docs** **educate / incentivize / mandate** ▪ Amendments to Zoning Bylaw ▪ Green Communities grant funding (ongoing)	**Mechanisms / Policy Docs** **educate / incentivize / mandate** ▪ DPW updated TAP Jan 2018 ▪ VW Settlement, Eversource Investment and grant ops ▪ Grant funding, possible public-private partnerships for shuttles	**Mechanisms / Policy Docs** **educate / incentivize / mandate** ▪ Amendments to Town Bylaw ▪ Amendment to Zoning Bylaw ▪ Carbon credits registry can help fund planting, stormwater projects	**Mechanisms / Policy Docs** **educate / incentivize / mandate** ▪ Amendments to Town Bylaw ▪ Amendment to Zoning Bylaw ▪ Maintain tree inventory ▪ Tech assistance to measure canopy increase and lower landarea temp	**Mechanisms / Policy Docs** **educate / incentivize / mandate** ▪ MVP grant funding ▪ FEMA grant funding

CRITERIA FOR EACH ACTION ITEM (not in chart above)	**SELECTED POLICY DOCUMENTS THAT MUST INTEGRATE THE CAP**
1. Specific and self-explanatory	▪ **GHG Inventory / Energy Reduction Plan:** A foundation for the Climate Action Plan, used to make policy decisions; needs to be created
2. Quantifiable Environmental Impact (in terms of GHG reductions)	▪ **Comprehensive Plan:** Include the Climate Action Plan as a separate chapter in the CP
3. Schedule or Priority	▪ **Capital Improvements Program:** Include policies for building new facilities (for eg, fossil-fuel-free new school projects)
4. Estimated Cost To Implement	▪ **Strategic Asset Plan:** For eg, include facilities that can double as cooling centers with back-up generation powered by solar
5. Funding Source	▪ **Hazard Mitigation Plan:** Update to reflect new Vulnerability Assessment / Adaption action item
6. Mechanism for Approval/Implementation	▪ **Zoning Bylaw / General Bylaw:** Green Building Guidelines; enhanced erosion/sediment bylaw
7. Policy Document Governing Enforcement, Monitoring	▪ **Transportation Asset Plan Guidelines:** Include sustainability provisions; for eg, electric-vehicle charging stations/conduit for future installs
8. Primary Department or Body Responsible for Launch, Implementation	▪ **Open Space Plan:** (and vice versa)
9. Staffing/Town operations implications identified	**POLICY AUDIT:** Current plans in progress or completed that make progress toward CAP objective; for eg Complete Streets Policy (May 2016)
10. Co-Benefits (cost savings, improved air quality, etc)	**2019 / ZERO EMISSIONS PLANNING:** Not shown above, but all strategic areas must develop plans to achieve zero emissions by 2050.

V. APPENDICES

1. Town Meeting Resolution (Article 29, May 27, 2008, Annual Town Meeting)

VOTED: That the Select Board establish a committee, the purpose of which is to reduce the total emission of greenhouse gases by the Brookline community, including Town government. The name of the committee shall be the Select Board's Climate Action Committee. The responsibilities of the committee shall include:

1. To recommend programs that reduce the net production of greenhouse gases in Brookline, such as energy efficiency measures, green energy sources, and additional greenspace;
2. To monitor, measure, and assess efforts of the Town to reduce net greenhouse gas emissions;
3. To monitor promising relevant programs in other municipalities;
4. To monitor relevant technological developments;
5. To serve as liaison between the Town and the public with regard to information and programs related to reducing net production of greenhouse gases;
6. To report annually to the Annual Town Meeting and to report from time to time to the Select Board, the Town Administrator, and the public; and
7. Such other responsibilities as may be determined from time to time by the Select Board.

The committee shall consist of the following members appointed by the Select Board:

1. A member of the Select Board
2. The Chair of the Advisory Committee or her/his nominee
3. The Chair of the School Committee or her/his nominee
4. The Chair of the Transportation Board or her/his nominee
5. The Chair of the Conservation Commission, or her/his nominee
6. The Chair of the Planning Board, or her/his nominee
7. The Chair of the Building Commission, or her/his nominee
8. The Chair of the Advisory Council on Public Health, or her/his nominee
9. A Co-Chair of Climate Action Brookline, or their nominee
10. The President of the Brookline GreenSpace Alliance, or her/his nominee
11. A Co-Chair of the Brookline Neighborhood Alliance, or their nominee
12. The President of the Brookline Chamber of Commerce, or her/his nominee
13. Three members at large with special consideration given to people with the following skills:

    - Relevant scientific and/or academic expertise
    - Relevant engineering expertise
    - Knowledge of and/or experience with green businesses
    - Relevant public health expertise.

All members shall serve three-year terms, which may be renewed. Initial

appointments shall be for terms of one, two, and three years so that terms will expire at staggered intervals. No member shall be disqualified because she or he is not a resident of the Town. The committee shall have two co-chairpersons, one of whom shall be the selectman member and one of whom shall be elected annually by the committee. The staffing of the committee shall be determined by the Select Board and the Town Administrator. The committee shall be established by November 30, 2008, and shall be evaluated by the Select Board before December 31, 2011 to determine whether it should be made permanent or dissolved.

2. SBCAC Membership

Daniel Bennett	Building Commission; Building Commissioner
Michael Berger	At-large
Ben Chang	School Committee
Nancy Heller, Co-chair	Select Board
David Lescohier	At-large
Alan Leviton	Climate Action Brookline
Werner Lohe, Co-Chair	Conservation Commission
Swannie Jett, PhD	Public Health Advisory Council; Health Commissioner
Linda Olson Pehlke	Brookline Neighborhood Alliance
Deborah Rivers	Brookline GreenSpace Alliance
Kathleen Scanlon	At-large
Ali Tali	Transportation Board
Don Weitzman	Advisory Committee
James Carr	Planning Board
David Gladstone	Chamber of Commerce

Staff:

Maria Morelli	Senior Planner, Department of Planning and Community Development

3. Green Communities Act

To qualify as a Green Community, a municipality must meet all five of the following criteria:

- Provide for the as-of-right siting of renewable or alternative energy generating facilities, renewable or alternative energy research and development (R&D) facilities, or renewable or alternative energy manufacturing facilities in designated locations.
- Adopt an expedited application and permitting process under which these energy facilities may be sited within the municipality and which shall not exceed 1 year from the date of initial application to the date of final approval.

- Establish an energy use baseline inventory for municipal buildings, vehicles, street and traffic lighting, and put in place a comprehensive program designed to reduce this baseline by 20 percent within 5 years of initial participation in the program.
- Purchase only fuel-efficient vehicles for municipal use whenever such vehicles are commercially available and practicable.
- Require all new residential construction over 3,000 square feet and all new commercial and industrial real estate construction to minimize, to the extent feasible, the life-cycle cost of the facility by utilizing energy efficiency, water conservation and other renewable or alternative energy technologies.

4. Municipal Energy Reduction Plan

In June 2011, the Select Board adopted a Municipal Energy Reduction Plan (available on the Climate Action website) with the goal of reducing municipal energy use by 20 percent over a 5-year period. This goal is also a criterion for maintaining the Green Communities designation, which was awarded in 2011.

Although the Town has not met the 20% target (it is about halfway there), it continues to prioritize energy conservation upgrades and measures. One possible explanation for not meeting this target over five years is that at the time the Town was awarded Green Communities designation, it had already been prioritizing energy conservation measures, especially among Town facilities, which make up the majority of the municipality's energy consumption. Nonetheless, staff is collaborating to analyze this further.

Energy efficiency and conservation is a priority of the town, and funding has been dedicated to improving the energy efficiency of the town's buildings and facilities for several years, reflecting this commitment. The town's Capital Improvements Program (CIP) has regularly included funding for energy efficiency measures on an annual basis. The CIP FY 2018-2023 budgets $1,400,000 for energy conservation and another $325,000 for energy management system upgrades. The Town regularly partners with and participates in utility programs that subsidize energy efficiency improvements in order to leverage these funds.

The Building Department is using cutting-edge Variable Refrigerant Flow HVAC on the Driscoll School upgrade, which uses refrigerant to both heat and cool buildings. The balancing of heating and cooling demand may have an up to 50% energy savings over traditional HVAC systems. The project team for the Brookline High School project (Cypress Street building) was charged with meeting an ambitious EUI (energy use intensity) of between 25 and 30 kBtu/sf. At schematic design, the project achieved an EUI of 29.5, which saves an estimated 37% in energy costs and reduces 42.7% greenhouse gas emissions annually over the ASHRAE baseline.

Over 90% of the Town's streetlights have been converted to LED. The Town would like to use a self-metering wireless system, which employs a dimming feature that steeply reduces energy consumption, a technology commonly used in municipalities outside of Massachusetts. Unfortunately, Eversource will not allow the use of self-metering systems. Staff will continue to pursue ways to overcome this obstacle, though it would take considerable political pressure involving the Department of Public Utilities to prevail.

The following table shows the Town's progress from the Green Communities annual report submitted to DOER (December 2017). Staff will increase its collaboration to analyze energy use in comparison to the previous year and ways to decrease consumption.

Timeline of Annual Municipal Energy Use*

	Baseline MMBtu	Year 1 MMBtu	Year 2 MMBtu	Year 3 MMBtu	Year 4 MMBtu	Year 5 MMBtu	Year 6 MMBtu	Year 7 MMBtu	Year 8 MMBtu		For Most Recent Year: Change vs. Baseline (%)
Note Fiscal or Calendar Year	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017		
Buildings	125,679	123,717	136,131	115,204	131,580	144,849	141,898	118,116	113,117		10.0%
Open Space	2,488	2,529	2,632	2,794	2,591	2,686	2,511	2,582	2,681		-7.8%
Street & Traffic Lights	11,181	11,226	11,199	11,439	10,981	9,927	10,526	9,611	8,957		19.9%
Vehicles	17,063	19,818	21,764	19,354	19,606	19,459	19,265	4,178	12,310		27.9%
Water/Sewer	15	9	15	10	6	5	6	5	5		66.7%
Building Stock Change Adjustment									-11.18		2017 was debut year for this category
Regional School Prorated											2017 was debut year for this category
TOTAL ENERGY CONSUMPTION (NO Weather Normalization)	156,426	157,299	171,741	148,801	164,764	176,926	174,206	134,492	137,059		12.4%
TOTAL ENERGY CONSUMPTION (Weather-Normalized)											Not available

* Does not reflect third-party audit and corrections (scheduled for mid-May) at the item of report submittal to Town Meeting (late April).

SELECT BOARD

Neil A. Wishinsky, Chair
Benjamin J. Franco
Nancy S. Heller
Bernard W. Greene
Heather Hamilton

ADVISORY COMMITTEE

Sean Lynn-Jones, Chairman